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Attorney for Plaintiffs

[redacted]
individually and as the natural parents
and next friends of B.D., a minor
Plaintiffs

v.

ALLAN R. DEJONG, M.D.
COUNTY OF DELAWARE
MARY GERMOND
META WERTZ
BETH PRODOEHL
PATRICIA MCGETTIGAN
GINA GIANCRISTIFORO
DR. DOE

Defendants

UNITED STATES
DISTRICT COURT FOR THE

EASTERN DISTRICT OF
PENNSYLVANIA

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Civil Action No. 10-6789

Plaintiffs, [redacted] and B.D. allege the following:

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. § 1981, 42 U.S.C § 1983 and 42 U.S.C. § 1985 and the Fourth, Fifth, Sixth and Fourteenth Amendments 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. The supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear related state causes of action is invoked.

ALLEGATIONS-PARTIES

3. Plaintiff, [redacted] hereinafter called [redacted] is and at all relevant times was a resident of Delaware County, Pennsylvania. On November 26, 2009 [redacted] was falsely accused of abusing his two-month old son, B.D.. Thereafter, [redacted] was arrested and incarcerated for 8 days and B.D. was removed from his care and [redacted] was separated from his son for over one year in violation of his constitutional rights. [redacted] is bringing claims on his own behalf individually and as the next friend of his son, B.D.

4. Plaintiff, [redacted] hereinafter called [redacted] is and at all relevant times was a resident of Delaware County, Pennsylvania. On December 9, 2009 [redacted] was falsely accused of knowing that her son was being abused and failing to protect B.D.. Thereafter, B.D. was removed from her care and separated from her son for nine months in violation of her constitutional rights. [redacted] is bringing claims on her own behalf individually and as the next friend of her son, B.D.

5. Plaintiffs [redacted] and [redacted] bring suit as the natural parents and next friend of, B.D., a minor, is the first and only child of [redacted] and [redacted] and at all relevant times was a resident of Delaware County, Pennsylvania. B.D. was born in September of 2008 and on November 20, 2008, B.D. was admitted to DuPont Hospital as a result of birth related complications. On December 9, 2009, B.D. was removed from his parents by an ex parte order obtained when Delaware County Children and Youth Services employees made reckless misrepresentations to the Delaware County Court without any opportunity for [redacted] and [redacted] to be heard. Thereafter, B.D. was placed in foster care and separated from his mother, [redacted] for nine months and was separated from his father, [redacted] for over one year in violation of his constitutional rights.

6. Defendant Dr. Allan R. DeJong, hereinafter called Dr. DeJong, is a citizen of Pennsylvania, is licensed to practice medicine by the Pennsylvania Department of State, claims to have expertise in the area of child abuse investigation and, at all times relevant to this complaint, maintained a primary office located at the Nemours/Alfred I. DuPont Hospital for Children, 1600 Rockland Road, Wilmington, Delaware. Dr. DeJong is a defendant in his individual capacity and in his capacity under color of state law as a member of the Delaware County child abuse investigative team in which he deliberately misrepresented that B.D. could not breathe on his own, deliberately misrepresented his interview with [redacted] and deliberately misrepresented other medical evidence for the purpose of getting [redacted] arrested, having [redacted] bail set high and separating B.D. from his parents. Dr. DeJong is a defendant in his individual capacity and in his capacity as a "defacto" detective and investigator while acting under color of state law to have [redacted] arrested and remove B.D. from the care [redacted] and [redacted]

7. Defendant County of Delaware, hereinafter Delaware County, is governed by a council created in 1976 by the Pennsylvania Legislature to "be a body politic and corporate" and to act for the Commonwealth of Pennsylvania in the execution of Commonwealth programs within Delaware County's boundaries and is governed by a council of five members. Delaware County is licensed by the Commonwealth of Pennsylvania to operate Children and Youth Services of Delaware County, hereinafter called CYS. Delaware County has a policy of relying upon medical professionals for information about "unexplained" injuries. Delaware County created an inherent conflict of interest in every dependency case when it deputized CYS to act as Clerk of juvenile court for all dependency matters involving CYS and has delegated full discretion regarding the scheduling of informal hearings and starting date of dependency trials to

CYS. Delaware County failed to train its employees about due process consideration when exercising its power to remove children from their parents.

8. Defendant Mary Germond is a citizen of Pennsylvania and at all relevant times held the position of administrator of Children and Youth Services of Delaware County and is a defendant in her individual capacity and in her capacity as administrator of CYS. At all times relevant herein, Mary Germond had a non-delegable duty to ensure that her employees conducted an independent unbiased complete medico-legal investigation into whether a report of suspected child abuse is founded and to reunify a child in the custody of CYS with his parents as soon as possible. Mary Germond is responsible for setting the policy of CYS and she signed the petition alleging that B.D. was a dependent child that Pennsylvania law required CYS file within 48 hours of the detention hearing but instead Mary Germond filed the petition 16 days late.

9. Defendant Meta Wertz is a citizen of Pennsylvania and at all relevant times held the position of intake administrator within CYS and is a defendant in her individual capacity and her capacity as intake administrator. At all times relevant herein, Meta Wertz had a non-delegable duty to ensure that she and the employees she supervised conduct an independent unbiased complete medico-legal investigation into whether a report of suspected child abuse is founded and to reunify a child in the custody of CYS with his parents as soon as possible. Meta Wertz sets policy for the intake department of CYS and signed the ex parte memorandum containing the reckless misrepresentation that there were no family members available to care for B.D. and the further misrepresentation that a full home study had to be completed before B.D. could be placed in kinship care. These misrepresentations were sent ex parte directly to Judge Maureen Fitzpatrick and were the basis upon which the court granted protective custody of B.D.

to CYS and refused to allow [redacted] to have more than one hour of supervised visitation with B.D. per week for over 9 months because [redacted] was maintaining hers and [redacted] innocence.

10. Defendant Beth Prodoehl, hereinafter Ms. Prodoehl, is a citizen of Pennsylvania and at all relevant times held the position of kinship administrator within CYS and is a defendant in her individual capacity and her capacity as kinship administrator. At all times relevant herein, Ms. Prodoehl breached her duty to ensure that she and the employees she supervised follow the mandate that the Commonwealth shall give first consideration to placement with relatives and to document the reason why such placement was not made when she refused to place B.D. with [redacted] parents or [redacted] and [redacted] friends, the Stevensons. In addition, Ms. Prodoehl sets policy of the kinship department of CYS and had a duty to reunify a child in the custody of CYS with his parents as soon as possible. Ms. Prodoehl refused to allow [redacted] to have more than one hour of supervised visitation with B.D. per week for over 6 months while B.D. was in kinship foster care because [redacted] was maintaining hers and [redacted] innocence.

11. Defendant Patricia McGettigan, hereinafter Ms. McGettigan, is a citizen of Pennsylvania and at all relevant times held the position of intake supervisor within CYS and is a defendant in her individual capacity and her capacity as intake supervisor. At all times relevant herein, Ms. McGettigan had a non-delegable duty to ensure that she and the employees she supervised conduct an independent unbiased medico-legal investigation into whether a report of suspected child abuse is founded and to reunify a child in the custody of CYS with his parents as soon as possible. Ms. McGettigan signed the ex parte memorandum containing reckless misrepresentations of the facts and the law sent directly to Judge Maureen Fitzpatrick upon which the court granted protective custody of B.D. to CYS and refused to allow [redacted] to have

more than one hour of supervised visitation with B.D. per week for over 9 months because [redacted] was maintaining hers and [redacted] innocence. Ms. McGettigan was responsible for scheduling the first day of the dependency trial more than four months after B.D. was taken from [redacted] and [redacted] care.

12. Defendant Gina Giancristiforo, hereinafter Ms. Giancristiforo, is a citizen of Pennsylvania and at all relevant times held the position of intake case-worker within CYS and is a defendant in her individual capacity and her capacity as CYS intake case worker. At all times relevant herein, Ms. Giancristiforo, had a non-delegable duty to conduct an independent unbiased medico-legal investigation into whether a report of suspected child abuse is founded and to reunify a child in the custody of CYS with his parents as soon as possible. Ms. Giancristiforo recklessly misrepresented to the court that there were no family members available to care for B.D. when she was fully aware that B.D.'s maternal grandparents were ready, willing and able to care for B.D.. Ms. Giancristiforo further recklessly misrepresented to the court that a full resource home study had to be completed before CYS could place B.D. with a kinship family when the law specifically provides for temporary approval pending a full resource home study within 60 days. These misrepresentations were made to the court in an ex parte memorandum sent directly to Judge Maureen Fitzpatrick upon which the court granted protective custody of B.D. to CYS and refused to allow [redacted] to have more than one hour of supervised visitation with B.D. per week for over 9 months because [redacted] was maintaining hers and [redacted] innocence.

13. Defendant Dr. Doe is a physician at DuPont Hospital that, upon information and belief, performed a surgical procedure to relieve pressure on B.D.'s brain on the wrong side of B.D.'s head on or about November 24, 2010 causing brain injury. Dr. Doe's

identity is not known due to the failure to document the surgical procedure in B.D.'s medical records.

ALLEGATIONS - FACTUAL

14. At the time of his arrest on November 27, 2008, [redacted] was employed as a truck driver and appliance installation technician. As a result of his arrest and subsequent incarceration, [redacted] lost his job, was able to find a part time job for several months until he obtained another full time job preparing and packing orders in a warehouse 8 months after his arrest. [redacted] has no criminal record.

15. At all times relevant to this complaint [redacted] was employed by World Impact, Inc. of Chester as a church plant team leader. World Impact is a Los Angeles based non-profit corporation that operates the Frederick Douglass Christian School in Chester Pennsylvania which serves inner city youth.

16. [redacted] and [redacted] were married on September 29, 2007. It was the first marriage for both [redacted] and [redacted] Prior to their marriage neither [redacted] nor [redacted] had any children.

17. Due to [redacted] age, [redacted] and [redacted] planned to have a baby immediately after they were married. [redacted] and [redacted] decided to have the baby at the Wilmington Birth Center under the care of a midwife in order for the birth of their child to be more natural.

18. Before and during her pregnancy with B.D., [redacted] watched her diet and avoided foods like milk with fat, butter, eggs and seafood, all of which are natural sources of vitamin D.

19. On October 29, 2007, [redacted] went to a dermatologist because of her concern about some lesions on her skin. On December 17, 2007 the dermatologist removed a basal cell carcinoma from her right deltoid area. On January 9, 2008, a second basal cell carcinoma was removed from her left deltoid area.

20. As a result of her skin cancers, the dermatologist advised [redacted] to use sunscreen to avoid future sun damage. [redacted] followed the advice of her dermatologist and avoided sun exposure denying [redacted] the most abundant source of vitamin D for mothers during pregnancy.

21. [redacted] attended her first pregnancy routine care visit at the Wilmington Birth Center, hereinafter called Birth Center, on January 22, 2008. On April 3, 2008 [redacted] returned to the dermatologist and an atypical mole was removed from [redacted] back. On July 14, 2008 [redacted] saw her dermatologist again and the doctor re-excised the mole due to inadequate margins.

22. [redacted] and [redacted] both participated in prenatal classes at the Wilmington Birth Center, hereinafter called Birth Center, and [redacted] attended a total of 15 appointments at the Birth Center to receive routine prenatal care from the Birth Center's midwife. In addition, [redacted] attended classes at the Delaware County Pregnancy Center during her pregnancy with B.D.. [redacted] had the recommended laboratory blood test screenings, ultrasound evaluations and took the recommended prenatal vitamin tablets during her pregnancy.

23. Studies have found that 60% to 90% of pregnant women taking prenatal vitamins still suffer a vitamin D insufficiency or deficiency.

24. On September 16, 2008 at 4:30 a.m., [redacted] membranes ruptured and by 11:50 a.m. [redacted] began having labor contractions. After consultation by telephone with the

Birth Center throughout the day, at 8:45 p.m. [redacted] brought [redacted] to the Birth Center. By 12:45 a.m. on September 17, 2008, [redacted] contractions were moderate to strong and were 2 to 3 minutes apart and lasting 60 to 90 seconds.

25. B.D.'s head presented in the Right Occipital Posterior position, a head position that prevents vaginal delivery. The Birth Center's midwife had [redacted] do various things like walk and go up and down steps in attempts to get the baby's head into a position that would allow vaginal delivery.

26. At about 2:30 p.m. on September 17, 2008, [redacted] left the Birth Center and the midwife drove [redacted] to Christiana Hospital. [redacted] followed in his car. [redacted] was admitted to Christiana Hospital at 2:56 p.m. on September 17, 2008.

27. [redacted] received an epidural for pain and oxytocin was administered to [redacted] at Christiana hospital to assist her contractions. An obstetrician at Christiana hospital reached in and manually turned B.D.'s head to the anterior occipital position for delivery. B.D. was born at 6:21 p.m. on September 17, 2008.

28. The obstetrician noted that B.D. had endured a "prolonged labor" and a "protracted active phase" on his medical chart. On September 18, 2008, an attending physician at Christiana noted on the chart that B.D. had "overriding sutures" referring to the fact that the plates of B.D.'s head had not yet completely moved to the abutting position from the overlapping position during delivery due to the extreme compression and molding of B.D.'s head during his lengthy labor and delivery.

29. On September 18, 2008, B.D. had a transcutaneous bilirubin level of 9.3 and B.D. was discharged from Christiana hospital to the care of Dr. Christos of Pediatric Associates of Glen Mills, PA. On September 22, 2008 [redacted] took B.D. for a bilirubin test.

B.D.'s bilirubin level had increased to 15.2 mg/dL. The reference range for bilirubin in an infant B.D.'s age was 0.0 to 1.5 mg/dL.

30. [redacted] took B.D. to Pediatric Associates on September 24, 2008 where B.D. was examined by Dr. Brooks. Dr. Brooks observed no evidence of pain, bruising or abuse during the examination and her only concern was B.D.'s continuing jaundice.

31. On October 22, 2008, [redacted] took B.D. to his regular one-month checkup with Pediatric Associates where a different pediatrician, Dr. Goldberg, examined B.D. and administered a Hepatitis B vaccination. Dr. Goldberg observed no evidence of pain, bruising or abuse during the examination and his only concern was B.D.'s continuing jaundice.

32. The day after B.D.'s one-month visit, on October 23, 2008 [redacted] took B.D. for a bilirubin test. B.D.'s bilirubin level was still elevated at 11.2 mg/dL. The reference range for an infant's bilirubin level at one month is 0.2 to 0.8 mg/dL. Shortly after B.D.'s one-month checkup, when his bilirubin was extremely elevated, [redacted] noticed a small red mark on B.D.'s chest that disappeared by the following morning. [redacted] did not know what caused the mark but discussed the mark with [redacted]

33. In that discussion with [redacted] [redacted] discussed how B.D. would throw his head back and arch his back sometimes and thought that the way [redacted] held B.D. when B.D. threw his head back might be an explanation for the red mark. [redacted] and [redacted] discussed how [redacted] could hold B.D. differently just in case that is what caused the mark.

34. About a week later, [redacted] noticed a second red mark, this time on B.D.'s back, that again disappeared by the following morning. She discussed the mark with [redacted] again and she also began to put t-shirts on B.D. because [redacted] thought maybe a snap on B.D.'s

clothing had caused the red mark. After discussing the mark with [redacted] again and starting to dress B.D. with t-shirts, [redacted] did not observe any more marks of any kind on B.D..

35. On November 18, 2008, [redacted] took B.D. to his regular two-month checkup with Pediatric Associates where Dr. Christos examined B.D. for the first time. Dr. Christos observed no evidence of pain, bruising or abuse during his examination of B.D.. [redacted] explained to Dr. Christos that she and [redacted] had discussed vaccinations and that they wanted B.D. to get one vaccination per visit and B.D. received a DTaP vaccination.

36. [redacted] did not feel Dr. Christos took sufficient time to answer her questions and she felt that Dr. Christos did not respect the decision made by [redacted] and [redacted] concerning doing only one vaccination per visit. The day after B.D. received his DTaP vaccination, B.D. was a little fussy and B.D.'s fussiness continued the following day on Thursday, November 20, 2008.

37. B.D. was alone with [redacted] for a significant portion of the day on Thursday, November 20, 2008.

38. On the evening of Thursday, November 20, 2008, with dinner guests at the house, B.D. continued to be fussy. [redacted] took B.D. upstairs to change B.D.'s diaper and while changing B.D.'s diaper, [redacted] noticed a momentary limpness of B.D.'s left side. [redacted] called downstairs to have [redacted] come up and look at B.D. and by the time [redacted] got upstairs to observe B.D., [redacted] saw nothing unusual. Later that evening after the dinner guests had left, B.D. continued to be fussy and he began to vomit and [redacted] observed one brief instance of B.D.'s arm going momentarily limp. At that time [redacted] did not know what the momentary limpness was but since it passed quickly she was not concerned about it. She was concerned about his continuing fussiness and vomiting.

39. On the morning of Friday November 21, 2008, [redacted] and [redacted] continued to be concerned about B.D.'s continuing vomiting and fussiness. Because of [redacted] frustration with Pediatric Associates not listening to her, [redacted] and [redacted] took B.D. to see Dr. Marilyn Mudrick. Dr. Mudrick was the [redacted] family's long time physician.

40. Dr. Mudrick examined B.D. and expressed concern about dehydration and advised [redacted] and [redacted] to increase the frequency of feedings and decrease the amount of each feeding and that if the vomiting persisted to take B.D. to the hospital. On Friday, November 21, 2008, Dr. Mudrick observed no evidence of pain, bruising or abuse during her examination of B.D.. Dr. Mudrick attributed B.D.'s vomiting and fussiness to a reaction to the DTaP vaccine received by B.D. three days earlier. Dr. Mudrick told [redacted] and [redacted] to take B.D. to the hospital if he continued to vomit.

41. On Saturday morning, November 22, 2008, B.D. was continuing to vomit and, acting on the advice of Dr. Mudrick, [redacted] and [redacted] took B.D. to Christiana Hospital, the hospital where B.D. was born.

42. At Christiana hospital, a CT scan of B.D.'s head was performed which revealed that B.D. had a left frontal subdural hematoma. The CT scan could not identify any skull fracture. An examination by Christiana Hospital emergency room doctors revealed no bruises or other external signs of trauma on B.D..

43. Peer reviewed studies published in medical journals show that asymptomatic subdural hematomas as a result of vaginal and cesarean birth have been found to occur in up to 50% of births. Risk factors for such birth induced subdural hematomas include prolonged phase I of labor, prolonged phase II of labor, oxytocin admission and overriding sutures.

44. All of these risk factors for subdural hematoma are present and noted in B.D.'s medical charts from his birth at Christiana Hospital.

45. In addition, peer reviewed studies published in medical journals show that subdural hematomas such as those caused by birth can subsequently re-bleed spontaneously or with minor jostling.

46. Christiana Hospital immediately referred the matter to Delaware County Children and Youth Services and transferred B.D. to duPont Hospital. At duPont Hospital an examination by emergency room doctors revealed no bruises or other external signs of trauma. At duPont Hospital two full skeletal x-rays series for trauma were taken along with a number of CT scans of B.D.'s head and body.

47. The duPont radiologic studies show that B.D.'s subdural hematoma had hours to days old recent hemorrhages that were superimposed upon an older chronic hematoma weeks or months old that could date back to birth. This condition is often referred to as an acute on chronic subdural hematoma referring to how new blood (acute) is on top of older blood (chronic) within the hematoma itself.

48. The duPont radiologic studies show multiple anterior rib fractures or pseudofractures such as Looser zones with callus formation, anterior rib flaring, metaphyseal irregularities, a poorly ossified skull and poorly ossified facial bones. All of these bone findings are radiologic evidence of a metabolic bone disorder such as congenital rickets being present in B.D.. Rickets is caused by a vitamin D deficiency.

49. The duPont radiologic studies show no reliable medical evidence of a skull fracture. There was no skull fracture in B.D. and no medical evidence whatsoever of

trauma to B.D.'s head. The duPont radiologic studies show no medical evidence of neck or spine injury in B.D..

50. [redacted] and [redacted] were interviewed by multiple doctors and social workers upon admission to DuPont hospital. In those interviews [redacted] and [redacted] explained that they knew of no accidental or inflicted trauma to B.D. but they consistently provided the history of B.D.'s long and difficult birth and manual manipulation of his head during delivery. In those interviews [redacted] and [redacted] provided history of B.D.'s brief moments of left side limpness that were observed on November 20, 2008.

51. On November 24, 2008, [redacted] was interviewed by Dr. DeJong and Mr. Speedling at DuPont hospital. During [redacted] interview with Dr. DeJong and Mr. Speedling, [redacted] explained that she knew of no trauma, accidental or inflicted, to B.D. and she provided the history of B.D.'s long and difficult birth including the manual manipulation of B.D.'s head during labor.

52. During [redacted] interview with Dr. DeJong and Mr. Speedling, [redacted] provided the history of the two marks that disappeared by the following morning and provided the history of B.D.'s brief moments of arm left arm limpness and staring that were observed on November 20, 2008.

53. During [redacted] interview with Dr. DeJong and Mr. Speedling, [redacted] said that neither she nor [redacted] did anything to hurt B.D..

54. Dr. DeJong misrepresented in his reports, to the police and to CYS that [redacted] and [redacted] provided no history to explain B.D.'s injuries when they had, in fact, consistently explained B.D.'s long and difficult birth and transfer from the Birth Center to Christiana Hospital for a manual manipulation of B.D.'s head prior to delivery.

55. Dr. DeJong misrepresented the two red marks that disappeared by the following morning described by [redacted] and the description of how [redacted] took B.D. upstairs November 20, 2008 to change his diaper as "injury events" to Delaware County Children and Youth Services and to the Chester police when, in fact, [redacted] told Dr. DeJong that [redacted] had done nothing to hurt B.D.. Dr. DeJong also misrepresented to Officer Collins that B.D. was on a ventilator because could not breathe on his own when B.D. was, in fact, electively intubated to facilitate the performance of an MRI on B.D..

56. On Sunday, November 23, 2008, Delaware County Children and Youth Services "advised [redacted] and [redacted] to begin to think about other potential, temporary extended family caregivers since it is likely that the case will still be in the middle of the investigation by the time of discharge and likely will not return home with parents."

57. On November 24, 2008, the fact that [redacted] could freely visit B.D. in the hospital was interpreted by duPont's Children At Risk Evaluation team as meaning "no current safety plan is in place" but that once the Chester Police and CYS interviewed [redacted] and [redacted] "this could change."

58. On November 25, 2008, CARE team social worker Edward Speedling stated that he would update the medical team once the "parent interviews are completed by Police/CYS."

59. On Tuesday, November 25, 2008, [redacted] and [redacted] voluntarily went to the Delaware County Children and Youth Services office where they were both interviewed and answered every question asked of them.

60. After [redacted] and [redacted] were interviewed by Delaware County Children and Youth Services on November 25, 2008 at about 2:30 p.m., Ms. McGettigan, a supervisor at CYS called Mr. Speedling and told him "that there would be no change in visitation at this time."

61. Mr. Speedling "explained to Ms. McGettigan that the medical team was very concerned about the child's injuries and felt that they were likely non-accidental." Ms. McGettigan responded to Mr. Speedling "that she has had no response whatsoever from the local Police including leaving three messages for a Srgt [sic] from Chester PD, therefore no Police interviews have been conducted"

62. Mr. Speedling asked Ms. McGettigan to call him "once she had talked with law enforcement."

63. On November 25, 2008 at about 2:45 p.m. Mr. Speedling reported, "At this time there are no visitation restrictions for parents, I will continue to update the medical team." *Emphasis in original.*

64. On Wednesday, November 25, 2008 at 3:05 p.m. Mr. Speedling noted, "Because I felt so uncomfortable with how the investigative process has gone I personally contacted Chester, PA Detectives by calling 610-447-7931. I left a message asking that someone there get in touch with me or Delaware County CYS (specifically Ms. McGettigan). Message left at 1500."

65. On Wednesday, November 26, 2008 at 12:11 p.m. Mr. Speedling noted, "I did not receive a call back from Chester, PA Detectives unit. I spoke to Dr. DeJong about this and he and I both remain very concerned that there has been no Police response to date. I contacted Patricia McGettigan (610-447-1049) regarding this and she informed me that she had not gotten a response from the juvenile unit Srgt. Arckacki (610-447-7941). I asked if her intake

administrator could assist in getting something done and she indicated she would ask Ms. Mertz. In the meantime she suggested that Dr. DeJong and I attempt to reach the Srgt as well to indicate the pressing urgency. She also informed me that father of patient had retained an attorney. I have updated the medical team about this investigative glitch."

66. Upon information and belief, Dr. DeJong called Delaware County Deputy District Attorney Michael Galantino to tell him that [redacted] should be charged with child abuse and arrested immediately. Upon information and belief, Deputy Galantino called Officer Collins at approximately 3:00 p.m. on November 26, 2008 and Deputy Galantino requested that Officer Collins attempt to interview the parents as soon as possible.

67. Ms. McGettigan contacted Sergeant Archacki of the Chester Police Department on Wednesday, November 26, 2008. Officer Collins also received a call from Ms. McGettigan on November 26, 2008.

68. Upon information and belief, at 5:00 p.m. on Wednesday, November 26, 2008 Officer Collins went to duPont hospital and interviewed Dr. DeJong. Officer Collins called Deputy Galantino to report the findings of his investigation and Deputy Galantino authorized Officer Collins to file criminal charges against [redacted]

69. A Police Criminal Complaint was generated accusing [redacted] of committing simple assault, aggravated assault and endangering the welfare of a child on Wednesday, November 26, 2008.

70. Upon information and belief, by 7:40 p.m. Officer Collins returned to the Chester Police department to prepare an affidavit of probable cause based entirely on his interview with Dr. DeJong and at 10:29 p.m. on Wednesday, November 26, 2008, an arrest warrant form was generated and signed by Officer Collins and District Judge Lippincott.

71. Very early on Thanksgiving morning, on Thursday, November 27, 2008, at 1:00 a.m. [redacted] was arrested at DuPont hospital by Officer Collins. [redacted] bail was set at $100,000.00 straight bail, meaning the full amount of bail had to be posted, not just 10%, and a condition of [redacted] bail was that he have no contact at all with his son B.D..

72. [redacted] was arrested just a little over 12 hours after Mr. Speedling and Dr. DeJong discussed how they were "very concerned that there has been no Police response to date" and Mr. Speedling and Ms. McGettigan agreed to have Dr. DeJong and Ms. Wertz contact Sergeant Archacki to "indicate the pressing urgency" that, in their opinion, [redacted] should be immediately arrested.

73. Dr. DeJong did not have one scintilla of medical or physical evidence that [redacted] committed any act of abuse against B.D..

74. The false allegations that B.D. had a skull fracture, that B.D. could not breathe on his own, that B.D.'s injuries were caused by abuse and that [redacted] allegedly committed child abuse contained in Officer Collin's affidavit of probable cause was based solely on Dr. DeJong's misrepresentations of the medical facts and on Dr. DeJong's misrepresentation of [redacted] statements.

75. Dr. DeJong made it clear to Delaware County Children and Youth Services that B.D. should be taken away from his parents stating that "in the absence of any admission or disclosure by either parent of any abuse, it would be difficult to assure B.D.'s safety with either of his parents."

76. Upon information and belief, on December 2, 2008, Ms. McGettigan informed Mr. Speedling that B.D. would not be going home with a relative or friend.

77. On December 3, 2008, [redacted] mother-in-law and father-in-law, Bob and Marlene Groff, posted $100,000.00 straight bail for [redacted] and [redacted] was released from jail.

78. On December 8, CYS informed [redacted] and [redacted] that they would not permit B.D. to go home with [redacted] or with [redacted] parents or with Bob and Linda Stevenson and that they were getting a court order to place B.D. in foster care.

79. Upon information and belief, on December 9, 2008 CYS sent an ex parte memorandum to Judge Maureen Fitzpatrick requesting an order granting CYS protective custody and finding that reasonable efforts had been made to prevent placement of B.D. in foster care with strangers. Judge Fitzpatrick immediately issued an order granting the request without having any hearing.

80. On December 11, 2008 a hearing was held before a Master who stated his authority was "limited" to encouraging CYS to take advantage of community resources being offered to care for B.D..

81. Eighteen days after the shelter care hearing on December 11, 2008, on December 29, 2008 CYS filed a petition alleging B.D. was a child dependent on the Commonwealth of Pennsylvania.

82. Because no dependency hearing in front of a judge had yet been held, On February 19, 2009, [redacted] filed an emergency petition to release B.D. pursuant to 42 Pa.C.S. § 6335, Release or holding of hearing, which states, "After the petition has been filed alleging the child to be dependent or delinquent, the court shall fix a time for hearing thereon, which, if the child is in detention or shelter care shall not be later than ten days after the filing of the petition." The statute also provides that except for circumstances not applicable to this case that "if the hearing is not held within such time, the child shall be immediately released from detention or

shelter care." On February 20, 2009, the court denied [redacted] petition to release B.D.. At the hearing on the petition, CYS did promise to remove B.D. from foster care with strangers and place B.D. in foster care with the Stevensons.

83. On February 23, 2009 B.D. was moved from the strangers with whom he was first placed to the home of close friends of the [redacted] family, Bob and Linda Stevenson.

84. On June 6, 2009, Jane E. Iannuzzelli, M.Ed., M.A., a psychologist licensed by the Pennsylvania Department of State, license # PS005034L, and approved by Delaware County Children and Youth Services to perform psychological evaluations of parents issued a report on [redacted] and a report on [redacted] The reports state that [redacted] and [redacted] were "referred for a psychological evaluation as part of an investigation by Children and Youth Services of Delaware County (CYS) for alleged child abuse. This evaluation began on 3/23/09 and was completed 5/5/09." The reports state that the "Wechsler Adult Intelligence Scale – Third Edition(WAIS-III), the Minnesota Multiphasic Personality Inventory (MMPI-2), the Thematic Appreciation Test (TAT), the Rohrschach Project Inkblots –Exner Method, the Personality Assessment Inventory (PAI), the Forer Structured Sentence Completion Test (SSCT), the Medical Self-Report, the Personality History Checklist for Adults, a Personal History Questionnaire and Clinical Interviews were all administered on [redacted] and [redacted]

85. The psychologist's report stated that "[redacted] is primarily experiencing anxiety, with some depression, resulting from the current situation. The source of emotional distress is the investigation of child abuse and separation from his child. In addition, he lost his job as a result, experienced several months of unemployment, and has had to find new employment. He demonstrated several symptoms of anxiety during the evaluation and he openly verbalized this, which shows openness and an effort to trust the process. Depression was also

seen in his basic feelings of being alone. There is no indication that depression was present prior to this time".

86. The psychologist's report stated that "[redacted] is experiencing both anxiety and depression resulting from her current situation, depressed feelings being predominant. Mrs. [redacted] is experiencing significant emotional stress due to the investigation of abuse and the separation from her child. She reported that as recently as when the evaluation began, she was having difficulty functioning; …She showed several symptoms of anxiety during the evaluation in her initial withdrawn presentation and her hesitancy to respond to some testing stimuli. During the evaluation, she at times was tearful and quietly emotional. This evaluator noted that during the initial interview, she was exceptionally withdrawn and presented as significantly depressed. Her affect improved over the course of the evaluation but remained relatively depressed despite her claims that the feelings of severe depression had lifted. The testing results confirmed the likelihood of anxiety and depression. There is no indication that either anxiety or depression was present prior to the loss of her child to foster care."

87. On June 8, 2009, the Domestic Relations section of the Delaware County Court of Common Pleas notified [redacted] and [redacted] that they were required to pay child support for B.D. [redacted] and [redacted] began to make child support payments pursuant to a court order.

88. Four days of trial on the dependency petition were conducted on April 22, 2009, June 2, 2009, July 8, 2009 and August 21, 2009.

89. At the conclusion of the trial on August 21, 2008, the Court immediately dismissed the dependency petition finding that CYS failed to prove that the injuries to B.D. were caused by abuse. B.D. was then immediately returned to [redacted]

DELAWARE COUNTY'S LACK OF TRAINING CONCERNING PENNSYLVANIA LAW AND DUE PROCESS

90. It is solely the responsibility of the county to ensure that the children and youth services agency operates in accordance with Pennsylvania law. "The executive officers shall ensure that the agency is operated in conformity with applicable Federal, State and local statutes, ordinances and regulations…."

91. Upon Information and belief, Delaware County is a member of the County Commissioners Association of Pennsylvania.

92. The Pennsylvania Children and Youth Administrators Association is an Affiliate of the County Commissioners Association of Pennsylvania.

93. Upon information and belief, Delaware County is a member of the Children and Youth Administrators Association. "The Pennsylvania Children and Youth Administrators Association (PCYA) is a 501(c) (4) nonprofit corporation incorporated in 1969. The Association represents all sixty-seven county children and youth agencies in activities with other organizations and government officials and facilitates on-going networking and information sharing among its membership."

94. The Delaware County, through the Children and Youth Administrators Association, has delegated its responsibility to train its employees, supervisors and administrators to the University of Pittsburgh's Pennsylvania Child Welfare Training Program. "The Pennsylvania Child Welfare Training Program (Training Program) is a collaborative effort of the University of Pittsburgh, School of Social Work, the Pennsylvania Department of Public Welfare, and the Pennsylvania Children and Youth Administrators. It was established to train direct service workers, supervisors, administrators, and foster parents in providing social services

to abused and neglected children and their families. The Training Program is centrally managed and regionally administered by the University of Pittsburgh, School of Social Work."

95. Delaware County has delegated the duty to train its case workers, supervisors and administrators to the University of Pittsburgh's Pennsylvania Child Welfare Training Program.

96. Pennsylvania law permits children to be removed from the care custody and control of their parents involuntarily by an ex parte request for a court order granting the county agency temporary custody.

97. Delaware County's training of its direct service workers, supervisors and administrators is devoid of training that a parents' right to the custody care and control of their child is a fundamental right protected by the United States Constitution, the Fourteenth Amendment of the United States Constitution, the Pennsylvania Constitution, Pennsylvania law and due process of law.

98. Delaware County's training of its direct service workers, supervisors and administrators is devoid of training that the curtailment of a parents' fundamental right to the custody care and control of their child triggers due process of law considerations.

99. Delaware County's training of its direct service workers, supervisors and administrators is devoid of training about due process of law and devoid of training about the appropriate use of ex parte communications with the Court in general, and about ex parte communication with the Court in particular, to obtain emergency custody of a child alleged to have been abused.

100. Pennsylvania law and due process of law require that a hearing be held within 72 hours after a child is removed involuntarily from his parents.

101. Delaware County has failed to train its direct service workers, supervisors and administrators about due process of law and the Pennsylvania law requirement that a hearing be held within 72 hours during which "the court or master shall also determine whether reasonable efforts were made to prevent such placement" during that 72 hour hearing.

102. Delaware County has failed to train its direct service workers, supervisors and administrators about Pennsylvania law and Federal law that placement with family is always to be the first preference and that only if a child cannot be placed with family should other options such as foster care be considered.

103. Pennsylvania law and due process of law require that a dependency petition be filed within 48 hours of the 72 hour hearing.

104. Delaware County has failed to train its direct service workers, supervisors and administrators about Pennsylvania law and about due process of law that a dependency petition be filed within 48 hours of the 72 hour hearing.

105. Pennsylvania law and due process of law require that a dependency hearing be held within 10 days of the filing of a dependency petition.

106. Delaware County has failed to adequately train its direct service workers, supervisors, administrators, and employees that have been given the job to serve as clerk of court, about Pennsylvania law and about due process of law that a dependency trial must be conducted within 10 days of the filing of a dependency petition.

107. Delaware County has failed to adequately train its direct service workers, supervisors, administrators about Pennsylvania law and about due process of law that discovery must be turned over to respondents of dependency petitions in a timely manner.

108. Delaware County has failed to adequately train its direct service workers, supervisors, administrators that a parent has a right to maintain their innocence and when a parent maintains their innocence, that is not a basis upon which to continue to separate a child from his parent.

COUNT I

FOURTEENTH AMENDMENT SUBSTANTIVE AND PROCEDURAL DUE PROCESS CLAIM AGAINST DELAWARE COUNTY

DELAWARE COUNTY'S DEPUTIZATION OF CYS TO ACT AS CLERK OF JUVENILE COURT AND FAILURE TO PROPERLY TRAIN THE CYS EMPLOYEE ACTING AS COURT CLERK VIOLATES DUE PROCESS AND RESULTED IN THE DELEGATION OF MINISTERIAL FUNCTION OF SCHEDULING THE FIRST DAY OF DEPENDENCY TRIALS TO FELLOW CYS EMPLOYEE

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

110. Delaware County has a custom, practice and policy of deputizing CYS to act as the Clerk of Court for all juvenile matters involving CYS.

111. Pursuant to the Pennsylvania Rules of Juvenile Court Procedure (Pa.R.J.C.P.) Rule 1120 the "Clerk of courts is that official in each judicial district who has the responsibility and function under state law and local practice to maintain the official juvenile court file and docket, without regard to that person's official title." The Rules committee comment explicitly states, "*Comment:* The county agency is a party to the proceeding and should not function as the 'Clerk of Courts.'"

112. Delaware County's Home Rule Charter establishes the Office of Judicial Support to function as the Clerk of the Court.

113. Delaware County is organized under its Home Rule Charter which mandates that "Council shall establish an Office of Judicial Support which shall combine the

offices of Clerk of Courts and Prothonotary ….the Office of Judicial Support shall have all powers and duties granted by Commonwealth law, by laws applicable to Counties of the Second Class A for Clerks of Courts and Prothonotaries, by this charter or by Ordinance of council.

114. Delaware County is mandated by law to "delegate responsibility for the administration of the county children and youth social services program to a county children and youth social service agency … The executive officers shall ensure that the agency is operated in conformity with applicable Federal, State and local statutes, ordinances and regulations.

115. For any dependency matter involving CYS in juvenile court in Delaware County it is the custom, practice and policy of Delaware County's Office of Judicial Support (OJS), which accepts all other criminal and civil filings in Delaware County, to direct a party wishing to file any paper with the juvenile court in a dependency proceeding, to the office of CYS located in the courthouse for filing.

116. Delaware County's Office of Judicial Support has deputized the Delaware County CYS to act as the "Clerk of court" in place of OJS for all dependency matters.

117. The impression of each time stamp of documents filed with CYS acting as deputy for OJS states:

FILED AS DEPUTY FOR OFFICE OF JUDICIAL SUP.

[DATE & TIME]

CHILDREN & YOUTH SERV. DELAWARE COUNTY PA

118. At all times relevant to this complaint, Cynthia Deconte, an employee of CYS located in the CYS legal Services office within the Delaware County courthouse, functioned as the juvenile court clerk for dependency proceedings by accepting, time stamping and maintaining all filings in dependency matters on behalf of OJS.

119. The Common Pleas Criminal Court Case Management System (CPCMS) provides case management, accounting, and reporting functions to the common pleas criminal courts in the Commonwealth. The primary users of the systems are the judges and chambers staff, court administration and the clerks of courts.

120. On December 19, 2005, Delaware County went live with the CPCMS program in which 178,985 cases were migrated into the new system dating back to 1974 and involving 234 users.

121. On or before June 10, 2008, a Juvenile Dependency Module was added to the CPCMS system and CPCMS was enhanced to include a calendaring feature. By November of 2008, Delaware County had implemented the Administrative Office of the Pennsylvania Courts Juvenile Dependency Module.

122. The computerized Juvenile Dependency Module brings consistency to dependency matters by implementing common forms for each dependency hearing. Common forms developed for the Juvenile Dependency Module are available on the CPCMS system and the Administrative Office of the Pennsylvania Courts website including a form for the Application for Emergency Protective Custody

123. On December 9, 2008, Defendants Wertz, McGettigan and Giancristiforo failed to use the Common Emergency Protective Custody form available through the Juvenile Dependency Module of the CPCMS for their emergency request for custody of B.D..

124. Nowhere in the Juvenile Dependency Module Application for Emergency Protective Custody form provided through the CPCMS does it falsely state that a complete home resource study must be made before the agency could recommend the baby be placed with

kinship resources as is stated in the ex parte memorandum made by Defendants Wertz, McGettigan and Giancristiforo.

125. The Juvenile Dependency Module Application for Emergency Protective Custody form provided through the CPCMS has a section that requires the applicant "State reasonable efforts made, family members contacted, etc. Attach additional pages if necessary" unlike the ex parte memorandum made by Defendants Wertz, McGettigan and Giancristiforo which provides no details of any "reasonable efforts" made because no reasonable efforts were made.

126. CYS employee/court clerk Cynthia Deconte failed to enter the December 9, 2008 ex parte memorandum seeking emergency custody of B.D. sent by Defendants Wertz, McGettigan and Giancristiforo to the Court into the docket.

127. CYS employee/court clerk Cynthia Deconte failed to enter the Court's December 9, 2008 ex parte Order, an order time-stamped and drafted by Cynthia Deconte herself, into the docket.

128. CYS employee/court clerk Cynthia Deconte failed to enter the notice of the hearing held on December 11, 2008 into the docket.

129. CYS employee/court clerk Cynthia Deconte failed to enter the detention hearing held on December 11, 2008 into the docket.

130. CYS employee/court clerk Cynthia Deconte failed to enter into the docket the Order issued by Master McNulty on December 11, 2008 continuing CYS' custody of B.D. after the detention hearing, a hearing in which Cynthia Deconte was present for the entire hearing.

131. The first entry into the docket made by CYS employee/court clerk Cynthia Deconte concerning B.D.'s case was made on December 29, 2008 in which she erroneously docketed an "Application for Emergency Custody Filed" when, in fact, it was the dependency petition that was filed on December 29, 2008.

132. CYS employee/court clerk Cynthia Deconte failed to schedule a dependency hearing within 10 days of the filing of the dependency petition.

133. Pursuant to Rule 1202 of the Pennsylvania Rules of Juvenile Court "the president judge of each judicial district shall ensure that a judge is available twenty-four hours a day, every day of the year to accept and decide actions brought by the county agency within the twenty-four hour period."

134. Upon information and belief and pursuant to the Pennsylvania Rules of Juvenile Court, a Court hearing day was available to schedule the dependency hearing between December 29, 2008 and January 8, 2009.

135. CYS employee/court clerk Cynthia Deconte further erroneously entered into the docket a "Master's Recommendation for Adjudication – Child Dependent" purportedly by Master McNulty on May 26, 2009.

136. Pursuant to Delaware County policy, Cynthia Deconte acted irregularly by delegating the ministerial function of scheduling the first day of the dependency hearing for B.D. to her fellow CYS employee Defendant McGettigan rather than acting independently, as a court clerk should do in scheduling matters, by scheduling the dependency trial within 10 days of the filing of the dependency petition.

137. Delaware County and CYS failed to train Cynthia Deconte about the CPCMS Juvenile Dependency docketing system.

138. CYS employee/ court clerk Cynthia Deconte had no idea about how to properly enter, docket and schedule hearings in a Juvenile Dependency case.

139. Delaware County failed to train Cynthia Deconte about how to properly enter, docket and schedule hearings in a Juvenile Dependency case or about due process of law requirements contained in Pennsylvania law and the United States Constitution that require that a dependency hearing be scheduled by the Court within 10 days of the filing of a dependency petition.

140. Pursuant to Delaware County policy, Cynthia Deconte acted illegally and violated Pennsylvania law when she failed to perform the ministerial function of Clerk of Court to schedule the first day of the dependency hearing within 10 days of the filing of the dependency petition as provided in Pennsylvania law but instead deferred the ministerial function of scheduling of the first day of the dependency trial to fellow CYS employee Defendant McGettigan.

141. As a result of Cynthia Deconte's irregular and illegal delegation and deferral of the Court clerk's ministerial function of the scheduling of the first day of B.D.'s dependency trial to Defendant McGettigan, the first day of B.D.'s dependency trial was not scheduled by Defendant McGettigan until April 22, 2009, more than four months after Pennsylvania law and due process requires.

142. Had Cynthia Deconte been properly trained about the CPCMS system, about how to properly maintain a Juvenile Dependency docket and been properly trained that Pennsylvania law and due process of law mandates that a dependency hearing be held within 10 days of the filing of a dependency petition, Cynthia Deconte, acting in her role of Court clerk,

would have scheduled the first day of the dependency hearing within 10 days of December 29, 2008.

143. In direct violation of the Rules committee Comment and in direct violation of due process under the law, Delaware County deputized CYS to function as the "Clerk of court" for any dependency matter and failed to train the CYS employee charged with the task of acting in the conflicted role as clerk of court for dependency proceedings.

144. The deputizing of CYS by Delaware County to act as Clerk of juvenile court makes the adversarial party to every dependency petition, CYS, or an employee of CYS, the very entity with which all defendants and respondents must schedule matters with the court and file matters with the court and enables the designated court clerk CYS employee to delegate and defer the ministerial function of scheduling the first day of dependency hearings to a fellow CYS employee.

145. The deputizing of CYS by OJS to act as Clerk of juvenile court, and the subsequent delegation of the scheduling of the first day of dependency trials to a fellow CYS employee, creates an un-waivable inherent conflict of interest within the Delaware County Office of Judicial Support which deprived [redacted] and B.D. of their due process rights as guaranteed under the Pennsylvania Constitution and United States Constitution.

146. In another Eastern District of Pennsylvania Case reported on July 14, 2010, the parent involved in a dependency addressed correspondence requesting that a hearing be rescheduled to a Delaware County CYS employee, Beverly White, demonstrating that it is a policy and practice of Delaware County to delegate the scheduling of dependency matters to CYS employees and not the Office of Judicial Support or even to the CYS employee designated to act as the Court Clerk for dependency matters, Cynthia Deconte.

147. The actions of Delaware County, OJS and CYS while acting in its conflicted role as Clerk of juvenile court in the dependency petition of B.D. [redacted] deprived [redacted] and [redacted] of their right to the care, custody and control of their son, B.D., and B.D. of the care, custody and control of his parents, for a constitutionally impermissible period of time without being accorded their rights to due process under the law.

148. It is well established federal law that an agency, or an employee of an agency, acting as the clerk of court in actions which they are a party is a violation of due process under the law.

149. As a direct result of Delaware County's policy of the deputization of CYS employee Cynthia Deconte as court clerk for Juvenile Dependency matters and as a result of Delaware County's and CYS' policy of failing to properly train its employee/ court clerk, Cynthia Deconte about due process, Cynthia Deconte failed to schedule the dependency hearing within 10 days of the filing of the dependency petition and instead, deferred her obligation as court clerk to timely schedule dependency hearings to fellow CYS employees.

150. As a direct and proximate result of Delaware County's custom, practice and policy of deputizing CYS to act as the Clerk of Court for all dependency matters and failure to train the CYS employee charged with such duty, [redacted] [redacted] and B.D.'s constitutional rights to due process of law as secured by the United States and Pennsylvania constitutions were violated.

151. [redacted] [redacted] and B.D. seek money damages as articulated below, including but not limited to, damages incurred by Delaware County for the constitutionally impermissible 280 days, from the time B.D. was 11 weeks old to the time B.D. was 11 months old, that [redacted] and [redacted] were separated from B.D., and B.D. separated from [redacted] and

[redacted] and suffered anxiety and depression as a result of Delaware County's a custom, practice and policy of deputizing CYS to act as the Clerk of Court, and for failing to train the responsible employee, for all juvenile matters involving CYS.

COUNT II-A

FOURTEENTH AMENDMENT PROCEDURAL AND SUBSTANTIVE DUE PROCESS CLAIMS AGAINST DELAWARE COUNTY

DELAWARE COUNTY'S POLICY OF INSISTING ON PLACEMENT WITH STRANGERS WHEN PARENTS MAINTAIN THEIR INNOCENCE, FAILURE TO TIMELY SCHEDULE SHELTER CARE HEARING AND MISREPRESENTING FACTS AND LAW TO OBTAIN EX PARTE ORDERS FINDING THAT THERE ARE NO FAMILY OR COMMUNITY CAREGIVERS AVAILABLE TO CARE FOR THE CHILD VIOLATES DUE PROCESS

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

153. CYS has a custom, policy or practice of insisting that parents who maintain their innocence of child abuse charges must "voluntarily" agree to placement of their child in foster care with strangers or suffer an ex parte request for protective custody that:

a. misrepresents to the court that [redacted] believed [redacted] caused B.D.'s injuries;

b. misrepresents to the court that family members are not available to care for the child when CYS is fully aware of family members capable, qualified and willing to care for the child;

c. misrepresents to the court that a full resource home study is required before CYS can place a child with a family member or friend of the parents;

d. misrepresents to the court that reasonable efforts to avoid placement have been made when they have not;

e. that is recklessly delayed for the specific purpose of denying the parents their due process right of an opportunity to be heard prior any court order depriving them of the custody of their child.

154. CYS did not make the decision to seek an ex parte order from the court for protective custody of B.D. in a hyperpressurized environment but rather had ample time (17 days) to deliberate about how to protect B.D. without removing B.D. from his mother. During that 17 day period, CYS rejected allowing B.D. to return home with [redacted] alone, rejected allowing B.D. to return home with [redacted] alone with CYS services, rejected allowing B.D. to return home with [redacted] with the stipulation that [redacted] mother (or another adult) move in with [redacted] and that [redacted] never be alone with B.D., rejected a voluntary placement agreement to place B.D. with [redacted] parents and rejected a voluntary placement agreement to place B.D. with family friends.

155. CYS had a duty to make reasonable efforts to prevent or eliminate the need for B.D.'s removal from the [redacted] home. Federal law mandates that CYS make reasonable efforts "to preserve and reunify families-- prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home." 42 USCS § 671(a)(15).

156. B.D.'s case was referred to CYS on November 22, 2008. By November 26, 2008, CYS and the Chester Police Department were relying on Dr. DeJong's false medical diagnosis and his false legal conclusion that [redacted] allegedly perpetrated abuse on B.D. On November 26, 2008, CYS, Mr. Speedling and Dr. DeJong made multiple calls to the police and/or Deputy Galantino to have [redacted] arrested and CYS' position was that [redacted] was the

perpetrator of abuse. At no time did CYS ever express any belief that [redacted] had perpetrated any abuse by commission on B.D.

157. To support her contention that B.D. had to be removed from the [redacted] home, Ms. Giancristiforo misrepresented to the court in her ex parte memorandum that "[redacted] mother, has indicated that the baby's father could have caused the injuries. Ms. [redacted] admitted to observing on three separate occasions in the past bruises on the baby's torso, back, and chest. She told Children and Youth Services staff that she was fearful of allowing the baby to be alone with the father yet she failed to protect the baby based on her beliefs."

158. On cross examination during the dependency, Ms. Giancristiforo admitted what she failed to tell the court in her ex parte memorandum, that [redacted] told CYS that [redacted] did not know what caused the red marks that disappeared by the following morning and that she thought the marks may have been caused by the clothing she put on B.D. and that after she started dressing B.D. differently and after she spoke with [redacted] about how to hold B.D. differently she never saw the marks again. [redacted] did not tell CYS that she was fearful of leaving B.D. with [redacted]

159. It was not objectively reasonable for Ms. Giancristiforo to recklessly omit the critical fact that [redacted] did not know what caused the red marks and that in addition to speaking with [redacted] about how he might have been holding B.D. improperly she also suspected that B.D.'s clothing may have caused the red marks and after she began dressing B.D. differently [redacted] saw no more marks from her ex parte communication in order to mislead the court into believing [redacted] was not capable of caring for B.D.. [redacted] response to observing red marks on B.D. that disappeared by the following morning is an example of how attentive [redacted] was to caring for B.D..

160. Defendant McGettigan, Mr. Speedling and Dr. DeJong made enough calls to the Chester police to get [redacted] arrested by 1:00 a.m. on November 27, 2008. The court imposed as a condition of bail that [redacted] have no contact at all with B.D. and that [redacted] "stay away from 2625 Curran St., Chester [the family residence] if [B.D. is] present." As of November 26, 2008, the court removed any possible or potential threat by [redacted] to B.D. through this condition of bail. CYS was fully aware of the condition of [redacted] bail.

161. By December 9, 2008, CYS was aware that [redacted] had been diligent to attend all eighteen of her prenatal appointments with the Wilmington Birth Center and had obtained all of her prenatal blood tests. CYS was aware that [redacted] was diligent to keep B.D.'s newborn, one-month and two-month pediatrician visits and that [redacted] had taken B.D. for blood work twice to monitor B.D.'s elevated bilirubin level in the 9 ½ weeks since he had been born. CYS was not aware of a single prenatal or newborn medical appointment missed by [redacted] and was fully aware of [redacted] diligence in keeping every pre-natal and newborn medical appointments. CYS knew that [redacted] and [redacted] both had no criminal record and that [redacted] had successfully been a second grade teacher for seven years and was employed full time with a non-profit organization in Chester. CYS knew that [redacted] and [redacted] were both employed full time, that B.D. was covered by private insurance and that [redacted] had flexibility to take B.D. with her to work and had a strong community of family and friends to support her and B.D.. CYS did not bother, in the 17 days between the time B.D.'s case was referred to them and B.D.'s discharge from the hospital, to request or make a home visit to the [redacted] household even though counsel for [redacted] invited CYS to make a home inspection and made the [redacted] home available for such inspection.

162. Even assuming the false allegations of abuse against [redacted] to be true, CYS had absolutely no evidence that B.D. was at risk with [redacted] alone. Nevertheless, CYS rejected permitting B.D. to go home with [redacted] by herself and CYS rejected allowing B.D. to go home with [redacted] with [redacted] mother moving into the [redacted] residence temporarily. Although it had been suggested as a possibility by the first CYS case worker that spoke to [redacted] and [redacted] on November 22, 2008, CYS never offered [redacted] any services which would permit B.D. to go home with [redacted]

163. It was not objectively reasonable for CYS to represent in its December 9, 2008 ex parte communication to the court that "[i]t is the agency's opinion that this child would be at risk if he were to remain in his parent's custody …" and such representation was made by CYS with deliberate indifference and reckless disregard to the truth. The court, without holding a hearing, accepted CYS' ex parte misrepresentation that B.D. would be at risk if he were to remain in [redacted] custody.

164. Even if the removal of B.D. from the [redacted] home could not be avoided, Pennsylvania law provides, "[c]ustody of a child may be temporarily transferred to the county agency for no more than 30 days if the child's parents or other person legally responsible for the child freely enter into a written agreement with the county agency." 55 Pa. Code § 3130.65(a)

165. Pennsylvania law further mandates that "[i]f a child has been removed from the child's home …[and] is in the legal custody of the county agency, the county agency **shall** give first consideration to placement with relatives. The county agency shall document that an attempt was made to place the child with a relative. If the child is not placed with a relative, the agency shall document the reason why such placement was not possible." 62 P.S. § 1303. Emphasis supplied.

166. B.D. was admitted to duPont Hospital and was referred immediately to CYS on November 22, 2008 as a case of suspected child abuse. On November 22, 2008, CYS informed [redacted] and [redacted] "to begin to think about other potential, temporary extended family caregivers since it is likely that the case will still be in the middle of the investigation by the time of discharge and [B.D.] likely will not return home with parents."

167. [redacted] and [redacted] immediately, on November 22, 2008, offered [redacted] parents, Bob and Marlene Groff, as a "potential temporary extended family caregiver" to CYS.

168. On November 25, 2008 [redacted] and [redacted] both voluntarily went to the CYS office in Chester to be interviewed by CYS. During that interview CYS reaffirmed that "by the time of discharge … [B.D.] likely will not return home with" [redacted] and [redacted] [redacted] and [redacted] again immediately offered [redacted] parents as caregivers for B.D..

169. Because [redacted] parents lived in Lancaster, CYS stated that placement of B.D. in Lancaster was "too much paperwork" and further misrepresented to [redacted] and [redacted] that, even if they were willing to do the paperwork, [redacted] parents would have to make the two hour commute each way every week to drive B.D. to the Chester CYS office for the one-hour per week of supervised visits CYS would allow. This assertion by CYS was not true and was a reckless attempt to discourage [redacted] and [redacted] from agreeing to place B.D. with [redacted] parents. CYS had full legal authority to transfer B.D.'s kinship custody case to Lancaster County for kinship placement and supervised visits could easily have been accomplished at the Lancaster County CYS. Instead of giving "first consideration" to kinship placement, CYS recklessly imposed obstacles to placing B.D. with [redacted] parents not required by law effectively and improperly denying [redacted] and [redacted] placement of B.D. with [redacted] parents.

170. CYS asked [redacted] and [redacted] whether they knew of a family in Delaware County who could care for B.D. instead of [redacted] parents. On November 25, 2008, [redacted] and [redacted] immediately offered Bob and Linda Stevenson. Bob Stevenson serves as the director of World Impact, Inc., the non-profit ministry in the city of Chester with whom [redacted] is employed.

171. "Foster families may be temporarily approved to provide foster care to children" pending a complete home study within 60 days. 55 Pa. Code § 3700.70, Temporary and provisional approvals of foster families. [redacted] parents and the Stevenson's both immediately offered to do whatever was necessary to obtain temporary and/or permanent approval to be foster families. Temporary approvals can be completed in matter of hours or days and could have easily been made by CYS during the 14 days between the November 25, 2008 meeting with CYS and B.D.'s discharge from DuPont Hospital on December 9, 2008.

172. During their voluntary November 25, 2008 interviews, CYS also told [redacted] and [redacted] that it was CYS' position that [redacted] was a perpetrator of abuse by commission and [redacted] was a perpetrator of abuse by omission and that the police would be contacting [redacted] and [redacted] [redacted] and [redacted] both continued to maintain their innocence.

173. When [redacted] continued to maintain [redacted] innocence after [redacted] arrest, CYS decided that they would not temporarily approve [redacted] parents or Bob and Linda Stevenson and demanded that [redacted] agree to B.D.'s placement in foster care with strangers. [redacted] would not agree to B.D.'s placement with strangers in light of the fact that there were family and friends available who were willing to be approved as foster parents and able to care for B.D.. Ms. McGettigan's decision to place B.D. in foster care with strangers was in retaliation for [redacted] maintaining [redacted] innocence even after [redacted] was arrested.

174. While an ex parte order can be constitutionally acceptable to initiate a custody proceeding if there are emergent circumstances, there were no emergent circumstances justifying an ex parte request for protective custody in B.D.'s case. CYS had 17 days during which, without any legitimate justification, CYS rejected the available and mandatory preferential alternatives to placement in foster care with strangers, all of which would have accomplished the compelling state interest of protecting B.D. from the person they alleged was B.D.'s abuser.

175. The state has no compelling interest in placing a child with strangers when family and friends are available.

176. Defendant Wertz had determined at least a full week or more before B.D. was discharged from DuPont Hospital, on or before December 2, 2008, that "they will not be placing the child with a relative or friend" and that [redacted] and [redacted] would not consent to placement in foster care.

177. Despite a full week, or more, to negotiate a voluntary placement agreement with [redacted] to place B.D. with [redacted] parents or the Stevenson's, or to file a petition for protective custody with the court and afford [redacted] and [redacted] an opportunity to be heard before B.D. was forcibly removed from them and placed with strangers, with deliberate indifference and reckless disregard to the due process rights of [redacted] and B.D., CYS arbitrarily delayed seeking relief from the court until the morning of B.D.'s discharge on December 9, 2008 and sent an ex parte memorandum to the court. Defendant Wertz, Defendant McGettigan and Defendant Giancristiforo deliberately delayed court action and then used an ex parte order purposely to deny [redacted] and [redacted] the opportunity to bring to the court's attention the fact that CYS refused to consider allowing B.D. to go home with [redacted] with services, with

conditions and that CYS refused to take any steps to temporarily approve [redacted] parents or the Stevenson's pending a full resource home study as permitted by law.

178. Although Defendants Wertz, McGettigan and Giancristiforo knew on or before December 2, 2008 that that "they will not be placing the child with a relative or friend" they delayed informing [redacted] of that fact until December 8, 2008. This reckless delay denied [redacted] and [redacted] the ability to petition the court prior to Defendants Wertz, McGettigan and Giancristiforo making their ex parte request for protective custody and was another act in a course of conduct by CYS designed to deny [redacted] and [redacted] a meaningful opportunity to present to the court the availability of alternatives to B.D.'s placement with strangers.

179. In addition to recklessly delaying court action and then obtaining an ex parte order to deny [redacted] and [redacted] the opportunity to be heard before forcibly removing B.D., Defendants Wertz, McGettigan and Giancristiforo recklessly misled the court about the facts and the law in its ex parte communication to cover up its refusal to temporarily approve [redacted] parents or the Stevenson's to avoid placement of B.D. in foster care with strangers.

180. In their December 9, 2008 ex parte memorandum to the court, Defendants Wertz, McGettigan and Giancristiforo falsely stated that "[t]here are no known family resources to care for the baby upon his discharge from the hospital." Defendants Wertz, McGettigan and Giancristiforo were aware that [redacted] parents were willing and available but had dismissed them as "too much paper work" because they lived in Lancaster county. Instead of telling the truth, Defendants Wertz, McGettigan and Giancristiforo violated their duty of candor to the court when they misrepresented the absence of [redacted] parents being able to care for B.D.. This outright lie was made to the court to avoid having the court learn about the availability of [redacted] parents to care for B.D..

181. It was not objectively reasonable for Defendants Wertz, McGettigan and Giancristiforo to misrepresent to the court that "[t]here are no known family resources to care for the baby upon his discharge from the hospital" in their December 9, 2008 ex parte communication to the court and demonstrates that Defendants Wertz, McGettigan and Giancristiforo were deliberately indifferent to, and recklessly disregarded, the truth and the due process rights of [redacted] and B.D..

182. The misrepresentations in CYS' ex parte memorandum continued, "[c]ommunity caregivers have come forward and want to be considered as caregivers. It is the Agency's belief that the caregivers must complete a full resource home study before the agency would recommend that the baby be moved to their care."

183. The Commonwealth provides a procedure to temporarily and immediately place a child in a home pending a "full resource home study" within 60 days and CYS' "belief" stands in stark contradiction to the Commonwealth's regulations. A "full resource home study" which can take up to 2 months to complete does not have to be completed in order for Defendants Wertz, McGettigan or Giancristiforo to "recommend" that B.D. be placed temporarily with [redacted] parents or with the Stevenson's. Commonwealth regulation provides a temporary approval process that takes hours to days that CYS refused to complete as a matter of policy during the 17 days between B.D.'s referral to CYS and B.D.'s discharge from the hospital.

184. CYS provides the motivation behind its policy of making misrepresentations to the court that there are "no known family resources" and that it "believes" a "full resource home study" must first be done before placing B.D. with family or friends. Defendants Wertz, McGettigan and Giancristiforo explain, "Ms. [redacted] remains supportive of her husband. Ms. [redacted] does not appear to acknowledge … that the injuries are non

accidental." In other words, because [redacted] is maintaining hers and [redacted] innocence, Wertz, McGettigan and Giancristiforo lied to the court and recklessly refused to follow the Commonwealth's temporary approval policy in order to force B.D. into foster care with strangers in violation of the law and of [redacted] and B.D.'s rights to due process under the law. Defendants Wertz, McGettigan and Giancristiforo would not allow B.D. to be placed with family or friends because [redacted] was maintaining her and [redacted] innocence and because [redacted] retained an attorney.

185. The December 9, 2008 ex parte memorandum was from the case-worker Ms. Giancristiforo directly to Judge Fitzpatrick and was approved by the signatures of her supervisor, Ms. McGettigan and the CYS intake administrator, Ms. Wertz.

186. It was not objectively reasonable for Defendants Wertz, McGettigan and Giancristiforo to misrepresent to the court that "[i]t is the Agency's belief that the caregivers must complete a full resource home study before the agency would recommend that the baby be moved to their care" in its December 9, 2008 ex parte communication to the court and demonstrates that Defendants Wertz, McGettigan and Giancristiforo were deliberately indifferent to, and recklessly disregarded, the truth and the due process rights of [redacted] and B.D..

187. As a result of Defendants Wertz, McGettigan and Giancristiforo ex parte misrepresentations to the court, the court adopted CYS' false misrepresentation "that reasonable efforts were made by the agency to prevent placement" as its finding and authorized B.D.'s placement in foster care with strangers.

188. It was not objectively reasonable for Defendants Wertz, McGettigan and Giancristiforo to misrepresent to the court that "that reasonable efforts were made by the agency to prevent placement" in its December 9, 2008 ex parte communication to the court and

demonstrates that Defendants Wertz, McGettigan and Giancristiforo was deliberately indifferent to, and recklessly disregarded, the truth and the due process rights of [redacted] and B.D..

189. Defendant Giancristiforo, with the approval of her supervisor, Defendant McGettigan and the approval of the CYS Intake administrator, Defendant Wertz, then, acting in its role as Clerk of juvenile court for dependency matters, delegated to them by Cynthia Deconte, scheduled a sham post-deprivation hearing and gave notice to [redacted] and [redacted] to give the ex parte order a false veneer of constitutional legitimacy.

190. Pennsylvania law provides, "An informal hearing shall be held promptly by the court or master and not later than 72 hours after the child is placed in detention or shelter care ... Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the hearing shall be given to the child and if they can be found, to his parents ... If the child is alleged to be a dependent child, the court or master shall also determine whether reasonable efforts were made to prevent such placement or, in the case of an emergency placement where services were not offered and could not have prevented the necessity of placement, whether this level of effort was reasonable due to the emergency nature of the situation, safety considerations and circumstances of the family." 42 Pa.C.S. § 6332(a), Informal hearing.

191. "Reasonable efforts to prevent placement" would include a good faith effort by CYS to place B.D. with [redacted] or to enter into a voluntary placement agreement pursuant to 55 Pa. Code § 3130.6(a) and that CYS give "first consideration to placement with relatives" pursuant to 62 P.S. § 1303.

192. Defendants Wertz, McGettigan and Giancristiforo obtained an ex parte protective custody order and took B.D. into custody on December 9, 2008 and placed B.D. with strangers, a foster family completely unknown to B.D.. Evidencing an ability to schedule a court

hearing within 48 hours and provide notice to the parents to give them the opportunity to attend, on December 11, 2008, an informal hearing scheduled by CYS was conducted before juvenile court Master David McNulty at the Delaware County Courthouse.

193. According to 42 Pa.C.S. § 6332 Master McNulty was to determine "whether reasonable efforts were made to prevent such placement."

194. However, Master McNulty was aware that Judge Fitzpatrick had already issued an order on December 9, 2008 in which she found "that reasonable efforts were made by the agency to prevent placement." As a result the existing ex parte order collaterally estopped Master McNulty from making a contradictory ruling by the same court only two days later. Confirming that Master McNulty was collaterally estopped from reviewing Judge Fitzpatrick's determination that reasonable efforts had been made, 55 Pa. Code § 3140.111(iv) provides that, "[i]f a court determination of reasonable efforts is made under subparagraphs (i) and (ii), no subsequent reasonable efforts determinations are required …"

195. With approximately 40 people supporting [redacted] and [redacted] outside of the courtroom because the proceeding was closed to the public, Master McNulty heard testimony about [redacted] reputation and character and was very positive about [redacted] and her community of support. During the December 11, 2008 hearing Master McNulty expressed "I could honestly tell you that if I was not here, I would probably be out in the hallway on your list of people [supporting the [redacted] and [redacted] ..."

196. During the December 11, 2008 hearing Master McNulty expressed that he "cannot make any changes in conditions," that his authority is "limited," that he "just cannot make any changes" and that "the best [he] can do here today in [his] limited authority" is to order

that the "investigation of the community resources [parents and the Stevenson's] "continue" and be "expedited."

197. Because it had already been judicially determined by Judge Fitzpatrick only two days earlier, at no time during December 11, 2009 hearing did the Master inquire about or entertain evidence to "determine whether reasonable efforts were made to prevent such placement" in foster care as required during an informal hearing as is required by 42 Pa.C.S. § 6332.

198. Because of Judge Fitzpatrick's pre-existing ex parte order finding that "reasonable efforts to prevent placement" had been made, Master McNulty made it clear that all he could do was urge CYS to expedite the approval of parents and the Stevenson's for B.D.'s care by stating "[a]ll I can do is – all I can do is indicate to the agency that, in my 28 years of doing this, I know the people out there are as good or better than any foster parent deals with so if there is a resource in the community there, I would say grab them as quickly as possible because I think we'd be losing maybe getting more foster parents for the County that we need, people who would volunteer to come forward and if they're here, let's take advantage of them."

199. When counsel for informed the court of his efforts to get CYS to place B.D. with the Stevensons and how CYS was not willing to listen to alternatives to placement in foster care with strangers, the Master replied, "Well, those ears have been cleared."

200. Master McNulty believed he had no authority to order CYS to take the steps necessary to temporarily approve parents or the Stevenson's and was bound by the court's ex parte order approving CYS' "belief" that a "full resource home study" needed to be completed before placement with any family or community resources despite the fact that federal

and Pennsylvania law not only permit temporary approval of family caregivers, but direct that CYS "shall" give such placement "first consideration."

201. The pre-existing order signed two days earlier by Judge Fitzpatrick and obtained by CYS through their ex parte memorandum request for a protective custody order foreclosed the Master from addressing the very issue that 42 Pa.C.S. § 6332 required him to address at the informal hearing. Defendants Wertz, McGettigan and Giancristiforo knew this when they recklessly delayed for 17 days any action with the court and waited until the day of B.D.'s discharge to make an ex parte request and misrepresented to the court that there are "no known family resources" and that a "full resource home study" must be completed before they could place B.D. with kinship families. These acts by CYS were approved by the CYS Intake Administrator, the CYS intake supervisor and the intake caseworker and demonstrate a custom, practice or policy deliberately designed to deny [redacted] and [redacted] the opportunity to bring to the court's attention that there were several reasonable options available for placement of B.D. other than foster placement with complete strangers and it is this course of conduct by CYS that is not objectively reasonable and shocks the conscience.

202. As a result, [redacted] and [redacted] were never afforded any meaningful opportunity to be heard by the court about whether "reasonable efforts have been made to avoid placement in foster care" such as the alternatives proposed by [redacted] and [redacted] which were with [redacted] mother (who is a nurse) and father in Lancaster County and the Stevenson's who lived in Chester and all of whom had already volunteered to have home studies and do whatever was necessary to be approved.

203. CYS' policy was that when [redacted] maintained hers and [redacted] innocence, CYS refused to negotiate a voluntary placement agreement and give "first

consideration" to kinship placement and insisted on placement with strangers and allowed [redacted] to have no more than one hour per week of CYS supervised visits (plus attendance at any doctor appointments) unless and until [redacted] "acknowledge[d] … that the injuries are non accidental." Placement in foster care with strangers was retaliation by CYS for [redacted] maintaining her and [redacted] innocence.

204. Defendants Wertz, McGettigan and Giancristiforo accomplished this policy by recklessly denying [redacted] and [redacted] a meaningful opportunity to be heard about placement options by delaying the scheduling of any court action in conjunction with the misuse of ex parte communication to the court in which they recklessly misrepresented ex parte the availability of [redacted] parents and misrepresented ex parte their false "belief" that a "full resource home study" was required for kinship placement in direct contradiction of Pennsylvania law.

205. Defendants Wertz, McGettigan and Giancristiforo had duty of candor to the court in general, and a heightened duty of candor in any ex parte communication. It was not objectively reasonable for Defendants Wertz, McGettigan and Giancristiforo to violate their duty of candor when they misrepresented the facts by stating that there was "no known family resource" and misrepresented the law when they stated their "belief" that a "full resource home study" was necessary for them to recommend placement with the Stevenson's.

206. Defendants Wertz, McGettigan and Giancristiforo knew the court would respond with the requested ex parte order and that the Master would also decline to reconsider the ex parte order's finding that "reasonable efforts" to avoid placement had already been made, thus guaranteeing that CYS could place B.D. with strangers without having a meaningful hearing on the matter.

207. Defendants Wertz, McGettigan and Giancristiforo purposeful delay followed by deliberate misrepresentation of the facts and the law in its ex parte request to the court because [redacted] and [redacted] were maintaining their innocence, demonstrate more than a deliberate indifference and reckless disregard to the due process rights of [redacted] and B.D., are clearly arbitrary and constitute gross negligence, or worse, that shocks the conscience.

208. Although the Commonwealth has a compelling state interest in protecting B.D. when there was a report of suspected abuse, the Commonwealth has no compelling state interest in placing B.D. in foster care with strangers when placement with [redacted] or placement with family and/or close friends already known to the child and family are willing and able to provide care. When removal of a child from the home is necessary, Defendants Wertz, McGettigan and Giancristiforo had a duty to give "first consideration" to family and community resource families rather than placement in foster care with strangers.

209. It is clearly established federal law that a deprivation of a right to the opportunity to be heard prior to the removal of a child from a parent's custody, except in exigent circumstances, is a violation of a parents due process rights and that under federal law a preference for placement with family is mandatory.

210. It is clearly established federal law that due process at a minimum requires that government officials refrain from misrepresenting the facts or law in ex parte communications to the court in order to obtain the removal of a child from his parents or placement of that child in foster care with strangers. An official causes a constitutional violation if she sets in motion a series of events that the official knew or reasonably should have known would cause others to deprive Plaintiffs of constitutional rights.

211. CYS' custom, policy or practice of insisting that parents who maintain their innocence must "voluntarily" agree to placement of their child in foster care with strangers or suffer a malicious CYS request for an ex parte order granting protective custody by recklessly misrepresenting facts and law to the court in ex parte communications with the court that reasonable efforts had been made to prevent placement with family or friends without any notice or opportunity for the parents to be heard regarding alternative placement options is a reckless policy of and by CYS designed to deny [redacted] B.D. and other families subjected to the same custom, practice or policy, of their right to due process under the law.

212. As a direct and proximate result of CYS' custom, policy or practice of insisting that parents who maintain their innocence must "voluntarily" agree to placement of their child in foster care with strangers or suffer a malicious CYS request for an ex parte order granting protective custody by recklessly misrepresenting facts and law to the court in ex parte communications with the court that reasonable efforts had been made to prevent placement with family or friends without any notice or opportunity for the parents to be heard regarding alternative placement options, violated the due process rights of [redacted] and B.D. as secured by the United States and Pennsylvania constitutions and deprived [redacted] and [redacted] of the care, custody and control of B.D., and B.D. of the care, custody and control of his parents, including the ability to direct with whom B.D. would be placed during the pendency of the dependency petition.

213. As a direct and proximate result of Defendants Wertz, McGettigan and Giancristiforo's deliberate delay in seeking a pre-deprivation hearing and purposeful delay and misuse of an ex parte memorandum with reckless misrepresentations that reasonable efforts had been made to prevent placement with family or friends without any notice or opportunity for the

parents to be heard regarding alternative placement options, [redacted] and B.D. due process rights to notice and a meaningful opportunity to be heard as secured by the United States and Pennsylvania constitutions were violated and such violation deprived [redacted] and [redacted] of the care, custody and control of B.D., and B.D. of the care, custody and control of his parents, including the ability to direct with whom B.D. would be placed during the pendency of the dependency petition.

214. [redacted] and B.D. seek money damages as articulated below, including but not limited to, loss of custody of B.D., anxiety, depression, physical injury and other emotional distress, against Defendants Wertz, McGettigan and Giancristiforo's for their deliberate delay in scheduling a pre-deprivation hearing and purposely delay in filing and misusing an ex parte memorandum containing serious misrepresentations of material facts and for Delaware County's unconstitutional custom, policy or practice of insisting that parents who maintain their innocence must "voluntarily" agree to placement of their child in foster care with strangers or suffer a malicious CYS request for an ex parte order granting protective custody by misrepresenting facts and law in ex parte communications with the court that reasonable efforts had been made to prevent placement with family or friends without any notice or opportunity for the parents to be heard regarding alternative placement options and the constitutionally impermissible 280 days (9 months & 10 days), from the time B.D. was discharged from the hospital until the court dismissed CYS' dependency petition during which [redacted] and [redacted] were separated from B.D., and B.D. was separated from his parents.

COUNT II-B

FOURTEENTH AMENDMENT PROCEDURAL AND SUBSTANTIVE DUE PROCESS CLAIMS AGAINST META WERTZ, PATRICIA MCGETTIGAN AND GINA GIANCRISTIFORO

DEFENDANTS DECISION NOT TO SEEK A PRE-DEPRIVATION HEARING AND DELAY IN FILING EX PARTE MEMORANDUM AND INSISTENCE ON PLACEMENT OF B.D. WITH STRANGERS IN FOSTER CARE WHEN [redacted] AND [redacted] MAINTAINED THEIR INNOCENCE VIOLATES DUE PROCESS

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

216. Upon information and belief, Defendants Wertz, McGettigan and Giancristiforo acted in concert and agreement when they failed to seek a pre-deprivation hearing and delayed seeking custody for at least one week after they knew they had no intention of placing B.D. with [redacted] parents or the Stephenson's. Each individual Defendant had the duty to follow the law and seek a pre-deprivation hearing rather than delay and ex parte seek an emergency custody order.

217. As a direct and proximate result of Defendants Wertz, McGettigan and Giancristiforo's deliberate delay in seeking a pre-deprivation hearing and purposeful delay and misuse of an ex parte memorandum without any notice or opportunity for the parents to be heard regarding alternative placement options, [redacted] and B.D. due process rights to notice and a meaningful opportunity to be heard as secured by the United States and Pennsylvania constitutions were violated and such violation deprived [redacted] and [redacted] of the care, custody and control of B.D., and B.D. of the care, custody and control of his parents, including the ability to direct with whom B.D. would be placed during the pendency of the dependency petition.

218. [redacted] and B.D. seek money damages as articulated below, including but not limited to, loss of custody of B.D., anxiety, depression, physical injury and other emotional distress, against Defendants Wertz, McGettigan and Giancristiforo's for their deliberate delay in scheduling a pre-deprivation hearing and purposely delay in filing and

misusing an ex parte memorandum and by their insistence that because [redacted] and [redacted] maintained their innocence they either had to "voluntarily" agree to placement of their child in foster care with strangers or suffer a malicious CYS request for an ex parte order granting protective custody by misrepresenting facts and law in ex parte communications with the court that reasonable efforts had been made to prevent placement with family or friends without any notice or opportunity for the parents to be heard regarding alternative placement options and the constitutionally impermissible 280 days (9 months & 10 days), from the time B.D. was discharged from the hospital until the court dismissed CYS' dependency petition during which [redacted] and [redacted] were separated from B.D., and B.D. was separated from his parents.

COUNT III

FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS CLAIM AGAINST DELAWARE COUNTY AND MARY GERMOND

POLICY OF EXCESSIVE DELAY IN FILING DEPENDENCY PETITION VIOLATES DUE PROCESS

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

220. CYS has a custom, policy or practice of excessive delay in filing dependency petitions for weeks after an informal hearing granting CYS continued custody and CYS has alleged dependency rather than within 48 hours after the informal hearing as required by Pennsylvania law and due process of law.

221. Pursuant to 23 Pa.C.S. § 6315, Taking child into protective custody, "[i]f, at the [informal] hearing, it is determined that protective custody shall be continued and the child is alleged to be without proper parental care or control or is alleged to be a dependent child under

42 Pa.C.S. § 6302 (relating to definitions), the county agency shall within 48 hours file a petition with the court under 42 Pa.C.S. Ch. 63 alleging that the child is a dependent child."

222. In its December 9, 2008 ex parte memorandum requesting protective custody, CYS stated that "[i]t is the agency's opinion that this child would be at risk if he were to remain in his parent's custody and care" based on allegations of abuse is essentially an allegation of dependency.

223. A sham informal post-deprivation hearing was held on December 11, 2008 by Delaware County Juvenile Court Master David McNulty to give CYS' ex parte memorandum and the order granted by the court as a result of that ex parte memorandum a constitutional veneer.

224. In direct violation of 23 Pa.C.S. § 6315, instead of filing the dependency petition within 48 hours after the informal hearing or within a period of time that satisfies due process under the law, CYS waited a full 18 days to file the dependency petition on December 29, 2008.

225. The dependency petition filed on December 29, 2008 was signed by Howard Gallagher, Esquire, counsel to CYS and Mary Germond, the top CYS administrator.

226. On December 9, 2008, B.D. was discharged from DuPont Hospital and a full skeletal x-ray was performed as recommended by the American Academy of Pediatrics to confirm the presence of fractures. The radiology report of the December 9, 2008 full skeletal survey could not confirm the previously identified "possible" corner fractures. In addition, the report could not confirm the presence of any skull fracture in B.D.. On December 11, 2008, CYS was given the December 9, 2008 radiology report. The December 29, 2008 dependency

petition contained false allegations that there was a skull fracture and that there were "corner" fractures.

227. It is not objectively reasonable for Mary Germond to have delayed filing the dependency petition until December 29, 2008. In addition, it is not objectively reasonable for Mary Germond to have alleged the presence of a skull fracture or of corner fractures in her December 29, 2008 dependency petition. It is clear that between December 11, 2008 when the sham informal hearing was held and December 29, 2008 when the dependency petition was filed, no further meaningful investigation by CYS was done.

228. In addition to the excessive delay in filing the petition and the allegations of non-existent injuries, the dependency petition made no allegations regarding [redacted] ability to parent.

229. It is clearly established Pennsylvania law that, in addition to any allegations of abuse, "[t]he petitioner must show that the juvenile is without proper parental care, and that such care is not immediately available." CYS failed to allege that [redacted] was not immediately available to care for B.D..

230. CYS' filing of the dependency petition by its counsel and top administrator was a full 16 days beyond the 48 hour limit mandated by law in 23 Pa.C.S. § 6315, contained allegations of non-existent injuries and failed to allege any facts that [redacted] was not immediately available to care for B.D.. Every day CYS delayed filing the dependency petition is another day B.D. was separated from his parents and this delay demonstrated a deliberate indifference and reckless disregard of [redacted] [redacted] and B.D.'s due process rights. During this time B.D. was placed in foster care with strangers rather than [redacted] parents or family friends, Bob and Linda Stevenson.

231. It is well established federal law that excessive delay in filing a dependency petition is a violation of due process and/or other federal rights.

232. As a direct and proximate result of CYS' custom, policy and practice of delaying the filing of dependency petitions weeks later than the mandatory 48 hour limit under Pennsylvania law and in excess of that required by due process under the law, CYS deprived [redacted] and [redacted] of the care, custody and control of B.D., and B.D. of the care, custody and control of his parents, for 16 days, and of their rights to due process under the law.

233. [redacted] and B.D. seek money damages as articulated below, including but not limited to, damages incurred by Delaware County for the 16 days during which CYS was in direct violation of 23 Pa.C.S. § 6315 for failing to file the dependency petition within 48 hours of the informal hearing and [redacted] and [redacted] were impermissibly denied the care, custody and control of B.D. and B.D. was denied the care, custody and control of his parents.

234. [redacted] and B.D. seek money damages as articulated below, including but not limited to, damages incurred by Mary Germond individually for the 16 days during which she was in direct violation of 23 Pa.C.S. § 6315 for failing to file the dependency petition within 48 hours of the informal hearing and [redacted] and [redacted] were impermissibly denied the care, custody and control of B.D. and B.D. was denied the care, custody and control of his parents.

COUNT IV

FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS CLAIM AGAINST DELAWARE COUNTY, PATRICIA MCGETTIGAN AND GINA GIANCRISTIFORO

EXCESSIVE DELAY IN SCHEDULING DEPENDENCY HEARINGS AND IN PROVIDING DISCOVERY MONTHS AFTER THE FILING OF DEPENDENCY PETITION VIOLATES DUE PROCESS

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

236. A failure by Delaware County to train its employees about Pennsylvania law and due process of law that a dependency hearing be scheduled within 10 days of the filing of the dependency petition results in a de facto policy, custom and/or practice of allowing dependency hearings to be scheduled more than 10 days after the filing of a dependency petition in violation of due process under the law.

237. Defendant Germond filed the dependency petition 16 days late on December 29, 2008.

238. Delaware County deputized CYS to act as the Clerk of Juvenile court and in that role was granted complete discretion as to the scheduling of matters before the court.

239. The CYS employee charged with acting as Clerk of juvenile court, Cynthia Deconte, deferred scheduling the first day of the dependency trial to Defendant McGettigan. Defendant McGettigan scheduled the first day of trial for April 22, 2009, 114 days or nearly four months after the late filing of the dependency petition on December 29, 2008.

240. Pursuant to 42 Pa.C.S. § 6335, Release or holding of hearing, "[a]fter the petition has been filed alleging the child to be dependent or delinquent, the court shall fix a time for hearing thereon, which, if the child is in detention or shelter care shall not be later than ten days after the filing of the petition."

241. Delaware County failed to train Defendant McGettigan about Pennsylvania law and due process of law requirements that the court shall fix a time for a dependency hearing within 10 days of the filing of a dependency petition.

242. Defendant McGettigan failed to obey Pennsylvania law when she not only failed to secure the release of B.D. when the dependency hearing was scheduled more than 10 days after the dependency petition was filed, CYS opposed [redacted] efforts to have B.D. released.

243. CYS was granted protective custody and B.D. placed in a foster home on December 9, 2008. A sham informal hearing was held on December 11, 2008 and 18 days later, on December 29, 2008, CYS filed its dependency petition.

244. In violation of 23 Pa.C.S. § 6335, instead of fixing a time for hearing within 10 days, a duty which the Delaware County Office of Judicial Support delegated to CYS with complete discretion to fix initial hearing dates, scheduled the date for a hearing in front of a conflicted Master McNulty on January 13, 2009, a full 15 days after the filing of the dependency petition and over 33 days after the detention hearing.

245. At the limited informal hearing held on December 11, 2008 before Master McNulty, the Master made it known that he personally knew one of the witnesses for [redacted] and [redacted] presented at the sham informal hearing due to his service with that witness on the board of directors of a non-profit organization located near Chester.

246. In chambers, with counsel for CYS present, Master McNulty expressed concern that he had a conflict of interest to hear the matter and stated that he should not hear the dependency.

247. On or about December 26, 2008, counsel for [redacted] informed Defendant McGettigan in writing that he was demanding a hearing in front of a judge rather than Master McNulty.

248. Despite Defendant McGettigan's knowledge of that demand and the conflict of interest with Master McNulty, three days later, on December 29, 2008, CYS filed a dependency petition and scheduled a dependency hearing for January 13, 2009 before Master McNulty.

249. No parties appeared at the January 13, 2009 hearing and Master McNulty's findings of fact were "case continued to first available judge day" and his proposed order "[t]hat this matter be scheduled for the next available hearing to be heard before the judge" was adopted and signed by the court on January 20, 2009.

250. Under Pennsylvania law, a dependency hearing was to be held on or before December 23, 2008. By fixing the date for the dependency hearing on January 13, 2009, Delaware County Children and Youth Services violated the law by fixing the date for the dependency hearing 21 days later than that required by law.

251. Defendant McGettigan rescheduled the dependency hearing in front of a conflicted Master McNulty from January 13,2008 to a hearing in front of a judge on February 20, 2009, some 71 days after B.D. was committed to protective custody and 36 days after Master McNulty continued the case to the "first available judge day."

252. Because counsel for [redacted] was attached for trial in another court, a single request for a continuance of the belatedly scheduled dependency hearing on February 20, 2009 was requested and should have resulted in the dependency hearing being rescheduled within 10 days of February 20, 2009.

253. In a situation where a parent's attorney has requested a continuance, "[a] child may be detained or kept in shelter care for an additional single period not to exceed ten days." 23 Pa.C.S. § 6335.

254. Defendant McGettigan did not reschedule the first day of the dependency hearing within 10 days of February 20, 2009 as required by law.

255. Delaware County failed to train Defendant McGettigan and Defendant Giancristiforo about the due process requirements that require CYS to timely provide discovery to respondents of dependency petitions including the report and curriculum vitae of any expert. Such failure to train about the due process requirement of timely providing expert reports gives rise to a reasonable inference that failing to timely provide such discovery is a policy, custom or practice of Delaware County and CYS.

256. Defendant Giancristiforo's and Defendant McGettigan's failure to produce mandatory discovery made trial on January 13, 2009 and on February 20, 2009 impossible whether it was with a master or with a judge.

257. Pursuant to Pa.R.J.C.P. 1340(B)(1)(h), Defendants Giancristiforo and McGettigan were mandated to provide "the names, addresses, and curriculum vitae of any expert witness that a party intends to call at a hearing and the subject matter about which each expert witness is expected to testify, and a summary of the grounds for each opinion to be offered."

258. After several demands and finally a letter from counsel, Defendant Giancristiforo produced, on February 17, 2009, a written report from Dr. DeJong, one of two expert witnesses identified by CYS.

259. Dr. DeJong's report was provided 56 days after the date the Court and Defendants Giancristiforo and McGettigan were required by law to schedule the dependency hearing and 34 days after the first hearing scheduled in front of the conflicted master for January 13, 2009.

260. On April 8, 2009 Defendant Giancristiforo produced a written report from Dr. Messam, the second expert witness identified by CYS as a witness for their case against petitioner in the dependency matter.

261. Dr. Messam's report was provided 106 days after the date the court and Defendants Giancristiforo and McGettigan were required by law to schedule the dependency hearing and 85 days after the first hearing scheduled in front of the conflicted Master McNulty for January 13, 2009 and 47 days after the first hearing scheduled in front of a judge on February 20, 2009.

262. The February 16, 2009 report of Dr. DeJong was produced 84 days after he rendered his opinion verbally to Officer Collins of the Chester Police Department on November 26, 2008.

263. Ms. McGettigan, intake supervisor for CYS, fixed a date to begin the dependency hearing for the afternoon of April 22, 2009, 132 days after the B.D. was committed to protective custody and 61 days after the first scheduled and continued hearing in front of a judge. Except for one single continuance requested by counsel for [redacted] which should have resulted in a delay of only 10 days or less, all of the delay in scheduling the first day of the dependency trial was due to the dilatory actions and policies of Defendants Delaware County, Giancristiforo and McGettigan.

264. On April 22, 2009, CYS put on its first witness, CYS caseworker Ms. Giancristiforo, and its second witness, Dr. DeJong. Dr. DeJong's direct examination was completed on April 22, 2009.

265. Control of the scheduling of trial dates after April 22, 2009 was subsequently assumed by the Court.

266. It was not objectively reasonable for Defendant McGettigan to delay scheduling the first day of the dependency hearing until April 22, 2009 and doing so demonstrates a deliberate indifference and reckless disregard to the due process rights of [redacted] and B.D. pursuant to the Pennsylvania and United States constitutions.

267. It was not objectively reasonable for Defendant McGettigan and/or Defendant Giancristiforo to delay providing mandatory discovery April 8, 2009 and doing so demonstrates a deliberate indifference and reckless disregard to the due process rights of [redacted] and B.D. pursuant to the Pennsylvania and United States constitutions.

268. It is well established federal law that excessive delay in providing discovery and scheduling a dependency hearing is a violation of due process and/or other federal rights.

269. As a direct and proximate result of Delaware County's failure to train its employees about due process, the timely production of discovery and the scheduling of dependency trials within 10 days of the filing of a dependency petition, which creates a de facto policy and/or practice of scheduling of hearings on dependency petitions weeks or months after the filing of a dependency petition, in violation of Pennsylvania law and in violation of due process of law, CYS deprived [redacted] and [redacted] of the care, custody and control of B.D., and B.D. of the care, custody and control of his parents, for 114 days beyond that permitted by law and of their rights to due process.

270. Plaintiffs' seek money damages, as articulated below, against Delaware County, Giancristiforo and McGettigan for the 114 days during which [redacted] and [redacted] were impermissibly denied the care, custody and control of B.D. and B.D. was denied the care, custody and control of his parents as a result of Defendant McGettigan's failure to timely

schedule the dependency trial until April 22, 2009, Defendant Giancristiforo's failure to provide discovery until April 8, 2009 and CYS' custom, policy and practice of scheduling of hearings on dependency petitions more than 10 days after the filing of a dependency petition, in violation of Pennsylvania law and in violation of due process of law.

271. [redacted] and B.D. seek money damages as articulated below, including but not limited to, the damages incurred by Delaware County, Giancristiforo and McGettigan for the 114 days during which [redacted] and [redacted] were impermissibly denied the care, custody and control of B.D. and B.D. was denied the care, custody and control of his parents as a result of the failure to produce timely discovery and schedule the first day of hearings on B.D.'s dependency petition within 10 days of the filing of the petition in violation of Pennsylvania law and in violation of due process of law.

COUNT V

FOURTEENTH AMENDMENT SUBSTANTIVE DUE PROCESS CLAIM AGAINST DELAWARE COUNTY

CYS' REFUSAL TO ALLOW MORE TIME WITH B.D. AND REFUSAL TO PLACE B.D. WITH [redacted] EVEN AFTER CYS' OWN PARENT EDUCATOR REPORTED [redacted] HAD "TOP NOTCH" PARENTING SKILLS AND CYS' OWN PSYCHOLOGIST REPORTED THAT IF ANYTHING [redacted] WAS "OVERPROTECTIVE" OF B.D. WAS RETALIATION FOR [redacted] MAINTAINING INNOCENCE AND VIOLATES DUE PROCESS

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

273. Delaware County had a custom, practice or policy of refusing to permit a child in its custody to have more time with, or to place the child with, his mother in retaliation for the mother maintaining hers and the father's innocence.

274. CYS was granted protective custody and CYS immediately placed B.D. in foster care with strangers on December 9, 2008. B.D. was placed by CYS in kinship care with Bob and Linda Stevenson on February 23, 2009.

275. During the 9 months it took for the court to hear the dependency petition, [redacted] and [redacted] voluntarily submitted to psychological evaluation by a CYS approved psychologist and to parent education by a CYS approved parent educator ([redacted] could not attend the parent education sessions with B.D. because of his condition of bail but he did participate as much as possible given the bail restrictions). [redacted] started the parent education classes in March of 2009.

276. The CYS approved parent educator sent CYS reports every month beginning in April of 2009. The parent educator's reports were very positive with observations such as, "[redacted] continues to be very attentive to her son's needs without staff prompting. Her parenting skills are top notch; she has shared parenting tips with other clients. … She and B.D. bond well; [redacted] is attentive to his needs …"

277. Despite the positive reports from the parent educator and [redacted] complete voluntary compliance with the parent education and the psychological evaluation and the passage of six months of time, CYS refused to consider giving [redacted] more time with B.D. other the one hour of supervised visitation per week at the CYS office.

278. [redacted] counsel told Ms. Wertz and Ms. Prodoehl that [redacted] was more than willing to move out of the family residence in order for B.D. to be placed with [redacted] On April 22, 2009, when counsel approached Ms. Wertz and Ms. Prodoehl

about placing B.D. with [redacted] Ms. Prodoehl deferred to Ms. Wertz who had only one question. Ms. Wertz wanted to know if [redacted] and [redacted] were still together. When the response to that question was that [redacted] and [redacted] were still married and were living as husband and wife in the family residence, Ms. Wertz would not consider placing B.D. with [redacted] or even consider giving [redacted] more time with B.D.. Ms. Wertz, the intake administrator, would not consider any change in the visitation until the dependency had been determined regardless of CYS' own approved parent educator positive reports.

279. On July 6, 2009, the CYS paid and approved psychologist issued her reports of [redacted] and [redacted] both of which were positive. Supporting the positive reports of the parent educator the psychologist reported Regarding [redacted]

> All of the psychological testing and the clinical interviews contraindicate that Mrs. [redacted] would be likely to jeopardize her son in any manner, knowingly or unwittingly. In fact, she is more apt to be overly protective. These findings indicate that it would be incongruent for Mrs. [redacted] to act in ways inconsistent with her fundamental belief system which includes caretaking, helping others, and acting in the best interest of others. She has devoted her life for the past 12 years actualizing this belief system. She prides herself in creating a safe environment for children in the classroom. She is likely to view the role of the mother has being particularly important in looking out for the welfare of children. … If Mrs. [redacted] ever believed her baby to have been in danger at the hands of anyone, including her husband, it is this psychologist's opinion that she would not have hesitated to take any and all precautions to protect her child. This speaks to the core of her life choices and her moral and ethical commitments.

280. The CYS Family Service Plan only listed two services for [redacted] to complete and these were to attend parent education classes and to have a psychological evaluation. The Family Service Plan stated goal was family reunification. After receipt of the psychologist's positive evaluation and the continuing positive reports of the parent educator, on July 20, 2009, counsel for [redacted] pleaded with CYS to place B.D. with [redacted] or at a minimum give [redacted] more than the one hour per week of supervised

visitation at the CYS office with B.D. that was permitted by CYS. By July of 2009, CYS was still limiting [redacted] to only one hour per week of supervised visitation with B.D. (plus doctor visits) just as CYS had done for the prior 8 months with no change and no effort by CYS to increase the visitation. In light of the positive reports from CYS' own approved parent educator starting in April and the positive report from the psychologist, CYS had absolutely no objectively reasonable basis for refusing to place B.D. with [redacted] or, at a minimum, for giving [redacted] more time with B.D..

281. CYS refused to place B.D. with [redacted] or to give [redacted] more time with B.D. because she was still together with her husband and because [redacted] was still maintaining hers and [redacted] innocence. CYS' refusal to allow more visitation or to place B.D. with [redacted] was retaliation against [redacted] for maintaining her innocence and her vigorous defense of the CYS dependency allegations.

282. It is well established federal law that refusal to allow a child to be placed with a parent without any objectively reasonable basis is a violation of due process and/or other federal rights.

283. As a direct and proximate result of Delaware County's custom, practice or policy of refusing to permit a child to have more time or to place the child with, his mother in retaliation for the mother maintaining hers and the father's innocence, [redacted] was separated from her son for nine months.

284. [redacted] and B.D. seek money damages as articulated below, including but not limited to, the harm caused by Delaware County as a result of their custom, practice or policy of refusing to permit a child to have more time or to place the child with, his mother in retaliation for the mother maintaining hers and the father's innocence and the harm it

caused to [redacted] and to [redacted] to experience the loss of the companionship, custody, care and control of their son, B.D., for 280 days.

COUNT VI

SUBSTANTIVE DUE PROCESS CLAIM AGAINST DELAWARE COUNTY

RELIANCE ON DR. DEJONG IN THE FACE OF DR. DEJONG'S LONG HISTORY OF BIASED AND UNRELIABLE INVESTIGATIONS, REPORTS AND TESTIMONY VIOLATES DUE PROCESS

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

286. On November 24, 2008, Defendant DeJong stated in his report that "There is no history of trauma to explain the injury" and DeJong's November 24, 2008 report was the evidence submitted at the 72 hour hearing by Defendant Giancristiforo in support of the allegations of abuse during which the Court noted that Defendant Giancristiforo was depending on DeJong's opinion.

287. In Defendant DeJong's February 16, 2009 letter addressed to Defendant Giancristiforo he stated that "There has been no history of accidental trauma provided that could explain these traumatic injuries."

288. [redacted] did provide a history of trauma, a very difficult birth, to both Defendant DeJong and to multiple CYS employees.

289. Delaware County has a policy concerning upon whom they will rely when there are purportedly "unexplained" injuries.

290. The Safety Assessment and Management Process Manual published by the University of Pittsburgh school of Social Work identifies, "unexplained"

injuries as a risk factor for a safety assessment to be conducted by CYS intake workers. The manual states that "This [unexplained injuries] refers to a serious injury which parents or other caregivers cannot explain. Generally this information comes from the medical community or other medical professionals."

291. In cases of "unexplained injuries" Delaware County has trained its case workers to rely upon opinions "from the medical community or other medical professionals" without conducting an independent medical investigation. In addition, Delaware County has failed to train those same professionals "from the medical community" upon whom they rely about due process of law, including but not limited to the burden of proof and the due process considerations of burden shifting presumptions.

292. Parents take their child(ren) to hospitals when a child exhibits symptoms for the purpose of having medical professionals examine and determine the cause of their child's symptoms. In certain types of cases in which the child has intracranial hemorrhages and/or bone findings without any external evidence of trauma, medical professionals associated with the American Academy of Pediatrics make presumptions about the cause of the child's symptoms. These medical presumptions cause the medical professionals to shift the burden of proof to the parents to "explain" the child's symptoms with an accidental traumatic "explanation" and that failing such an "explanation" makes diagnosis that the cause of the child's symptoms is abuse.

293. Delaware County's training of case workers to rely upon professionals "from the medical community" and failure to train those same professionals upon whom CYS relies about due process of law and presumptions constitutes a custom,

policy or practice of relying exclusively on medical opinions tainted by burden shifting presumptions.

294. CYS relied exclusively on Dr. DeJong's medical opinion and legal conclusion about the cause of B.D.'s "unexplained" injuries and the identity of the purported perpetrator in their investigation of the suspected child abuse allegations of B.D..

295. CYS caseworker Ms. Giancristiforo did not do her own independent medical investigation into the B.D.'s injuries but instead relied solely on Dr. DeJong's medical opinion and legal conclusion in her investigation just as she was trained to do. In response to questioning about what medical investigation Ms. Giancristiforo herself performed the court commented, "she is totally dependent on what the doctors tell her."

296. At no time before B.D. was removed from the [redacted] home or before the dependency petition was filed did CYS obtain any independent medical opinion concerning B.D.'s "unexplained" injuries.

297. Defendant DeJong is a Fellow of the American Academy of Pediatrics.

298. 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."

299. 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.

300. 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." B.D. had no retinal hemorrhages and had no internal injuries with rickets induced anterior rib flaring and/or pseudofractures at the costochondral junction that were misdiagnosed as evidence of severe trauma.

301. A nationally prominent physician affiliated with the American Academy of Pediatrics 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 an interview on July 18, 2011. In B.D.'s case there is no obvious trauma to B.D.'s head, there was no bruising, abrasions, scalp swelling or skull fractures. This prominent physician 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, has 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".

302. Dr. DeJong has a long history of misrepresenting medical evidence as supportive of a diagnosis of abuse when, in fact, the actual medical evidence supports alternative diagnoses (differential diagnoses), in his medical reports and medical testimony in child abuse investigations.

303. In 1991, Pennsylvania Superior court reversed a child rape sentence finding that "the prejudicial value of [Dr. DeJong's] testimony clearly outweighed the probative value, if any; this testimony was, therefore, inadmissible."

304. In 1999 the Delaware Superior court reversed another child abuse conviction in which Dr. DeJong testified. In that case, the Delaware Superior court noted that although Dr. DeJong concluded "there were no specific physical findings suggestive of sexual abuse" he was "of the view that the absence of such finding was, nevertheless, consistent with abuse."

305. Dr. DeJong's dubious ability to report the absence of "specific physical findings of sexual abuse" as "consistent with abuse" has been criticized going back as far as 1989.

306. Upon information and belief, in 1997, in another suspected child sexual abuse case, the court directed the jury to disregard all of Dr. DeJong's testimony in another case in which Dr. DeJong testified that the absence of specific physical findings of abuse was "consistent with" abuse.

307. Upon information and belief, in another case in 2007, Dr. DeJong misrepresented the medical evidence in support of his misdiagnosis of child abuse.

308. Upon information and belief, Dr. DeJong has misrepresented the absence of specific physical findings in both physical and sexual abuse cases as

"consistent with" abuse in tens, if not hundreds, of child abuse investigations. Upon information and belief, Dr. DeJong frequently misrepresents the medical evidence as supportive of a diagnosis of abuse, when, in fact, the medical evidence is also consistent with alternative non-abusive diagnoses. Upon information and belief, Dr. DeJong frequently recklessly misrepresents the age of SDHs and fractures to conform the age of the injury to the time the person Dr. DeJong believes abused the child was with the child when medical science and research does not support such aging. Due to the confidential nature of juvenile court proceedings, Plaintiffs have been restricted from discovering even more examples of Dr. DeJong's misrepresentation of medical evidence as supportive of a diagnosis of abuse when, if fact, it is not.

309. Despite Dr. DeJong's long and documented history of biased and unreliable medical investigation and dubious mischaracterization of the absence of specific physical findings of abuse as "consistent with" abuse, and of recklessly misrepresenting the age of injuries, CYS has a custom, policy and practice of relying solely on Dr. DeJong's medical opinion about whether the clinical findings of B.D. were inflicted and/or a custom, policy and practice of relying solely on Dr. DeJong's legal conclusions as to the identity of the purported perpetrator.

310. In addition to Dr. DeJong's proclivity to find the absence of specific medical findings of abuse as consistent with abuse. Dr. DeJong has a bias against performing a complete differential diagnosis looking for alternative medical explanations for injuries other than that the injuries were inflicted and recklessly ignores evidence that the injuries are not traumatic in nature.

311. Upon information and belief, despite the fact that there are numerous well-recognized alternative non-abusive explanations (differential diagnoses) for the clinical and radiological findings in suspected child abuse cases in general and in B.D.'s case in particular, Dr. DeJong has a bias that "in reality there is no other explanation" for SDHs, rib fractures and retinal hemorrhages.

312. Dr. DeJong has plainly expressed his bias that "in reality there is no other explanation" for such injuries in at least one class he taught in 2008 on the subject of child abuse investigation. Dr. DeJong expressed his bias at a conference on child abuse sponsored by the Delaware Child Death, Near Death and Stillborn Commission and the Child Protection Accountability Commission held in May of 2008 and in power point slides published on the official Delaware government court website.

313. Upon information and belief, in his investigation of child abuse cases where one of the clinical findings is a SDH, Dr. DeJong has adopted the medical presumption announced by the American Academy of Pediatrics that "[a]lthough 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." While Dr. DeJong performs some nominal level of differential diagnosis before making the presumption, he nevertheless will make the presumption without ruling out many of the well recognized metabolic and other medical causes of SDHs. Dr. DeJong makes that same presumption in the presence of fractures as well.

314. Upon information and belief, once a few nominal lab tests are performed and the results of those few nominal tests do not provide an alternative

explanation for the SDH, Dr. DeJong makes the presumption that the cause of the SDH is child abuse. Once Dr. DeJong makes that presumption, he falsely reports that the very presence of a SDH provides prima facie evidence of abuse and does not insist upon further investigation to rule out the multitude of medically recognized causes of SDH, including the obvious cause of birth trauma, and instead shifts the burden of proof and demands that the parents "explain" the presence of the SDH.

315. Even when [redacted] explained to Dr. DeJong how traumatic B.D.'s birth was with prolonged labor and how B.D.'s head was malpositioned requiring manual manipulation by the obstetrician prior to delivery, Dr. DeJong's bias that "in reality there is no other explanation" and his "presumption of child abuse" compelled Dr. DeJong to dismiss birth trauma by saying "there is no history of trauma" that explained the SDH without fist reviewing the birth records of two month old B.D..

316. B.D.'s rib findings provide intrinsic evidence recklessly ignored by Dr. DeJong that the cause of B.D.'s rib findings was not traumatic in nature. Dr. DeJong holds himself out as an expert in child abuse and as such he knew or should have known of medical research that 100% of patients with four or more rib fractures due to trauma have internal injuries. When duPont's radiology department reported the presence of what appeared to be 14 healing anterior rib fractures with absolutely no internal injuries, the sheer number of fractures without any evidence of internal injury constitutes strong evidence that the radiological bone findings were NOT caused by trauma.

317. Another indicator that B.D.'s rib findings were not caused by abuse recklessly ignored by Dr. DeJong is the location of B.D.'s rib findings. B.D.'s rib findings were in the anterior region of the ribs. Dr. DeJong holds himself out as an

expert in child abuse and as such he knew or should have known of medical research that in traumatic rib injuries the distribution of rib findings has been found that 75% or more of the rib findings due to abusive trauma were posterior and only 17% of the rib findings due to trauma were anterior. Posterior rib fractures have been considered by many in the medical profession to be diagnostic of abuse. If B.D.'s rib findings were caused by abuse, it would be expected that a majority of his rib findings would be posterior. Instead, the fact that every rib finding is in the anterior region of the rib made it exceedingly medically unlikely that B.D.'s rib findings were caused by trauma. In addition, all of the rib findings were located at the growth plate of B.D.'s ribs, at or near the costochondral junction. The fact that all of B.D.'s rib findings were proximate to the costochondral junction where the bone of the rib transitions to cartilage and where much of the growth of the rib takes place both before and after birth is a strong indicator that the cause of the rib findings is metabolic in nature rather than traumatic. Dr. DeJong chose to ignore these strong indicators that B.D.'s rib findings were metabolic in nature and were likely due to bone developmental disorder.

318. Dr. DeJong failed to ensure that a medical workup looking for a metabolic cause of B.D.'s rib findings BEFORE he made a diagnosis of child abuse as the cause.

319. It is Dr. DeJong's duty as the child abuse "expert" upon whom CYS exclusively relies to "explain" the presence of the SDH and bone findings by first investigating and ruling in or ruling out every possible medical cause before coming to a diagnosis of abuse. However, upon information and belief, Dr. DeJong, after only minimal testing, did not continue to investigate every possible medical cause and instead

adopted the medical "presumption of child abuse" that shifted the burden of "explaining" the SDH to the parents. Then, even when [redacted] and [redacted] did provide an "explanation" such as B.D.'s traumatic birth, that explanation was dismissed without any investigation because "in reality" Dr. DeJong believes "there is no other explanation" other than abuse. Dr. DeJong then declared that [redacted] and [redacted] failed to carry their burden to "explain" the presence of the SDH with a description of some accidental event involving the child under the medical "presumption of child abuse" and concluded that the SDH and bone findings must have been caused by some "non-accidental" event and made the false and presumption tainted medical diagnosis of child abuse.

320. Upon information and belief, Dr. DeJong's bias that "in reality there is no other explanation" and his adoption of the American Academy of Pediatric's medical "presumption of child abuse" distorted Dr. DeJong's medical investigation of B.D.'s SDH and rib fractures so much so that he failed to investigate the multitude of well recognized alternative medical explanations for SDH and fractures such as birth trauma the increasingly common condition of vitamin D insufficiency and rickets.

321. Upon information and belief, Dr. DeJong's bias that "in reality there is no other explanation" for a SDH or rib fractures other than abuse and his adoption of the "presumption of child abuse" explains Dr. DeJong's long history of providing unreliable medical reports and medical testimony in child abuse investigations in which, although "there were no specific physical findings" of abuse, he was "of the view that the absence of such finding was, nevertheless, consistent with abuse."

322. In B.D.'s case, DeJong clearly stated in his report and confirmed such in his testimony that there was "an absence of any admission or disclosure by either parent of abuse."

323. Despite no "admission" or "disclosure" of abuse by [redacted] Dr. DeJong's November 24, 2008 report about B.D. nevertheless misrepresented innocent statements made by [redacted] to "suggest injury events consistent with" clinical findings that are not specific for abuse and conclude that B.D.'s injuries were caused by "child physical abuse." Dr. DeJong further misrepresented innocent statements made by [redacted] to falsely conclude that it was [redacted] who inflicted the purported abuse on B.D..

324. DeJong falsely diagnosed child abuse without first investigating B.D.'s vitamin D status both at birth and upon admission to duPont, without first investigating [redacted] vitamin D status during pregnancy and though [redacted] and [redacted] described B.D.'s traumatic birth, Dr. DeJong diagnosed the cause of B.D.'s SDH and rib fractures as child abuse without even reviewing B.D.'s birth records.

325. It was not objectively reasonable for DeJong to state "there is no history of trauma to explain the injury" when Dr. DeJong was provided with a history of B.D.'s traumatic birth. It is not objectively reasonable for Dr. DeJong to state that "the history provided by the mother … suggest injury events consistent with the imaging and clinical findings" when Dr. DeJong also clearly stated in his report that there was "an absence of any admission or disclosure by either parent of abuse."

326. Delaware County's training and policy resulted in the unquestioning acceptance of Dr. DeJong's biased medical opinion, the adoption of Dr. DeJong's medical "presumption of child abuse" and the adoption of Dr. DeJong's false

legal conclusion that [redacted] abused B.D. and was the direct, immediate and proximate cause for the removal of B.D. from [redacted] and [redacted]

327. Dr. DeJong was the sole medical and/or expert witness relied upon and/or called by CYS in the investigation of the suspected abuse of B.D..

328. Although CYS listed another medical expert as a potential witness in the dependency proceeding, Dr. Messam, her report was not prepared until more than four months after [redacted] was arrested and B.D. was forcibly removed from [redacted] and [redacted] CYS did not rely upon Dr. Messam during its investigation and never called Dr. Messam as a witness in the dependency trial.

329. Due process of law requires that CYS conduct an unbiased investigation into whether the allegations that the "unexplained" injuries sustained by B.D. were inflicted or caused by abuse or whether they were caused by birth trauma and metabolic issues.

330. Delaware County knew, or should have known, of Dr. DeJong's bias that "in reality there is no other explanation" for SDHs and fractures, of Dr. DeJong's pattern of mischaracterizing physical findings that are not specific for abuse as "consistent with" abuse, of Dr. DeJong's pattern of failure to perform complete differential diagnoses and of Dr. DeJong's misrepresentation of medical evidence as supportive of a diagnosis of abuse when, in fact, it is not.

331. Delaware County had a policy of relying upon and accepting the opinions of medical professionals about "unexplained" injuries and a policy of failing to train those medical professionals that a presumption that an "unexplained" injury was caused by abuse and violates due process of law.

332. Delaware County's policy of reliance on the biased medical opinions and false legal conclusions of Dr. DeJong in the face of his bias and history of mischaracterization of physical findings demonstrate a reckless disregard and reckless indifference to the truth and the right of [redacted] and B.D., to an unbiased investigation into whether allegations of abuse are supported by medical and other evidence.

333. It is well established federal law that a biased dependency investigation is a violation of due process and/or other federal rights.

334. The presence of B.D.'s "unexplained" subdural hemorrhages with no external signs of trauma to B.D.'s head and "unexplained" multiple rib findings with no internal injuries, did not create an objectively reasonable suspicion of abuse that justified the placement of B.D. in foster care through the misuse of a delayed ex parte memorandum that misrepresented the availability of family members and misrepresentation of the law regarding emergency placement and as such, was an arbitrary exercise of government power.

DR. DEJONG'S UNRELIABILITY IS NOT LIMITED TO ALLEGED SHAKEN BABY CASES

335. In 2008 Deputy Attorney General of Delaware, Stacy Cohee, consulted Dr. DeJong after Delaware State Troopers swore out affidavits of probable cause against Dr. Earl Bradley related to three complaints of "inappropriate conduct" against Dr. Bradley in which it was alleged that Dr. Bradley had performed vaginal exams on young girls.

336. The "inappropriate" conduct consisted of vaginal exams performed in cases where the presenting symptoms were sore throat and pink eye of a 12 year girl of whom received a vaginal exam, a 6 year old girl presenting with Attention Deficit

Disorder whom received a 4 minute vaginal exam, and an 8 year old girl who had an excessive urination problem whom was given "at least three (3) vaginal exams over a six week period."

337. Dr. DeJong told Deputy Attorney General Cohee that "vaginal exams in certain circumstances were acceptable as routine practice" and that "when alarm bells did not go off for DeJong" she consulted Dr. Cindy Christian from Children's Hospital of Philadelphia (CHOP).

338. Dr. Christian told Deputy Attorney General Cohee that "generally vaginal exams are not appropriate" in such circumstances.

339. As a result of Dr. DeJong's conflicting opinion regarding the appropriateness of vaginal exams for young girls presenting with sore throat and pink eye and Attention Deficit Disorder, Deputy Attorney General Cohee concluded that "making an arrest under the circumstances was not the best way to proceed at the time".

340. Dr. Earl Bradley continued to practice and perform "inappropriate conduct" on children for more than one year after Dr. DeJong told Deputy Attorney General Cohee his practice of performing vaginal exams was "in certain circumstances acceptable in routine practice".

341. Dr. Earl Bradley had been a medical student under Dr. DeJong when Dr. Bradley was in medical school.

342. At all times relevant to this complaint in 2008 and 2009, Dr. DeJong was listed as a physician affiliated with Nemours and duPont Hospital on the Nemours/A.I. duPont website.

343. At all times relevant to this complaint in 2008 and 2009, Dr. DeJong was listed as the medical director of the C.A.R.E. Team at duPont Hospital and as the medical director of the Child Advocacy Center of Delaware.

344. As of the filing of this complaint, Dr. DeJong is no longer listed as an doctor affiliated with Nemours or A.I. duPont Hospital.

345. As of the filing of this complaint, the Child Advocacy Center of Delaware's website was not functioning.

346. Delaware County's custom, policy and/or practice of relying exclusively on the biased medical opinions and false legal conclusions of a pediatrician affiliated with the American Academy of Pediatrics who has a history of bias and unreliability in investigating whether injuries were inflicted in suspected cases of child abuse and policy of failing to train that pediatrician about due process considerations of presumptions demonstrates a policy of reckless disregard and reckless indifference to [redacted] and B.D.'s right to due process under the law.

347. As a direct and proximate result of Delaware County's custom, policy and/or practice of relying exclusively on the biased opinions medical professionals concerning "unexplained" injuries, combined with the failure of Delaware County to train those medical professionals about the due process considerations of a presumption that certain injuries are abusive and shifts the burden of proof to the parents to "explain" those injuries, [redacted] and [redacted] due process rights as secured by the United States and Pennsylvania constitutions were violated and [redacted] and [redacted] were deprived of the fundamental constitutional right to the care, custody and control of their son B.D., and B.D. of the fundamental right to the care, custody and control of his parents.

348. [redacted] and B.D. seek money damages as articulated below, including but not limited to, damages caused by Delaware County for the constitutionally impermissible 280 days, from the time B.D. was 11 weeks until he was 11 months old, that [redacted] was separated from B.D., and B.D. separated from [redacted] and over one year that [redacted] was separated from B.D., and B.D. separated from [redacted] and for over one year that [redacted] and B.D. could not all be together as a family as a result of CYS' custom, policy and practice of relying exclusively on the opinions of medical professionals without training them about due process considerations of burden shifting presumptions to arrive at their medical conclusions.

COUNT VII

SUBSTANTIVE DUE PROCESS CLAIM AGAINST DELAWARE COUNTY AND DR. DEJONG

DR. DEJONG'S PATTERN OF MUTIPLE RECKLESS MISREPRESENTATIONS OF MEDICAL FINDINGS TO SUPPORT FALSE ALLEGATIONS OF CHILD ABUSE IS NOT OBJECTIVELY REASONABLE, CONSTITUTES BAD FAITH AND SHOCKS THE CONSCIENCE AND HIS ACTS ARE FAIRLY ATTRIBUTABLE TO DELAWARE COUNTY

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

350. Conversations between counsel for [redacted] and Defendants Wertz, McGettigan and Giancristiforo were ongoing from November 26, 2008 through February 20, 2009, and beyond, in an attempt to get B.D. placed with [redacted]

351. Defendants Giancristiforo, McGettigan and Wertz anticipated that [redacted] and [redacted] would vigorously press to have B.D. placed with [redacted] and/or [redacted] family members.

352. Exasperated that Defendants Giancristiforo, McGettigan and Wertz refused to even consider placement of B.D. with [redacted] on February 19, 2008, [redacted] filed a motion to release B.D. to [redacted] pursuant to 23 Pa.C.S. § 6315.

353. At the behest of one or more of Defendants Wertz, McGettigan and Giancristiforo, Defendant DeJong amended his report to cooperate and aid Defendants Wertz, McGettigan and Giancristiforo in efforts to keep B.D. from his parents.

354. On or about November 26, 2008, Defendant DeJong wrote a report misdiagnosing the cause of B.D.'s subdural hemorrhage and rib findings as abuse.

355. Just four days prior to the dependency trial date scheduled by Defendant McGettigan, on or about February 16, 2009, Defendant DeJong issued a report addressed to Defendant Giancristiforo. This second report reiterated, almost word for word Defendant DeJong's November 26, 2008 report with one major exception.

356. The major exception is that Defendant DeJong offered an opinion, not only about the cause of B.D.'s injuries, but also added an opinion about whether or not he could assure B.D.'s safety with either of his parents.

357. Defendant DeJong stated, "[u]nfortunately, in the face of continued denial of the traumatic nature of these injuries and in the absence of any admission or disclosure by either parent of abuse, it would be difficult to assure [B.D.]'s safety with either of his parents."

358. Upon information and belief, Defendant DeJong's addition of his opinion concerning placement of B.D. with [redacted] and [redacted] was done at the request and guidance of Defendants Giancristiforo, McGettigan and Wertz to enable them to

buttress their argument that B.D. should be kept away from [redacted] even though there was no allegation that [redacted] had ever done anything to hurt B.D.

359. Defendant DeJong's amendment of his report on February 16, 2009 to include a non-medical opinion about whether B.D. could be safely placed with [redacted] combined with the joint efforts made to get [redacted] arrested on November 26, 2008, demonstrates a joint participation/symbiotic relationship between DeJong and Defendants Giancristiforo, McGettigan and Wertz and is more than simply rendering a medical opinion about the cause of B.D.'s injuries and renders his actions fairly attributable to Delaware County and CYS.

360. It is well established federal law that all relevant and available information, including exculpatory facts are to be considered in a determination of whether there is probable cause to arrest and Dr. DeJong, acting on behalf of the Commonwealth, was not free to ignore evidence that would dispel probable cause and the Commonwealth must conduct a reasonable investigation prior to arresting a suspect in the absence of exigent circumstances.

361. Dr. DeJong's multiple reckless misrepresentations of the medical findings, reckless omissions in his investigation and reckless misrepresentations of his interview with [redacted] are not objectively reasonable and are acts of bad faith, shock the conscience and are fairly attributable to Delaware County.

DR. DEJONG'S CLAIM OF A SKULL FRACTURE AND HIS RECKLESS MISREPRESENTATION OF A NON-EXISTENT SKULL FRACTURE AS "SEVER[E] SKULL FRACTURES" TO CHESTER POLICE AND AS "A SIGNIFICANT FRACTURE" TO CYS IS NOT OBJECTIVELY REASONABLE AND AN ACT OF BAD FAITH

362. A CT scan of B.D.'s head was performed at approximately 1 p.m. on November 22, 2008. The Christiana radiologist found "[n]o definite skull fracture is demonstrated."

363. On the same day, the DuPont transport team took B.D. from Christiana Hospital to duPont Hospital, and four hours after the CT scan at Christiana was performed, at approximately 5:38 pm, DuPont Hospital performed a head CT scan and a DuPont radiologist "found" an alleged "short segment of skull fracture identified in the left temporal region, seen on image #9/26, with mild displacement." This reported "short segment skull fracture" was found on a brain window of the CT scan and not a bone window and was a normal suture or fissure in B.D.'s skull and was not a fracture at all.

364. This finding of an alleged "short segment of skull fracture" was found four and one-half hours after "[n]o definite skull fracture is demonstrated" by CT at Christiana Hospital.

365. On December 1, 2008 at 9:37 a.m. a duPont CT scan of B.D.'s head revealed no skull fracture thus confirming that the "short segment skull fracture" was a suture or fissure.

366. Protocol established by the Child Advocacy Center of Delaware (CACD), for which Dr. DeJong serves as medical director, directs that any examination of a child for suspected child abuse "should follow guidelines established by the American Academy of Pediatrics…"

367. The American Academy of Pediatrics (AAP), Committee on Child Abuse and Neglect (COCAN) states, "[i]n a retrospective series of abused children, skull

films were more sensitive and improved the confidence of diagnosis of skull fracture, compared with CT." Two skull x-ray film studies were performed on B.D., one on November 24, 2008, two days after his admission to DuPont and the second on December 9, 2008 about two weeks later when fractures, if in fact there had been any, would have begun to calcify and would be visible on the film. Both skull films were negative for any skull fracture.

368. On November 24, 2008 at 11:34 a.m. the first full skeletal x-ray was performed on B.D. which the DuPont radiologist interpreted as "[l]eft temporal fracture seen on CT scan cannot be appreciated on the plain radiographs."

369. More than two weeks later, on December 9, 2008 at 11:15 am the second full skeletal x-ray was performed on B.D. and the DuPont radiologist could find no evidence of a skull fracture, "[t]he skull is intact. No fracture is identified … Fracture of skull identified on CT scan is not seen radiographically." The initial and follow-up skull films were unanimous in that both skeletal surveys failed to confirm the presence of any skull fracture whatsoever. This failure to find a skull fracture on the radiological study found to be more reliable by the AAP's COCAN for confirming the presence of skull fractures again confirmed that the spurious CT finding of a "short segment skull fracture" was simply a suture or fissure on a brain window that was mistaken as a fracture.

370. There was no credible or reliable medical evidence of any "short segment of skull fracture" or any other fracture in B.D.'s skull.

371. Dr. DeJong misrepresented that B.D. "suffers from skull fractures" and had "sever[sic] skull fractures" to the Chester Police and "a significant skull fracture"

to CYS for the purpose of misleading them into believing there was medical evidence that B.D.'s SDH was inflicted. Both CYS and the Chester Police interviewed Dr. DeJong and relied on Dr. DeJong's representations of B.D.'s injuries. CYS employees stated in the ex parte memorandum, the dependency petition, and the family service plan the false assertion that the skeletal survey and/or MRI revealed a "significant skull fracture." The police affidavit of probable cause stated that B.D. had "sever[sic] skull fractures."

372. Though the CT scan reports were conflicting regarding the presence of a "short segment" skull fracture and the skull films were unanimous in confirming the absence of any skull fracture, upon information and belief, Dr. DeJong misrepresented the spurious "short segment of skull fracture" to Delaware County Children and Youth Services as B.D. having suffered a "significant" skull fracture and Dr. DeJong told Officer Collins of the Chester Police department that B.D. had "sever [sic] skull fractures."

373. Since the CT reports were conflicting about the presence of a "short segment" skull fracture and reports of the skull films, which are more sensitive for confirming the presence of skull fracture, were both unanimous that a "short segment" skull fracture could not be confirmed, Dr. DeJong's misrepresentation to Delaware County Children and Youth Services of a "significant" skull fracture and misrepresentations to the Chester Police that there were "sever [sic] skull fractures" are not objectively reasonable and are reckless misrepresentations made in bad faith for the purpose of ensuring that [redacted] was arrested and B.D. was removed from the custody of his parents.

374. Dr. DeJong testified that he "was convinced" there was a skull fracture when he wrote his reports in November of 2008 and February of 2009, but by June of 2009 when confronted with the conflicting CT reports and the unanimous skeletal survey results, he testified "I'm actually not sure at this time." When asked what changed his mind about his certainty of a skull fracture between February of 2009 and June of 2009 Dr. DeJong answered "[t]hinking more about it …"

375. Dr. DeJong's failure to think "more about" the purported skull fracture during his investigation before he falsely diagnosed B.D.'s injuries as being caused by child abuse and his misrepresentation that there was medical evidence of a skull fracture was not objectively reasonable and a reckless attempt to use his influence with CYS, the Chester Police and the District Attorney to arrest [redacted] and remove B.D. from [redacted] and [redacted]

DR. DEJONG'S CLAIM OF A HYPERACUTE "MIXED DENSITY" SDH IS NOT OBJECTIVELY REASONABLE AND BAD FAITH

376. A "mixed density" SDH consists of areas of high intensity that are bright white and areas of low intensity that are darker. In most cases a "mixed density" SDH represents new blood (the bright white) overlying old blood (the darker color). In cases where the initial CT scan is taken within hours of a traumatically inflicted SDH, a "mixed density" appearing SDH can actually be a hyperacute SDH.

377. The medical literature well recognizes that follow-up CT scans and MRI will confirm whether or not the initial "mixed density" SDH was hyperacute or acute on chronic (new blood over old blood).

378. An acute on chronic SDH means that the SDH has blood that is fresh and is only hours or days old (the acute component) superimposed on blood that is weeks to months old (the chronic component).

379. The distinction between acute on chronic SDH and hyperacute SDH in the setting of suspected child abuse is of great significance as regards the cause and age of the injury.

380. Since B.D. was 2 months old at the time of admission to the hospital, the importance of the aging of the SDH determines whether the injury event that caused the SDH can date back to the trauma of child birth. Medical studies have found the incidence of SDH in newborn children due to ordinary birth trauma to be as high as 50% of infants born and these infants demonstrate no symptoms of the SDH whatsoever. Medical studies have found that once there is a SDH present from birth that in most cases the SDH resolves without any treatment at all. Medical studies have also found that in some cases the SDH does not resolve, can occur spontaneously and have a possibility of re-bleeding one or more times causing the SDH to grow in size to the point where symptoms such as vomiting and seizures can occur.

381. By misrepresenting the SDH as a hyperacute "mixed density" SDH that was no more than 72 hours old, Dr. DeJong falsely claims in his report and testimony that [redacted] and [redacted] provided no explanation for B.D.'s SDH and that Dr. DeJong was able to rule out birth trauma as the cause of B.D.'s SDH. Instead of finding that B.D.'s acute on chronic SDH could date back to the trauma B.D. experienced at birth, Dr. DeJong attempted to connect the SDH to the ten minute window of time on November 20, 2008 that [redacted] took B.D. upstairs to change B.D.'s diaper while [redacted] and dinner

guests waited downstairs. While [redacted] was changing B.D. he noticed B.D. go limp briefly and called [redacted] upstairs to look at B.D.. By the time [redacted] got upstairs B.D. was acting normal again and [redacted] didn't think there was anything wrong. In hindsight it is clear that, unknown to [redacted] and [redacted] B.D. had experienced a focal seizure as a result of a re-bleeding of his chronic SDH. Dr. DeJong recklessly mischaracterizes this focal seizure as evidence of "injury event."

382. It is true that in some cases an initial CT scan that shows a "mixed density" SDH collection can mean there is an acute on chronic SDH or that there could be a hyperacute SDH that is less than 72 hours old. However, subsequent studies were performed on B.D. which provided the additional information necessary to differentiate B.D.'s SDH as an acute on chronic SDH that was weeks to months old and could easily date back to birth. This principle was well explained in the report by the Christiana radiologist of the initial CT scan.

383. The November 22, 2008 CT scan report from the Christiana radiologist stated "There is a left subdural hemorrhage demonstrating mixed attenuation pattern, suggesting the possibility of hemorrhage of different ages; there is an acute or subacute hemorrhage component present anteriorly, but areas of subdural hygroma or chronic subdural hemorrhage may also be present … It should be noted, however, that a hyperacute subdural hemorrhage might have a similar mixed pattern on CT. … Large left subdural hemorrhage, causing mass-effect and shift of midline structures. There are features about the subdural hemorrhage that suggest the presence of hemorrhagic products of different ages (please see above comments). … The presence of hemorrhagic products of different ages might be established by brain MRI, if clinically indicated."

384. A DuPont board certified pediatric radiologist interpreted another head CT scan taken on November 24, 2008 at 2:31 a.m. as "[a]gain noted is the left-sided acute on chronic SDH" clearly indicating by a board certified radiologist that B.D.'s subdural collection was not hyperacute as misrepresented by Dr. DeJong.

385. MRI is recognized as being a superior radiological indicator for aging SDH collections in the brain. The DuPont board certified pediatric radiologist interpreted the November 24, 2008 MRI as "an acute on chronic subdural hematoma overlying the left cerebral hemisphere" in another confirmation that B.D.'s subdural collection was not hyperacute as misrepresented by Dr. DeJong.

386. In another CT scan on December 1, 2008, the DuPont board certified pediatric radiologist interpreted that "[t]here is expected interval progression in the appearance of blood products, now with a decrease in the amount of hyperdense/acute blood products. Hyperdense, hypodense, and isodense blood products are still seen compatible with acute/subacute on chronic subdural hemorrhage" again confirming that B.D.'s subdural collections were not hyperacute when he was admitted as misrepresented by Dr. DeJong.

387. Upon information and belief, Dr. DeJong claimed to have ruled out birth trauma as the cause of B.D.'s SDH by misrepresenting the age of B.D.'s SDH. Dr. DeJong misrepresented the age of B.D.'s SDH so that he could rule out birth trauma as a cause, justify his failure to actually review B.D.'s birth records and so he could connect the SDH to an "injury event" that Dr. DeJong manufactured from innocent statements made by [redacted] during her interview with Dr. DeJong.

388. In Dr. DeJong's report and in his testimony he misrepresented the SDH as a hyperacute "mixed density" SDH rather than as an acute on chronic SDH as the DuPont board certified pediatric radiologists interpreted the radiological studies of B.D.'s head. By misrepresenting B.D.'s SDH as a hyperacute "mixed density" SDH, Dr. DeJong was misrepresenting the SDH as being no more than three days old at the time of B.D.'s admission rather than as being weeks to months old as the board certified radiologists reports indicated.

389. Upon information and belief, Dr. DeJong's misrepresentation of B.D.'s SDH as a hyperacute "mixed density" SDH requires that he disagree with the board certified pediatric radiologists at his own DuPont Hospital that interpreted the multiple CT scans and MRI study of B.D.'s head as acute on chronic. Dr. DeJong is not board certified in radiology or pediatric radiology. In fact, when questioned about how Dr. DeJong's opinion of the age of the SDH differed from that of the board certified pediatric radiologist from his own hospital that interpreted the MRI Dr. DeJong stated, "[s]o yes I am disagreeing with her report …"

390. Protocol recognized by the CACD, for which Dr. DeJong serves as medical director, is that any examination of a child for suspected child abuse "should follow guidelines established by the American Academy of Pediatrics…"

391. The American Academy of Pediatrics, Committee on Child Abuse and Neglect has stated "Pediatricians should not testify to anything that is beyond their level of knowledge or expertise."

392. Dr. DeJong's misrepresentation of B.D.'s SDH as a hyperacute "mixed density" SDH which places him in direct disagreement with DuPont board

certified pediatric radiologists and violates the guidelines of the American Academy of Pediatrics, Committee on Child Abuse and Neglect that direct a pediatrician such as Dr. DeJong not to "testify to anything that is beyond their level of knowledge or expertise." Dr. DeJong's misrepresentation of B.D.'s SDH as a hyperacute "mixed density" SDH is also in violation of the guidelines of the CADC, the organization for which he serves as medical director.

393. Dr. DeJong's reckless misrepresentation of B.D.'s SDH as a "mixed density" hyperacute SDH rather than an acute on chronic SDH and then using that misrepresentation to rule out birth trauma as an injury event that explains B.D.'s SDH is not objectively reasonable and a reckless act of bad faith by Dr. DeJong to use his influence with CYS and the District Attorney to get [redacted] arrested and remove B.D. from [redacted] and [redacted]

DR. DEJONG'S MISREPRESENTATION OF THE AGE OF THE RIB FINDINGS IS NOT OBJECTIVELY REASONABLE AND BAD FAITH

394. Since B.D. was two months old at the time of his admission to the hospital, the importance of dating the rib findings determines whether the cause of B.D.'s rib findings can date back to birth.

395. The dating of fractures is a very inexact science. The dating of fractures in the presence of metabolic bone disorder such as rickets makes the inexact science of fracture dating even more unreliable.

396. None of the DuPont board certified pediatric radiologists dated B.D.'s rib findings other than to describe them as "healing" and as having "callus." Healing fractures with callus can date from several weeks to several months in age.

397. Upon information and belief, no DuPont board certified pediatric radiologist interpreted any CT or x-ray with any estimate of the age of the rib findings. Upon information and belief, the DuPont orthopedic doctor consulted in B.D.'s case did not estimate the age of the rib findings. The Dupont radiologists and orthopedic doctor did not date the age of B.D.'s rib findings because of the inexact nature of dating bone findings.

398. Upon information and belief, Dr. DeJong does not treat patients for fractures and Dr. DeJong is not a board certified radiologist, or a board certified orthopedic doctor and possessed no board certification or other qualification that qualified him to estimate the age of rib fractures.

399. The American Academy of Pediatrics, Committee on Child Abuse and Neglect states "Pediatricians should not testify to anything that is beyond their level of knowledge or expertise."

400. Protocol recognized by the CACD, for which Dr. DeJong serves as medical director, is that any examination of a child for suspected child abuse "should follow guidelines established by the American Academy of Pediatrics…"

401. Upon information and belief, Dr. DeJong recklessly misrepresented the age of B.D.'s rib findings as being "2 to 4 weeks old" so that he could connect the rib findings to another "injury event" that Dr. DeJong manufactured from innocent statements made by [redacted]

402. Upon information and belief, Dr. DeJong's misrepresentation of the age of B.D.'s rib findings as "2 to 4 weeks old" when DuPont board certified pediatric radiologists and the consulted orthopedic doctor do not age the bone findings

violates the guidelines of the American Academy of Pediatrics, Committee on Child Abuse and Neglect and the protocol established by the CACD for child abuse investigations.

403. Upon information and belief, there is no foundation in the evidence based medical literature for timing the rib fractures in B.D.'s case as being "2-4 weeks old", particularly in the presence of dysplastic or metabolic bone disorder.

404. Dr. DeJong's misrepresentation of the age of the rib findings as "2 to 4 weeks" old in the absence of any estimate by a doctor who is actually qualified to age fractures and then using that misrepresentation to rule out birth trauma as a possible cause of the rib findings is not objectively reasonable and a reckless act of bad faith by Dr. DeJong to use his influence with CYS and the District Attorney to get [redacted] arrested and remove B.D. from [redacted] and [redacted]

DR. DEJONG'S MISREPRESENTATION THAT [redacted] AND [redacted] PROVIDED NO HISTORY OF TRAUMA THAT COULD EXPLAIN B.D.'S INJURY IS NOT OBJECTIVELY REASONABLE AND CONSTITUTES BAD FAITH

405. Dr. DeJong reported and testified that "there is no history of trauma to explain the injury" to B.D..

406. It is well recognized in the medical community that fractures and SDHs can be caused by birth trauma. Dr. DeJong himself teaches that birth trauma is one of the differential diagnoses and alternative explanations for both SDHs and fractures.

407. Upon information and belief, despite Dr. DeJong's teaching that birth trauma is a differential diagnosis for SDH and fractures, Dr. DeJong believes that

"[i]n reality, nothing explains the combination of SDH, numerous RH in all layers to ora cerrata, classical rib fractures, and certain bruise patterns in babies."

408. Although B.D. had no retinal hemorrhages (RH) or bruises, Dr. DeJong's bias that "in reality, nothing explains" SDHs and rib fractures is evident in Dr. DeJong's unfounded dismissal of birth trauma as the cause of B.D.'s injury without even reviewing B.D.'s birth records.

409. [redacted] and [redacted] consistently told the doctors and social workers, including Dr. DeJong and Mr. Speedling, about B.D.'s long and difficult birth. B.D.'s birth records contain evidence of the presence of multiple risk factors for birth induced SDH.

410. Dr. DeJong knew of B.D.'s prolonged labor, head malposition and subsequent manual manipulation of B.D.'s head by an obstetrician and that B.D.'s delivery had to be induced. In spite of having been told of B.D.'s extremely traumatic birth, Dr. DeJong failed to review B.D.'s birth records and repeatedly stated in his reports "there was no reported history of trauma."

411. Dr. DeJong's repeated misrepresentation that [redacted] and [redacted] provided "no history of trauma" in the face of their repeated and consistent reporting of B.D.'s long and difficult delivery is not an objectively reasonable statement and constitutes an act of bad faith deliberately intended to influence CYS and the District Attorney to arrest [redacted] and remove B.D. from [redacted] and [redacted]

DR. DEJONG'S FAILURE TO REVIEW BIRTH RECORDS BEFORE RULING OUT BIRTH TRAUMA IS NOT OBJECTIVELY REASONABLE AND IS AN ACT OF BAD FAITH

412. Upon information and belief, Dr. DeJong teaches that birth trauma is among the differential diagnoses for SDH and fractures. Dr. DeJong never attempted to obtain or review B.D.'s birth records before he concluded that B.D.'s injury was caused by child abuse.

413. On December 5, 2008, ten days after Dr. DeJong told Chester Police that [redacted] abused B.D., [redacted] and her friend, Linda Stevenson, met with Dr. DeJong and Mr. Speedling. Mr. Speedling noted that Dr. DeJong was asked by Linda Stevenson "whether reviewing [B.D.'s] birth records would be helpful to the team in covering all bases. Dr. DeJong explained that he was happy to review these medical records. [Mr. Speedling] provided mother with a release of information for us to obtain the records."

414. Three days later, on December 8, 2008, Mr. Speedling noted that he had received the signed release form from [redacted] and faxed it to Christiana hospital. By June of 2009 and at all times relevant to this complaint, Dr. DeJong failed to review B.D.'s birth records.

415. Dr. DeJong's refusal and failure to review B.D.'s birth records before diagnosing the cause of B.D.'s SDH and rib fractures as abuse in the face of the well accepted fact in the medical community, a fact taught by Dr. DeJong himself, that birth trauma is a differential diagnosis for SDH and fractures, and in the face of [redacted] and [redacted] description of B.D.'s traumatic birth, is not objectively reasonable and an omission in bad faith by Dr. DeJong intended to influence CYS and the District Attorney to arrest [redacted] and remove B.D. from [redacted] and [redacted]

DR. DEJONG'S FAILURE TO ASSESS [redacted] PRENATAL VITAMIN D STATUS DURING PREGNANCY PRIOR TO RULING OUT METABOLIC DISEASE SUCH AS CONGENITAL RICKETS IS NOT OBJECTIVELY REASONABLE AND IS BAD FAITH

416. It is well accepted in the medical community that metabolic disorders can cause bone findings that appear to be healing rib fractures, like those found in B.D., that are suspicious for child abuse. One such metabolic disorder that affects the bones is rickets. When a pregnant mother has a vitamin D insufficiency or deficiency the baby can be born with congenital rickets.

417. Rickets is a metabolic bone disorder that can be caused by a deficiency or insufficiency of vitamin D. When a baby has rickets, the baby's bones are soft and can fracture as a result of birth or as a result of ordinary handling of the baby. In addition, a baby born with a vitamin D deficiency or insufficiency can be born with rib flaring caused by the deficiency or insufficiency. Such congenital rib flaring can appear to be healing rib fractures, also called pseudo-fractures, months after birth. A diagnosis of congenital rickets provides a reasonable non-accidental explanation for bone findings that appear to be healing rib fractures, particularly in cases where all of the findings are anterior, where there are no internal injuries and there is absolutely no external or other evidence of inflicted trauma.

418. Research shows that vitamin D deficiency is at nearly epidemic proportions. A recent study of 2000 pregnant women in Pennsylvania showed that deficient or insufficient levels of vitamin D were found in 83% of black women and 92% of their newborns, as well as in 47% of white women and 66% of their newborns. Over 90% of these women were taking prenatal vitamins.

419. That research has been confirmed in at least one local Delaware Valley newspaper report in 2008 "Over the last three years, pediatricians in Philadelphia have identified more than 150 cases of rickets, the childhood scourge that was virtually eliminated from early 20th-century America by milk fortified with Vitamin D." The article continues, "vitamin D is crucial to the absorption of phosphorus and calcium, the body's most abundant mineral, which in turn is required for skeletal development, muscle contraction and nerve conduction. The vitamin is most critical during spurts of bone-building: pregnancy, infancy and adolescence." "Some surveys show that half or more of the population fails to get enough of the "sunshine vitamin" to meet federal guidelines. And many doctors believe that current recommendations are too low," the article explains.

420. Dr. DeJong teaches that metabolic disorders should be part of the differential diagnosis in cases with clinical findings suspicious for child abuse. However, upon information and belief, Dr. DeJong believes and teaches that metabolic disorders such as rickets and that the fractures of soft bones in patients with metabolic bone disorders such as rickets are "very uncommon (implausible)."

421. Vitamin D is called the "sunshine vitamin" because sun exposure on the skin where the body converts sunlight into vitamin D is a primary source of vitamin D in the human body.

422. Dr. DeJong never asked [redacted] about her medical history or vitamin D status during pregnancy nor did he refer her to another doctor to perform such a medical history of [redacted] vitamin D status during her pregnancy with B.D..

423. Upon information and belief, had Dr. DeJong asked [redacted] about her medical history, he would have learned that [redacted] had skin cancer just prior to and during her pregnancy.

424. Upon information and belief, had Dr. DeJong asked [redacted] about her medical history he would have discovered that [redacted] had three skin lesions removed just prior to and during her pregnancy and that the lesions were malignant.

425. Upon information and belief, had Dr. DeJong asked [redacted] about her medical history he would have discovered that she was avoiding the most abundant source of vitamin D during her entire pregnancy as a result of her skin cancer.

426. [redacted] avoidance of sun exposure contributed toward a vitamin D insufficiency or deficiency during her pregnancy with B.D..

427. Diet is another source of vitamin D. Dr. DeJong never asked [redacted] about her diet to determine her vitamin D status during pregnancy. Upon information and belief, had Dr. DeJong interviewed [redacted] about her diet before and during pregnancy, he would have found that [redacted] avoids most natural sources of vitamin D such as whole milk, eggs, butter and seafood in her diet.

428. [redacted] avoidance of natural sources of vitamin D contributed toward a vitamin D insufficiency or deficiency during her pregnancy with B.D..

429. Dr. DeJong's bias that metabolic bone diseases such as rickets are "very uncommon (implausible)" coupled with his failure to obtain [redacted] prenatal diet history and her medical history for skin cancer prior to ruling out metabolic bone disease as the cause of B.D.'s rib findings is not objectively reasonable and an omission of bad

faith intended to influence CYS and the District Attorney to arrest [redacted] and remove B.D. from [redacted] and [redacted]

DR. DEJONG'S MISREPRESENTATION THAT B.D. HAD AN EXTENSIVE WORKUP LOOKING FOR A NON-TRAUMATIC EXPLANATION OF B.D.'S INJURY IS NOT OBJECTIVELY REASONABLE AND BAD FAITH

430. By or before November 26, 2008, Dr. DeJong falsely concluded that B.D. had been abused and that [redacted] was the perpetrator. Dr. DeJong misrepresented that "B.D. had an extensive workup looking for some non-traumatic explanation for his condition, but the results provide no other explanation than trauma."

431. Upon information and belief, much of the "extensive" workup was done long after Dr. DeJong had already falsely concluded that B.D.'s injury was caused by child abuse. In addition, the "extensive" workup was incomplete.

432. It was not until a full five days AFTER Dr. DeJong told Officer Collins that [redacted] was the purported perpetrator, on December 1, 2008, that a battery of tests were run for several of the alternative explanations and differential diagnoses for B.D.'s condition. These tests were only done because the family was "still insisting on the workup."

433. It was not until December 1, 2008, a full five days AFTER Dr. DeJong told Officer Collins that [redacted] was the purported perpetrator, that a vonWillebrands workup and a Factor VIII antigen test were ordered.

434. Some of the tests that are part of the "extensive workup," including a vitamin D test, were ordered only after [redacted] met with Dr. DeJong on December 5, 2008, ten days AFTER Dr. DeJong told Officer Collins his conclusions, and asked whether Dr. DeJong had investigated several metabolic conditions, including rickets.

435. The most important test, a review of B.D.'s birth records, was never performed by Dr. DeJong.

436. On December 5, 2008, "[a]t 10:10 am Dr. DeJong and [Mr. Speedling] met with mother, [redacted] and her family friend, Linda Stevenson. [Dr. DeJong and Mr. Speedling] asked mother what questions she had and she ran through a list with what had been tested and what the results were. Dr. DeJong reviewed this. He also answered her questions pertaining to: Biliary Atresia, Neonatal Hepatitis, Ricketts [sic], Scurvy, temporary brittle bone disease, copper deficiency, Menkes Syndrome, and vaccine related bleeding of the brain/seizures (specifically questioned about DTAAP). Dr. DeJong pointed out why none of these clinical conditions made sense in terms of diagnosis of her son. He also reiterated the child's injury findings and that they were consistent with non-accidental trauma."

437. Approximately three hours after Dr. DeJong "pointed out" to [redacted] "why none of these clinical conditions made sense in terms of diagnosis of her son," including rickets, a Factor XIII assay and a vitamin D evaluation were first ordered on December 5, 2008 at 1:21p.m. Both of these tests should have been performed before Dr. DeJong made any diagnosis of the cause of B.D.'s injuries.

438. At the time Dr. DeJong "pointed out why none of these clinical conditions made sense" including rickets, no vitamin D test had yet even been ordered.

439. The blood sample for the vitamin D test was taken on December 7, 2008, some 2 weeks after B.D.'s admission and 10 days after Dr. DeJong falsely told Chester Police that [redacted] was the alleged perpetrator.

440. A belated vitamin D test taken 2 weeks after B.D.'s admission to DuPont provides no reliable measurement of his vitamin D status upon admission. A vitamin D test taken at 2 months of age provides no reliable measurement of B.D.'s vitamin D status during pregnancy, a critical time for bone development, at birth or at one month of age.

441. The results of the belated vitamin D test show a nonexistent vitamin D2 level of <4 ng/mL and a low normal vitamin D3 level of 37 ng/mL. (The reference range for vitamin D2 and D3 is 20-100 ng/mL and less than 30 ng/mL is considered insufficient.) The active form of vitamin D, 1,25 dihydroxy, was elevated at 104 pg/mL. (The reference range is 27-71 pg/mL.)

442. An elevated 1,25 dihydroxy level is associated with patients who had a low vitamin D level in the past that is now normalizing.

443. An elevated 1,25 dihydroxy level coupled with a non-existent D2 level and a low normal D3 level is completely consistent with and medically supports B.D. having rickets at birth due to [redacted] vitamin D insufficiency.

444. Dr. DeJong's misrepresentation that an "extensive workup looking for some non-traumatic explanation for [B.D.'s] condition" when he failed to review B.D.'s birth records and purportedly ruled out rickets when a vitamin D test had not even yet been ordered and B.D.'s vitamin D status was not known was not objectively reasonable and was an act of bad faith intended to influence CYS to remove B.D. from [redacted] and [redacted] custody and to influence the District Attorney to authorize the arrest of [redacted]

DR. DEJONG'S MISREPRESENTATION OF B.D.'S INABILITY TO BREATHE ON HIS OWN IS NOT OBJECTIVELY REASONABLE AND BAD FAITH

445. Upon admission to DuPont on November 22, 2008, B.D. was "breathing spontaneously" had "no cough, shortness of breath, [or] wheezing," his unassisted "respirations were 24" and "30" breaths per minute and "pulse ox was 97% on room air". While in the emergency room B.D. experienced an episode of increased tone, increased left eye deviation and arching. Pulse ox decreased to 84% on room air. Bag mask ventilation was initiated with a pulse ox of 100%" and "with assisted mask positive pressure ventilation, his chest moved well and his oxygen saturation never fell below 96".

446. Later on November 22, 2008 in the PICU, "with natural airway on room air" B.D.'s "[r]espiratory rate [was] 28" and his pulse ox was "100%". On November 23, 2008 in the PICU B.D.'s "respirations range[d] from 16 to 37" and his "Glasgow Coma Score [was] now 15." (15 is the best and highest score for awareness a patient can receive on the Glasgow Coma Scale.)

447. On the Morning of November 24, 2008, the PICU noted that "[o]ver the last 24 hours [B.D.] has demonstrated several seizures associated with eye deviation to the right, gaze preference to the left, shaking of his left arm and lower extremities. With that he has maintained good oxygen saturation with a small amount of nasal cannula oxygen." Due to the need to sedate B.D. during MRI the PICU noted that "[f]or MRI we will instrument the airway and initiate mechanical ventilation."

448. A PICU Off-service note stated, "[d]uring his seizures he would have periods of apnea. He had one desat to the 60s that spontaneously resolved. Otherwise his apneic periods did not result in significant desats and spontaneously resolved. On 11/24/08 he was electively intubated prior to his MRI/MRA. He remained intubated afterwards in order to control respirations & etCO2. We attempted to extubate him on 11/26; however after he

experienced stridor and increased WOB. He was given a dose of racemic epi but was still experiencing upper airway obstruction and so he was reintubated. He was started on Decadron to decrease upper airway swelling. Later he had a significant air leak from the ETT, so we hypothesized that the swelling had decreased. He was again prepped to be extubated on 11/28."

449. On November 27, 2008 the surgery note explained "[m]y impression is that [B.D.] continues to require endotracheal support of respiration, however, with decreasing sedation, he may be able to be extubated."

450. On November 29, 2008, the Neurosurgery note states "B.D. has been doing well and has been extubated."

451. B.D. was breathing on his own when he was admitted to DuPont hospital. As a precaution for B.D. being sedated for an MRI on November 24, 2008, two days after his admission to duPont, B.D.'s treating physician decided to electively intubate B.D.. B.D. was not put on a ventilator because he could not breathe on his own

452. Although B.D. was in the intensive care unit, his doctor noted that B.D. "was in no acute distress" and was "gradually improving" and "B.D. was "expected to be extubated later today or tomorrow" on November 25, 2008.

453. Upon information and belief, it is common for the tubes placed in the throat for mechanical ventilation to cause swelling in the airway of a 2-month old child. When the doctors' extubated B.D., the swelling from the tube in his throat closed his airway and, as is common in that situation, B.D. was reintubated. B.D. was then given a course of steroids to reduce the swelling in the airway due to the tubes, and as expected, was extubated a few days later.

454. Contrary to what B.D.'s attending physicians were recording of B.D.'s condition, Dr. DeJong recklessly misled Officer Collins that B.D. "has been on a ventilator, since the child was admitted on 11-22-08. He added that the ventilator was removed, to see if the child would breathe on his own. The child did not breathe by himself, so the tube was placed back into the child." Officer Collins stated in his affidavit of probable cause that "[t]he child/victim is currently on a ventilator, which was removed at one time to see if the child would breathe on his own. The child did not breathe on his own so the child was placed back on the ventilator."

455. Dr. DeJong failed to inform Officer Collins that B.D.'s intubation was elective and that B.D.'s failure to be able to breathe on his own after extubation was not an indication that B.D.'s injuries rendered B.D. unable to breathe on his own but was a normal complication of the elective intubation for the MRI and subsequent attempt to extubabte. As a result of Dr. DeJong's reckless omission of this critical fact, Officer Collins' ex parte affidavit of probable cause omitted the very important detail that B.D.'s intubation was elective. Dr. DeJong knew that Officer Collins would be making an ex parte affidavit of probable cause to the court and knew that through his omission of critical information he was deliberately and recklessly misleading the court to believe that B.D. could not breathe on his own due to his injuries.

456. Dr. DeJong recklessly misled Officer Collins to believe that B.D. could not "breathe on his own" and was in imminent danger of dying. Dr. DeJong recklessly misled Officer Collins in this way so that the affidavit of probable cause presented by Officer Collins would appear that B.D. may die from his injuries. Dr. DeJong's purpose and intended effect was to cause the court to set a high bail, as if B.D.

might die and murder charges would ensue. The court responded just as Dr. DeJong intended by setting bail for [redacted] even though [redacted] had no criminal record whatsoever, at a straight $100,000.00 with no opportunity to post 10% of the bail in lieu of the full amount.

457. Dr. DeJong's misrepresentations and omissions to recklessly mislead Officer Collins that B.D. was unable to breathe on his own due to his injuries was not objectively reasonable and a deliberate act of bad faith by Dr. DeJong to persuade the court to set a high bail for [redacted]

458. Dr. DeJong made multiple reckless misrepresentations including "significant" and "sever skull fractures," reckless misrepresentations of a hyperacute "mixed density" SDH rather than an acute on chronic SDH, of reckless misrepresentations of the age of the rib fractures being "2-4 weeks old" when it is not possible to date fractures that precisely, of reckless misrepresentation that "no history of trauma was provided" when [redacted] and [redacted] consistently provided history of B.D.'s unusually traumatic birth, of reckless failure to review B.D.'s birth records when even Dr. DeJong teaches that birth trauma is an explanation for a SDH and fractures, of reckless failure to review B.D.'s vitamin D status and [redacted] vitamin D status during pregnancy when even Dr. DeJong teaches that metabolic disorders are explanations for fractures, of recklessly misrepresenting that "an extensive workup looking for some non-traumatic" explanation for B.D.'s injuries when Dr. DeJong did little, if anything, to rule out birth trauma and rickets as the cause of B.D.'s injuries, and of recklessly misleading Officer Collins to believe that B.D. could not breathe on his own due to his injuries. These deliberate and reckless misrepresentations by Dr. DeJong were not objectively

reasonable and when combined with Dr. DeJong's knowledge that CYS and the District Attorney would rely exclusively on his investigation, Dr. DeJong's actions shock the conscience and demonstrate a reckless disregard and deliberate indifference to the truth and to the right of [redacted] and B.D. to an unbiased investigation into the suspected abuse of B.D..

DR. DEJONG'S MISREPRESENTATION OF HIS INTERVIEW WITH [redacted] AS PROVIDING "INJURY EVENTS" THAT IDENTIFY [redacted] AS THE ALLEGED PERPETRATOR IS NOT OBJECTIVELY REASONABLE AND CONSTITUTES BAD FAITH

459. Dr. DeJong interviewed [redacted] on November 24, 2008 and December 5, 2008 and unequivocally reported and testified that there was an "absence of any disclosure or admission by either parent of abuse." [redacted] told Dr. DeJong and Mr. Speedling that "my husband would not intentionally hurt" B.D..

460. Despite the fact that neither parent admitted or disclosed any act of abuse, Dr. DeJong states in his report that "the history provided by the mother of the chest bruising several weeks ago and sudden change on 11/20/2008 suggest injury events consistent with the imaging…" These so called "injury events" are reckless fabrications by Dr. DeJong of innocent statements made by [redacted] and he twists them into something she never said. Dr. DeJong twists [redacted] innocent statements in order to connect the misrepresented "history" Dr. DeJong claims was provided by [redacted] to Dr. DeJong's misrepresentation of the medical evidence.

461. Dr. DeJong strained to connect his false and misleading representation of B.D.'s rib findings as being "2 to 4 weeks old" to [redacted] description of seeing two instances of dime sized red marks on B.D. that disappeared by the following morning. Dr. DeJong strained to connect his false and misrepresented "mixed

density" interpretation of B.D.'s SDH as being less than 72 hours old at admission to the 10 minutes of time [redacted] took B.D. upstairs on November 20, 2008 to change B.D.'s diaper while [redacted] and dinner guests were waiting downstairs.

462. When Dr. DeJong kept insisting to [redacted] that B.D.'s injuries were "an indication of trauma" and pressed [redacted] for an "explanation" during his interview with her, [redacted] did recall seeing a single red mark about the size of a dime on B.D.'s chest shortly after B.D.'s one-month pediatrician visit when he received his hepatitis B vaccination. The single red mark disappeared by the following morning. [redacted] being the conscientious mother that she is, wondered if the mark was caused by the way she or [redacted] were holding B.D.. [redacted] and [redacted] discussed how B.D. tended to arch his back and throw his head backwards sometimes when they were holding him. [redacted] and [redacted] discussed how [redacted] could hold B.D. a little differently just in case the mark was caused by how [redacted] held B.D. when B.D. was arching his back.

463. [redacted] noticed a second single red mark about the size of a dime on B.D.'s back about a week later that again disappeared by the following morning. She spoke to [redacted] about this second red mark and they again discussed how to hold B.D. differently just in case the mark was caused by how [redacted] held B.D. when B.D. arched his back. [redacted] told Dr. DeJong that she did not know what caused these two marks and she related to Dr. DeJong and Mr. Speedling that she also suspected that the marks may have been caused by how [redacted] dressed B.D.. [redacted] thought the marks may have been caused by snaps on B.D.'s clothing that pressed against his chest and back while he was lying down. [redacted] told Dr. DeJong that she began to put undershirts on B.D. after she saw the second red mark and after that she never saw another mark on B.D..

464. Dr. DeJong's report omitted the fact that [redacted] did not know what caused these marks and omitted the fact that [redacted] also thought the marks may have been caused by clothing and omitted from his report that there were no more red marks after [redacted] dressed B.D. differently. Instead, Dr. DeJong distorted what [redacted] told him into [redacted] "said her husband had some trouble holding B.D. properly and 'I did not think he realized or knew how to deal with his crying'. She said it was much worse at the beginning, but 'he has gotten better in the last 3 weeks'. She explained that 1 month ago she noticed some bruising on B.D.'s upper chest and neck area in the front. She said she has on more than 1 occasion spoke with her husband about how to handle the baby and other concerns that he was holding the baby too tight. About a week after noticing the bruises on the front of his chest, she noticed them again, this time on B.D.'s back. She said she talked to the father again, telling him 'I think you are holding the baby too tightly'". The two instances of observing single dime sized red marks that disappeared by the following morning and did not occur again after dressing B.D. differently and discussing how to hold B.D. differently with [redacted] is what Dr. DeJong misrepresents in his report as an "injury event."

465. According to Dr. DeJong another "injury event" occurred when [redacted] "had gone upstairs to change B.D.'s diaper at about 7 p.m. He said B.D. was crying, and they were upstairs about 10-15 minutes at most. Suddenly, the crying stopped. Shortly after that, he called her upstairs to look at the baby because he did not look right. When she arrived, she said she knew right away something was wrong. She said she saw the left side of B.D.'s mouth was drooping and the left arm was limp."

466. [redacted] and [redacted] recounted the events of that night consistently many times and never did [redacted] ever say that she saw B.D.'s mouth drooping or his arm limp when she went upstairs. [redacted] and [redacted] consistently stated that by the time [redacted] got upstairs, B.D. looked sleepy but otherwise looked fine to [redacted] Dr. DeJong states that the "sudden change on 11/20/2008" suggests an "injury event." According to Dr. DeJong the "sudden change" was that B.D. stopped crying. Dr. DeJong admitted in his testimony that the reason B.D. may have stopped crying is that, unknown to [redacted] at the time, B.D. was experiencing a focal seizure due to a rebleed of B.D.'s chronic SDH from birth.

467. Dr. DeJong misrepresents the SDH as a hyperacute "mixed density" SDH so that he can falsely connect it to when B.D. stopped crying during a focal seizure when [redacted] changed B.D.'s diaper on November 20, 2008. Dr. DeJong did not want CYS or the police to know that the SDH was acute on chronic because birth trauma is a perfectly reasonable "explanation" for the chronic component and B.D.'s fussiness and crying due to a reaction to his DTaP vaccination on November 18, 2008 is a reasonable "explanation" for the acute component of the SDH due to a re-bleeding of the birth induced chronic SDH. Dr. DeJong misrepresented the SDH as a hyperacute "mixed density" collection so that he could falsely connect B.D.'s SDH to the 10 minute window of time when [redacted] took B.D. upstairs to change his diaper while [redacted] and [redacted] had dinner guests and misrepresent it as an "injury event."

468. A doctor cannot pass judgment on a parent's truthfulness in the guise of a medical opinion.

469. It was not objectively reasonable for Dr. DeJong to misrepresent that [redacted] provided a "history" of "bruising" and "sudden change" that "suggest injury events consistent with the imaging" when Dr. DeJong reported that there was an "absence of any disclosure or admission by either parent of abuse," that [redacted] told Dr. DeJong that "I don't think my husband would intentionally hurt our child," that Dr. DeJong knew his own board certified radiologists diagnosed B.D.'s SDH as acute on chronic not a hyperacute "mixed density" collection and no board certified radiologist or orthopedic doctor aged B.D.'s rib findings as "2-4 weeks old." It is not objectively reasonable for a doctor to pass judgment on a parent's truthfulness in the guise of a medical opinion.

DR. DEJONG'S ACTIONS ARE FAIRLY ATTRIBUTABLE TO DELAWARE COUNTY

470. One or more of Defendants Wertz, McGettigan or Giancristiforo requested that Dr. DeJong add a sentence to his report saying that in the absence of an admission by [redacted] or [redacted] of abuse he could not guarantee the safety of B.D. if B.D. were to be placed with either of his parents.

471. Demonstrating that employees of Delaware County controlled Dr. DeJong's actions and that these Defendants were acting in concert for the purpose of keeping B.D. away from [redacted] and [redacted] Dr. DeJong amended his report and added the sentence.

472. Both the Commonwealth of Pennsylvania and State of Delaware have Child Protection Services Law that mandate the compulsory reporting of suspected child abuse by doctors and social workers.

473. Pennsylvania Child Protective Services Law authorizes a physician or hospital designee to take a child into protective custody (for 24 hours or less) without a

prior Court order or without even having obtained prior approval from the local child protective services agency.

474. Delaware Child Protective Services Law authorizes a physician to take a child into protective custody (for 4 hours or less) without a prior Court order or without even having obtained prior approval from the local child protective services agency.

475. This governmental delegation of authority to unilaterally take a child into protective custody without any prior intervention by the Court or consent of the parents gives doctors and hospitals power to take actions that are traditionally exclusive government functions.

476. The Pennsylvania and Delaware compulsory child abuse reporting requirements and statutory delegation of authority to a doctor or hospital designee to remove children from their home without prior court approval are an exercise of coercive power and a state provision of significant encouragement that provides a nexus between, and intertwines the actions of, the doctor or hospital designee and the state in matters pertaining to suspected child abuse, the investigation of suspected child abuse, whether a child should be removed from his home and whether a parent should be arrested.

477. The Delaware and Pennsylvania compulsory reporting requirements and discretionary delegation of authority to temporarily remove a child from his parents home without prior court approval have so far insinuated the state into a position of interdependence with Dr. DeJong, Mr. Speedling, the Children At Risk Evaluation team and DuPont hospital that their conduct must be recognized as having a nexus to and being joint participants with the state in the removal of B.D. from his

parents, continued separation of B.D. from [redacted] for 9 months and the arrest of [redacted] and total separation of B.D. from [redacted] for over one year.

478. "The Department [of Public Welfare] and each of the 67 counties are jointly responsible for the achievement of the goal of children and youth services and for assuring the availability of adequate children and youth social services to children who need the services, regardless of race, sex, religion, settlement, residence, economic or social status." 55 Pa. Code § 3130.12. The Commonwealth of Pennsylvania mandates that every county shall make available child protective services within the agency. 23 Pa.C.S. § 6361.

479. The county agency shall be the sole civil agency responsible for receiving and investigating all reports of child abuse made pursuant to this chapter. 23 Pa.C.S. § 6362(a). Upon receipt of each report of suspected child abuse, the county agency shall immediately commence an appropriate investigation… 23 Pa.C.S. § 6368(a).

480. The Commonwealth of Pennsylvania has directed its county agencies to immediately refer a case law enforcement if during the course of investigating a report of suspected child abuse, the county agency obtains evidence which indicates that referral to law enforcement officials is appropriate. 55 Pa. Code § 3490.92(b)(4).

481. Once an alleged child abuse case is referred to law enforcement, the Commonwealth then requires that the district attorney shall convene an investigative team for any case of child abuse involving crimes against children and shall coordinate investigations and share information and avoid duplication of fact-finding efforts and

interviews. The Commonwealth mandates that, at a minimum, the investigative team include a health care provider, county caseworker and law enforcement official. 23 Pa.C.S. § 6365(c).

482. The Commonwealth of Pennsylvania's Department of Public Welfare has licensed Delaware County to operate the Commonwealth's county agency known as the Children and Youth Services of Delaware County, also known as Delaware County Children and Youth Services.

483. Upon information and belief, Deputy District Attorney Michael Galantino and Officer Collins were the law enforcement officials involved in this case since November 26, 2008.

484. Upon information and belief, Dr. DeJong was the health care provider on the Delaware County team mandated by the Commonwealth of Pennsylvania to investigate the allegations of abuse against B.D. [redacted] as a result of clinical findings made on or about November 22, 2008.

485. Dr. DeJong was appointed by the Attorney General of Pennsylvania to serve on the Pennsylvania Attorney General's Medical/Legal Advisory Board on Child Abuse. Deputy Galantino was appointed by the Attorney General of Pennsylvania to serve on the same Pennsylvania Attorney General's Medical/Legal Advisory Board on Child Abuse. At all times relevant to this complaint, Dr. DeJong and Deputy Galantino served together on the Pennsylvania Attorney General's Medical/Legal Advisory Board on Child Abuse.

486. As part of their duties on the Attorney General's Medical/Legal Advisory Board on Child Abuse, Dr. DeJong and Deputy Galantino consult and advise

prosecutors and child protection services caseworkers from around the State of Pennsylvania on child abuse cases and help define the goals of an investigation, prepare prosecutors and child protection services caseworkers to prove a case at trial and to prepare prosecutors and child protection services caseworkers to meet defenses which are likely to be raised at trial.

487. As part of their duties on the Attorney General's Medical/Legal Advisory Board on Child Abuse, Dr. DeJong and Deputy Galantino consult and advise prosecutors and child protection services caseworkers from around the State of Pennsylvania on child abuse cases presented to the board in its bimonthly meetings and help prosecutors and child protection services caseworkers from around the State of Pennsylvania where the significance of medical evidence is either unknown or unclear.

488. Dr. DeJong and Deputy Galantino serve on the Attorney General's Medical/Legal Advisory Board on Child Abuse along with investigators, and representatives from state and local child protection services from around the State of Pennsylvania.

489. The Attorney General's Medical/Legal Advisory Board on Child Abuse meets bimonthly and is available to consult on a case at the request of any investigating officer, prosecutor or Children and Youth Services caseworker from anywhere in the State of Pennsylvania. Any investigating officer, prosecutor or Children and Youth Services caseworker from anywhere in the State of Pennsylvania that presents a case to the Attorney General's Medical/Legal Advisory Board on Child Abuse may request that Dr. DeJong provide a written report.

490. The Attorney General's Medical/Legal Advisory Board on Child Abuse meets bimonthly to review questions presented such as the timing of an injury, whether an injury is accidental or caused by abuse, whether the injury is consistent with the statement of the suspect, what questions should be asked of suspects and witnesses in the course of an investigation and if existing evidence is sufficient for prosecution, and if not, how further evidence should be gathered.

491. Deputy Galantino and Dr. DeJong presented the allegations of abuse of B.D. [redacted] to the Attorney General's Medical/Legal Advisory Board on Child Abuse.

492. Dr. DeJong has served as an expert witness in multiple cases for Delaware County Deputy District Attorney Michael R. Galantino.

493. Deputy Galantino is the prosecuting Commonwealth Attorney who approved the criminal complaint against [redacted]

494. Due to the confidential nature of Juvenile Court proceedings it is not known, upon information and belief, Dr. DeJong has served as an expert in multiple cases for Delaware County Children and Youth Services.

495. Dr. DeJong has served as an expert prosecution witness in multiple child abuse cases for the Delaware County District Attorney.

496. The Governor of Pennsylvania appointed Dr. DeJong as a member of the Pennsylvania Governor's Community Partnership for Safe Children Child Abuse and Neglect Work Group and Dr. DeJong has served on this Governor's task force along side of the Secretary of Education, Secretary of Public Welfare, Secretary of Health and the Physician General of Pennsylvania continuously for the past 12 years.

497. Dr. DeJong served as a member of the Philadelphia Sexual Assault program for 14 years from 1980 to 1994. Dr. DeJong served as a member of the Philadelphia Law Enforcement Pilot Project from 1986 to 1988. Dr. DeJong served as a member of the Philadelphia Law Enforcement Child Abuse Project for nine years from 1988 to1997.

498. Dr. DeJong serves on the Delaware Child Abuse Intervention Committee and has done so continuously for the past 17 years. The Delaware Child Abuse Intervention Committee is responsible for setting government policy in the drafting of a Memorandum Of Understanding (MOU) entitled "Procedural Agreement for the Investigation and Collaborative Intervention on Child Abuse and Neglect" between the Delaware Department of Services for Children, Youth and Their Families, Delaware Children's Advocacy Center, Delaware Department of Justice and all Delaware Police Departments. The Memorandum Of Understanding was originated in 1989 and was revised while Dr. DeJong has served on the committee in 1994, 1998 and 2009.

499. Dr. DeJong participated in the revision of this Memorandum Of Understanding (abbreviated as MOU) concerning how executive branch departments and executive agencies in the state of Delaware will investigate and collaborate to intervene in child abuse cases. The terms of the MOU establishes, and the Children's Advocacy Center of Delaware (abbreviated as CAC or CACD) has agreed to, a "Medical Protocol for Acute Child Physical Abuse and Sexual Abuse Cases" which includes the provision in child abuse cases that "the examination should follow guidelines established by the American Academy of Pediatrics" among other organizations.

500. Under the terms of the MOU, the CADC provides services to "expedite the investigation and prosecution of child abuse cases" and "accepts direct referrals for forensic interviews from the Department of Justice, law enforcement agencies and the DSCYF, including Dover Air Force Base Law Enforcement" and "no disclosure of abuse is necessary prior to a referral for a forensic interview"

501. Under the terms of the MOU, the Children's Advocacy Center of Delaware has agreed to "Joint Investigation Procedures" with police and child protective services that includes that "[w]henever appropriate, cases should be referred to the CAC [Child Abuse Center of Delaware]" and "[i]f at all possible, full forensic interviews should not be conducted prior to referral to the CAC."

502. Under the terms of the MOU, the Delaware "DFS, the police, the CAC, and the DOJ agree to exchange information on families and children when this information is needed to assist an investigation involving a shared client."

503. Dr. DeJong serves as medical director of the CADC which is a party to the agreement along with government child protective services agency, department of justice and every police department in the state.

504. Dr. DeJong was appointed by the Governor of Delaware to serve as the sole at large member from the medical community on the 19-member Delaware Child Protection Accountability Commission and has done so continuously for the past 12 years.

505. Dr. DeJong regularly makes presentations to law enforcement and child protective services agencies including two presentations made at a joint conference of the Delaware Child Death, Near Death, and Stillbirth Commission and the Delaware

Child Protection Accountability Commission in 2008 that at all times relevant to this complaint were available on the Delaware Courts website at http://courts.delaware.gov/childdeath/PDCCdocs.htm.

506. The power point slides of Dr. DeJong's presentations were available for download on the governmental Delaware Court website and one is entitled "Understanding Medical Evidence in Physical Abuse Cases" and the other "Understanding Shaken Baby Syndrome."

507. DuPont Hospital established a Children At Risk Evaluation Program and appointed Dr. DeJong as its medical director who has served in that capacity for the past 12 years.

508. Mr. Speedling is the social worker at DuPont Hospital assigned to the Children At Risk Evaluation program and had been in that position for 4 years.

509. At all times relevant to this complaint Dr. DeJong and Mr. Speedling comprised the Children At Risk Evaluation team at DuPont Hospital.

510. Dr. DeJong and Mr. Speedling conduct interviews of parents to discover information in suspected child abuse cases that identifies the cause of the injury and identifies the perpetrator of the injury. Dr. DeJong and Mr. Speedling interviewed [redacted] as part of Dr. DeJong's investigation of B.D.'s injuries.

511. DuPont Hospital sponsors the Children's Advocacy Center of Delaware at duPont's Rockland Road facility.

512. Dr. DeJong serves as the medical director of The Children's Advocacy Center of Delaware which is a comprehensive program "based in a facility that allows law enforcement, child protection professionals, prosecutors, and the mental

health and medical communities to work together when intervening in child abuse cases" and interviews "children with trained forensic interviewers in a manner that is legally sound."

513. DuPont Hospital's website boasts "the Children's Advocacy Center of Delaware is a model of interdisciplinary cooperation and collaboration between community agencies and the hospital. … A forensic interviewer conducts videotaped interviews with the children. These interviews can be viewed simultaneously by child protective services, law enforcement, and legal personnel via closed circuit television."

514. At all times relevant to this complaint, duPont Hospital's website provides an example of how the DuPont's Children At Risk Evaluation team and the Children's Advocacy Center of Delaware "helped identify the abuser and the mechanism of abuse" and that "[f]aced with the child's videotaped statement and the physician's documentation of the boy's injuries, his father plead guilty."

515. In a letter dated October 15, 2008, Randall E. Williams, Executive Director of the Children's Advocacy Center of Delaware stated "[t]he [Children's Advocacy Center of Delaware] for all intents and purposes functions as an agency [of the State of Delaware] and plays a pivotal and critical role in ensuring that the state's response to allegations of child abuse occurs as intended."

516. Randall E. Williams, Executive Director of the Children's Advocacy Center of Delaware further stated, "The Children's Advocacy Center of Delaware has provided the services that the Governor, the Legislature and our Justice and Child Protection System partner agencies have mandated in order to provide a comprehensive and coordinated response to allegations of child abuse … We collaborate

with law enforcement, child protection professionals, prosecutors, mental health specialists and pediatric medical experts in order to expedite the investigation and prosecution of child abuse cases …"

517. The Children's Advocacy Center of Delaware "will provide education, training, and information regarding forensic interviewing, and the multidisciplinary response to allegations of child abuse, to our child protection system partners … shall provide no less than 5 training/information sessions to child protection system partners … and Each year no less than 50 front line child protection professionals will attend the "Finding Words Delaware" course." "At the CAC the Multidisciplinary Team, consisting of specially trained forensic interviewers, law enforcement officers, prosecutors, mental health specialists, child protection workers, case review specialists and medical staff work together to discuss and make decisions about the assessment, investigation, treatment and prosecution of child abuse cases."

518. "The Children's Advocacy Center of Delaware is a model of multidisciplinary cooperation and collaboration among law enforcement, child protection professionals, prosecutors, mental health specialists, pediatric medical experts and the CAC team. The core philosophy of the multidisciplinary team approach is that child abuse is a multi-faceted community problem and that no single agency, individual or discipline possesses all of the necessary knowledge, skills or resources…" necessary for a child abuse investigation.

519. The CAC provides "[t]he timely interview of the child victim … [is] critical so that: the "facts" of the alleged incident can be obtained promptly and

accurately; any necessary and appropriate safety plans can be put in place; the arrest and prosecution of the alleged perpetrator can proceed without delay…"

520. Upon information and belief, duPont Hospital provided the services of Dr. DeJong and Mr. Speedling to conduct the forensic interview of [redacted] and "for all intents and purposes function[ed] as an agency" in their role in investigating the alleged abuse of B.D.

521. Upon information and belief, Dr. DeJong teaches that a "Basic Concept" in child abuse investigations is that "many inflicted injuries in children are indistinguishable from accidental trauma on clinical or radiological grounds" and that the "most important factor is a detailed description of the 'accidental event.'" Dr. DeJong's interview of [redacted] and his misrepresentation of that interview was the "most important factor" in rendering his opinion that the injuries sustained by B.D. were inflicted and that they were inflicted by [redacted]

522. Directly or indirectly, the state of Delaware, the Commonwealth of Pennsylvania and the United States Government fund the provision of medical experts to participate in the "multidisciplinary team approach" of child abuse investigations in general and in the investigation of the alleged abuse of B.D., in particular.

523. The Commonwealth of Pennsylvania mandates that the Delaware County District Attorney convene an investigative team that includes a health care provider that, upon information and belief, in this case was Dr. DeJong and renders the actions of Dr. DeJong fairly attributable to the government.

524. Dr. DeJong's appointment, association with and services to the Pennsylvania Attorney General's Medical/Legal Advisory Board and the Pennsylvania

Governor's Community Partnership for Safe Children, Child Abuse and Neglect Work Group where he serves along side of the Pennsylvania Secretaries of Education, Public Welfare and Health and Delaware County Deputy District Attorney Michael R. Galantino, the prosecutor assigned to prosecute Plaintiff in this case, and his other government participation in programs involving the determination of whether injuries were the result of abuse and identification of the alleged perpetrator render the actions of Dr. DeJong in the course of a child abuse investigation fairly attributable to the government.

525. DuPont Hospital's hosting of the Children's Advocacy Center of Delaware and establishment of its Children At Risk Evaluation team, which have a stated purpose of providing facilities that allow law enforcement, child protection professionals, prosecutors and medical personnel to work together when "intervening in child abuse cases" and role as "helping identify the abuser" in child abuse cases, and whose executive director states that, "for all intents and purposes functions as an agency [of the State of Delaware]," and the participation of the Children's Advocacy Center of Delaware in an agreement with Delaware's DFS, DOJ and all Police Departments in Delaware render the actions of the CADC, DuPont Hospital's Children At Risk Evaluation team, Dr. DeJong and Mr. Speedling fairly attributable to the government in the course of a child abuse investigation.

526. Dr. DeJong's participation in setting Delaware state policy on the investigation and collaboration to intervene in child abuse cases through three revisions over 15 years of a Memorandum Of Understanding which is an agreement between the Children's Advocacy Center of Delaware, a non-government entity, and state executive

branch agencies and every police department in the state which are charged with enforcing laws pertaining to child abuse and child protection along with Dr. DeJong's service as medical director to the non-governmental entity subject to that agreement render the actions of Dr. DeJong in the course of a child abuse investigation fairly attributable to government.

527. The State of Delaware and Commonwealth of Pennsylvania have so far insinuated themselves into a position of interdependence with Dr. DeJong that his conduct must be recognized as having a nexus to, and being joint participants with, the state in the removal of B.D. from his parents, continued separation of B.D. from [redacted] for over 9 months, the arrest of [redacted] and total separation of B.D. from [redacted] for over one year.

528. The actions of Dr. DeJong are fairly attributable to the government.

529. It is well established federal law that a biased dependency and/or criminal investigation is a violation of due process and/or other federal rights.

530. As a direct and proximate result of Dr. DeJong's, deliberate, reckless and objectively unreasonable misrepresentations and the interdependence between Dr. DeJong and CYS, Dr. DeJong influenced CYS to remove B.D. from [redacted] and [redacted] care.

531. [redacted] and B.D. seek money damages as articulated below, including but not limited to, damages incurred as a result of Dr. DeJong's reckless misrepresentations of the medical findings and rendering an objectively unreasonable conclusion that B.D.'s injuries were "consistent with" "injury events" that were never

described to Dr. DeJong and such misrepresentations caused [redacted] and [redacted] to experience the loss of the custody, care and control of their son, B.D. for 280 days and caused [redacted] to be arrested and incarcerated for 8 days and caused [redacted] to be separated from his son for over one year.

COUNT VIII

FAILURE TO TRAIN UNDER THE FOURTEENTH AMENDMENT AGAINST DELWARE COUNTY

DEFENDANTS DENIED [redacted] AND B.D. OF DUE PROCESS UNDER THE LAW BY FAILING TO PROPERLY TRAIN AND SUPERVISE INTAKE CASE WORKERS, SUPERVISORS AND ADMINISTRATORS ABOUT PROCEDURAL DUE PROCESS REGARDING THE FILING OF DEPENDENCY PETITIONS AND SCHEDULING OF DEPENDENCY TRIALS, THE APPROPRIATE USE OF EX PARTE COMMUNICATION WITH THE COURT, THE DUTY OF CANDOR TO THE COURT IN EX PARTE COMMUNICATIONS

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

533. CYS made an ex parte request for protective custody which could and should have been made by petition with notice and opportunity for [redacted] and [redacted] to be heard during the two weeks prior to the ex parte request. In that ex parte request, CYS made reckless misrepresentations of the facts and the law to mislead the court into granting protective custody.

534. The CYS dependency petition made the presumption that in the absence of external signs of trauma and in the absence of a parent provided non-accidental "explanation" the very presence of a SDH was evidence of abuse as its cause, and the dependency petition was filed 18 days late and was signed by Ms. Germond, the top CYS administrator.

535. The first day of trial of the dependency petition was scheduled on April 22, 2009, more than four months after B.D. was placed in protective custody, by CYS intake supervisor, Ms. McGettigan, and was attended by CYS intake supervisor, Ms. Wertz. CYS had full authority on when to schedule the first day of dependency hearings and did not follow Pennsylvania law that requires a dependency hearing be held within 10 days of the filing of a dependency petition. The parents requested only one continuance which under Pennsylvania law should have resulted in a postponement of no more than 10 days.

536. CYS refused to allow [redacted] any increase in visitation with B.D. during the 9 months it took for the dependency trial to be completed beyond one hour of supervised visitation per week and attendance at any of B.D.'s doctor appointments. CYS refused to allow any increase in visitation because [redacted] continued to maintain her innocence that she was not aware of any abuse by [redacted] CYS maintained there refusal to allow increased visitation even after their own parent educator reported that [redacted] had "top notch" parenting skills and CYS own approved psychologist declared [redacted] to be a fit parent.

537. The involvement by the top CYS administrator, the CYS intake administrator and the intake supervisor, and their knowledge of, and acquiescence to, these violations of [redacted] and B.D.'s due process rights, demonstrates that Delaware County has failed to ensure that CYS properly trained its employees, including case workers, supervisors and administrators;

a. about how a parent's right to the care, control and custody of their children is a fundamental right that upon deprivation triggers due process considerations,

b. about how Pennsylvania law and due process requires a dependency petition be filed within 48 hours of an informal hearing, not 18 days,

c. about how Pennsylvania law and due process requires a dependency hearing be held within 10 days after the dependency petition, not more than four months,

d. about how the normal legal due process requires the filing of a petition for protective custody with the court and afford the parents the opportunity to be heard before a child is taken into protective custody, as should have been done in the case with B.D. where CYS had more than two weeks to file a petition and schedule a hearing that [redacted] and [redacted] could attend,

e. about how due process requires that ex parte communications and requests should not be the routine procedure but should only be made in an emergency,

f. about how CYS has a duty of candor to the court regarding its knowledge of the facts in ex-parte communications and that CYS' misrepresentations that [redacted] parents were not available to care for B.D. violated that duty of candor and due process,

g. about how CYS has a duty of candor to the court regarding its knowledge of the law and that CYS' ex-parte misrepresentations to the court that a full resource home study was required before CYS could recommend placement with Bob and Linda Stevenson when Pennsylvania law provides a temporary approval procedure violated that duty of candor and due process, and

h. about how refusing to increase visitation between a parent and a child because the parent is maintaining her innocence and telling the truth violates the parent's constitutional rights.

538. Delaware County has delegated its training responsibility to the University of Pittsburgh's School of Social Work. The online training materials are available at http://www.pacwcbt.pitt.edu/Curriculum/default.htm. Delaware County's choice to utilize a University School of Social Work to provide their training is a deliberate choice by Delaware County.

539. CYS employees are considered to have constructive notice of due process considerations expressed in applicable case law.

540. The training provided by Delaware County through the University of Pittsburgh's School of Social Work revolves largely around the activities for which the County receives reimbursement from the Federal and State Government.

541. Delaware County's training of its employees fails to train about even the most basic elements of procedural due process and substantive due process.

542. CYS employees are not trained about, and the training provided by the University of Pittsburgh's School of Social Work is completely devoid of any training about the following:

a. the fundamental right of a parent to the custody of their child,

b. due process of law requirements when a parent's right to the custody of their child is curtailed,

c. Pennsylvania law and due process requirement to file a dependency petition within 48 hours of a detention hearing,

d. Pennsylvania law and due process requirement to schedule a dependency hearing within 10 days of the filing of a dependency petition,

e. that barring exigent circumstances parents due process requires a parent be afforded notice and opportunity to be heard prior to any deprivation of their fundamental right to the custody of their children,

f. that due process of law mandates a duty of candor in ex parte communications with a court, and

g. that due process requires a reasonable basis to withhold custody of a child from his parent.

543. CYS employees are armed with the power to request ex parte orders for custody of children, the power and responsibility to file dependency petitions and the discretion to place, or not place, a child with his parent during the pendency of a dependency proceeding.

544. Just within this case alone are multiple instances of due process violations committed, not by one single employee, but rather committed by two department administrators, a supervisor, the top CYS administrator as well as the case-worker.

545. The intake administrator, Defendant Wertz, and intake supervisor, Defendant McGettigan, approved the delayed ex parte memorandum with factual and legal misrepresentations, the top CYS administrator, Defendant Germond filed the dependency petition weeks late, and the kinship administrator, Defendant Proedehl, approved the continued one hour per week visitation after the CYS approved professionals declared [redacted] to be a fit mother, are all further evidence that Delaware County's training is so deficient, that the acts are not the acts of one bad employee, but demonstrate an agency wide lack of training so grossly negligent to constitute deliberate indifference that even the supervisor and administrators were not trained sufficiently to even recognize violations of due process.

546. The need to train CYS employees in due process considerations when a parent's right to the custody of their child is curtailed through and as a result of the acts of its employees is so obvious that Delaware County's complete failure to train its administrators, supervisor and case worker about due process considerations constitutes a deliberate indifference to the rights of a parent to the custody of their child.

547. It is highly predictable and patently obvious that when Delaware County fails to train its administrators, supervisor and case worker about due process considerations during the investigation of allegations of abuse and the curtailment of parental rights to the custody of their children, those parents' due process rights will be violated.

548. As a direct and proximate result of Delaware County's failure to train its administrators, supervisor and case worker, [redacted] only saw her son B.D., her first and only child, for just one hour per week from the time B.D. was 2 months old until B.D. was 11 months old, a time during which B.D. cut his first tooth, began to crawl, began to talk and began to stand, among other once in a lifetime events, and experienced depression and emotional distress due to her separation from B.D. and being falsely accused of knowing of abuse. In addition, [redacted] and [redacted] were deprived of legal custody of B.D. for over 9 months during which time [redacted] and [redacted] could not make decisions concerning B.D.'s care.

549. [redacted] and B.D. seek money damages as articulated below, including but not limited to, the losses and damages sustained as a result of Delaware County's failure to train its employees.

COUNT IX
STATE LAW CLAIM
NEGLIGENCE AGAINST DR. DOE

DR. DOE NEGLIGENTLY EVACUATED THE WRONG SIDE OF B.D.'S HEAD

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

551. Upon information and belief, doctors at duPont Hospital performed "two procedures to relieve bleeding in the brain" of B.D.

552. B.D. had a "large" SDH on the left side of his head.

553. B.D. was taken to the Christiana Hospital emergency room at about 7:00 a.m. on Saturday, November 22, 2008. The CT of B.D.'s head taken at Christiana Hospital at 1:00 p.m. showed no swelling of any sort in B.D.'s scalp.

554. Subsequently, B.D. was transferred to duPont Hospital where upon information and belief, "Neurosurgery was consulted and Dr. Warf drained the hemorrhage. After draining the hemorrhage, there was concern because [B.D.'s] fontanelle was still full and his hemoglobin was dropping. In addition he was having more seizures. His CT scan was repeated twice, both times showing no further progression of the hemorrhage." … another "repeat CT scan … showed a 1 mm increase in mass effect . In addition, he was having some increased blood pressures."

555. Upon information and belief, the only procedure documented in B.D.'s medical chart at duPont to relieve pressure from B.D.'s SDH was performed on November 22, 2008 on or before 4:55 p.m by Dr. Warf.

556. A CT scan was performed at 5:38 p.m. showed slight scalp swelling on the front left side of B.D.'s head.

557. Upon information and belief, three hours after Dr. Warf's first evacuation and two hours and twenty one minutes after the previous CT scan, another CT scan was performed at 8:59 p.m. (making a total of 3 CT scans within an 8 hour period) showing an increased amount of scalp swelling on the front left side of B.D.'s skull.

558. No head CT scans were performed on Saturday, November 23, 2008.

559. Upon information and belief, on November 24, 2008 at 2:27 a.m. another head CT scan was performed which showed the scalp swelling on the left as "stable" and even "decreased." In addition, the CT shows for the first time scalp swelling on the RIGHT side of B.D.'s head described as "increased right temporoparietal and posterior scalp soft tissue swelling".

560. Upon information and belief, sometime before 2:27 a.m. on Sunday, November 24, 2008, Dr. Doe attempted to evacuate B.D.'s SDH a second time. This attempt, however, was not performed on the left side, but rather on the right side, as indicated by the new and significant RIGHT sided scalp swelling on the side opposite to the location of B.D.'s left frontal SDH.

561. Upon information and belief, on November 24, 2008 at 9:30 a.m. an MRI was performed on B.D.'s head which confirmed slight left frontal scalp swelling but also demonstrated significant swelling on the RIGHT side of B.D.'s head.

562. Upon information and belief, the MRI revealed brain injury in B.D.'s brain for the first time.

563. Upon information and belief, this second surgical procedure to evacuate B.D.'s SDH was negligently performed on the wrong side of B.D.'s head by Dr. Doe resulting in, not only a failure to actually relieve the pressure in B.D.'s brain as the procedure is intended

to do, but also resulted in increased swelling and pressure on the right side of B.D.'s brain and exacerbating the pressure in B.D.'s brain causing brain injury.

564. Upon information and belief, no injury to B.D.'s brain was apparent until after 2:31 a.m. on Monday, November 24, 2008 when swelling on the right side of B.D.'s head first appeared.

565. On December 1, 2008 another CT scan report noted "[h]ypoattenuation is seen in the left frontal lobe which is new compared to" the CT scan performed at 2:31 a.m. on Sunday, November 24, 2008.

566. As a direct and proximate result of Dr. Does negligence in performing the surgical evacuation on the wrong side of B.D.'s head, the pressure in B.D.'s head increased and caused brain damage. That brain damage caused B.D. neurological impairment and was used as evidence of abuse against [redacted] and [redacted] As a direct and proximate result of Dr. Doe's negligence, B.D. suffered brain damage, [redacted] was arrested and B.D. was taken away from [redacted] and [redacted]

567. [redacted] and B.D. seek money damages as articulated below, including but not limited to, for injuries sustained due to Dr. Doe's negligence the result of which was that B.D. suffered brain injury and had to undergo months of rehabilitation therapy, [redacted] was arrested, the arrest was published in the newspapers, CYS was granted protective custody of B.D., B.D. was kept away from [redacted] for nine months except for one-hour per week of supervised visitation at the CYS office, [redacted] was kept from being with both his wife and his son for over one year, B.D. was kept from being with his mother for nine months and his father for over one year and [redacted] and B.D. experienced emotional distress and will continue to experience emotional distress. B.D. will have to live for the rest of his life with the

knowledge that his father was charged and arrested for allegedly abusing B.D. and that he was taken away from his parents and separated from even his mother for nine months because she was alleged to have known about the purported abuse and purportedly failed to protect B.D.

COUNT X
STATE LAW CLAIM AGAINST DR. DEJONG
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

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

569. Dr. DeJong knowingly misrepresented that B.D. had multiple and/or severe skull fractures when the medical evidence indicated there was none, misrepresented the age of B.D.'s SDH as less than 72 hours when the duPont radiologists identified the SDH collection as chronic, misrepresented the rib findings as 2 to 4 weeks old when such dating is not possible, misrepresented that an "extensive" medical workup had been performed when B.D.'s birth records were not reviewed and B.D.'s vitamin D levels not tested, misrepresented that [redacted] and [redacted] had not provided a history of trauma when they described B.D.'s traumatic birth, misrepresented that B.D. could not breathe on his own due to his injuries when B.D. was electively intubated for an MRI and represented that [redacted] provided a history consistent with "injury events" when [redacted] never made any admission of abuse by either [redacted] or [redacted]

570. On Tuesday, November 25, 2008, [redacted] and [redacted] went to the CYS office and maintained their innocence of any acts of abuse.

571. On Wednesday morning, November 26, 2008, Ms. McGettigan found out [redacted] had retained an attorney when the attorney called Ms. McGettigan.

Mr. Speedling considered this development an "investigative glitch" and Mr. Speedling and Dr. DeJong were "very concerned there had been no police response".

572. Mr. Speedling and Ms. Wertz accelerated their efforts to get [redacted] arrested by enlisting the aid of each of their respective supervisors, Dr. DeJong and Meta Wertz, November 26, 2008 immediately after Ms. McGettigan found out that [redacted] had a lawyer.

573. Although the police had not responded in the four days since B.D. had first been admitted to duPont Hospital, within 13 hours of Mr. Speedling and Dr. DeJong being "very concerned" and finding out about the "investigative glitch" that [redacted] had retained a lawyer, Ms. McGettigan, Mr. Speedling, Dr. DeJong and Ms. Wertz successfully motivated the Chester Police to get [redacted] arrested at 1:00 a.m. on Thanksgiving morning.

574. The accelerated efforts of Mr. Speedling, Ms. McGettigan, Dr. DeJong and Ms. Wertz to get [redacted] arrested was in direct retaliation for [redacted] exercising his Sixth Amendment right to retain an attorney.

575. Upon information and belief, these accelerated efforts to provoke the Chester Police to arrest [redacted] using the misrepresentations of Dr. DeJong were in direct retaliation for [redacted] having retained an attorney and demonstrate intentional outrageous conduct.

576. Upon information and belief, Dr. DeJong's misrepresentation of B.D.'s intubation to the Chester Police to mislead the Police and the court to believe that B.D.'s injuries were life threatening was for the specific purpose of ensuring [redacted]

bail would be set high and an effort to keep [redacted] incarcerated and separated from his wife and son.

577. Mr. Speedling's, Ms. McGettigan's, Ms Wertz's and Dr. DeJong's actions were deliberate attempts to inflict emotional distress on [redacted] and B.D.

578. As a direct and proximate result of the intentional infliction of emotional distress by Dr. DeJong, [redacted] and [redacted] have suffered depression and anxiety, as diagnosed by a licensed psychologist, arrest, separation from each other and from their son, B.D, and other harm and seek money damages for the damages articulated below.

DAMAGES

579. [redacted] and B.D. seek compensatory, punitive and other damages as the court may find appropriate for the following:

a. For the 280 days, from December 9, 2008, when B.D. was 2 ½ months old until August 21, 2009 when B.D. was over 11 months old, [redacted] was separated from her firstborn child B.D., and B.D. was separated from his mother [redacted] except for one hour of supervised visitation conducted at the CYS office under CYS surveillance.

b. For the 280 days [redacted] was denied the custody, control and care of her son B.D.

c. For nearly one year, from November 27, 2008 to October 16, 2009 [redacted] was not able to be with his son at all and B.D. was not able to be with his father [redacted]

d. For nearly one year, [redacted] was denied the companionship, custody, control and care of his son.

e. For the one month, after successfully defending the dependency, from August 21, 2009 to October 16, 2009, [redacted] could not be with his son, B.D. at all.

f. For two months after successfully defending the dependency, [redacted] could only see his son for 6 hours per week. From October 16, 2009 to December 17, 2009, that [redacted] was restricted to seeing his son B.D. for 6 hours of supervised visitation per week.

g. For two months after successfully defending the dependency, from October 16, 2009 to December 17, 2009, that [redacted] could not be with his wife [redacted] nor [redacted] with [redacted] if [redacted] was caring for their son for 162 hours per week.

h. For two and one-half months after successfully defending the dependency, [redacted] could only be with his family during the day and had to leave his home to sleep elsewhere. From December 17, 2009 to March 5, 2010, [redacted] was restricted to being with his family from 8:00 a.m. to 11:00 p.m. and could not stay overnight in his own home if his son was present.

i. For the seven months after successfully defending the dependency, From March 5, 2010 to October 5, 2010, that [redacted] could not be alone with his own son.

j. [redacted] and [redacted] suffer anxiety, depression and emotional distress as a result of false accusations and of the forced separation from their firstborn child, B.D.

k. [redacted] and [redacted] were denied the opportunity to experience major life events together as a family during the first year of their firstborn child, events such as B.D.'s first tooth, beginning to crawl, beginning to talk and beginning to walk.

l. Having no criminal record whatsoever, [redacted] was incarcerated for 8 days, from the time of his arrest on November 27, 2008 to December 5, 2008 until his in-laws, [redacted] parents, could post their house as collateral for [redacted] $100,000.00 straight bail.

m. The cost of a title insurance policy was incurred in order for [redacted] parents to post their house as collateral for [redacted] bail.

n. [redacted] lost his job as a result of his arrest.

o. [redacted] arrest on the charge that he abused his son was published in the Philadelphia Inquirer and Delaware County Daily Times, both in print and online, causing a loss of reputation in the community and public humiliation.

p. [redacted] and [redacted] were both compelled to pay child support for B.D. while he was in the foster care with strangers and with family friends, the Stevensons.

q. After successfully defending the dependency, over the course of the following year, [redacted] was forced to file pretrial motions, retain additional expert witnesses, prepare for trial and return to court for 9 pre-trial conferences and a tenth time for the first day of an expected 2 week trial.

r. [redacted] and [redacted] incurred attorneys' fees, expert witness fess, costs and other expenses to successfully defend the dependency.

s. [redacted] incurred attorneys' fees, expert witness fees, costs and other expense to successfully defend the criminal charges.

t. [redacted] and [redacted] experienced anxiety and emotional distress for over one year after the successful dismissal of the dependency due to the continued pending criminal charges.

u. B.D. will have to live the rest of his life, and emotionally cope, with the knowledge that his mother and his father were both indicated for abusing him, that he was taken away from his mother for 8 months, separated from his father for over one year, that he lived in foster care with strangers for 2 ½ months, lived in foster care with family friends for 6 months and that his father was criminally charged with assaulting him.

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

Respectfully submitted,

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DECLARATION

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 16 day of December, 2011.

Reginald Dennis

Renee Dennis