

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DWIGHT D. MITCHELL, individually and on behalf of his children X.M., A.M., and BRYCE MITCHELL; and STOP CHILD PROTECTION SERVICES FROM LEGALLY KIDNAPPING,

Plaintiffs,

v.

DAKOTA COUNTY SOCIAL SERVICES; COUNTY OF DAKOTA; EMILY PIPER, in her official capacity as Commissioner of Department of Human Services; PATRICK COYNE, individually and in his official capacity as Executive Director of Dakota County Social Services; JOAN GRANGER-KOPESKY, individually and in her official capacity as Deputy Director of Dakota County Social Services; LESLIE YUNKER, individually and in her official capacity as Supervisor of Dakota County Social Services; DIANE STANG, individually and in her official capacity as Supervisor of Dakota County Social Services; SUSAN BORELAND, individually and in her official capacity as Social Worker of Dakota County Social Services; CHRIS P'SIMER, individually and in his official capacity as Social Worker of Dakota County Social Services; CHRISTINA AKOLLY, individually and in her official capacity as Social Worker of Dakota County Social Services; JACOB TROTZKY-SIRR, individually and in his official capacity as Guardian ad Litem of Dakota County; TANYA DERBY, individually and in her official capacity as Public Defender of Dakota County; KATHRYN "KATHY" SCOTT, individually and in her official capacity as Assistant County Attorney of Dakota County; ELIZABETH SWANK, individually and in her official capacity as Assistant County Attorney of Dakota County,

Defendants.

Case No. 18-CV-1091 WMW/BRT
Judge Wilhelmina M. Wright
Demand for Jury Trial

**CORRECTED
AMENDED COMPLAINT**

Preliminary Statement

Stop Child Protection Services from Legally Kidnapping (SCPS) is an association of parents who have been affected or may be affected by Minnesota's child-protection statutes, Minnesota Department of Human Services' rules and policies, or Minnesota counties' child-protection services. SCPS is committed to preventing state and county agencies from unconstitutionally interfering in the parent-child relationship, even on a temporary basis, when there is at least a single fit parent. The reason is that when the government takes custody of a child away from a single fit parent, the government is horrible and terribly expensive in raising children—much worse than the single fit parent.

This complaint's counts 1 through 6 contain claims that facially challenge statewide application of Minnesota's child protection laws as unconstitutionally vague, unconstitutionally overbroad and fail strict scrutiny. The remaining counts are as-applied constitutional claims and state-law claims particular to the Defendants' actions against the Mitchell family. The remedies include damages and broad statewide injunctions against the Defendants so that what happened to the Mitchell family does not occur again.

Plaintiff Dwight Mitchell (Mitchell) and his children Bryce Mitchell, XM, and AM (collectively, the Mitchells) have the same claims as SCPS and more claims.

Mitchell brought this complaint after his children were illegally removed from the home without court order and without exigent circumstances and was forced to wait ten days for a post-deprivation hearing for his three children Bryce Mitchell, XM, and AM. After Mitchell complied with all county requests, only two of his three children were returned and not until after five months. The authorities maliciously denied Mitchell all contact with his middle son XM for 22 months.

Mitchell was allowed no phone calls, no visits, no letters—absolutely no contact—for 22 months. It was 22 months of lost smiles, lost hugs and lost time spent together as a family. Almost two years of not seeing or hearing from his child. Mitchell was not even being told where XM was. Every night, Mitchell did not know where XM was. Mitchell had the same feeling that a normal parent would have in a normal parent’s worst nightmare: kidnapping.

It was hell on earth and totally disproportionate to the need presented. It was inspired by malice or sadism rather than a merely careless or unwise excess of zeal. It amounted to a brutal and inhumane abuse of official power shocking to the conscience and offending judicial notions of fairness, especially in light of the fact that Mitchell’s 6-year old son AM was returned in five months and three Dakota County Social Services (DCSS) psychologists said that Mitchell was a fit parent.

There was no danger present in the home. Mitchell had a constitutional right for his legal proceedings to be free of fabricated evidence and judicial deception. Because the legal proceedings were tainted by fabricated evidence and judicial deception, Mitchell’s children were illegally detained. This case is also about overzealous, inadequately trained, and inadequately supervised employees of an out-of-control county government agency, and the acts of those employees were directed, authorized or ratified by the agency’s policymaking officials.

The defendants knew almost immediately that they lacked “subject matter jurisdiction” over Mitchell and his children pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and that Mitchell’s former wife had fabricated her allegations of Mitchell’s long-term abuse against her and the boys in an attempt to regain custody.

Jurisdiction and Venue

1. The plaintiffs bring this civil-rights lawsuit under 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988 to redress the defendants’ deprivation of the plaintiffs’ rights under the United

States Constitution, including, but not limited to, the Fourth and Fourteenth Amendments, and under federal and state law.

2. This Court has supplemental jurisdiction over Mitchell's state-law claims under 28 U.S.C. § 1367(a) because they are part of the same case and controversy described by Plaintiffs' federal claims, and independent original jurisdiction over Mitchell's state-law claims under 28 U.S.C. § 1332 because this action is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

3. Venue is proper in the District of Minnesota under 28 U.S.C. § 1391(b)(1), (2), and (3) because most or all of the Defendants reside and may be found in Minnesota and a substantial part of the events giving rise to these claims occurred in Dakota County, Minnesota.

Parties

4. SCPS is an association of parents who are citizens of the United States and Minnesota. SCPS is committed to Minnesota's child-protection statutes, rules, policies, and actions conforming to the U.S. Constitution. All of them have had experiences with the child-protection system in Minnesota which provide them standing to bring SCPS's claims in this court.

5. Mitchell is an African-American citizen of the United States. He is—and was during all times relevant to this complaint—a New Jersey resident. On February 16, 2014, Mitchell, a management consultant in the IT industry, was in Minnesota to complete a temporary contractual work engagement for CHS (Cenex Harvest States).

6. Bryce Mitchell, XM, and AM are all Mitchell's children. They reside with Mitchell in New Jersey. They were minors at the times relevant to this complaint, but Bryce Mitchell is now an adult.

7. The County of Dakota (the County) is a public entity and a political subdivision

of the State of Minnesota. The County of Dakota has purchased liability insurance sufficient under Minn. Stat. § 3.736 to waive its immunity against civil liability.

8. The County operates Dakota County Social Services, which is the County's department implementing Minnesota Department of Human Service standards and Minnesota law.

9. The Dakota County Social Services or Department of Social Services (Agency or DCSS) is an agency of the County.

10. Defendant Emily Piper (Piper) is the Commissioner of the Minnesota Department of Human Services who is legally obligated to ensure enforcement of Minn. Stat. ch. 518D. Enforcement includes, but is not limited to, the implementation of the Department's child protection plan, training, creating manuals, and disciplining social workers for non-compliance on matters of custody. She is sued in her official capacity as a Minnesota state employee. Piper is a citizen and resident of Minnesota.

11. Defendant Kathryn "Kathy" Scott (Scott) was, at the times relevant to this complaint's allegations, an Assistant County Attorney with the County, and acted during her employment under color of state law. Scott led and directed the civil factual investigation of the allegations against Mitchell. She is sued both in her individual capacity and in her official capacity as a County employee. Scott is a citizen and resident of Minnesota.

12. Defendant Elizabeth Swank (Swank) was, at the times relevant to this complaint's allegations, an Assistant County Attorney with the County, and acted during her employment under color of state law. Swank led and directed the criminal factual investigation of the allegations against Mitchell. She is sued both in her individual capacity and in her official capacity as a County employee.

13. Defendant Patrick Coyne (Coyne) was, at the times relevant to this complaint's

allegations, an Executive Director with DCSS and in that capacity served in a supervisory or policymaking role and acted during his employment under color of state law. He is sued both in his individual capacity and in his official capacity as a County employee. Coyne is a citizen and resident of Minnesota.

14. Defendant Joan Granger Kopesky (Kopesky) was, at the times relevant to this complaint's allegations, a Deputy Director with DCSS and in that capacity served in a supervisory or policymaking role and acted during her employment under color of state law. She is sued in both her individual capacity and in her official capacity as a County employee. Kopesky is a citizen and resident of Minnesota.

15. Defendant Leslie Yunker (Yunker) was, at the times relevant to this complaint's allegations, a Supervisor with DCSS and in that capacity served in a supervisory or policymaking role with respect to this investigation and case and acted during her employment under color of state law. She is sued both in her individual capacity and in her official capacity as a County employee. Yunker is a citizen and resident of Minnesota.

16. Defendant Diane Stang (Stang) was, at the times relevant to this complaint's allegations, a Supervisor with DCSS, and, in that capacity, served in a supervisory or policymaking role with respect to the investigation and case and acted during her employment under color of state law. She is sued both in her individual capacity and in her official capacity as a County employee. Stang is a citizen and resident of Minnesota.

17. Defendant Susan Boreland (Boreland) was, at the times relevant to this complaint's allegations, a social worker with DCSS and acted during her employment under color of state law. She is sued both in her individual capacity and in her official capacity as a County employee. Boreland is a citizen and resident of Minnesota.

18. Defendant Chris P'Simer (P'Simer) was, at the times relevant to this complaint's

allegations, a social worker with DCSS and acted during his employment under color of state law. He is sued both in his individual capacity and in his official capacity as a County employee. P'Simer is a citizen and resident of Minnesota.

19. Defendant Jacob Trotzky-Sirr (Sirr) was, at the times relevant to this complaint's allegations, a guardian ad litem with the County, and acted during his employment under color of state law. He is sued both in his individual capacity and in his official capacity as a Minnesota state employee. Sirr is a citizen and resident of Minnesota.

20. Defendant Tanya Derby (Derby) was, at all times relevant to this complaint's allegations, a public defender with the County, and acted during her employment or under color of state law. She is sued both in her individual capacity and in her official capacity as a Minnesota state employee. Derby is a citizen and resident of Minnesota.

Facts

A. Mitchell and his children were domiciled in New Jersey, but lived temporarily in Minnesota.

21. Mitchell has owned his home at 20 Summershade Circle, Piscataway, New Jersey for 22 years.

22. Although traveling domestically and internationally for business, Mitchell has never rented out his house in Piscataway, New Jersey.

23. During the 22-year period that Mitchell owned his current home, he has continuously.

- filed federal and New Jersey state income taxes using his current home address;
- maintained a New Jersey driver's license and New Jersey automobile insurance;
- received at his current home address financial statements, utility bills, and tax-reporting forms; and

- registered to vote using his current home address.

24. Mitchell has owned his place of business in Piscataway, New Jersey for 24 years and filed Federal and New Jersey state business income taxes using a New Jersey address for the entire 22-year period that he has owned his current home.

25. Previous court filings in other cases, including Dakota County, Minnesota court filings, were sent to Mitchell's current home address.

26. As of the date of this complaint's date of filing, Mitchell is still working in Minnesota regularly.

B. Minnesota child-welfare authorities illegally remove the Mitchell children from their home.

27. The family came to Minnesota for a limited time period for Mitchell's temporary contractual work assignment with CHS (Cenex Harvest States).

28. On February 16, 2014, Mitchell and his wife Tatiana Litvinenko went to dinner and a movie and left their children XM, AM, and ML in the care of their long-time baby sitter Ellie Hardy. XM who was 10 years old at the time, had received a spanking the day before for stealing, months of repeated acts of disobedience, negative calls from his school teacher, failing to do his school homework for 6 weeks, failing to do his house chores, and playing the Xbox at 4 AM when he should have been sleeping.

29. When XM was returned to Mitchell's custody, XM told Mitchell it was XM who told Hardy to call the police. His mother, Mitchell's ex-wife Campos, told him to call the police if Mitchell should ever spank him. Hardy complied; the police were dispatched to Mitchell's residence. All the children were taken to the police station for questioning without Mitchell's knowledge or consent.

30. Hardy advised Mitchell that she told Boreland and the police that she had never

seen corporal punishment used on or reported by any of the children before that evening's incident in the six months she had been working for the family. Also, Hardy stated that she told Boreland and the police that she, Hardy, did not consider the father a threat to the children even considering the spanking that XM had received because the children were not afraid of their father and were always happy to see him. Until the incident of that night, they were a normal happy, loving family with no issues even though XM was not always truthful.

31. Boreland and the police questioned the children and took statements without Mitchell's knowledge or consent. XM and AM stated that they had been spanked by their father in the past. Furthermore, XM and AM specifically stated they had never been spanked or abused by Litvinenko. All of information in this statement is evidenced in the Dakota County discovery police statements that were provided to Mitchell and are further described below. (Exhibit 001).

32. When XM was returned to Mitchell's custody, XM told Mitchell he provided Boreland with his mother Campos's telephone number in Spain. Boreland and the Police interviewed Campos as evidenced by the police reports. Campos' statements paint an entirely false pattern of illegal activities in the household and domestic abuse against her and the children for 10 years. Campos stated that she reported this information to the Piscataway, NJ Police Department and New Jersey Social Services in the past, but that they failed to act upon the information or prosecute Mitchell on any of Campos's accusations. (Exhibit 002)

33. When XM was returned to Mitchell's custody, XM told Mitchell that he and Boreland had further discussions with Campos at the police station when Detective Sean McKnight was not in the room. Campos asked Boreland to intercede on Campos's behalf to keep the pending case in Minnesota because New Jersey had failed to act on any of her requests for aid in the past and would continue to do so in the future. Although Campos did not have legal custody of the children, she asked Boreland that the children be sent to her in Spain. XM also

told Mitchell upon his return that Boreland agreed to keep the case in Minnesota and that Boreland said she would work with other Dakota County officials to ensure the children are removed from Mitchell's custody and sent to Campos in Spain. XM also told Mitchell upon his return that Boreland told him to say that Litvinenko knew about the spankings, and that she didn't tell Mitchell to stop or do anything to help the children.

34. Mitchell and Litvinenko presented themselves to the Apple Valley Police Department after receiving a call that their children had been taken into protective custody. Mitchell was immediately arrested and booked for malicious punishment of a child. Mitchell exercised his Miranda rights and refused to speak with Boreland or the police. For refusing to give up his constitutional rights, Boreland requested the police to detain Mitchell for a 72-hour hold. Next, the police called the assistant county attorney and the Dakota County District Court Judge to request that Mitchell be denied bail. The judge granted the request. All of the information in this statement is evidenced in the Dakota County Discovery police statements that were provided to Mitchell as further detailed below. (Exhibit 003)

35. Boreland and the police interviewed Litvinenko, XM, AM, and ML on the same evening. Litvinenko told Mitchell that she was not read her Miranda rights, or advised she did not have to speak to Boreland or the police without having an attorney present. All of the information in this statement is evidenced in the Dakota County Discovery police statements that were provided to Mitchell as further detailed below.

36. Boreland, working in concert with the police, used improper questioning techniques to intimidate, harass, cause fear, and make Litvinenko appear to be an accomplice to long-term child abuse, even though she was not. All of information in this statement is evidenced in the Dakota County Discovery police statements that were provided to Mitchell as further detailed below.

37. Boreland and the police asked the following questions. “So how often does he hit you?” “He’s never hit you? Even if he told us that he’s hit you before?” “So, your husband has a violent streak, is that correct?” “It’s not safe for those boys to be there, okay and you’re a part of that?” “You know that this happens, whether or not you see it or not, you can’t be that dumb?” “It’s impossible for you not to know and right now might be a time when you pause and think I should really start telling the whole truth?” “You can’t protect your husband anymore, he’s dug his own hole.” This type of questioning is inappropriate under the circumstances. All of information in this statement is evidenced in the Dakota County Discovery police statements that were provided to Mitchell as further detailed below.

38. Boreland made the following direct quotes. “Just like you, I know everything that’s going on in my house. I know everything that’s going on; I know if the kids are getting hit, they’re going to tell me. They’re going to tell me what’s going on, I don’t believe that you never knew that the children were being hit.” “I have a foster home for all 3 of them right now. How do you feel about that?” “Okay, I don’t believe that, alright; I don’t. I know moms better than that; I know moms pretty much know everything that’s going on in the house, okay. And I know you know your son isn’t being hit with a belt but I don’t know that you really care that the other two are getting hit.” “Okay, he is almost 20 years older than you, right” “Okay. What if he wasn’t in your life, how would you take care of yourself?” “Would you be able to stay in this country?” “Okay. Well, I don’t know yet. We’ll have to decide, ah, at this point we’ll have to talk and I’m, I’m still not believing that you don’t know that these boys were being hit with a belt.” All of information in this statement is evidenced in the Dakota County Discovery police statements that were provided to Mitchell as detailed below.

39. Litvinenko told Boreland that Mitchell was not abusive and that she had never seen Mitchell spank the boys before with a belt or otherwise. The children had never told her that

Mitchell had spanked them in the past. She was not aware of the incident that gave rise to the arrest because she was away for the weekend with ML visiting friends, but she had taken AM and other neighbor's children skiing that same day with the exception of XM because he was not doing well in school and he stayed home with his father to study. All of the information in this statement is evidenced in the Dakota County Discovery police statements that were provided to Mitchell as detailed further below. (Exhibit 004).

40. Boreland responded by saying that she did not believe Litvinenko, that Litvinenko neglected to stop the abuse, and that Boreland was going to do everything in her power to make sure that the children were never returned to the family.

41. When XM was returned to Mitchell's custody, XM told Mitchell that Boreland told him on the night of the incident that she was going to do everything in her power to make sure he would never be returned to his father, and that she was going to send XM to live with his mother in Spain.

42. Kendall Broders (Broders), the full-time nanny for one year, told Mitchell that she told Boreland that she, Broders, was with the children daily, that she bathed them each night, and that she had never seen any bruises or signs of abuse on any of the three children in the year that she had been working with the family. Broders also told Boreland that none of the boys had ever complained of abuse or being spanked in the past, and that, until this incident, the Mitchells seemed like a normal happy, loving family with no issues. Broders also told Boreland that none of the children were afraid of Mitchell and that they were always happy to see him come home from work, that they gave him hugs and kisses, and that each night the Mitchells had dinner together as a family in which she participated.

43. Litvinenko told Mitchell upon his release from jail that Boreland allowed Litvinenko and ML to return home, but refused to return XM and AM to her and allow them all

to return home together. Litvinenko told Mitchell that Boreland said that Boreland was keeping XM and AM, refused to explain why, and refused to provide any additional information regarding the involuntary retention of XM and AM.

C. The aftermath of the illegal removal of the Mitchell Children.

44. On February 18, 2014, based upon the document date of the discovery information, that Mitchell received from Dakota County Attorney's office, Boreland, Scott, and Swank knew Mitchell had full physical and legal custody of the children and that all court documents were from Middlesex County courts, New Jersey. Furthermore, Boreland, Scott, and Swank had received all official documents and reports relating to Mitchell's family from the Piscataway, New Jersey Police Department. Below is a listing of information received.

45. On November 07, 2008, Campos was arrested for theft. She attempted to steal from Walmart 22 video games valued at \$451.05 by placing them in her purse.

46. On January 9, 2009, Campos was arrested for terroristic threats. Campos called the Piscataway Police dispatcher and stated that she would kill her husband. As a result, a New Jersey court issued a Temporary Restraining Order (TRO) against Campos.

47. On January 10, 2009, Campos violated the TRO by criminal trespass. Campos attempted to enter Mitchell's home. The incident was reported to the Piscataway Police.

48. On January 13, 2009, Campos violated the TRO by calling and harassing Mitchell.

49. On February 06, 2009, Campos violated the TRO by being a defiant trespasser. Campos again attempted to enter Mitchell's home and sent Mitchell multiple text messages. A New Jersey court issued a no-bail warrant for Campos's arrest.

50. On February 13, 2009, Campos called Middlesex County Social Services, for the first time accusing Mitchell of abusing his children. The Child Protection Services conducted its

required investigation and determined that the allegations against Mitchell were unfounded.

51. On February 22, 2009, Campos called Middlesex County Social Services, again accusing Mitchell of abusing his children. The Division conducted its required investigation and determined that the allegations against Mitchell were unfounded.

52. On March 01, 2009, Campos violated a visitation order. Mitchell called the police to resolve.

53. On March 10, 2009, Campos told XM to tell his teacher that Mitchell hit him on his bottom. The school called the police who in turn contacted Middlesex County Social Services. XM said that Mitchell hit him on his bottom, and the school was required to report this. According to the Piscataway Police Department's report, Principal McFall told the police that there was no history of child abuse or suspicious injuries involving XM. The Division conducted its required investigation and, upon seeing no marks or bruising, determined that the allegations of abuse were unfounded.

54. On March 13, 2009, after numerous violations of the TRO, Campos attempted to abduct the oldest child BM from his school. The school principal notified Mitchell, who in turn notified the Piscataway Police Department. Campos was arrested on the charge of violating the TRO, spent 13 days in jail, pleaded guilty, paid a fine, and was released on March 30, 2009.

55. On March 26, 2009, Middlesex County Social Services sent Mitchell a formal letter stating that the Division conducted its required investigations of the 2/13/09 and 2/22/09 accusations and determined that they were unfounded.

56. On April 27, 2009, Campos filed a complaint regarding an alleged violation of her visitation rights, but the authorities took no action in response.

57. On April 29, 2009, Campos and her boyfriend Jose Rodriguez were arrested for a conspiracy to hire a hitman to attack Mitchell and kidnap Mitchell's children. Campos offered to

pay an undercover police officer \$75,000 for his assistance to commit a crime. Campos had secretly provided BM with a cell phone and had him turn off the house alarm and open the back-sliding glass door. Campos had airline tickets to Spain for her and the children. Bail was set at \$25,000. Both defendants posted bond and were released.

58. On April 30, 2009, Campos and Jose Rodriguez were again arrested for trying to kidnap Mitchell's children. Campos calls the police and files a false incident report at Mitchell's house in order to distract him while she attempts to take the children. While Mitchell was on the front porch speaking with a police officer, Campos was speaking with BM on his cell phone. Campos told BM to grab XM and to meet her on the corner of their street. Campos had changed the airline tickets for Spain to the current date for her and the children. They were caught by the police and arrested. Bail was set at \$100,000. Her boyfriend posted bond and left the country. Campos was unable to post bond and remained in jail.

59. On May 1, 2009, Police take BM to UMDMJ for psychological welfare evaluation for threatening suicide if he is not allowed to live with his mother. Nowhere in the evaluation does BM tell anyone that Mitchell had ever been physically or mentally abusive to him. The report stated BM wanted to live with his mother because of her lax parenting style. BM didn't like living with his father because he is overly strict and has too many rules. He did not have suicidal tendencies as he told his teacher and the police, and he admitted that he lied so that he could live with his mother.

60. On July 30, 2009, Campos was indicted for the following crimes under New Jersey law: one count of conspiracy, two counts of criminal attempt, one count of possession of weapons for unlawful purposes, and one count of unlawful possession of weapons.

61. On November 2, 2009, the New Jersey prosecutor offered Campos a plea agreement with lowered charges. Campos pleaded guilty to conspiracy and an amended count of

interference with custody and was sentenced to five years in prison. She served three years of her sentence and was subsequently deported to Spain. The sentencing New Jersey judge, the Honorable Frederick P. DeVesa, was unhappy with the plea agreement because it was too lenient, but accepted it anyway:

In this matter, the reasons that I find are: The nature and circumstances of the offense, and the role of the actor therein, including whether it was committed in an especially heinous, cruel or depraved manner. The risk that the defendant will commit another offense is high given her pattern of domestic violence, her return to criminality after prior court orders and incarceration. There is a need to deter this defendant from this type of unlawful activity. I find no mitigating factors. The court is clearly convinced that the aggravating factors substantially outweigh the mitigating factors, but the court will sentence the defendant per the plea agreement.

62. On February 18, 2014, the official New Jersey reports demonstrated to Boreland, Scott, and Swank that all of statements by Campos, BM, XM, and AM to Boreland and the Apple Valley Police department relating to ten years of alleged abuse by Mitchell were false and not substantiated by any of the more than 250 pages of New Jersey official records.

63. As of February 18, 2014, Boreland, Scott, and Swank were aware that Campos, BM, XM, and AM had lied to them, provided them with false police statements, and fabricated evidence.

64. Campos was the perpetrator of domestic violence. Campos had the restraining order against her. Campos had been arrested for numerous crimes, was a repeat offender, and had repeatedly gone to great lengths since her first incarceration in New Jersey to illegally regain custody of the children after court removal.

65. Additionally, the records evidenced that Campos had repeatedly used the children in all her previous schemes, and had the children lie to Piscataway New Jersey Police Officers and Social Services officials and a school teacher on several occasions in her attempt to regain custody of the children, no matter what the lie or the cost.

66. As mentioned above, the inbound document receipt date on the discovery information Mitchell received from the County shows that Boreland, Scott, and Swank received all official documents and reports relating to their request for a full police, FBI, and ICE background check. The official reports explicitly highlighted to Boreland, Scott, and Swank that Mitchell had lived 53 years of his life with no criminal record. (Exhibit 005).

67. On February 19, 2014, Mitchell was released from the Dakota County jail after being held for three days. Upon returning home, Mitchell learned XM and AM had been removed from the family home by Dakota County Social Services. There was a letter waiting for Mitchell requesting that he appear at the Dakota County Courthouse on February 20, 2014 to accept service of the petition that Dakota County Social Services intended to file with the court concerning XM and AM. (Exhibit 006).

68. On February 20, 2014, 9:30 AM, Mitchell, and Litvinenko arrived at the courthouse to accept the service of the Dakota County Social Services petition. In a private meeting room outside the courtroom, Boreland stated to Mitchell and Litvinenko “I am going to do everything in my power to see that the children are never returned to your custody.”

69. Mitchell advised Boreland that Campos and the children were lying and that Campos had tried the same tactic in the past.

70. Boreland responded: “Why are all black families so quick to spank their children? You are unfit to be parents and don’t deserve to have children.”

71. Shocked by this disparaging and racially discriminatory statement from a social worker, Mitchell responded that this is not true, and you will never understand us because you are a White American and not African-American. Mitchell stated that Boreland has no concept of the underlying racism against African-Americans while she lives in a safe middle-class suburbia. Mitchell stated that he must teach his children to respect authority and do what they

are told because white police officers are stopping, beating, killing and getting away with murder while systematically incarcerating our children at the disproportionate rate of 2.7 million new inmates in less than 25-years when the entire US prison population before this was never greater than 500,000 inmates. There is daily documented evidence of this, videos on the Internet, TV, and newspapers. Mitchell also told Boreland that there were enough Middlesex County New Jersey court records, Piscataway New Jersey police reports, and New Jersey Social Services reports to disprove everything Campos and children are saying because they have tried this exact same tactic and approach of false allegations in New Jersey and everything was disproved.

72. Boreland responded stating she understood African-Americans very well, that her brother in-law is African American and she has African American relatives and furthermore, she had requested all of the State of New Jersey records and will conduct her investigation of long-term abuse by Mitchell.

73. Boreland knew that her racial comments were discriminatory and inappropriate, and she intended them to intimidate Mitchell.

74. On February 20, 2014, XM had his first meeting with both Boreland and Scott. A few days after XM was returned to Mitchell's custody on December 5, 2015, XM told Mitchell about the first time XM met with both Boreland and Scott together. XM related the following statements made between Boreland and Scott while he was in the meeting with Boreland and Scott at the Dakota County Courthouse, before entering the courtroom. Boreland asked Scott if Scott had determined a way for DCSS to retain custody of Mitchell's children as they had discussed two days prior since the Piscataway New Jersey Police reports failed to demonstrate that Mitchell had a history of child abuse as Boreland had hoped. Boreland told Scott that Boreland still wanted to transfer custody of Mitchell's children to their mother in Spain. Scott told Boreland that the only way to accomplish this was to retain custody of Mitchell's children in

Minnesota, deny visitation, terminate Mitchell's parental rights, and then transfer custody to the children's mother in Spain. Scott told Boreland that XM and AM would have to remain in foster care until arrangements could be made to transfer custody to their mother in Spain. After the transfer of custody was completed, DCSS could then send XM, AM, and BM to live with their mother in Spain. XM told Boreland and Scott that he and AM would soon be returning to New Jersey with the family because Mitchell's temporary work assignment in Minnesota was completed. Scott told Boreland not to tell the court that the Mitchell family was returning to New Jersey and not to show or tell the court about the New Jersey custody court order. Scott told Boreland that Scott would make sure that the case remained in Minnesota and that this would allow Boreland to retain custody in order to send the children to Campos. Boreland told Scott that Boreland would do as Scott advised and follow Scott's instructions not to tell the court about Mitchell's New Jersey background or the New Jersey court order. Boreland and Scott told XM they would make special arrangements with the court to keep jurisdiction and custody of the boys to ensure that XM and AM stayed in Minnesota and would not return to New Jersey with Mitchell. During the meeting described in this paragraph, Boreland and Scott came to an agreement to work together to illegally and wrongfully deprive Mitchell of custody, usurp jurisdiction from the New Jersey court, terminate Mitchell's parental rights, deceive the court system, and transfer custody to Campos in Spain.

75. On February 20, 2014, Mitchell and Litvinenko met with Scott outside the courtroom to discuss the case before the petition was filed with the court. Mitchell told Scott that Campos and the children were lying and that Campos had tried the same tactic in the past in Piscataway, NJ. Mitchell requested that Scott review the Piscataway police reports because they proved Mitchell was telling the truth and that Campos and the children were lying. Scott told Mitchell she had already reviewed the Piscataway, NJ Police reports and discussed them with

Boreland and that she would be conducting further investigations into the allegations of long-term child abuse.

76. On February 20, 2014, Boreland submitted the Dakota County Social Services petition to the court. No emergency Child in Need of Protection Hearing took place on that date. Boreland requested a hearing date of February 26, 2014 to be set for the post-deprivation hearing. This was 10 days after removal of the children. The request was granted and the post-deprivation hearing was held on February 26, 2014. (Exhibit 007).

77. As of February 20, 2014, the date that Boreland prepared and submitted a deficient CHIPS petition to the court that included fabricated evidence, lies, and misrepresentations for the removal of BM, XM, and AM from the family home, Boreland had already received as of February 18, 2014 the New Jersey police reports, which demonstrated that the allegations of long-term abuse by Campos were false. Despite the New Jersey court and police records showing that the allegations against Mitchell were unfounded, Boreland signed the petition on February 20, 2014 and had it notarized by Kristine Ellingson. Scott told Mitchell and his then wife Litvinenko on the morning of February 20, 2014 that Scott had also reviewed the New Jersey police reports. Scott then signed the petition on February 20, 2014 and made a sworn certification that said "I approve this Petition as to form and have found reasonable grounds to support the Petition." Scott was acting in the capacity of a "witness" at that time on February 20, 2014. Even though she admitted to having read the New Jersey police reports, Scott certified the facts were true and gave rise to probable cause for the removal of BM, XM, and AM from the family home. (Exhibit 007). Because they were involved in the investigation and had reviewed the New Jersey police reports on February 18, 2014, Boreland and Scott knew that the petition omitted exculpatory evidence and contained fabricated inculpatory evidence, lies, and misrepresentations. Boreland and Scott used fabricated evidence on February 20, 2014 in the

petition to further the conspiracy discussed above. Boreland and Scott also knew that the petition was deficient because the safety plan had not been presented to Mitchell.

78. On February 20, 2014, Boreland met with Mitchell and his wife Litvinenko to serve Litvinenko with a separate DCSS petition that had been filed with the court. Without any proof of abuse by Litvinenko, and knowing that the children provided statements acknowledging that Litvinenko had never abused them, Boreland separately named Litvinenko in her own dependency petition under the County's standard policy of alleging a "failure to protect" against the non-offending spouse, without any further information, other than the allegation that the other spouse may have been neglectful or harmful. More specifically, based upon official Minnesota documentation, it was and remains, the County's regularly established operating procedure and policy to make allegations in a separate dependency petition when the agency knows there is no proof or evidence to support the allegations.

79. On February 20, 2014, while still at the courthouse, Boreland approached Mitchell and Litvinenko for a third time. Without due process or court order, Boreland intentionally and with malice told Mitchell and Litvinenko that they had to separate and were not allowed to live together.

80. When Mitchell pressed for the reason why, Boreland would not provide one.

81. Mitchell told Boreland that her demand was illegal and unconstitutional, and that Boreland was just being mean, evil, and spiteful.

82. Litvinenko told Boreland that her son and she were perfectly safe with Mitchell, that Mitchell is not violent and has never laid a hand on either of them in anger or rage and neither she nor her son fear Mitchell.

83. Boreland threatened Litvinenko by responding that if Litvinenko did not move out of the family home immediately Boreland would remove her child ML from her custody and

place him in a foster home.

84. Boreland advised Mitchell and Litvinenko they were not to live together, nor was Mitchell allowed to be around Litvinenko or ML until after her court proceedings were completed.

85. Boreland told Mitchell and Litvinenko that Boreland was going to tell Litvinenko's case worker to remove ML from Litvinenko's custody and place him in a foster home if the couple did not separate immediately.

86. On February 26, 2014, XM had his first meeting with Boreland and Swank. Within a few days after XM was returned to Mitchell's custody on December 5, 2015, XM told Mitchell about the first time that XM met with Boreland and Swank. XM related the following statements made between Boreland and Swank while he was in the meeting with Boreland and Swank. Boreland told Swank that Boreland and Scott agreed to retain custody in Minnesota, deny visitation to Mitchell, terminate Mitchell's parental rights, and transfer custody to the children's mother in Spain. Boreland told Swank that there was a "no contact order" currently in place between the Mitchell and his children. Boreland gave Swank a copy of the New Jersey police files and the two of them discussed the police reports in detail. Boreland asked Swank if there was a way that Swank could use the criminal justice system to help DCSS retain permanent custody of Mitchell's children. Boreland told Swank that the Mitchell family was from New Jersey and scheduled to return soon. Boreland told Swank that Boreland wanted to transfer custody of Mitchell's children to their mother in Spain. Swank advised Boreland that the plan that Scott and Boreland had agreed to was good and to stick to that plan on the civil side of the matter. Swank told Boreland that Swank could help by seeking to make the "no contact order" permanent through criminal proceedings to further assist in denying visitation to Mitchell. Swank said that she would increase the charges against Mitchell and would do whatever else she

could to help. Swank also told Boreland that bringing more serious charges would help in retaining custody in Minnesota denying visitation, terminating Mitchell's parental rights, and transferring custody to the children's mother in Spain. During the meeting described in this paragraph, Swank came to an agreement to work together with Boreland and Scott to illegally and wrongfully deprive Mitchell of custody, usurp jurisdiction from New Jersey, terminate Mitchell's parental rights, and transfer custody to Campos in Spain.

D. Emergency Protective Hearing Regarding the Mitchell Children.

87. On February 26, 2014, at the CHIPS Emergency Protective Hearing – First Appearance, ten days after the initial removal of the children from the home, Boreland, intentionally and with malice, submitted to the court an amended petition/affidavit that lacked an approved safety plan and that contained fabricated evidence and false, inaccurate, uncorroborated, and misleading statements. Boreland stood in a position of power and trust with the court. By intentionally submitting the inaccurate amended petition under penalty of perjury, Boreland abused her position's authority.

88. Based upon the statements that XM told Mitchell when he was returned to Mitchell's custody, Boreland, Scott, and Swank knew that Minnesota courts did not have subject matter jurisdiction of the case and that New Jersey courts did, and Boreland, Scott, and Swank agreed to keep the case in Minnesota. Boreland, Scott, and Swank also knew that failing to disclose the New Jersey court order to the judge, who otherwise would be obligated to enforce UCCJEA, guaranteed the case would remain in Minnesota. They also knew that this was a major breach of procedural due process because the "Home State" must be established at the beginning of the legal proceedings to determine subject matter jurisdiction, and they intentionally agreed not to disclose regardless of the illegality. Boreland, Scott, and Swank knew New Jersey was Mitchell's "Home State." They knew Minnesota courts lacked subject matter jurisdiction over

this case from the commencement of the proceedings. Nonetheless, they agreed to illegally usurp jurisdiction to further their conspiracy to terminate Mitchell's parental rights and transfer custody to Campos in Spain.

89. Boreland did not amend the petition's paragraph C regarding the false statement of AM saying he was spanked with a belt. On the night of the incident at the police station, XM, AM's 10-year-old brother, told Boreland that AM had never been spanked with a belt. ML told Boreland that AM had never been spanked with a belt. Litvinenko told Boreland that AM had never been spanked with a belt. Mitchell told Boreland that AM had never been spanked with a belt. Hardy, the babysitter, told Boreland she had never seen any bruises or signs of abuse and that none of the children had ever told her that they had been spanked. These statements are corroborated by these individuals' police statements disclosed in discovery. Boreland was aware that the statement by 6-year old AM was false, but Boreland intentionally included this false information and did not include the exculpatory information or statements from the other individuals described above.

90. Litvinenko told Boreland that on the day of the XM incident, she took the children skiing all day. It was their first-time skiing, and the boys fell on top of their skis, hips, and behinds all day in their attempts to learn how to ski and that this is where he probably received the bruise on his hip and not from a spanking from his father. This statement can be corroborated in a police statement disclosed in discovery.

91. Boreland changed the original petition's paragraph G regarding Campos's statements to the amended petition's paragraph H and added additional fabricated inculpatory evidence to the amended petition. Boreland stated that she had obtained and reviewed more than 200 pages of New Jersey police reports, but she failed to disclose that those police reports evidenced wrongdoing by Campos, not Mitchell. Through this deceptive omission, Boreland

intentionally misled the court into thinking that the domestic violence police reports from New Jersey supported the conclusion that Mitchell was a perpetrator of domestic violence. In some of the foregoing paragraphs, Mitchell has provided details of the New Jersey police reports that Boreland failed to disclose to the court. Boreland had in her possession proof that Campos, BM, and XM lied to her and the Apple Valley police. Therefore, Boreland's reliance on their lies in the amended petition was an example of Boreland's knowing use of false evidence to harm Mitchell.

92. Boreland had proof that the allegations by Campos, BM, and XM of long-term abuse were false and that the accusations against Mitchell that Campos made to Minnesota officials were like the accusations that she had made to New Jersey officials—accusations that had already been rejected by New Jersey officials and the New Jersey court system. By her failure to disclose the outcomes of the New Jersey investigations and proceedings, Boreland intentionally hid exculpatory evidence from the court to harm Mitchell. By relying on the discredited accusations of Campos, BM, and XM, Boreland intentionally used fabricated evidence to harm Mitchell.

93. Boreland changed the original petition's paragraph H regarding BM's statements to paragraph I. Boreland fabricated evidence that Mitchell chased his oldest son BM down the street, pushed him to the ground, and stepped on his head. Boreland had official proof from the New Jersey police reports that these events never happened.

94. Boreland fabricated evidence in the amended petition's paragraph J regarding the credibility of statements by BM, XM, and AM. Boreland admitted that she read the New Jersey police reports, that she participated in the initial and all subsequent interviews before filing the amended petition, and that she had documented proof from the New Jersey records that all of the children had lied to her on multiple occasions.

95. Boreland interviewed impartial witnesses during her investigation. Boreland spoke with the full-time nanny Broders, the part-time baby sitter Hardy who reported the incident, and the principals and teachers of both XM and AM. None of them stated there were any past signs of abuse in the family or that any of the children were afraid of Mitchell. The witnesses' statements supported Litvinenko's denial that Mitchell abused the children. Boreland knew or should have known that the boys were not telling the truth when they said that they were terrified of their father. All of the information in this statement is evidenced in the Dakota County discovery information and statements that were provided to Mitchell. By failing to disclose witness reports supporting Mitchell, Boreland intentionally hid exculpatory evidence from the court to harm Mitchell.

96. Boreland fabricated evidence in her amended petition by stating that Mitchell's stepson ML needed protection also. ML's mother Litvinenko and ML told Boreland that Mitchell had never harmed them and that they did not fear that they would be harmed in the future. Neither ML nor Litvinenko sought protection from DCSS. ML and Litvinenko repeatedly told Boreland that they wanted to continue to reside in the family home with Mitchell. All of the information in this statement is evidenced in the Dakota County discovery information and statements that were provided to Mitchell. By failing to disclose ML's and Litvinenko's denials of abuse, Boreland intentionally hid exculpatory evidence from court to harm Mitchell.

97. Minn. Stat. §260.012 required Boreland to show in the amended petition, for each of Mitchell's children, what "reasonable efforts" county social services "made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time." But she did not.

98. As of February 26, 2014, the date that Boreland prepared and submitted a deficient CHIPS Amended Petition to the court that included fabricated evidence, lies, and

misrepresentations for the removal of BM, XM, and AM from the family home, Boreland had already received as of February 18, 2014 the New Jersey police reports, which demonstrated that the allegations of long-term abuse were false. Even knowing that the allegations against Mitchell were false, Boreland signed the amended petition on February 26, 2014 and had it notarized by Kristine Ellingson. Scott told Mitchell and his then wife on the morning of February 20, 2014 that Scott had also reviewed the New Jersey police reports. Scott then signed the amended petition on February 26, 2014 and made a sworn certification that said “I approve this Petition as to form and have found reasonable grounds to support the Petition.” Scott was acting in the capacity of a “witness” at that time on February 26, 2014. Even though she admitted having read the New Jersey police reports, Scott certified that the amended petition’s allegations were true and gave rise to probable cause for the removal of BM, XM, and AM from the family home. Boreland and Scott knew that the amended petition was deficient and that it omitted information and contained fabricated evidence, lies, and misrepresentations because Boreland and Scott were involved in the original investigation, reviewed the New Jersey police reports on February 18, 2014, and obtained and used manufactured and fabricated evidence on February 26, 2014 in the amended petition to further the conspiracy as discussed above. (Exhibit 008).

E. The Uniform Child Custody Jurisdiction Act (UCCJEA) and the Mitchell Children.

99. Minnesota’s version of the UCCJEA, Minn. Stat. §518D.01 *et seq.*, required Boreland to inform the court of the New Jersey court proceedings in her first pleading or affidavit, Minn. Stat. §518D.209(a), (a)(2), but Boreland did not do this.

100. Furthermore, Boreland and the other defendants had a continuing obligation to inform the court of the New Jersey court proceedings, Minn. Stat. §518D.209(d), but deliberately failed to do so for 14 months.

101. Boreland flouted Minn. Stat. §518D.01 *et seq.* to further the conspiracy described

above.

102. The court read and considered the deficient amended petition with fabricated evidence and false statements by Boreland. Because of Boreland's and Scott's deceptive omissions, the court was not able to fully examine, hear, or consider exculpatory evidence and other material matters pertinent to the court's jurisdiction and the case's disposition.

103. The Minnesota district court judge granted the amended petition based upon fabricated evidence, false statements, and deceptive omissions.

104. By granting the petition, the court usurped subject-matter jurisdiction from New Jersey, even if the judge did not realize this.

105. The judge granted the petition even though 13 requirements of ch. 518D had not been satisfied. *See* Minn. Stat. §§518D.209, 518D.202, 518D.204, 518D.207, 518D.303, 518D.304, 518D.313.

106. Mitchell's children, AM, 6 years old, and XM, 10 years old, were illegally removed from the custody, care, and comfort of their father and placed under the legal responsibility of DCSS for protective care and placement in foster care.

107. The court ordered Mitchell to participate in a psychological evaluation, parenting evaluations, anger assessments, and AAPI2 Testing, and to follow all recommendations of the evaluations including the reunification plan, but the reunification plan was never presented to Mitchell. Mitchell followed the court orders by participating in, and completing, all parenting evaluations, tests, and DCSS requests.

108. The court made the following additional orders: "Case Plan - The case plan proposed by Dakota County Social Services shall be filed with the court and served upon the parties, or their counsel if represented, by March 20, 2014. The Court will review the case plan and will approve it or modify it. The court may modify the proposed case plan if the parent files

with the court and serves upon the parties a notice of intent to comply with the case plan together with a request for modification because the proposed plan is inadequate.”

109. The County never supplied Mitchell with a case plan, safety plan, or reunification plan to review or sign, even though the County was ordered or required under Minnesota state law to do so.

110. On March 5, 2014, a transition meeting took place between Boreland and P’Simer. P’Simer was the newly assigned case worker for Mitchell’s case. Boreland told P’Simer that the request for the New Jersey custody court order was still outstanding. Mitchell told Boreland and P’Simer that he would email it to them immediately and did so. The request for the New Jersey custody order was fulfilled within 7 days of Boreland’s initial request. (Exhibit 009).

111. On March 5, 2014, Mitchell emailed P’Simer the following additional documents in an effort to inform him about the amended petition’s deficiencies, the missing police report information, and other information that the defendants had not disclosed to the court:

- NJ Complaint 7-12-09 All Threats from Campos to Mitchell;
- Violation Restraining Order Prosecution for Campos;
- NJ Complaint for Shop Lifting 1217 W 2008 for Campos;
- NJ DFYUS Social Services Negative Outcome of Abuse Allegation by “Campos 03-31-2009”;
- Judgement of Conviction Campos;
- Cert of Dwight D. Mitchell in opposition to motion for visitation 05-27-10; and
- UMDMJ Psychiatric evaluation BM.

The receipt of this information is confirmed by the Dakota County discovery information provided by Scott, but this exculpatory information is hidden in the records and was never submitted to the court by P'Simer, Boreland, Yunker, or Stang (Exhibit 009).

112. On March 5, 2014, Scott received the New Jersey Middlesex County custody court order on the same day as Boreland and P'Simer. The court order, along with the date received, is indexed in the discovery information Scott sent to Mitchell. Boreland, P'Simer, and Scott now had the official New Jersey court order and were aware that Minnesota courts lacked subject matter jurisdiction, but Boreland and P'Simer intentionally withheld the New Jersey court order from the Minnesota court in order to mislead the Minnesota court and illegally retain custody of Mitchell's children.

113. Boreland and P'Simer intentionally failed to correct the deficient and misleading amended petition and failed to correct the misrepresentations to the court after the receipt of the New Jersey custody court order on March 5, 2014, even though Minn. Stat. §518D.209 required Boreland and P'Simer to disclose the New Jersey order to the Minnesota court. Boreland's and P'Simer's intentional failure to disclose the order was part of the conspiracy described above.

114. Scott intentionally failed to inform the Minnesota court of the New Jersey court order on March 5, 2014 or at any later date, and Scott intentionally failed to require Boreland to correct her amended petition. These failures were part of the conspiracy described above.

115. Then, Boreland severed the initial petition which had brought accusations against both Mitchell and Litvinenko. Boreland brought a separate petition against Litvinenko, and the petition against Litvinenko was assigned a separate case number.

116. Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Scott were in contact with the Middlesex County New Jersey courts pursuant to UCCJEA proceedings on subject matter jurisdiction for Litvinenko's case, as required by law, but intentionally failed to initiate a

UCCJEA proceeding as required on Mitchell's case when the cases were being prosecuted simultaneously. Official DCSS documentation disclosed in discovery and email exchanges between Mitchell, Boreland, Akolly, and P'Simer corroborate these allegations. (Exhibit 010).

117. New Jersey had its UCCJEA Hearing on continuing exclusive jurisdiction to determine if New Jersey would retain subject matter jurisdiction over the Litvinenko custody court order or relinquish jurisdiction to Minnesota.

118. Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, Scott, and the County were aware that the Minnesota court had suspended proceedings in the Litvinenko case pending the outcome of the New Jersey UCCJEA hearing. DCSS documentation disclosed in discovery and email exchanges between Mitchell, Boreland, Akolly, and P'Simer corroborate this accusation. (Exhibit 011).

119. On March 6, 2014, Mitchell and Litvinenko complained to Mitchell's new case worker, P'Simer, that Boreland's demand that Mitchell and Litvinenko live separately was illegal and a violation of the couple's civil rights.

120. Mitchell and Litvinenko told P'Simer that Boreland told them that she would remove ML from the family home if the couple did not separate. Litvinenko told P'Simer that Litvinenko and ML were perfectly safe in the family home and that Mitchell had never physically abused either of them.

121. P'Simer told Mitchell and Litvinenko that he had spoken to Boreland regarding this matter and fully supported Boreland's demand and that Mitchell and Litvinenko must separate immediately.

122. Mitchell asked P'Simer for the grounds of the forced separation, but P'Simer refused to provide one.

123. P'Simer told Mitchell and Litvinenko that Boreland told him that if Mitchell and

Litvinenko did not separate immediately, then their plan was to remove ML from the family home and place him in foster care.

124. On or about March 6, 2014, Mitchell and Litvinenko complained to Litvinenko's new case worker, Akolly, that Boreland's and P'Simer's demand that Mitchell and Litvinenko live separately was illegal and a violation of the couple's civil rights. Mitchell and Litvinenko told Akolly that Boreland told them that she would remove ML from the family home if the couple did not separate.

125. Litvinenko told Akolly that Litvinenko and ML were perfectly safe in the family home and that Mitchell had never physically abused either of them.

126. Akolly told Mitchell and Litvinenko that Akolly had spoken to Boreland regarding this matter and that Akolly fully supported Boreland's demand and that Mitchell and Litvinenko must separate immediately.

127. Mitchell asked Akolly for the grounds of the forced separation, but Akolly refused to provide one.

128. Akolly told Mitchell and Litvinenko that Boreland told Akolly that if Mitchell and Litvinenko did not separate immediately, then their plan was to remove ML from the family home and place him in foster care. DCSS documentation disclosed in discovery and email exchanges between Mitchell, Boreland, Akolly, and P'Simer corroborate this allegation.

129. Because Mitchell and Litvinenko were terrified that Boreland would make good on her threat to take ML, Mitchell and Litvinenko complied with Boreland's demand. Litvinenko and ML moved out of the family home. Mitchell and Litvinenko provided written confirmation that they were living separately to Boreland, P'Simer, and Akolly. Official DCSS documentation disclosed in discovery and email exchanges between Mitchell, Boreland, Akolly, and P'Simer corroborate these allegations. (Exhibit 012).

130. Mitchell and Litvinenko were forced to live separately from March 2014 until they returned to New Jersey in July 2014.

131. Boreland conspired with Akolly and P'Simer to intentionally and illegally force Mitchell and Litvinenko to live separately for 5 months. Boreland, P'Simer, and Akolly never filed a petition to the court for a separation order for Mitchell and Litvinenko.

132. Also, Boreland, P'Simer, and Akolly never disclosed to the court that they ordered Mitchell and Litvinenko to separate. Boreland, P'Simer, and Akolly were required to obtain a court order before telling Mitchell and Litvinenko to separate and failed to do so.

133. Boreland, P'Simer, and Akolly intentionally and with malice interfered in Mitchell's and Litvinenko's marital relationship. Boreland, P'Simer, and Akolly were never legally authorized to force Mitchell and Litvinenko to separate without first obtaining a court order.

134. On March 6, 2014, Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Scott received Litvinenko's New Jersey UCCJEA determination and court order from New Jersey. DCSS documentation disclosed in discovery and email exchanges between Mitchell, Boreland, Akolly, and P'Simer corroborate this allegation. (Exhibit 011).

135. Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Scott were involved in Mitchell's and Litvinenko's cases at the same time and were aware that both individuals were married and had New Jersey custody court orders from prior relationships.

136. Furthermore, Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Scott were aware that, under Minn. Stat. §§518D.202 and 518D.204, UCCJEA requirements had to be met to determine continuing exclusive jurisdiction in Minnesota.

137. Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, or Scott should have contacted a New Jersey court regarding Mitchell's case to have a New Jersey hearing to

determine subject matter jurisdiction.

138. Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Scott were required to disclose to the Dakota County District Court and the New Jersey court the need for a hearing to determine subject-matter jurisdiction, but they never did, not even when they were in contact with these courts.

139. Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Scott all received the New Jersey UCCJEA determination for Litvinenko and were aware that Minnesota courts did not have subject matter jurisdiction over Mitchell's case, but Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Scott intentionally failed to mention this to the Minnesota court and illegally usurped subject matter jurisdiction from New Jersey and kept the case in Minnesota. Under Minn. Stat. §§518D.209, 518D.202, and 518D.204 regarding UCCJEA requirements to determine "continuing exclusive jurisdiction," the Minnesota court was required to contact the New Jersey court and request a hearing before proceeding further with the Mitchell's case.

140. Based upon Litvinenko's UCCJEA hearing, Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Scott were aware that a court must possess subject matter jurisdiction to hear any portion of a family law dispute; otherwise, it is powerless to proceed. Furthermore, Scott as a senior prosecutor, knew or should have known that in the context of a family law disputes, Minnesota courts have consistently stated that a judgment entered by a court without subject matter jurisdiction is void.

141. Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Coyne were all aware that their actions were illegal because there were several discussions between Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, Coyne, and Litvinenko about Mitchell being a New Jersey resident and about Minnesota usurping subject matter jurisdiction.

142. Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Coyne did the above-

mentioned acts in furtherance of the conspiracy between them to send the boys to their mother in Spain in violation of a New Jersey custody court order. Boreland, P'Simer, Akolly, Stang, Yunker, Kopesky, and Coyne conspired and illegally usurped jurisdiction over Mitchell's case. When BM, XM, and AM were returned to the custody of the Mitchell, BM, XM, and AM told Mitchell there were numerous meetings and conference calls between Boreland, P'Simer, Scott, Sirr and Derby relating to the conspiracy to send BM, XM, and AM to Spain to live with their mother.

143. Litvinenko told Mitchell that Boreland contacted Litvinenko's former partner Suren Ter-Saakov by phone and email for the purpose of destroying Litvinenko's and Mitchell's marriage. Litvinenko told Mitchell that Boreland was definitely aware of the New Jersey UCCJEA hearing from its commencement.

144. Litvinenko told Mitchell that Boreland conspired with Ter-Saakov to destroy Litvinenko's and Mitchell's marriage. Litvinenko spoke with Ter-Saakov who provided Litvinenko copies of the emails that Boreland and Ter-Saakov exchanged.

145. After Litvinenko read the email correspondence between Boreland and Ter-Saakov, Litvinenko provided the email correspondence to Mitchell. Mitchell and Litvinenko became aware that Boreland advised Ter-Saakov that Boreland wanted to break up Mitchell's and Litvinenko's marriage.

146. To that end, Boreland told Ter-Saakov to ask a New Jersey court for custody of ML and to ask that a New Jersey court retain continuing exclusive jurisdiction regarding ML.

147. Ter-Saakov told Litvinenko that in order for Litvinenko to retain custody of her son ML, Litvinenko would be required to resign from her assignment in Minnesota and return to New Jersey with her son ML. Boreland told Ter-Saakov that this would completely fracture the Mitchell family unit.

148. Ter-Saakov did as Boreland instructed and filed for custody of ML in New Jersey and requested the return of ML to New Jersey. Before being instructed by Boreland to bring this New Jersey custody motion, Ter-Saakov had not filed for, or requested custody of, ML in the 5 years since he was born, nor had Ter-Saakov visited his son in the two years before filing this custody motion.

149. Coyne, Kopesky, Stang, Yunker, Boreland, P'Simer, Sirr, and Derby were all aware that the Mitchell case fell under UCCJEA guidelines and that the UCCJEA eliminates the term "best interests" test to distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children. The "best interests" language in the jurisdictional sections was removed so that courts could not address the merits of the custody dispute in the jurisdictional determination or otherwise provide that "best interests" considerations should override jurisdictional determinations or provide any additional jurisdictional basis. Yet each of these defendants repeatedly used this illegal rationale of "best interests" of the child for the retention of the children in every recommendation that was made to the court despite the Minnesota court's lack of subject-matter jurisdiction. (Exhibit 013).

150. On March 7, 2014, BM had his first meeting with Boreland. After BM was returned to Mitchell's custody, BM told Mitchell about the first time that BM met Boreland. Their first meeting occurred at the Minneapolis–St. Paul airport while BM was visiting Minneapolis for spring break. BM told Mitchell that before BM and Boreland left the airport, Boreland told BM that Boreland had been in contact with Campos that week, that Boreland had a ticket for BM to go to Spain, and that Boreland had agreed to send BM to Spain immediately upon his arrival in Minnesota. Boreland further told BM that he would not be able to visit his brothers, and that Boreland would tell her colleagues that BM did not arrive as scheduled. BM told Boreland that he wanted to see his brothers XM and AM. Boreland told BM that if he

wanted to see his brothers, then he would need to wait to return to his mother because the process of transferring custody takes time. BM told Boreland that he would wait to go to Spain with his brothers because he wanted to see and speak to them first. Boreland also told BM that she and Scott had devised and implemented a conspiracy to secure custody of BM, XM, and AM and to keep the children and the child-welfare and custody proceedings in Minnesota rather than New Jersey, and that when BM returned to Minnesota in the summer he would be living with XM and AM. Boreland told BM that P'Simer, Sirr, and Swank were also participating in the conspiracy to send BM and XM to Spain to live with Campos. Boreland told BM that P'Simer, Sirr, and Swank would be contacting him, and that he should do and say whatever they told him to further the conspiracy.

151. On March 7, 2014, P'Simer visited Mitchell at a rented house in Apple Valley, Minnesota. Mitchell provided P'Simer with the names and contact information of all the live-in nannies he had employed since his divorce. Mitchell also provided P'Simer with copies of XM's journal, which documents events of his life and shows in XM's own handwriting that he was happy and healthy; it contained no references to spankings or child abuse through December 2013. Mitchell also provided P'Simer with a copy of the New Jersey court-ordered psychiatric evaluation of Campos, which states that Mitchell was not a child abuser and that there was never any violence in 11 years of marriage. Finally, Mitchell provided P'Simer with a copy of the New Jersey Social Services psychiatric evaluation of BM, which states that Mitchell was not a child abuser and that BM lied at his mother's request so that he could live with her.

152. Mitchell told P'Simer about Boreland's racially discriminatory comments, Boreland's menace that she would be "doing everything in her power to see that Mitchell's children are never returned to him," and Boreland's discriminatory practices. Mitchell asked to lodge a formal complaint against Boreland and provided all the details to P'Simer. P'Simer told

Mitchell he would investigate the allegations and get back to him. Mitchell and P'Simer also discussed the New Jersey UCCJEA determination hearing for Litvinenko. P'Simer knew that Mitchell is from New Jersey, had a New Jersey state custody court order, and that this case also falls within New Jersey's and Minnesota's codifications of the UCCJEA. (Exhibit 009).

153. On March 07, 2014, Mitchell and Litvinenko spoke with Supervisor Yunker regarding Boreland's "Letter of Findings," in which she concluded that her investigation had shown that both Mitchell and Litvinenko had abused Mitchell's children. Mitchell told Yunker that the reports were false. Mitchell also told Yunker about Boreland's promise to do everything in her power to see that Mitchell's children were never returned to him, her racist comments, and her discriminatory practices. Mitchell told Yunker that Mitchell is from New Jersey and has a New Jersey court child custody order. Mitchell and Yunker discussed Litvinenko's New Jersey UCCJEA determination. Yunker was indifferent and told Mitchell and Litvinenko that she had thoroughly reviewed the case files and supported Boreland's actions. Yunker told Mitchell and Litvinenko that Yunker did not wish to see additional New Jersey documentation to prove that they were innocent of long-term abuse. Yunker told Mitchell and Litvinenko to speak with Kopesky, the Assistant Director, if they had further grievances concerning this matter, but ignored Boreland's actions, even though Yunker was Boreland's supervisor, was aware of what Boreland had done and said, and was asked to intercede by Mitchell.

154. On March 07, 2014, Mitchell and Litvinenko spoke with Supervisor Stang regarding Boreland's "Letter of Findings," in which she said that her investigation had shown that both Mitchell and Litvinenko had abused Mitchell's children. Mitchell told Stang that the reports were false. Mitchell also told Stang about Boreland's promise to do everything in her power to see that Mitchell's children are never returned to him, her racist comments, and her discriminatory practices. Mitchell told Stang that Mitchell was from New Jersey and had a New

Jersey court order. Boreland and Stang discussed Litvinenko's New Jersey UCCJEA determination. Stang was indifferent and told Mitchell and Litvinenko that she had thoroughly reviewed the case files and supported Boreland's actions. Stang told Mitchell and Litvinenko that Stang did not wish to see additional New Jersey documentation to prove that they were innocent of long-term abuse. Stang told Mitchell and Litvinenko to speak with Kopesky, the Assistant Director, if they had further grievances concerning this matter, but ignored Boreland's actions, even though Stang was Boreland's supervisor, was aware of what Boreland had done and said, and was asked to intercede by Mitchell.

155. On March 08, 2014, Mitchell and Litvinenko spoke with Assistant Director Kopesky regarding Boreland's "Letter of Findings," in which Boreland said that her investigation had shown that both Boreland and Litvinenko had abused Mitchell's children. Mitchell told Kopesky that the reports were false. Mitchell also told Kopesky about Boreland's promise to do everything in her power to see that Mitchell's children are never returned to him, her racist comments, and her discriminatory practices. Mitchell told Kopesky that he was from New Jersey and had a New Jersey court order. They discussed Litvinenko's New Jersey UCCJEA determination. Kopesky was indifferent, told Mitchell and Litvinenko that Kopesky had thoroughly reviewed the case files and supported Boreland's actions. Kopesky told Mitchell and Litvinenko that Kopesky did not wish to see additional New Jersey documentation to prove that they were innocent of long-term abuse. Kopesky told Mitchell to write a letter to Director Coyne if they had further grievances concerning this matter. Kopesky ignored Boreland's actions, even though Kopesky was Boreland's supervisor, was aware of what Boreland had done and said, and was asked to intercede by Mitchell.

156. On March 08, 2014, Mitchell and Litvinenko sent Coyne letters requesting the reconsideration of Boreland's Letters of Findings. In the letters, Mitchell and Litvinenko told

Coyne that the reports were false and requested that DCSS wait until after the court proceedings were finalized to render a decision. On March 13, 2014, Mitchell and Litvinenko spoke with Director Coyne regarding Boreland's Letters of Findings, in which Boreland said that her investigation showed that both Mitchell and Litvinenko had abused Mitchell's children. Mitchell told Coyne that the reports were false. Mitchell also told Coyne about Boreland's promise to do everything in her power to see that Mitchell's children are never returned to him, her racist comments, and her discriminatory practices. Mitchell told Coyne that he was from New Jersey, and had a New Jersey court custody order. They discussed Litvinenko's New Jersey UCCJEA determination. Coyne appeared indifferent, but told Mitchell that he would take the allegations and statements under advisement, review the case thoroughly, speak with his subordinates, and respond in writing. Coyne told Mitchell and Litvinenko that he did not wish to see additional New Jersey documentation to prove that they were innocent of long-term abuse. Coyne responded to Mitchell and Litvinenko in writing. Coyne supported Boreland's actions, ignored Boreland's racist comments, and ignored Minnesota's UCCJEA requirements. Coyne told Mitchell and Litvinenko to write to the state if they had further grievances concerning this matter. Coyne did nothing further even though Mitchell and Litvinenko asked him to intercede. (Exhibit 014).

157. On March 13, 2014, BM had his first meeting with P'Simer and Sirr. After BM was returned to Mitchell's custody, BM told Mitchell about the first time BM met with Boreland, P'Simer, and Sirr together. BM related the following statements made between Boreland, P'Simer, and Sirr while he was in the meeting with the three of them at Dakota County Social Services before a formal interview was conducted. Boreland told BM that Boreland, Scott, Swank, P'Simer, and Sirr had come to an agreement on the best way for DCSS to retain custody of Mitchell's children since they were from New Jersey and not Minnesota. Boreland told BM

that she had hoped that the New Jersey police reports would show that Mitchell had a history of child abuse, but that, to her disappointment, they did not. Boreland told BM that Boreland, Scott, Swank, P'Simer, and Sirr were still going to send BM and XM to their mother in Spain.

Boreland told BM that Boreland, Scott, Swank, P'Simer, and Sirr had determined how they would retain custody of Mitchell's children in Minnesota, deny visitation, terminate Mitchell's parental rights and then transfer custody to the children's mother in Spain: none of them would tell the court that the Mitchell's family was returning to New Jersey and they would not discuss the New Jersey court custody order. Boreland told BM that Scott would make sure that the case remained in Minnesota. P'Simer and Sirr stated that they would support the scheme by omitting from their reports information about the family's connections to New Jersey and New Jersey proceedings, while recommending that the children remain in foster care in Minnesota. They would tell the court that BM and XM did not wish to visit or live with their father so that they would not have to attempt reunification, and that this would allow Minnesota to retain custody, terminate Mitchell's parental rights, and send BM and XM to Campos in Spain. Boreland, P'Simer, and Sirr told BM that Swank was going to request that no visitation be allowed from the court to further the scheme of keeping the children away from Mitchell. Sirr said that their area of concern was how to ensure that BM was returned to Minnesota from Virginia after Fork Union Military Academy (FUMA) ended school in May for summer break instead of going somewhere else out of state. P'Simer said that it would be best if BM returned to Minnesota just before school ended. Boreland, P'Simer, and Sirr agreed and told BM to get expelled from school before it ended. This emergency situation would ensure that he would to be sent back to Minnesota immediately where DCSS would again have full custody of BM. Once he returned, he would live with his brothers until the conspirators could arrange to send them all to Campos in Spain. During the meeting described in this paragraph, Boreland, P'Simer, and Sirr agreed to

work together to illegally and wrongfully usurp custody from Mitchell, usurp jurisdiction from New Jersey, terminate Mitchell's parental rights, and transfer custody to Campos in Spain. (Exhibit 015).

158. On March 19, 2014, the Court Report submitted by P'Simer failed to mention that Mitchell provided him with a copy of the New Jersey court order twice for filing with the court and that Mitchell told P'Simer that P'Simer was violating the New Jersey court order. The second time Mitchell sent P'Simer the New Jersey court order was March 18, 2014, the day before the March 19, 2014 hearing. This was the second time that a Dakota County Social Services employee intentionally failed to mention or provide the New Jersey court custody order in their official Court Report as required by law. After thoroughly reviewing the discovery information, P'Simer intentionally failed to mention or present the New Jersey court custody order in any Court Report or court appearance from March 2014–March 2015, nor did P'Simer present it to the court for filing as required by law, even though Mitchell had called the order to P'Simer's attention. It was not until P'Simer requested termination of parental rights fourteen months later, that P'Simer finally presented the New Jersey court custody order to the Dakota County District Court for the first time. (Exhibit 016).

159. P'Simer intentionally concealed the exculpatory evidence that Mitchell provided to him for over one year. The exculpatory evidence included the evidence that Mitchell provided regarding Boreland's deficient petition, omissions, fabrications, and lies. P'Simer concealed the exculpatory evidence to further the conspiracy to illegally send the children to their mother in Spain.

160. On March 20, 2014, Boreland inserted a fabricated interview with former nanny Tanisha Wellard based on the CHIPS Chronology Summary report that was later disclosed to Mitchell in discovery. Although Boreland was officially transitioned off the case 15 days prior,

she was still actively working behind the scenes to fulfill her threat to Mitchell that she would do everything that she could to make sure his children were never returned to him. Up to this point, Boreland had created only long, totally biased, one-sided, negative case reports against Mitchell that were not supported by facts. Boreland's withholding of exculpatory evidence and her false statements and illegal actions, show that Boreland was conducting a discriminatory and biased investigation and had spun a web of misrepresentations to cast Mitchell in a negative light. (Exhibit 017).

161. At the March 26, 2014, court hearing, Mitchell received a court report from DCSS. P'Simer again failed to disclose the New Jersey court order and failed to correct the original petition as required by law. As Boreland, Scott, Swank, P'Simer, and Sirr agreed, the visitation update falsely stated that the two oldest children, BM and XM, did not wish to have visitation. The report did not mention a reunification plan for BM or XM even though a plan was required by law and a court order. (Exhibit 018).

162. Supervisor Stang co-signed P'Simer's Court Report and approved its recommendation, even though both knew the report was inaccurate and deficient and contained false information and fabricated evidence.

163. The court approved all of P'Simer's recommendations and requests, which were based on false information and fabricated evidence, and which were deficient in that they failed to discuss a reunification plan, the necessity and appropriateness of continued out-of-home placement, progress made toward alleviating or mitigating the need for placement, and the projected date of return to the home. P'Simer intentionally omitted these items although they were required by Minnesota law and a court order.

164. On March 26, 2014, XM had his first meeting with Boreland and Derby. After XM was returned to Mitchell's custody, XM told Mitchell about the first time that XM met with

Boreland and Derby together. XM related the following statements made between Boreland and Derby while he was in the meeting with the two of them at the Dakota County Courthouse.

Boreland told Derby that Boreland, Scott, Swank, P'Simer, and Sirr had come to an agreement on the best way for DCSS to retain custody of the Mitchell's children since they were from New Jersey and not Minnesota. Boreland told Derby that Boreland had hoped that the New Jersey police reports would show that Mitchell had a history of child abuse, but that they did not.

Boreland told Derby that Boreland, Scott, Swank, P'Simer, and Sirr still wanted to send XM to live with his mother in Spain. Boreland told Derby that Boreland, Scott, Swank, P'Simer, and Sirr were able to determine how they would retain custody of Mitchell's children in Minnesota, deny visitation, terminate Mitchell's parental rights, and then transfer custody to Campos in Spain. Boreland told Derby that none of them would tell the court that Mitchell's family was returning to New Jersey and the conspirators would not discuss the New Jersey court custody order. Boreland asked Derby to help them keep the case in Minnesota by not disclosing that the family was returning to New Jersey and by not disclosing the New Jersey court custody order. Boreland also asked Derby to tell the court that XM did not wish to visit or live with his father and wanted instead to live with his mother in Spain. Derby agreed to Boreland's requests. During the meeting described in this paragraph, Boreland and Derby came to an agreement to work together to illegally and wrongfully usurp custody from Mitchell, usurp jurisdiction from New Jersey, terminate Mitchell's parental rights, and transfer custody to Campos in Spain.

165. On April 3, 2014, Mitchell had a hearing on the criminal charge of malicious punishment of a child. Immediately upon commencement of the hearing, and without motion notice to Mitchell's counsel, Swank moved the court for a domestic-abuse no-contact order (DANCO) in furtherance of the conspiracy to deny Mitchell visitation. What made this motion especially odious was that just three weeks prior, in the same court, the judge reinstated

visitation privileges for Mitchell in front of Swank and explained his rationale for allowing visitation to recommence. Swank requested that the denial of visitation—something that Swank had asked for in the initial complaint and been granted—continue. Swank requested the DANCO to further the conspiracy to illegally send BM and XM to their mother in Spain. (Exhibit 019).

166. At the hearing, the judge became concerned about the apparent lack of notice and asked Swank if proper notice had been given. When told that notice had not been given, the judge denied the motion.

167. On May 3, 2014, the County completed a DCSS CRU intake form documenting that Campos complained of emotional abuse of XM because the foster parents took away his iPod as a punishment. Campos told the foster parents that their punishment was emotional abuse and much worse than Mitchell's physical abuse. Campos got very angry and demanded that the foster family give XM back his iPod. Campos threatened the foster family, stating "May Allah protect your children. An eye for an eye." Campos told the foster parents that she would call DCSS the next day to request that XM be returned to Mitchell. The DCSS Intake Specialist told the foster family to file a police report for terroristic threats. Further, Campos told DCSS to return the children to Mitchell the next day. (Exhibit 020).

168. Now, even if the New Jersey police reports were not enough, DCSS was aware that Campos had lied to them and the Apple Valley police. Mitchell was not the abusive monster that Campos had previously depicted. If he had been, then Campos would not have threatened to ask that XM be returned to Mitchell.

169. DCSS was also aware that Campos's terroristic threats to the foster family might have resulted from the same violent tendencies manifest in the New Jersey police reports that the defendants had suppressed. The CRU Intake Report was sent to Tom Bergstrom, Carol Duerr, P'Simer, Stang, and Yunker. The defendants continued to illegally detain the children and

attempt to transfer them to their mentally unstable mother in Spain despite these facts. (Exhibit 021). The defendants also allowed XM to continue his Skype conversations with his mother and continued to deny Mitchell visitation. None of the defendants ever disclosed to the court Campos's complaint about the foster family or her threats.

170. In March, 2014 Boreland, P'Simer, and Sirr agreed with each other that they would arrange for BM to return to Minnesota from Fork Union Military Academy (FUMA) in Virginia, the school that BM was attending. While BM was in Virginia, DCSS had no authority over him and Minnesota courts had no jurisdiction over him. The conspirators were concerned that unless BM returned to Minnesota before the school year ended, BM might not return to Minnesota at all and that the conspirators would thus not be able to send him to Spain or even to keep him apart from Mitchell. Boreland, P'Simer, or Sirr then later contacted BM and encouraged him to get himself expelled from FUMA so that it would be hard for Mitchell to keep BM from returning to Minnesota.

171. On May 7, 2014, acting on this instruction from Boreland, P'Simer, or Sirr, BM purposefully violated FUMA's code of conduct in to order to get himself expelled, and he was, in fact, expelled.

172. BM then called Sirr to come and retrieve him from school and return him to Minnesota. Sirr then contacted P'Simer, who in turn contacted Mitchell to retrieve BM from school and return him to Minnesota. P'Simer told Mitchell that BM had been expelled from FUMA, and that BM must leave the school grounds that day. Mitchell told P'Simer to go and retrieve BM since DCSS had custody of the children. P'Simer then told Mitchell that although Dakota County purchased an airline ticket to send BM back to school after spring break, DCSS did not have the authority to retrieve BM from Virginia. Mitchell would need to bring BM back to Minnesota for the custody order to take effect. (Exhibit 022).

173. Mitchell called FUMA and was told by the school commandant that FUMA had called DCSS because FUMA had received a court order and documentation from P'Simer that said that DCSS had custody over BM and that BM would return to Minnesota at the end of the semester.

174. Mitchell then arranged for transporters, Chuck and Rhonda Mapes from Safe Passage Adolescent Services, to transport BM from FUMA to the Pinnacle Schools in Huntsville, Alabama. The Pinnacle Schools is a private academy that runs an alternative high school. BM began attending the high school when he arrived and he stayed there until September, 2014.

175. When BM was returned to Mitchell's custody, he told Mitchell that he was shocked when he learned that DCSS would not pick him up to return him to Minnesota and that he would instead be taken to a different school outside Minnesota. Boreland, P'Simer, or Sirr had told him that he would be returned to Minnesota after he was expelled. BM repeatedly told the transporters to call P'Simer and Sirr, and BM provided the transporters with P'Simer's and Sirr's phone numbers. BM told the transporters that that he was supposed to return to Minnesota and that taking him to another school was illegal and a mistake. (Exhibit 023).

176. Mitchell sustained the following monetary damages from BM's expulsion from FUMA: \$30,000 in lost tuition and \$5,065 in transport costs. The Pinnacle School tuition from May 2014–September 9, 2014 cost \$44,475. Mitchell called over 30 schools and none would accept BM because of his expulsion from FUMA.

177. Diamond Ranch Academy agreed to accept BM with the expulsion, but charged tuition of \$74,200 per year, far more than Mitchell was paying for BM to attend FUMA. Mitchell paid for BM to attend Diamond Ranch from when BM left the Pinnacle Schools until BM graduated from high school.

178. The damages for this one incident alone was \$167,940 after subtracting \$60,000 of what Mitchell would have paid had BM graduated from FUMA.

179. On May 13, 2014, DCSS dismissed the Litvinenko child-protection case. Mitchell and Litvinenko call Boreland, P'Simer, and Akolly and asked them to allow Mitchell and Litvinenko to live together again. Boreland, P'Simer, and Akolly refused and stated that the couple must stay separated until all the DCSS proceedings were completed or DCSS would immediately take custody of ML and put ML in a foster home. Boreland, P'Simer, and Akolly were not authorized to make this demand and they knew from police reports and other sources that there were no allegations of abuse by Litvinenko or ML and no probable cause to expect any abuse of Litvinenko or ML. (Exhibit 024).

180. On May 27, 2014, Mitchell returned to criminal court in Dakota County for his trial on malicious punishment of a child. At the commencement of the hearing, Judge Richard G. Spicer asked if there were any pretrial motions. Swank, without prior notice to Mitchell's attorney, stated that she wished to amend the charges to add a count of felony "Terroristic Threats," even though she already knew Mitchell was not a child abuser.

181. Judge Spicer immediately called both attorneys to the bench. After some discussion, Judge Spicer told Swank that she should withdraw the motion and that he would be offering Mitchell an *Alford* Plea. Mitchell thanked Judge Spicer for the offer, but requested to proceed to trial because Mitchell would not plead guilty to a crime that he was innocent of. Also, Mitchell needed the trial to be completed so that his children could be returned to him. Judge Spicer called for a break in the proceeding and requested that Mitchell speak with his attorneys before refusing the offer. Swank was visibly upset.

182. Judge Spicer's suggestion to Mitchell was a gift to Mitchell. The *Alford* Plea would allow the case to be completed with Mitchell maintaining his innocence. Even if Mitchell

won the case and was found innocent by the jury, Mitchell would still have a felony arrest on his record and this case would possibly drag on for a year with Mitchell having to remain in Minnesota until the case was finished. Meanwhile, Mitchell's children would remain in foster care. The civil proceedings regarding custody of Mitchell's children would not end until the criminal case's conclusion. If Mitchell were convicted, he would face a maximum penalty of 5 years in prison and a \$10,000 fine. Also, Mitchell would have a felony conviction record, lose the ability to vote, lose the ability to possess firearms, lose the ability to live in some apartments, lose the ability to obtain or hold certain professional licenses, and become disqualified from certain jobs. Additionally, a conviction would mean that Mitchell could not volunteer at things like helping at school functions, coaching youth sports, or working with boy scouts. Also, Judge Spicer was obligated to accept Swank's motions if Mitchell continued to trial. Swank was attempting to use the judicial system to make sure Mitchell did not get his children back.

183. Because of the overwhelming pressure that Swank applied to Mitchell in furtherance of the conspiracy to deny him custody, Mitchell accepted the judge's proposed plea agreement and entered an *Alford* plea in response to the charge of malicious punishment of a child.

184. Upon the hearing's recommencement, Judge Spicer said that he was glad that Mitchell had reconsidered and decided to accept his offer. Judge Spicer then convicted Mitchell of a misdemeanor and imposed a \$100 fine and an \$80 court cost. The criminal proceedings that delayed the conclusion of the civil proceedings was thus completed. (Exhibit 025).

185. On June 1, 2014, as part of BM's counseling, The Pinnacle School recommended that BM start writing letters to the family as part of his reunification plan. BM commenced writing letters to Mitchell every 3 to 5 days, recanting all of his lies about Mitchell. Mitchell supplied all of the letters to Boreland, P'Simer, SIRR, Yunker, and Kopesky and asked for

reconsideration and dismissal of the case. All of these defendants refused. When BM was returned to Mitchell's custody, BM told Mitchell that his mother requested help from Boreland to keep the children in Minnesota and to transfer the custody of the children to her in Spain.

(Exhibit 026).

186. On June 14, 2014, Dr. Michael Ferrarese completed a five-week Parent/Psychological Evaluation of Mitchell for DCSS. Dr. Ferrarese recommended that the children be returned to Mitchell, but DCSS continued to illegally detain Mitchell's children.

(Exhibit 027).

187. On June 27, 2014, Kim Surve, the boys' assigned child therapist, advised P'Simer that she was cancelling the counseling services that P'Simer had scheduled because of XM's and BM's failure to attend. XM and BM were scheduled to attend twice a week, but attended only once in 4 months. (Exhibit 028).

188. On July 10, 2014, a court-ordered settlement-conference occurred. Even though five months had elapsed, P'Simer, Yunker, Stang, and Sirr had still not returned the children. After not working for several months, Mitchell could no longer afford to remain in Minnesota incurring dual expenses with no income. P'Simer, Yunker, Stang, and Sirr were aware that Mitchell and part of his family were planning to return to New Jersey on July 21, 2014.

189. Mitchell attended the court-ordered settlement conference in yet another attempt to get his children back. P'Simer, Yunker, Stang, and Sirr finally agreed to return AM and BM to Mitchell's custody, but only on two conditions: that Mitchell agree that XM was a CHIPS who would not be returned to Mitchell and that Mitchell agree to a court order prohibiting him from using any corporal punishment. (Exhibit 029).

190. Because P'Simer, Yunker, Stang, and Sirr had thus far always been successful in obtaining whatever court orders they wanted in the child-custody proceedings, Mitchell felt that

he was in a no-win situation. He could take two of his children and go home to New Jersey, abandoning his third child, or he could take none of them and continue to fight, when the youngest, AM, who was just 6 years old, had been begging to come home since this whole incident started. Mitchell had told P'Simer, Yunker, Stang, and Sirr many times that there was nothing wrong with his family and that his children did not need therapy. P'Simer told Mitchell that the therapy's purpose was not addressing any psychological harm that Mitchell had directly caused the children, but rather was for the trauma of being separated from their family. P'Simer further explained that CPS provides therapy to all children who are separated from their parents, guardians, or families. P'Simer told the court about these same statements from Mitchell in his court report of April 23, 2014.

191. Out of fear, duress, and heartbreak especially for his 6-year-old AM's emotional torture, Mitchell said that he agreed that XM needed "Protection or Services" as P'Simer, Yunker, Stang, and Sirr demanded. Likewise, in order to get two of his children back, Mitchell agreed to a court order prohibiting him from using any corporal punishment. Mitchell reasoned this would gain the family some stability and normalcy in their lives. The court dismissed the petitions with respect to BM and AM, but Mitchell was emotionally shattered because of his continued separation from XM.

192. After five months, the court again ordered P'Simer, Yunker, Stang, and Sirr to create a reunification plan. The order read as follows: "A reunification plan shall be developed between XM, XM's therapist, Mr. Mitchell, Dakota County Social Services and XM's Guardian ad Litem. There needs to be a clear plan with Mr. Mitchell about his plans for therapy and reunification with XM." P'Simer and Sirr disobeyed this court order and Minnesota statutory law, and refused to create the formal reunification plan. (Exhibit 029).

193. On July 21, 2014, Mitchell left Minnesota with part of his family and returned to

their home in New Jersey. Mitchell spent three additional months in Minnesota, unemployed and fighting to get his children back. Mitchell's lawyers continued to fight for custody of XM with mounting expenses.

194. On August 14, 2014, Kim Surve, XM's therapist, provided her assessment. She expressed approval for the reunification of XM and Mitchell: "In my last session with [XM], on August 8th, he stated he would like to go live with his dad and younger brother. I am not trained as a parenting evaluator, but based on my meeting with Dwight Mitchell, I found him to be a competent parent who is capable of parenting [XM]." (Exhibit 030). Despite this recommendation and XM's request, DCSS continues to detain XM.

195. On August 16, 2014, after XM was returned to Mitchell's custody, XM told Mitchell about the time that he ran away from the foster home. XM told Mitchell that he was unhappy, wanted to return home, and had repeatedly asked P'Simer, Sirr, and Derby if he could return home to New Jersey. P'Simer, Sirr, and Derby refused to allow XM to return home to New Jersey and told XM that they were sending him to Spain to live with his mother and that his father had abandoned him in Minnesota and no longer wanted him. XM was unhappy about the refusal of his request to return home. He then ran away from the foster family's home. DCSS documents obtained in discovery corroborate this account. (Exhibit 031).

196. After XM was returned to Mitchell's custody, XM told Mitchell about the time that XM met with P'Simer and Sirr shortly after he had run away from the foster home. XM related the following statements made between P'Simer and Sirr while XM was in the meeting with them. P'Simer again told XM that although he wanted to return home, he could not because his father no longer wanted him and had abandoned him in Minnesota. Sirr said that DCSS was going to send XM to Spain to live with his mother. Sirr further stated that if XM agreed to not run away again, then he would stay with a rich family and be allowed to do as he wished until

they were able to send him to his mother in Spain. P'Simer and Sirr dishonestly told XM that his father had abandoned him in Minnesota and the abandonment was the reason that he would not be able to go home or have any contact with Mitchell. During the meeting described in this paragraph, P'Simer and Sirr came to a further agreement to continue to illegally and wrongfully usurp custody from Mitchell, usurp jurisdiction from New Jersey, terminate Mitchell's parental rights, and transfer custody of XM to Campos in Spain. (Exhibit 031).

197. After XM was returned to Mitchell's custody, XM told Mitchell about the time that XM met with Derby shortly after XM had run away from the foster home. Derby again told XM, that although he wanted to return home, he could not because his father no longer wanted him and had abandoned him in Minnesota. Derby said that she had spoken to both P'Simer and Sirr and that they had agreed to send XM to Spain to live with his mother. Derby further stated that if XM agreed to not run away again, then XM would stay with a rich family and be allowed to do as he wished until they were able to send him to his mother in Spain. Derby dishonestly told XM that his father had abandoned him in Minnesota and that the abandonment was the reason that he could not go home or have any contact with Mitchell. During the meeting described in this paragraph, Derby came to a further agreement with P'Simer and Sirr to continue to illegally and wrongfully usurp custody from Mitchell, usurp jurisdiction from New Jersey, terminate Mitchell's parental rights, and transfer custody of XM to Campos in Spain.

198. At an August 20, 2014 court hearing, Six Month Placement Review Findings, DCSS requested an extension for the permanent placement determination for the child based on the parent's compliance with the case plan and Sirr agreed. The statements by P'Simer and Sirr were a misrepresentation. Once again, they were misrepresenting or otherwise suppressing meaningful information from the court. P'Simer and the guardian ad litem Sirr had not complied with the July 10, 2014 court order to create a case plan and reunification plan. P'Simer and Sirr

also lied and omitted information from their court reports:

a) In furtherance of the conspiracy, P'Simer and Sirr failed to report a marked emotional deterioration of XM after AM returned home to New Jersey. They also failed to report that XM had asked to go home to New Jersey also, or that P'Simer and Sirr refused to allow XM to go home to New Jersey, or that XM ran away from his foster family because he was upset that he could not return home to Mitchell.

b) P'Simer fabricated evidence by stating, "XM had been refusing to see his father during the time that he was living in Minnesota. Mr. Mitchell now resides in New Jersey and has indicated to this worker that he is not willing to return to Minnesota for visitation or therapy sessions with his son." P'Simer knew Mitchell was working and living in Europe and that Mitchell had requested the visitation take place over video conferencing or Skype, something that DCSS had allowed for Campos. Mitchell has the email correspondence to corroborate this.

c) Sirr fabricated evidence by stating; "XM remained unwilling to work towards reunification with his father." Upon XM's return to Mitchell, XM told Mitchell that XM never expressed an unwillingness to be reunited with Mitchell. On the contrary, while XM was in foster care, he repeatedly said that he wanted to live with his father again. But Sirr told XM that he would not be allowed to see Mitchell.

d) P'Simer and Sirr intentionally failed to tell the court that XM's therapist, Kim Suave, told P'Simer that XM told her that XM wanted to go home to New Jersey on August 11, 2014.

e) P'Simer and Sirr intentionally failed to tell the court that on August 14, 2014 XM's

therapist, Kim Suave, submitted her formal evaluation in which she wrote the following; “although not trained as a parenting evaluator, but based upon her meeting with Dwight Mitchell, I found him to be a competent parent who is capable of parenting XM.” (See Exhibit 030)

f) Dakota County District Court Judge MacDonald provided DCSS with the authority to place XM on a trial home visit with Mitchell in New Jersey, but P’Simer refused to allow the visit to take place.

g) P’Simer and Sirr lied to the court by failing to disclose that Mitchell requested a written guarantee from P’Simer and Sirr that XM would attend all the reunification therapy sessions before making travel arrangements, which included purchasing airline tickets to Minnesota from New Jersey. P’Simer and Sirr both refused to make that guarantee. Instead, P’Simer and Sirr lied to the court and stated that Mitchell refused to come to Minnesota for visitation or therapy sessions. Furthermore, Mitchell has email correspondence with XM’s therapist where Mitchell provided his contact information for use for the therapy sessions after Mitchell’s return to New Jersey. Mitchell attended one session where XM for which XM did not appear and waited for other sessions, but P’Simer refused to bring XM to therapy because, according to P’Simer, XM said he didn’t need therapy and refused to go. P’Simer and Sirr refused to mandate that XM attend the sessions or to personally bring him to the therapy sessions. Yet both P’Simer and Sirr lied to the court by saying that Mitchell was unwilling to work on the reunification effort, when it is P’Simer and Sirr who intentionally blocked all visitation and reunification.

h) P’Simer and Sirr misled the court by failing to disclose that Mitchell requested a trial

under Minn. Stat. § 260C.503, subd. 3(a). CHIPS matters come to trial by day 63, but not later than day 93. Mitchell had requested a trial on multiple occasions.

(Exhibit 032).

199. After XM was returned to Mitchell's custody, XM told Mitchell about the time that XM met with Derby at the court house before the August 20, 2014 hearing. XM related the following. XM told Derby to tell the court that XM wanted to go home to live with his father. Derby replied that she would tell the court that XM wanted to go home to live with his father, but, at the hearing, Derby failed to do so. She also refused to let XM speak in court because she wanted to keep XM from telling the judge that XM wanted to be reunited with Mitchell. After the hearing, Derby again told XM again that his father had abandoned him in Minnesota. She also told XM that she had met with P'Simer, Sirr, and Scott just before the hearing and that they had agreed not to tell the court that XM wanted to go home to live with his father because P'Simer, Sirr, Scott, and Derby had discussed the matter again and agreed that it was in XM's "best interest" to be sent to his mother in Spain. During the meeting described in this paragraph, P'Simer, Sirr, Scott, and Derby came to further agreement to work together to illegally and wrongfully usurp custody from Mitchell, usurp jurisdiction from New Jersey, terminate Mitchell's parental rights, and transfer custody to Campos in Spain.

200. At a November 19, 2014 court hearing, P'Simer continued to fabricate evidence, make false statements, dissemble, and lie to the court in his reports in furtherance of the conspiracy to send XM to his mother in Spain. The report states that P'Simer moved XM to a new foster home and that XM was happy, healthy, and doing fine. According to the report, XM no longer wished to be reunited with Mitchell, but instead wished to live with his mother in Spain. P'Simer again failed to mention that XM had repeatedly told P'Simer, Sirr, Derby, and his psychologist that XM wished to be reunited with Mitchell. As mentioned above, P'Simer,

Sirr, and Derby intentionally withheld this information from the court. P'Simer's deceptive omission further evidences the conspiracy between P'Simer, Sirr, and Derby to illegally send XM to his mother in Spain. (Exhibit 033).

201. The court report from November 19, 2014 further evidences the conspiracy between P'Simer, Sirr, and Yunker to send XM to Spain to live with his mother because P'Simer's and Sirr's reports were worded identically with fabricated evidence and false statements from the August 20, 2014 court report. P'Simer's reports were approved by DCSS supervisor Yunker although they both knew that the reports contained fabricated evidence, false statements, and deceptive omissions. P'Simer requested superfluous extensions of time in the permanency proceedings in furtherance of their conspiracy to deliver XM to Campos. DCSS met none of the Minnesota statutory timelines for permanency proceedings.

202. Between November 2014 and April 2015, every court report by P'Simer and Sirr contained lies to effect the continued illegal retention of XM. P'Simer was well past the defined permanency placement deadline. P'Simer maliciously made Mitchell wait in limbo for an additional 7 months for P'Simer to file a termination-of-parental-rights petition with the court when P'Simer knew at the end of 6 months that Mitchell wanted and requested the matter be decided at trial. During this time period, Mitchell was not allowed any contact or visitation with XM.

203. P'Simer knew that federal funding for XM's foster care would expire on the 15-month anniversary of XM's placement in foster care unless Mitchell's parental rights to XM were terminated. So, after 15 months of proceedings against Mitchell and his family, the County commenced the illegal process of trying to use the Minnesota court system to terminate Mitchell's parental rights, and the County continued to seek the transfer of custody of XM to Campos. The county did this to maintain federal funding.

204. On February 15, 2015, Mitchell emailed P'Simer and Sirr to complain that a written and signed reunification or case plan has never been provided to Mitchell or the Court. P'Simer and Sirr lied to the court by saying that the reunification effort had failed. Neither P'Simer nor Sirr created a reunification plan despite having been ordered by the court to create one, and neither worked towards reunification. In fact, they were both part of a conspiracy to preven the reunification of XM and Mitchell. (Exhibit 035).

205. On April 21, 2015, P'Simer filed an Affidavit in Support of Termination of Mitchell's Parental Rights and Transfer of Custody to ex-wife Campos. In the Affidavit, P'Simer finally informed the court of the New Jersey court custody order and finally informed the court that Mitchell was a resident of New Jersey.

206. In P'Simer's haste to finalize the conspiracy to send XM to Spain, P'Simer lied to the court by stating "The father has had no recent contact with the child. The father has not had an ongoing relationship with the child. Affiant has had no contact with or from the father." Mitchell had been corresponding with P'Simer and Sirr continually in an effort to regain custody of XM. DCSS case notes and email exchanges from February 17, 2015 to the affidavit's date evidence Mitchell's efforts to obtain visitation rights and to participate in joint therapy in an effort to regain custody of XM. (Exhibit 036).

207. Campos had physically threatened the foster family earlier in the year for taking away XM's iPod for failing to do his chores. The DCSS employee who took the call advised the family to call the police and press charges for terrorist threats. Additionally, Campos told DCSS to return XM to Mitchell. This information was documented and shared with DCSS social workers and the supervisory defendants. (Exhibits 020 and 021).

208. DCSS psychiatrist Dr. Ferraresce stated the following about Campos: "her credibility is in question due to her own possible mental health issue, her criminal history, and

her frustration due to the Court in New Jersey having given Mr. Mitchell full legal and physical custody of the children.” (Exhibit 027).

209. The only condition that Campos had to complete before the petition for her to obtain custody was filed with the court was a psychological evaluation by a licensed psychologist named Robert Lopno II (Lopno). (Exhibit 037).

210. In Skype interviews with Lopno, Campos told Lopno that Mitchell had physically abused her and their children.

211. Lopno repeated some or all of the allegations of abuse in his report.

212. P’Simer, Sirr, and Yunker knew that the allegations of abuse in the report were false because they had read the New Jersey official documents in which Campos admitted to the court that there was no abuse for the 11 years that Mitchell and Campos were married.

213. Lopno’s report was not especially favorable to Campos. Lopno had concerns about Campos’s mental health, though Lopno attributed some of Campos’s problems to Mitchell’s alleged abuse—Lopno appears to have believed Campos’s allegations, or at least some of them. Although Lopno did not oppose Campos gaining custody of XM, he did not recommend that she gain custody either. Lopno wrote in his report that, if Campos and XM were reunited, then “[s]ix to twelve months of virtual monitoring of [Campos’s] possible reunification with her son is recommended to ensure her healthy adjustment to the renewed responsibilities of parenthood after a six year hiatus. The additional stresses of raising her child away from his native culture and, considering his history of trauma and maltreatment, could prove challenging.”

214. Campos and XM had not met face to face in more than 6 years.

215. Campos lived in a Catalan-speaking region of Spain. XM spoke neither Spanish nor Catalan.

216. In attempting to obtain the transfer of custody of XM to Campos, the County

violated mandatory MN-DHS requirements. The County failed to conduct a home visit, failed to conduct a home study, failed to prepare a reunification plan, and failed to contact a Spanish social-services agency. The County also failed to make any arrangement to monitor XM and Campos in Spain, despite Lopno's recommendation and despite Campos's history of serious criminality. Finally, the County had no back-up plan if, as was pretty likely, Campos proved to be an unsuitable parent. The County did not, for example, have a plan for retrieving XM from Spain or for alerting Spanish authorities to problems or the risk of problems.

217. DCSS refused to release XM back to Mitchell even though he had legal custody under a New Jersey court order, was a fit parent, had completed all DCSS requirements, including required psychological tests, and had already had his other two children, one of whom was younger than XM, returned to him. Furthermore, a DCSS certified psychologist had recommended that XM be returned to Mitchell. But P'Simer and Yunker were willing to give Campos custody of the 10 year-old XM even though DCSS requirements for the transfer of custody had not been met, even though XM did not speak Spanish or Catalan, even though Campos was a convicted felon, and even though DCSS would not be able to protect XM once he was in Spain.

218. On June 4, 2015, Mitchell's marriage to Litvinenko was dissolved due to the emotional distress caused by Boreland, Akolly, P'Simer, Yunker, Stang, Kopesky, and Coyne. Due to the forced separation of Mitchell from Litvinenko for five months and the continued detention of XM, Mitchell suffered Post Traumatic Stress Syndrome (PTSD). Mitchell experienced the trauma of having his children removed, the loss of familial association and paternal-child bond, opportunity to bond with stepmother Litvinenko and stepbrother, lost enjoyment of life, anger at being wrongly accused, fear, powerlessness, confusion, anxiety, a severe major depressive disorder, emotional distress, sleeplessness, headaches, fatigue, malaise,

irritability, inability to focus, a generalized fear of authority figures, loss of appetite, loss of weight and resulting work disability.

219. Because of this, Mitchell was unable to work from May 2015 to December 2015 when his son was finally returned. The legally unauthorized DCSS proceedings put a tremendous strain on Mitchell and his marriage, causing the marriage to Litvinenko to fail. Before the actions of Boreland, Akolly, P'Simer, Yunker, Stang, Kopesky, and Coyne, the couple had a very happy normal marriage. The intentional, illegal and maliciously-enforced separation of Mitchell and his wife and the ongoing conduct of Boreland, Akolly, P'Simer, Yunker, Stang, Kopesky, and Coyne changed Mitchell's life forever.

220. On July 22, 2015, Mitchell again sent P'Simer a written demand for visitation with XM. XM and Mitchell finally commenced weekly Skype sessions while waiting for the trial date. (See Exhibit 040).

221. On July 23, 2015, in a supervised therapy session at the Twin Cities Play Therapy Center, Mitchell was finally allowed to speak to his son XM after 15 months of separation. The very first question that XM asked was why Mitchell had not been in contact with him. Mitchell responded that he had tried repeatedly to visit and speak with him since the initial separation and was always denied access by DCSS. This is confirmed by supervisor Shawn Bulgatz's session summary report to P'Simer dated September 3, 2015. P'Simer and Sirr had been lying to the court and Mitchell by telling them that XM did not want to have contact with Mitchell. (Exhibit 041). And P'Simer and Sirr had been lying to XM by telling him that Mitchell did not want to have contact with XM.

222. After XM was returned to Mitchell's custody, XM told Mitchell about numerous meetings that XM had with Boreland, P'Simer, Sirr, and Derby over the twenty-two-month period that XM was separated from Mitchell. XM told Mitchell that XM had wanted to be

returned to Mitchell, but Boreland, P'Simer, Sirr, and Derby told XM that he was going to live with his mother in Spain because his father wanted nothing more to do with him. Boreland, P'Simer, Sirr, and Derby told XM that he could not speak with his father or visit him.

223. Boreland, P'Simer, Yunker, Stang, Sirr, and Derby caused XM to be continually detained without cause, or consent after his brothers were returned to Mitchell's custody, and knowingly and intentionally continued to detain XM from Mitchell's care, custody, control, and love without just cause, by fabricating evidence, concealing evidence, misleading the court, giving false testimony, failing to divulge exculpatory evidence, committing perjury, and exercising undue influence over XM while he was a minor.

224. On August 21, 2015, Assistant County Attorney Jenny Nystrom (Nystrom) was assigned to take over the case from Scott who has retired.

225. On September 17, 2015, Nystrom requested a special hearing to address the Middlesex County New Jersey custody court order. Nystrom told the court that there was no indication that New Jersey had relinquished subject-matter jurisdiction, that a hearing had never taken place to determine if Minnesota had subject-matter jurisdiction, and that New Jersey had not even been contacted as required under the UCCJEA. On September 21, 2015 the court scheduled an in-court motion hearing for November 2, 2015. (Exhibit 042).

226. On October 19, 2015, Mitchell filed his Notice of Motions to Dismiss for Lack of Subject Matter Jurisdiction, Notice to Vacate Orders, and Notice to Enforce Foreign Child Custody Registration. (Exhibit 043).

227. The County filed and served its Memorandum of Law on Jurisdiction on October 23, 2015. Mitchell filed and served his Memorandum of Law *pro se* on October 30, 2015. Judge MacDonald presided at the November 2, 2015 court hearing on lack of subject-matter jurisdiction. Instead of ruling on subject-matter jurisdiction at the hearing, Judge MacDonald

scheduled another hearing date for December 4, 2015.

228. At the December 4, 2015 court hearing on subject-matter jurisdiction, the Dakota County Attorney's Office and DCSS abruptly dropped the CHIPS petition against Mitchell and immediately returned Mitchell's son XM to him in the court room after illegally retaining him for 22 months. Furthermore, the Dakota County Assistant Attorney requested that the case be dismissed. Judge MacDonald dismissed the case and declined to rule on subject-matter jurisdiction motion due to mootness. Mitchell requested twice unsuccessfully that Judge MacDonald rule on subject-matter jurisdiction and vacate all prior decisions in the case, but the judge refused. (Exhibit 044).

229. On December 5, 2015, Mitchell and his son XM returned to their home in New Jersey.

230. Mitchell has incurred significant expenses, including, approximately \$167,940 for the FUMA incident, approximately \$16,840 to pay for the care of his children during their time in foster care, approximately \$9,600 for lodging, approximately \$5,000 for airfare, approximately \$692 for car rental, approximately \$900 for food, and approximately \$63,172 for legal fees incurred to date related to the DCSS proceedings that were initiated and maintained based on false and misleading information.

231. The Commissioner of Minnesota's Department of Human Services has, among other duties, the duty to:

Administer and supervise all child welfare activities; promote the enforcement of laws protecting disabled, dependent, neglected and delinquent children, and children born to mothers who were not married to the children's fathers at the times of the conception nor at the births of the children; license and supervise child-caring and child-placing agencies and institutions; supervise the care of children in boarding and foster homes or in private institutions; and generally perform all functions relating to the field of child welfare now vested in the State Board of Control.

Minn. Stat. §256.01, subd. 2(c).

232. Local social services agencies, such as DCSS, must comply with state law and the Commissioner's rules. Minn. Stat. §393.07, subd. 1.

233. The Commissioner is a state agent possessing final rule-making authority, and the Commissioner is legally obligated to ensure enforcement of Minnesota laws relating to DHS, including Minn. Stat. ch. 518D. Minn. Stat. §§256.01, 393.01, 393.04, 393.07.

234. The MN-DHS Social Services Manual, training curriculum, PIP guideline, and update contain no reference to the UCCJEA or Minn. Stat. ch. 518D, even though ch. 518D was enacted in or about 1997.

235. The Commissioner has failed to properly implement ch. 518D.

236. The Commissioner has failed to train, update, and supervise MN-DHS staff, MN-DHS subordinates, county administrators, county offices, county office staff, and local social-services agencies on ch. 518D. Most importantly, the Commissioner has failed to train on the matters of child custody and constitutional violations.

237. These failures are a violation of the Commissioner's duties under Minn. Stat. § 256.01, subd. (2)(intro.), 2(c).

238. These failures constitute a policy or custom of the Commissioner and evidence the Commissioner's deliberate indifference to the rights of persons with whom Minnesota social-service agencies come into contact in situation in which ch. 518D is relevant.

239. These failures were the moving force behind DCSS's wrongful actions against Mitchell.

240. The Commissioner's actions or inactions violated Mitchell's Fourteenth Amendment rights and caused Mitchell irreparable harm.

241. The Commissioner's actions or inactions continue to pose a risk that other parents

will have their children taken or kept from them in violation of ch. 518D.

242. Mitchell filed a “Notice of Tort Claim” to all state and County agencies on February 27, 2016.

F. Dakota County Social Services Discovery.

243. In her DCSS case notes for February 18, 2014, Boreland wrote that Campos, had told her “that Dwight has full physical and legal custody. and all court documents are in Middlesex Courts NJ.” (Exhibit 045.) Boreland never reported this information to the court although legally required to do so under Minn. Stat. § 518D.209(a)(intro.), (a)(2), (d).

244. In her DCSS case notes for February 18, 2014, Boreland wrote “I contacted Piscataway Police and the Division of Child Protection and requested records.” (Exhibit 045).

245. On February 18, 2014, Boreland received Piscataway Police Department records. The date on the documents are 2/18/14. On this day Boreland had official documented evidence that all of the statements of past abuse that Campos, BM, and AM provided Boreland and the Apple Valley Police in the recorded Apple Valley Police interview process were false, and that Mitchell did not have a history of abuse. Furthermore, Boreland was aware that the 285 pages of Piscataway Police Department records document Campos’s illegal activities, violent tendencies, and kidnapping, and not wrongdoing by Mitchell. (Exhibit 046).

246. On February 20, 2014, Mitchell received service of the CHIPS petition, a copy of which is attached as Exhibit 007. Boreland requested and received a First Appearance date of February 26, 2014—10 days after the illegal removal of the children without court order or warrant.

247. On February 26, 2014, Boreland filed an amended CHIPS petition, a copy of which is attached as Exhibit 008. Scott signed the amended petition as a witness. The amended petition contained falsehoods and omitted exculpatory information—things that Boreland and

Scott were in a position to know from the official Piscataway Police reports that Boreland and Scott had received 8 days earlier.

248. On March 5, 2014, Mitchell sent P'Simer an email to which was attached a copy of Mitchell's New Jersey court custody order and other documents as listed in the email's list of attachments. These documents contained exculpatory information. A copy of this email together with Mitchell's New Jersey court custody order is attached as Exhibit 009.

249. On March 6, 2014, Mitchell emailed New Jersey Court Order to Boreland, P'Simer, and Yunker with demonstrative evidence regarding UCCJEA hearing between Minnesota and New Jersey with requirements regarding matters of custody in the Mitchell's wife Litvinenko case in which Boreland, P'Simer, Yunker, and Scott were participants. Based upon the Outlook email read return receipt, Boreland read the email on 3/6/2014 at 3:11 PM, P'Simer read the email on 3/6/2014 at 3:09 PM, and Yunker read the email on 3/6/2014 at 4:18 PM. This evidence documented shows Boreland, P'Simer, Yunker, and Scott were aware of the Minnesota and New Jersey UCCJEA requirements and Subject Matter Jurisdiction on March 6, 2014, or 8 days after the commencement of the proceedings against Mitchell and his wife Litvinenko. (Exhibit 047).

250. On March 11, 2014, in addition to speaking on the telephone, Mitchell and P'Simer exchanged emails with further discussions on visitation, the New Jersey Court Order and the official New Jersey documents provided. The exculpatory evidence provided to P'Simer on March 6, 2014 and further discussed on March 11, 2014 is missing from the 603 pages of discovery information that was sent to Mitchell from Dakota County. But the documents were received by P'Simer, because P'Simer eventually presented the New Jersey Custody Court Order to the Minnesota Court on July 15, 2015. (Exhibit 048).

251. On March 18, 2014, in DCSS case notes, P'Simer fabricates that he met with

Mitchell to discuss case planning. Boreland, P'Simer, Yunker, and Stang are aware DCSS has a legal requirement to create a case plan. No case plan or visitation plan was created, reviewed with, or signed by Mitchell as required by Minn. Stat. § 260C.007, subd. 3 and MN-DHS Manual. The case plan was due 30 days after removal pursuant to Minn. Stat. § 260C.178, subd. 7. (Exhibit 049).

252. In an April 1, 2014 internal DCSS email, Yunker told P'Simer and Stang that Mitchell has full physical and legal custody from New Jersey. Neither P'Simer nor Stang ever reported this information to the court although they were legally required to do so by Minn. Stat. § 518D.209. A copy of this email in in the email chain that is attached as Exhibit 050.

253. On April 1, 2014, in DCSS case notes, Mitzi Mabry recorded that Yunker, P'Simer, and Stang began discussing Campos as a placement option in Spain. Mitchell was a fit parent, with full physical and legal custody from New Jersey and there are no rational reasons whatsoever that transfer of custody discussions should have been taking place 45-days into the case. (Exhibit 051).

254. On April 23, 2014, in DCSS case notes, P'Simer wrote: "voice mail from Dwight Mitchell who was calling to say that he does not agree that Xander and Aramis need therapy but understands that it is a social service recommendation but that he is unwilling to pay for it. Mr. Mitchell goes on to say in the voicemail that he has a very different opinion on this matter and that social services is coming in at the 9th hour and that he believes that it should wait until after court as more information will come to light." (Exhibit 052).

255. On April 30, 2014, in DCSS case notes, P'Simer wrote: "VM From Eva Mitchell who asked that this worker email her about today's court hearing. Worker has asked County Attorney Kathy Scott to email Ms. Mitchell as this worker has received email communications through Sue Borland that she is the only person from Dakota County that she trusts." This further

illustrates early in the case the bonds and conspiracy between Boreland and Campos. Boreland was intentionally controlling the flow of information from Campos to other members of DCSS in the initial stages of the investigation. (Exhibit 053).

256. In a May 2, 2014 email to P'Simer and Supervisor Stang, XM's foster date wrote that Campos said that she wished that XM were back with his dad. (Exhibit 054).

257. DCSS CRU intake notes for May 3, 2014 record that Supervisor Stang said that Campos "said that she was going to call child protection to have the kids taken from them [i.e., the foster family] and placed with their father." The notes also record that "[m]om [i.e., Campos] had also said to the foster dad 'May Allah protect you children. An eye for an eye.' Diane [i.e., Stang] spoke with Matt [i.e., the foster dad] and told him he should report the incident to his local police dept. They are also going to not allow mom contact for now." (Exhibit 055).

258. On May 7, 2015, in DCSS case notes, P'Simer wrote "TC w/Major John Justice from Fork Union Military School in Virginia and was informed that Bryce Mitchell was going to be dismissed from the school for theft. Major Justice informed this worker that Bryce had stolen a credit card number and was ordering Items from Amazon. Major Justice also noted that Bryce stole money from another student at the school. Major Justice wanted to know if the father whom he has spoken to has the authority to come to Virginia and pick Bryce up and take him to the new school that his father has arranged. This worker informed Major Justice that Dakota County only has protective supervision of Bryce as he was not involved in the incident that brought the case to the attention or social services. Major Justice also wanted clarification on if Bryce would not go with his father, Major Justice discussed that they may have no choice but to call children and family services in their county and potentially have Bryce placed in care. I asked if that is the case that he notify this worker immediately. He agreed to do so." (Exhibit 057).

259. On July 16, 2014, in a DCSS case note for June 20, 2014, P'Simer wrote: "This

worker met with Dwight to review case plan goals and court recommendations.” This was not true; there was no case plan and Mitchell was never provided with a case plan. (Exhibit 058).

260. In a DCSS case note for June 20, 2014, P’Simer wrote: “FTFC w/Dwight Mitchell at his residence in Apple Valley. Also present was Guardian ad Litem Jacob Trotzky-Sirr. . . . This worker encouraged Dwight to begin to mend the relationship with his son by at least acknowledging that he will not use physical or corporal punishment in the future and this may help Xander feel that his father is at least acknowledging the incident that occurred. Dwight said that he was willing to do this and that he would do this with Xander’s therapist if and when appropriate.” (Exhibit 059).

261. On June 30, 2014, P’Simer created or updated Child Welfare-Targeted Case Management (CW-TCM) for AM. The Plan Dates at the top are 02/16/2014 - 08/21/2014. In the document, P’Simer wrote the following:

- “[AM] will receive case management services as identified in the completion of a written case plan.”
- “Social Worker will develop and review a written case plan with [AM], his family, and identified service providers.”
- “Signatures are required from people responsible to achieve goals.”

There is a place for Mitchell’s signature, along with two questions: 1) “This plan was explained to me,” and 2) “I received a copy of this plan” along with boxes for the recipient to check “yes” or “no.” None of these tasks ever took place. The document is signed by P’Simer and Supervisor Yunker directly below Mitchell’s signature line, but Mitchell’s signature does not appear on the document. Mitchell never signed the document. In fact, the document was never presented to Mitchell until he received it in discovery. P’Simer and Yunker were fully aware of their job responsibilities and legal requirements as they related to AM and intentionally failed to present

the document to Mitchell to sign, despite being required to do so by Minn. Stat. §260C.212. (Exhibit 060).

262. On June 30, 2014, P'Simer created or updated Child Welfare-Targeted Case Management (CW-TCM) for XM. The Plan Dates at the top are 02/16/2014 - 08/21/2014. In the document, P'Simer wrote the following:

- “[XM] will receive case management services as identified in the completion of a written case plan.”
- “Social Worker will develop and review a written case plan with [XM], his family, and identified service providers.”
- “Signatures are required from people responsible to achieve goals.”

There is a place for Mitchell's signature, along with two questions: 1) “This plan was explained to me,” and 2) “I received a copy of this plan” along with boxes for the recipient to check “yes” or “no.” None of these tasks ever took place. The document is signed by P'Simer and Supervisor Yunker directly below Mitchell's signature line, but Mitchell's signature does not appear on the document. Mitchell never signed the document. In fact, the document was never presented to Mitchell until he received it in discovery. P'Simer and Yunker were fully aware of their job responsibilities and legal requirements as they related to XM and intentionally failed to present the document to Mitchell to sign, despite being required to do so by Minn. Stat. §260C.212. (Exhibit 061).

263. At a July 10, 2014 court hearing, P'Simer and Yunker made the following requests in their court report settlement recommendations:

1. Admission that Xander is in need of protection or services based upon the record of Mr. Mitchell's Alfred Plea in Dakota County Court File No. 19HA-CR-14-71 J on May 27, 2014.

2. Withhold adjudication of Xander as a child in need of protection or services for up to 90 days. If the CHIPS proceeding is still open in 90 days, adjudication will then be entered by the court.
3. Dismiss CHIPS petition with regard to Bryce because he does not live with his father and father now lives out of state; and dismiss CHIPS petition with regard to Aramis because custody (legal responsibility) is recommended returned to the father and the father now lives out of state, *contingent on modification of his sentencing order in the Criminal File to include no physical discipline of children.*

(Exhibit 062) (emphasis added). Furthermore, the judge ordered that a reunification plan be developed between XM, XM's therapist, Mitchell, DCSS, and XM's guardian ad litem. There needs to be a clear plan with Mr. Mitchell about his plans for therapy and reunification with XM. This task did not take place as ordered. (See Exhibit 062).

264. On July 10, 2014, P'Simer created or updated the Out of Home Placement Plan for AM. The plan start date at the top is 02/16/2014. In the document, P'Simer wrote the following under the heading "What does the parent need to accomplish or demonstrate for the child to return home?":

1. Dwight shall refrain from harming his children and will parent safely and effectively without the use of physical punishment.
2. Dwight shall develop a working safety plan in order to address any conflict that arises in the home with the help of the in-home provider to avoid any future occurrences of physical abuse from occurring in the home.
3. Dwight shall identify and address mental health concerns to provide increased stable parenting in the following ways:
 - a. Dwight shall arrange for, cooperate with, successfully follow and complete all recommendations of a psychological evaluation.

4. Dwight shall provide appropriate and stable parental care for Aramis in the following ways:
 - a. Dwight shall participate in parenting education services and be able to demonstrate skills presented to the provider and social worker to provide for the safety and stability of Aramis. Social Worker will make referral for parenting education services.
 - b. Cooperate with all parenting assessments provided by Social Worker and or Psychologist, successfully complete all recommendations.

There is a place for Mitchell's signature, along with two questions: 1) "This plan was explained to me," and 2) "I received a copy of this plan" along with boxes for the recipient to check "yes" or "no." None of these tasks ever took place. The document is signed by P'Simer and Supervisor Yunker directly below Mitchell's signature line, but Mitchell's signature does not appear on the document. Mitchell never signed the document. In fact, the document was never presented to Mitchell until he received it in discovery. P'Simer and Yunker were fully aware of their job responsibilities and legal requirements relating to AM and intentionally failed to present it to Mitchell to sign, even though they were required to by Minn. Stat. §260C.212. (Exhibit 063).

265. On July 10, 2014, P'Simer created or updated an Out of Home Placement Plan for XM. The plan start date given at the top is 02/16/2014. In the document, P'Simer wrote the following under the heading "What does the parent need to accomplish or demonstrate for the child to return home?":

1. Dwight shall refrain from harming his children and will parent safely and effectively without the use of physical punishment.
2. Dwight shall develop a working safety plan in order to address any conflict that arises in the home with the help of the in-home provider to avoid any future occurrences of physical abuse from occurring in the home.
3. Dwight shall identify and address mental health concerns to provide increased stable parenting in the following ways:
 - a. Dwight shall arrange for, cooperate with, successfully follow and. complete all recommendations of a psychological evaluation.
4. Dwight shall provide appropriate and stable parental care for Aramis in the following ways:

- a. Dwight shall participate in parenting education services and be able to demonstrate skills presented to the provider and social worker to provide for the safety and stability of Aramis. Social Worker will make referral for parenting education services.
- b. Cooperate with all parenting assessments provided by Social Worker and or Psychologist, successfully complete all recommendations.

Furthermore, P'Simer wrote, "The child has expressed an interest in being placed with his biological mother who currently resides in Spain. The mother at this time has no physical or legal authority of the child." This statement is fabricated evidence. (Exhibit 064).

266. As stated above, Boreland and P'Simer told XM that they were sending him to Spain to live with his biological mother. XM had no choice in the decision. The document further states "Required to sign the out-of-home placement plan: the parent or parents or guardian of the child, the child's guardian ad litem, a representative of the child's tribe, the responsible social service agency and if possible, the child. [Minnesota Statutes section 260C.212, subdivision 1 (b)]" Signatures are required from people responsible to achieve goals."

267. There is a place for Mitchell's signature, along with two questions: 1) "This plan was explained to me," and 2) "I received a copy of this plan" above boxes to check "Yes" or "No." None of these tasks ever took place. The document is signed by P'Simer and Supervisor Yunker directly below Mitchell's signature line, but Mitchell's signature does not appear on the document. Mitchell never signed the document. In fact, the document was never presented to Mitchell until he received it in discovery. P'Simer and Yunker were fully aware of their job responsibilities and legal requirements relating to XM and intentionally failed to present it to Mitchell to sign, even though they were required to by Minn. Stat. § 260C.212.

268. As explained above, P'Simer provided the same requirements for the reunification AM and XM returning to Mitchell and the family home. The requirements were met. AM was returned to Mitchell's custody, but XM was not returned and there is no rational reason for this

decision.

269. As explained above, although Mitchell met all DCSS requirements when AM was returned, DCSS failed to offer or explain to Mitchell what was required for the reunification of his family, or the role Mitchell was expected to play. P'Simer and Yunker subverted Minn. Stat. § 260C.212 and all Minnesota Department of Health and Services requirements which resulted in the illegally retention of Mitchells son XM.

270. On August 11, 2014, in DCSS case notes, P'Simer wrote that XM wanted to return home. P'Simer further wrote that he told XM that "this worker did not feel that it was in his best interest to go home until [XM] and his dad can have some supervised contact with each other." This statement and rationale is illegal under the UCCJEA, and as stated above based on Discovery evidence, P'Simer was fully aware of this, yet presented this argument to the court nevertheless. P'Simer further wrote "TC w/Kim Surve from Twin Cities Play Therapy Center. This worker spoke with Kim today and discussed that I had talked with Xander and that he is now saying that he wants to go home. Kim noted that the last time that she met with Xander he also expressed this." P'Simer further wrote "TC w/Dwight Mitchell, Dwight informed this worker that the county has restricted XM from having contact with him over the past 6 months." (Exhibit 065).

271. On August 18, 2014, in DCSS case notes, P'Simer wrote, "XM ran away from the foster home of Mr. & Mrs. Weber. XM chose to leave the Weber residence. XM was placed with Kevin and Jeanette Appold in Rosemount." (Exhibit 066).

272. On September 30, 2014, in DCSS case notes, P'Simer wrote, "This worker noted that I had email communication with his father Dwight Mitchell and noted that his father indicated that unless Xander was willing to take responsibility for his actions regarding the child protection matter that he and Xander have nothing to talk about. I informed Xander based on his

father's response that it appears that he would not be going back to New Jersey to live with his father." P'Simer was lying to both XM and Mitchell in an effort to alienate them against each other. (Exhibit 067).

273. On November 10, 2014, in DCSS case notes, P'Simer wrote "Case consultation with Supervisor L. Yunker. We discussed having XM's mother Eva Mitchell complete a psychological evaluation to determine her ability to be able to parent XM in Spain. We are attempting to make arrangements for this to occur via skype or some alternative form of communication. We also talked about contacting Eva Mitchell and asking that she contact the Spanish consulate to determine what Xander may need document wise to travel to Spain and what is the closest city for airport travel." P'Simer and Yunker continued discussing sending XM to Spain to live with his mother in violation of the New Jersey court custody order. (Exhibit 068).

274. On November 19, 2014, in a court report, Sirr fabricated evidence and wrote "Neither Xander, nor his father, have expressed any desire to engage in services."

275. The guardian ad litem's report's recommendations contradicted the UCCJEA and the New Jersey court custody order:

- 1) That DCSS maintain temporary legal custody of Xander for continued out of home placement.
- 2) That DCSS be relieved of any reunification efforts.
- 3) That DCSS investigate relative permanency options, including Xander's maternal relatives.

(Exhibit 069).

276. On November 19, 2014, in a court report, P'Simer wrote "Recommendation: That Eva Mitchell shall submit to and complete a psychological evaluation and parenting capacity assessment. Reason: To evaluate mental health status and Identify any potential concerns and

assess parenting capacity and Identify any concerns with parenting.” Again, supervisor Yunker reviewed and signed P’Simer’s report with fabricated evidence and lies and omitted exculpatory evidence. (Exhibit 069).

277. On November 19, 2014, the court wrote:

- a) That the Recommendations dated November 12, 2014 from the Court Report of the Social Worker Chris P’Simer, together with the November 17, 2014 Recommendations of Guardian ad Litem Jacob Trotzky-Sirr, are attached and incorporated by reference into this Court’s Order.
- b) That the Social Service Case Plan on file with the Court is adopted and compliance with it is made a part of this order.

As outlined above, no case plan was presented, reviewed or signed by Mitchell. Therefore, there was no valid case plan to present to the court. P’Simer and Sirr submitted to the court a fabricated case or reunification plan without exculpatory evidence and lied to the court to further their illegal acts attempting to send XM to Spain to live with his mother. (Exhibit 069).

278. On January 13, 2015, in a DCSS case note for December 15, 2014, P’Simer wrote, “This worker requested from the foster parent that she take XM to the WSC and attempt to obtain his passport if and when he does have the ability to move to Spain.” (Exhibit 070).

279. On February 2, 2015, in a DCSS case notes for January 20, 2015, P’Simer wrote, “Case Consultation with Robert Lopno regarding Eva (Mitchell) Campos Cabanas in regards to the psychological evaluation that Robert is conducting with Eva. Alos [sic] present was supervisor L. Yunker.” (Exhibit 071).

280. On February 15, 2015, Mitchell wrote P’Simer and Sirr that up to that date, neither P’Simer or Sirr had presented the court with a written signed reunification plan, which had been ordered by the court on numerous occasions. (Exhibit 072).

281. On February 15, 2015, Lopno presents psychological report to P’Simer, Yunker, and Sirr. Lopno does not recommend that Campos receive custody of XM. In fact, Lopno

recommends just the opposite, along with 6-12 months therapy before possibly providing positive recommendation. The report contained 573 words or four full paragraphs of fabricated information by Campos of longterm abuse that is inconsistent with the New Jersey official documents and the statements made by Campos in the original Apple Valley police report. Lopno specifically points this out in his report. (Exhibit 073).

282. In a DCSS case note for February 17, 2015, P'Simer wrote, "TC w/Stacia Driver. Dwight's Attorney. Stacia was asking this worker what may potentially happen if Dwight were to acknowledge that he wanted to work on reunification with his son Xander. I noted that the court previously had previously ceased reunification efforts with Dwight and that it may be too late for him. I did however acknowledge that I would be open to Dwight attempting to repair his relationship with his son and making some efforts toward that. We agreed to further discuss this in court tomorrow." (Exhibit 074).

283. On February 18, 2015, in P'Simer court report, despite Lopno's negative review and recommendation regarding Campos, (see Exhibit 073), P'Simer wrote the following: "this worker is recommending that Xander full physical and legal custody be transferred to Ms. Campos Cabanas in Spain." Yunker signed and approved the court report knowing it contained fabricated evidence, lies, and omissions of exculpatory information. (Exhibit 075).

284. During the period from February 19, 2015 to April 21, 2015, Mitchell continued to follow up on reunifying with XM with P'Simer and Sirr via email correspondence. (Exhibit 076).

285. On April 21, 2015, P'Simer created or updated an Out of Home Placement Plan for XM. The plan start date written at the top is 02/16/2015. In the document, P'Simer wrote the following: "Mitchell still resided Apple Valley when Mitchell hadn't resided in Minnesota for 7 months." P'Simer wrote under the heading "What does the parent need to accomplish or

demonstrate for the child to return home?":

1. Dwight shall refrain from harming his children and will parent safely and effectively without the use of physical punishment.
2. Dwight shall develop a working safety plan in order to address any conflict that arises in the home with the help of the in-home provider to avoid any future occurrences of physical abuse from occurring in the home. *Update: Dwight while working with a parent education provider and working on reunification with his son AM committed to no further physical punishment of his children. XM refused to participate.*
3. Dwight shall identify and address mental health concerns to provide increased stable parenting in the following ways:
 - a. Dwight shall arrange for, cooperate with, successfully follow and complete all recommendations of a psychological evaluation. *Update: Dwight completed a psychological evaluation and parenting capacity assessment. Mr. Mitchell moved to New Jersey and then failed to follow the plan that was agreed upon at the CHIPS hearing on July 10, 2014. The plan was clear that Mr. Mitchell would engage in a therapeutic process with his son.*
4. Dwight shall provide appropriate and stable parental care for XM in the following ways:
 - a. Dwight shall participate in parenting education services and be able to demonstrate skills presented to the provider and social worker to provide for the safety and stability of Aramis. Social Worker will make referral for parenting education services. *Update: Dwight made initial efforts with a parent education provider and XM refused to participate. Mr. Mitchell then moved to New Jersey and no further services have been in place to foster reunification with XM and Mr. Mitchell.*
 - b. Cooperate with all parenting assessments provided by Social Worker and or Psychologist, successfully complete all recommendations.

P'Simer further wrote, "The child has refused to participate in visitation with the father but has been given the opportunity to do so." (Exhibit 077).

286. These statements contain misrepresentations, lies, and omissions of exculpatory information. P'Simer and Sirr refused to allow XM, and prevented him from having, an opportunity for reunification with Mitchell. No reunification plan was ever created although XM

wanted to come home as stated by P'Simer in earlier statements. The document further states:

- a) Child has identified a person with whom the child would like to be placed and the agency is in the process of assessing that person.
- b) The child has expressed an interest in being placed with his biological mother who currently resides in Spain. The mother at this time has no physical or legal authority of the child.
- c) The child has consistently indicated that he does not want to live with his father based on the events that have placed him in foster care.

The document further states: "Required to sign the out-of-home placement plan: the parent or parents or guardian of the child, the child's guardian ad litem, a representative of the child's tribe, the responsible social service agency and if possible, the child. [Minnesota Statutes section 260C.212, subdivision 1 (b)] Signatures are required from people responsible to achieve goals."

287. There is a place for Mitchell's signature, along with two questions; 1) "This plan was explained to me," 2) "I received a copy of the plan." Beneath these questions are boxes to check "Yes" or "No." None of these tasks ever took place. The document is signed by P'Simer and Supervisor Yunker directly below Mitchell's signature line, but Mitchell never signed the document. In fact, Mitchell was never presented with the document until it was disclosed to him in discovery. P'Simer or Yunker wrote "out of state" on Mitchell's signature line. P'Simer and Yunker were fully aware of their job responsibilities and legal requirements relating to XM and intentionally failed to present the document to Mitchell to sign, even though they were required to by Minn. Stat. § 260C.212. (Exhibit 077).

288. On April 21, 2015, P'Simer signed the Affidavit for the Termination of Parental Rights against Mitchell. P'Simer falsely represented the following:

- "Affiant has had no contact with or from the father."
- "It appears that there is very little likelihood that XM would reunify with his father based on the communication that this worker has had with him. It seems clear that the

Mr. Mitchell is not willing to work on his relationship with his son.”

- “The father also has abandoned the child in the State of Minnesota and that he has never attempted to reconcile with his son.”
- “Mr. Mitchell made no effort to reunify with XM.”

As stated above, P’Simer had been in constant contact with Mitchell up to and including that very day. All of these statements are not true based upon previously submitted official DCSS documents. (Exhibit 078 and 086).

289. On April 21, 2015, against Lopno’s recommendation, P’Simer’s signed Affidavit for the Termination of Parental Rights against Mitchell contained the following: “Eva Campos Cabanas, the proposed custodian, is willing and able to assume the duty of care, custody, and control of the child in order to keep his placement with her. She is requesting that the Court grant her legal and physical custody of the child. She is fit to parent him. Ms. Campos Cabanas submitted to a psychological evaluation and this reporter determined her to be an appropriate placement for the child.”

290. P’Simer determined Campos to be an appropriate placement for the child, NOT the doctor. P’Simer intentionally misled the court in his Affidavit. (Exhibit 078).

291. On May 5, 2015, Dakota County filed for the Termination of Parental Rights of Mitchell. (Exhibit 079).

292. On October 15, 2015, Mitchell filed a motion to dismiss for lack of subject matter jurisdiction and memorandum of law. (Exhibit 080).

293. On October 15, 2015, Mitchell filed a motion to vacate all orders. (Exhibit 081).

294. On October 15, 2015, Mitchell filed a motion to enforce the New Jersey custody court order. (Exhibit 082).

295. On December 4, 2015, at a hearing on Subject Matter Jurisdiction, the motion to

vacate, and the motion to enforce the New Jersey custody court order, case number 19HA-JV-15-1014, filing *pro se* Mitchell submitted official Dakota County evidence that demonstrated conclusively to the court that State and County Defendants fabricated evidence, lied to the court, misled the court on multiple occasions, and intentionally usurped subject matter jurisdiction from New Jersey to illegally remove and retain custody of Mitchell's children. None of the State or County Defendants denied any of the submitted evidence as per the official court transcripts.

296. On December 4, 2015, at a hearing on subject matter jurisdiction, the motion to vacate, and motion to enforce the New Jersey custody court order, Assistant Dakota County Attorney Jenny Nystrom requests that the CHIPS petition be dismissed, the Termination of Custody Petition be dismissed, and that XM be immediately returned to Mitchell's custody and the court grants all of the requests. P'Simer, Sirr and Derby are in attendance. (Exhibit 083).

297. As discussed above, all of the attached court reports of P'Simer which were approved by supervisor Yunker or Stang, contained fabricated evidence and false statements and intentionally omitted exculpatory evidence as it relates to the visitation and reunification of XM with Mitchell in furtherance of the illegal conspiracy to terminate Mitchell's parental rights and send XM to live with his mother in Spain. (Exhibit 084).

298. As discussed above, all of the attached court reports of Sirr contained fabricated evidence, false statements and intentionally omitted exculpatory evidence as it relates to the visitation and reunification of XM with Mitchell in furtherance of the illegal conspiracy to terminate Mitchell's parental rights and send XM to live with his mother in Spain. (Exhibit 085).

G. The state and county defendants are implementing Minnesota's laws terminating parental rights, which are facially unconstitutional under well-established law; so, no immunities apply for the state and county defendants.

299. This lawsuit alleges Minnesota's laws terminating parental rights are unconstitutional.

300. The case law showing that Minnesota's laws are unconstitutional is well-established.

301. Since the state and county defendants are implementing Minnesota's laws terminating parental rights, which are facially unconstitutional under well-established law, no immunities apply for the state and county defendants.

H. The defendants are not entitled to any immunity because of the waiver of sovereign immunity in Minn. Stat. § 626.556, subdivision 5, for malicious and reckless reports.

302. The defendants are not entitled to any immunity because Minnesota has waived its sovereign immunity under Minn. Stat. § 626.556 for any persons engaged in false reporting under Minn. Stat. § 626.556 and, by incorporation, under Minn. Stat. § 260C.007:

Subd. 5. Malicious and reckless reports.

Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees.

“[F]alse reports under the provisions of this section” include false reports under Minn. Stat. §626.556, subd. 2 which has been incorporated in the CHIPS definition under Minn. Stat. §260C.007. So, any person under this subd. 5 would include the Defendants.

I. State defendants Piper, Surr, and Derby are not entitled to Eleventh Amendment immunity nor qualified immunity.

303. This lawsuit alleges unconstitutional state policies and unconstitutional actions taken by Piper as Commissioner of MN-DHS (and Jesson before her). She and her office are being sued for injunctive and prospective declaratory relief. Thus, as it relates to state officials Piper, Surr and Derby, they may be sued in their official capacity on those federal constitutional claims because the Plaintiffs seek injunctive or prospective relief based on legally cognizable claim.

304. Piper as the Commissioner of Minnesota's Department of Human Services has, among other duties, the duty to:

Administer and supervise all child welfare activities; promote the enforcement of laws protecting disabled, dependent, neglected and delinquent children, and children born to mothers who were not married to the children's fathers at the times of the conception nor at the births of the children; license and supervise child-caring and child-placing agencies and institutions; supervise the care of children in boarding and foster homes or in private institutions; and generally perform all functions relating to the field of child welfare now vested in the State Board of Control.

Minn. Stat. § 256.01, subd. 2(c).

305. Local social services agencies, such as DCSS, must comply with state law and the Commissioner's rules. Minn. Stat. § 393.07, subd. 1.

306. Minn. Stat. ch. 518D, adopting the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), was enacted in or about 1997. Plaintiffs have copies of the MN-DHS Social Services Manuals, training curriculum, PIP guidelines, or updates through 2015. There is no mention of UCCJEA in any of the documentation or training material as required by law. In fact, Plaintiffs couldn't find any training program or material on the topic of UCCJEA whatsoever.

307. Pursuant to all of the state statutes mentioned above, it was the Commissioner's direct responsibility to implement, train and supervise on the UCCJEA. The commissioner and her office have direct policy making authority and as such, by failing to implement this state statute, implement a training program, supervise the training progress/results, supervise and monitor the adherence of the policy with social services employees, the Commissioner and her office (including her predecessors) are directly responsible for Plaintiffs' constitutional injuries. Inaction or action constitute the same principle of deliberate and intentional choice. *Issaenko v. Univ. of Minn.*, 57 F. Supp. 3d 985, 1011–12 (D. Minn. 2014).

308. The Defendants' failure to train or supervise on the UCCJEA caused damages to the Mitchell and his children.

309. For example, near the end of the government's 22-month retention of XM, the government moved to terminate Mitchell's parental rights.

310. In response, Mitchell *pro se* filed motions challenging subject-matter jurisdiction of the Dakota County District Court based on his constitutionally-protected parental rights under the New Jersey child custody order pursuant to the UCCJEA—which is clearly-established law.

311. Dakota County District Court issued Findings and Order for a November 2, 2015 on the government's petition to terminate Mitchell's parental rights and Mitchell's petition that the court lacks subject matter jurisdiction because of the New Jersey state court child custody order granting physical and legal custody to Mitchell.

312. At the court hearing on November 2, 2015, Mitchell stated:

To be succinct I feel that it's been one attempt after another to keep my son away from me for this extended period of time. Now it seems that the county is trying to take the time period that they created by failed to properly investigate jurisdiction at the beginning and holding my son all this time, and now they're trying to bootstrap that same time period to create a basis for jurisdiction to try and take my son away from me. (Tr. at 6-7).

313. Due to the government officials' lack of training and supervision, the government did not withdraw its petition at the November 2, 2015 despite the clearly-established law on subject matter jurisdiction presented by Mitchell *pro se* to the government in Court.

314. Instead, the government extended its illegal retention of X.M without subject matter jurisdiction another 32 days until the December 4, 2015 hearing. This illegal extension included Thanksgiving of 2015.

315. At the December 4, 2015 hearing, Assistant Dakota County Attorney Jenny Nystrom stated:

At this point today, the county is asking to withdraw the Petition to transfer custody and are in support of returning custody to – of Xander to Dwight Mitchell, his father, and essentially reunifying the two and terminating jurisdiction in this matter. (Tr. 2-3).

316. With proper training and supervision, the County would have at least terminated the petition at the November 2, 2015 hearing instead of extending the illegal detention another 32 days separating XM from his father and brothers.

317. At a pleading level, Plaintiff has adequately established his claim, that Piper’s and her office’s failure to train or supervise over the course of seven years amounts to a showing of deliberate indifference to the rights of persons with whom the social workers come into contact with regarding UCCJEA.

318. Their failure is the “moving force behind the constitutional violation.”

J. State Defendants Sirr and Derby are not entitled to absolute quasi-judicial immunity.

a. Sirr is not entitled to guardian ad litem immunity.

319. Guardians *ad litem* are appointed by the court to represent the interests of affected children and are generally entitled to absolute quasi-judicial immunity, for state and federal claims, for actions taken while performing their standard duties.

320. But, it is equally true that quasi-judicial immunity would not protect Sirr for any acts performed beyond the scope of his duties. Quasi-judicial immunity is contingent not on the status but on the particular function of the official. Quasi-judicial acts are presumably the product or result of investigation, consideration, and deliberate human judgment based upon evidentiary facts of some sort commanding the exercise of their discretionary power.

321. Sirr injured the Plaintiffs by illegally depriving the Mitchells of familial associations with each other. His actions departed from the scope of his appointment and exceeded his statutory authority as guardian ad litem. Under Minn. Stat. §518.165, subd. 2a, a

guardian ad litem shall carry out the following responsibilities:

- (1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case;
- (2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;
- (3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;
- (4) monitor the child's best interests throughout the judicial proceeding; and
- (5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

322. Sirr acted outside his statutory responsibilities. For example, Sirr: 1) intentionally did not follow multiple Minnesota court orders; 2) told Mitchell's son XM not to follow Minnesota court orders; 3) told Mitchell's son XM not to return home in August of 2014 when XM requested to return to his father; 4) told Mitchell's son XM that his father had abandoned him in Minnesota and didn't want him any longer; 5) and told Mitchell's son XM that he did not have to follow the New Jersey Custody court order by returning to his father because he, Sirr was working with the other State and County Defendants to send him to his biological mother in Spain as XM and BM will testify, and Sirr's alleged actions establish that he was involved in the conspiracy. XM and BM will testify that these discussions happened on multiple occasions over the entire course of the case. XM will testify that Derby, Sirr and P'Simer were together on the last day of court and apologized for not being able to send him to his mother in Spain as they had promised him. Because Sirr was not in compliance with or following court directives, he is not entitled to absolute immunity.

323. Although the courts have concluded that normally awards against State

Defendants in their official capacities are not allowed, the defendant Sirr may be liable for compensatory and punitive damages in his individual capacity. Where damages are sought against the defendants in their individual capacities, they are protected against money damages if their acts fall within the scope of “official immunity.” Defendants are not immune from damages if they knew or should have known that the action they took would violate the constitutional rights of plaintiffs or if they took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to plaintiffs. With respect to a prima facie defense of official immunity, the defendant must demonstrate that they acted within the scope of their official duties.

324. Allegations of conspiratorial action must be made with sufficient specificity and factual support so as to suggest a “meeting of the minds.” In this case, Mitchell and his children plead with specificity the intentional conspiracy that took place with the State and County Defendants which caused them injury. Sirr departed from his role as a functionary of the court, in making recommendations to the court regarding the children. Furthermore, because Sirr is an employee of a state program and he is not immune from liability for the alleged actions or negligent performance of his duties, his lack of immunity extends to the program and to the state as an entity. The GAL program is a state program; Sirr is a state employee.

325. Sirr is sued in his individual and official capacity as a state employee.

326. Because Sirr’s actions are not immune, the GAL program and the state are also not immune.

K. Derby is not entitled to public-defender immunity.

327. Public defenders who are appointed by the court to represent children over 10-years old in custody and dependency cases are generally entitled to absolute quasi-judicial immunity, for state and federal claims, and for actions taken while performing their standard

duties. But it is equally true that quasi-judicial immunity would not protect Derby for any acts performed beyond the scope of her duties under color of state law which is exactly what is alleged in the instant case with specificity.

328. Though the Courts have concluded that normally awards against State Defendants in their official capacities are not allowed, the defendant Derby may be liable for compensatory and punitive damages in her individual capacity. Where damages are sought against the defendants in their individual capacities, they are protected against money damages if their acts fall within the scope of “official immunity.”

329. Defendants are not immune from damages if they knew or should have known that the action they took would violate the constitutional rights of plaintiffs or if they took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to plaintiffs. With respect to a prima facie defense of official immunity, the defendant must demonstrate that they acted within the scope of their official duties.

330. Allegations of conspiratorial action must be made with sufficient specificity and factual support so as to suggest a “meeting of the minds.” In this case, Mitchell and his children have pled with specificity the intentional conspiracy that took place between the State, County Attorney and County Defendants which caused them injury as well as the fraudulent activities of Derby.

331. The Mitchell family has been damaged by the acts of the defendants Derby, guardian ad litem Sirr, County Attorney Scott, and social worker P’Simer conspiring herein.. Derby is not entitled to immunity if the attorney exceeded the bounds of the unique agency relationship by knowingly participating with her client in the perpetration of a fraudulent or unlawful act.

332. Plaintiffs’ allegation against Derby fall outside her responsibilities and constitute

fraud. For example, Derby: 1) worked with County Attorney Scott to deprive the Mitchells of their constitutional rights of family association; 2) intentionally did not follow multiple Minnesota court orders; 3) told Mitchell's son XM not to follow Minnesota court orders; 4) told Mitchell's son XM not to return home in August of 2014 when XM requested to return to his father; 5) told Mitchell's son XM that his father had abandoned him in Minnesota and didn't want him any longer; 6) told Mitchell's son XM that he did not have to follow the New Jersey Custody court order by returning to his father because she, Derby was working with the other State and County Defendants to send him to his biological mother in Spain, as XM will testify. Derby's alleged actions establish she was involved in the conspiracy. XM will testify that these discussions happened on multiple occasions over the entire course of the case, and that Derby, Sirr and P'Simer were together on the last day of court and apologized for not being able to send him to his mother in Spain as they had promised him. Because Derby was not in compliance with or following court directives, she is not entitled to absolute immunity.

333. The Mitchell family alleges that Derby injured them by illegally depriving them of their right to familial associations. Derby departed from her role as a representative of XM and was working under color of law because of her participation with State and County Defendants.

334. Furthermore, because Derby is an employee of a state program and she is not immune from liability for the alleged actions or negligent performance of her duties, her lack of immunity extends to the program and to the state as an entity. The Public Defender program is a state program; Derby is a state employee.

335. Derby is sued in her individual and official capacity as a state employee.

336. Therefore, because her actions are not immune, the Public Defender program and the state are also not immune.

L. County defendants are not entitled to immunity.

a. Swank and Scott are not entitled to absolute immunity.

337. Plaintiff has not alleged any claims with regard to Scott and Swank based on the initiation and pursuit of a prosecution or presenting the state's case.

338. Instead, Plaintiffs' claims regarding Scott and Swank arise from the investigative functions, before the initiation of the case, conspiracy, and when they were acting outside their proper prosecutorial capacity.

339. A prosecutor who directs illegal investigatory activities is not cloaked by absolute immunity even if the prosecutor did not personally perform the improper acts. There is no absolute immunity for conspiracy and acting outside the scope of prosecutorial functions.

340. Additionally, Scott is not entitled to absolute immunity for signing and vouching for the accuracy of Boreland's false Petitions.

341. During the acquisition of evidence, Scott and Swank discovered that Campos, BM, XM, and AM, the accusers of long-term abuse by Mitchell, had lied to them and that no long-term abuse had ever taken place. Mitchell actually was a New Jersey resident, with a New Jersey custody court order which established sole legal and physical custody. Therefore, Minnesota lacked subject matter jurisdiction in the juvenile proceedings.

342. Mitchell's former wife Campos and the children advised Plaintiff that Boreland, Scott and Swank agreed to keep these facts concealed to retain jurisdiction in Minnesota. Scott and Swank gave Boreland legal advice on how to create the petition to accomplish their goals. These activities did not take place in court, were not part of the prosecutor's trial preparation or review process and were not a part of the judicial proceedings.

343. Misrepresentation and omitting evidence of subject matter jurisdiction to illegally usurp and retain jurisdiction from a foreign US state was not protected by a well-established

common-law privilege in 1871, when §1983 was enacted.

344. The court must employ a “functional approach” to absolute prosecutorial immunity and that even prosecutors are not entitled to such immunity where they are performing investigatory functions similar to those of police officers.

345. In the instant case, Scott and Swank are licensed attorneys, and know that conspiring with Boreland, P’Simer, Sirr, and Derby, advising and directing Boreland in the creation on the fabricated Petition, falsifying evidence and misrepresenting/withholding information to illegally usurp subject matter jurisdiction was unconstitutional and would and did do harm to the Mitchell family for twenty-two-months.

M. Boreland and P’Simer are not entitled to absolute immunity.

346. Plaintiffs incorporate by reference the discussion on absolute immunity claims above, as the discussion applies to Boreland and P’Simer.

347. Defendants Boreland and P’Simer are not entitled to absolute immunity with regard to Plaintiffs' claims. Boreland and P’Simer do not have absolute immunity because they are not prosecutors. Further, as explained above, Plaintiffs' claims do not arise from or relate to the filing of the Petition to initiate proceedings, but even if they did, Boreland and P’Simer would still not be immune as discussed above.

348. Instead, Plaintiffs’ claims arise from the coercive and illegal removal of the children without a court order, judicial deception, equal protection, prohibiting the children to have contact with their father, and conspiracy to terminate parental rights in furtherance of a scheme to send the children to their biological mother.

349. At all times during the case, the County Attorney fulfilled the role of “prosecutor,” Defendants Boreland and P’Simer were merely investigators. Thus, prosecutorial immunity cannot apply to Boreland and P’Simer.

350. The focus of Plaintiffs' claims against Boreland and P'Simer is on:

1. The illegal removal, false statements and omissions made in Defendants' Affidavits and Court Reports continuously submitted by Defendants from February 20, 2014 through the termination of the dependency proceedings that deprived Plaintiff of the custody of his children for five-months and twenty-two-months respectively, denial of visitation and denial of contact; and
2. The fabrication of evidence throughout the dependency proceedings and repeated suppression of exculpatory evidence in Defendants' written Court Reports; and Defendants' recommendations that the children continue to be detained for five-months and twenty-two-months respectively, even though Defendants knew they were lying to the court and fabricating evidence about the basis for the initial seizure and detention, among other things.

351. Testimonial immunity does not encompass non-testimonial acts of fabricating evidence.

352. Defendant Boreland's and P'Simer's actions are investigative and administrative actions of the child welfare workers.

353. Therefore, Defendants Boreland and P'Simer are not entitled to absolute immunity for their actions.

N. The county defendants are not entitled to qualified immunity.

354. The County defendants are not entitled to qualified immunity because they violated Plaintiffs' clearly established rights as a matter of law. The Plaintiffs' allegations against the county defendants are as follows:

- removal of Plaintiffs' children from the family home without a court order or warrant;
- conspired to cause, and did cause, the detention of Plaintiffs' children from the family home pursuant to court orders that they knew were obtained through judicial deception;
- agreed to mislead the court regarding UCCJEA requirements and the lack of subject matter jurisdiction over Plaintiffs' case;
- conspired to retain, and did retain custody of Plaintiffs' children pursuant to court orders that they knew were obtained through judicial deception;
- conspired to terminate Plaintiffs' parental rights without subject matter jurisdiction, and illegally transfer custody of the children pursuant to court orders that they knew were obtained through judicial deception;

- fabricated inculpatory evidence and withheld exculpatory evidence;
- illegally separated Plaintiff and his wife for five months;
- concealed evidence of Plaintiffs' actual innocence of long-term abuse, and that all of the accuser's statements to the Apple Valley Police were proven false with New Jersey police reports and official state documents in the first two weeks of the case; and
- illegally denied Plaintiff all contact and visitation with his middle son XM for twenty-two-months without rational or justifiable reasons.

On the facts alleged, the county defendants must meet their burden of establishing their entitlement to qualified immunity.

O. Boreland, P'Simer, Akolly, Yunker, Stang, Coyne, and Granger-Kopesky are not entitled to immunity.

355. Boreland, P'Simer, Akolly, Yunker, Stang, Coyne and Granger-Kopesky are not entitled to immunity.

356. As discussed, supra, the complaint alleges that Boreland illegally removed children from their home when no exigent circumstances existed. She had the time and opportunity to obtain a court order first.

357. Thereafter, Boreland conspired with Scott, Swank, and P'Simer to cause, and did cause, pursuant to UCCJEA requirements, the retention of Mitchell's children, and retained them without subject matter jurisdiction pursuant to court orders that they knew were obtained through judicial deception. Every court report, case plan, or reunification plan in Plaintiffs' possession from pre-litigation discovery that was created by Boreland or P'Simer was reviewed with, discussed with and signed by either DCSS Supervisor Stang or Yunker who knew the information was false, but intentionally signed them nevertheless.

358. Thereafter, for five months for AM and twenty-two months for XM, P'Simer conspired with Boreland, Surr, Derby, Stang and Yunker to cause, and did cause their retention without subject matter jurisdiction pursuant to court orders that they knew were obtained through judicial deception in an effort to transfer custody to the children's biological mother in Spain.

Mitchell was not allowed contact or visitation with XM whatsoever despite court ordered visitation for no rational or justifiable reason. Every false or misrepresented court report, false or misrepresented case plan, and false or misrepresented reunification plan in Mitchell's possession from discovery that was created by Boreland and P'Simer was reviewed with, discussed and signed by either DCSS Supervisor Stang or Yunker who knew the information was false, but intentionally signed them nevertheless. As discussed above, Boreland, P'Simer and Akolly illegally forced Plaintiff and his wife "Litvinenko" to separate for over five months. Plaintiff and "Litvinenko" appealed to all DCSS supervisory defendants for intervention, up to and including Coyne the Director of DCSS and Deputy Director Granger-Kopesky. Mitchell had a constitutionally protected right to "familial association" with his wife. Families have a well-elaborated constitutional right to live together without governmental interference.

359. Defendant Boreland misrepresented facts to the court on February 20, 2014 and February 26, 2014 in the amended Petition, thereafter P'Simer, in his court reports, and verbally both on and off the record which caused the removal of the children from Mitchell's custody five-months and twenty-two-months respectively. The court transcript of the hearing on February 26, 2014, along with the findings and order, sets out the basis for the juvenile court's decision to remove the children in sufficient detail to show Defendants' lies were material. The juvenile court expressly stated that it "read and considered" Boreland's written report; Boreland's affidavit and trial testimony reveal what information she did, and did not, reveal to the court. The information imparted to the court resulted in the children being removed from the family home. The evidence presented to the Court was material. Thereafter, P'Simer continued with the submission of fabricated evidence, along with misrepresented and false facts to the court in furtherance of the conspiracy to retain custody until the termination of the case.

360. None of the Defendants is entitled to qualified immunity.

COUNT I
42 U.S.C. § 1983

Minnesota's laws terminating parental rights are unconstitutionally vague.

361. Plaintiffs incorporate this complaint's previous paragraphs.

362. The Fourteenth Amendment's Due Process Clause prohibits the state from taking away someone's life, liberty, or property under a law—criminal or civil—so vague that it fails to give ordinary people fair notice of the conduct it prohibits, or so standardless that it invites arbitrary enforcement.

363. Minnesota Statutes § 260C.007, which incorporates §609.224 and §609.377 and §626.556, and §260C.301 are unconstitutionally vague as to terminating parental rights.

364. Specifically, the following Minnesota statutory provisions are void for unconstitutional vagueness:

- Minn. Stat. §260C.007, subd. 5, subd. 6(2)(i)–(iii), (4), (5), subd. 13;
- Minn. Stat. §260C.301, subd. 1, (b)(2), (4), (5); and
- Minn. Stat. §626.556, subd. 2(f), (k).

365. These Minnesota laws terminating parental right are unconstitutionally vague because they do not give ordinary parents fair notice of the parental conduct that they prohibit and the laws are so standardless that they invite arbitrary enforcement.

366. The statutes are unconstitutionally vague by not specifying a threshold of harm to the child required to be shown by the government as a legal requirement before terminating parental rights.

367. Because of Defendants' actions, SCPS and its members, including the Mitchell family, have suffered deprivations of rights guaranteed to them by the Fourteenth Amendment's Due Process Clause, which protects parental rights to discipline children as fundamental rights.

368. Defendants' actions have damaged SCPS and its members, including the Mitchell family.

369. The Plaintiffs seek judgment against the defendants as stated in the prayer for relief.

COUNT II
42 U.S.C. § 1983

Minnesota's laws terminating parental rights based on parental use of corporal punishment to discipline or correct a child are unconstitutional.

370. Plaintiffs incorporate this complaint's previous paragraphs.

371. Minnesota's statutes terminating parental rights are subject to strict scrutiny because they authorize government intervention in the constitutionally protected fundamental rights of a parent to raise a child.

372. Under the federal Constitution, parents have a constitutional right to use corporal punishment to discipline or correct a child. It is a fundamental right under the Constitution.

373. Certain provisions of Minnesota's laws terminating parental rights are unconstitutional because they authorize child-protection services to intervene in the parent-child relationship based on a parent's constitutionally-protected use of corporal punishment to correct or discipline a child.

374. Minnesota Statutes §260C.007, which incorporates §609.224 and §609.377 and §626.556, and §260C.301 prohibit parental corporal punishment to discipline or correct a child upon penalty of temporary or permanent termination of parental rights.

375. Minnesota's laws terminating parental rights prohibit parental corporal punishment to discipline or correct a child.

376. By banning corporal punishment used to discipline or correct a child, Minnesota's laws violate the parents' constitutional rights to use corporal punishment to discipline or correct their children.

377. Because of Defendants' actions, SCPS and its members, including the Mitchell

family, have suffered deprivations of rights guaranteed to them by the Fourteenth Amendment's Due Process Clause, which protects parental rights to discipline children as fundamental rights.

378. Defendants' actions have damaged SCPS and its members, including the Mitchell family.

379. The Plaintiffs seek a judgment against the defendants as stated in the prayer for relief.

COUNT III
42 U.S.C. § 1983

Minnesota's laws terminating parental rights facially violate substantive due process.

380. Plaintiffs incorporate this complaint's previous paragraphs.

381. Under the U.S. Constitution, Fourteenth Amendment, Due Process Clause, Minnesota's laws terminating parental rights are subject to strict scrutiny because they authorize government intervention in the constitutionally-protected fundamental rights of a parent to raise a child.

382. Minnesota's statutes terminating parental rights are not narrowly tailored to meet a compelling state interest because they authorize child-protection services to intervene in the parent-child relationship without a showing of a prescribed threshold of harm to terminate parental rights.

383. Minnesota Statutes §260C.007, which incorporates §609.224 and §609.377 and §626.556, and §260C.301 violate parents' substantive due process rights by terminating parental rights without requiring a prescribed showing of the harm to the child if the child is not separated from the parent

384. Specifically, the following Minnesota statutory provisions violate substantive due process:

- Minn. Stat. §260C.007, subd. 5, subd. 6(2)(i)–(iii), (4), (5), subd. 13;

- Minn. Stat. §260C.301, subd. 1, (b)(2), (4), (5); and
- Minn. Stat. §626.556, subd. 2(f), (k).

385. These statutory provisions violate parents' substantive due process rights by terminating parental rights without requiring a prescribed showing of the harm to the child if the child is not separated from the parent.

386. Therefore, the statutory provisions are not narrowly tailored to meet a compelling state interest.

387. Because of Defendants' actions, SCPS and its members, including the Mitchell family, suffer deprivations of rights guaranteed to them by the Fourteenth Amendment's Due Process Clause, which protects parental substantive due process rights.

388. Defendants' actions have damaged SCPS and its members, including the Mitchell family.

389. The Plaintiffs seek a judgment against the defendants as stated in the prayer for relief.

COUNT IV
42 U.S.C. § 1983

Minnesota's laws terminating parental rights facially violate procedural due process.

390. Plaintiffs incorporate this complaint's previous paragraphs.

391. Under the U.S. Constitution, Fourteenth Amendment, Due Process Clause, Minnesota's laws terminating parental rights must provide parents notice and a meaningful opportunity to be heard.

392. Minnesota's statutes terminating parental rights do not provide parents the constitutionally-required notice and opportunity to be heard.

393. First, the statutes do not require the child-protection agency to produce exculpatory information to the court and to the parents. Since the child protection agency serves

a dual role in attempting to reunite the family and, in certain cases, to terminate parental rights, the Due Process Clause requires the agency to submit to parents and to the court all exculpatory information—as a prosecutor would under *Brady*. Child protection agencies terminating parental rights, like prosecutors, are subject to the constitutional duty to provide parents and the court with exculpatory information. The role of the agency prosecuting a child protection case transcends that of an adversary; the child protection agency’s goal is not to win the case, but to ensure the right decision regarding the specific parent and child is made.

394. Second, as explained in the void-for-vagueness Count above, the Minnesota laws terminating parental rights do not give fair warning to the parent that their child may be determined as CHIPS and their parental rights may be terminated as a result. The parent of ordinary intelligence would not know that they would lose their children to the child protection services agency under the statutes if they engaged in parental discipline, care, medical treatment, duties and conditions. For example, as to termination of parental rights, Minnesota Statutes § 260C.301, subd. 1(b)(5), authorizes termination of parental rights if “reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child’s placement.” This sentence violates procedural due process because it is not specific about what harm to the child is being avoided by a permanent termination of parental rights. Specifically, the phrase “conditions leading to the child’s placement” is not linked to any specific on-going harm to the child that justifies termination of parental rights.

395. Third, after the out-of-home placement based on the parent’s corporal punishment, the statute prohibits any parental challenge to inadequacy of the agency’s reunification plans. After these children are in out-of-home placements, the statutes prohibit a parental challenge to the adequacy of the government’s reunification plan. Minnesota Statutes §260.012(g) limits the right to such a hearing until after “the court has determine[d] that

reasonable efforts for reunification are not required because the court has made one of the prima facie determinations under paragraph (a). Rule 15.04 of the Rules of Juvenile Protection Procedure, titled “Motion to Dismiss Petition”, is limited to jurisdictional issues and does not cover the issues raised by Minnesota Statutes §260.012(g).

396. So, under Minnesota Statutes §260.012(g), a parent and child are unconstitutionally prohibited from either filing a motion and obtaining a hearing challenging the government’s failure to make reasonable efforts to reunify parent and child *until after* the court determines that reasonable efforts for reunification are not required because the court has made one of the prima facie determinations under paragraph (a).

397. Minn. Stat. §260C.301, subd. 1(b)(5) also includes an unconstitutional presumption in favor of the government if the child has been in foster care for 12 of the preceding 24 months, a filed out-of-home placement plan has not corrected the conditions leading to the child’s placement, and the government has made reasonable efforts to rehabilitate parent and reunite the family. The length of a foster care placement is an unconstitutional criterion for terminating parental rights because the length of a foster care placement is a decision made by the government—and is outside the direct control of the parent.

398. Fourth, in the Mitchell family’s case, the agency failed to follow the Uniform Child Custody Judgment and Enforcement Act (UCCJEA) codified at Minnesota Statutes ch. 518D. The New Jersey state court order awarded Dwight Mitchell sole physical and legal custody over his minor children. The UCCJEA required that a proceeding occur in New Jersey state court before the Dakota County District Court asserted jurisdiction. Even though the county was legally obligated to initiate proceedings, it did not do so. Instead, the county proceeded, after over a year of proceedings and foster care, to petition the Minnesota court for permanency proceedings, attempting to award Mitchell’s ex-wife sole physical and legal custody and to

terminate Dwight Mitchell's parental rights—all without reference to the New Jersey state court order. The county eventually withdrew that motion. But the county's actions directly violated the UCCJEA, and, consequently, violated Mitchell's procedural due process rights.

399. Minnesota laws terminating parental rights violate procedural due process rights.

400. Because of Defendants' actions, SCPS and its members, including the Mitchell family, suffer deprivations of rights guaranteed to them by the Fourteenth Amendment's Due Process Clause, which protects parental due process rights.

401. Defendants' actions have damaged SCPS and its members, including the Mitchell family.

402. The Plaintiffs seek a judgment against the defendants as stated in the prayer for relief.

COUNT V
42 U.S.C. § 1983

Minnesota's laws terminating parental rights facially violate equal protection rights.

403. Plaintiffs incorporate this complaint's previous paragraphs.

404. Under the U.S. Constitution, Fourteenth Amendment, Equal Protection Clause, Minnesota's laws categorizing by race are subject to strict scrutiny.

405. Therefore, a categorization by race must be narrowly tailored to meet a compelling state purpose.

406. Minnesota's laws terminating parental rights using "cultural" classifications cannot be justified by any compelling state interest. In Minnesota's laws, "culture" is a proxy for race.

407. Minnesota's compelling state interest in laws terminating parental rights is protecting children from harm.

408. Minnesota is not constitutionally permitted to protect children in one culture one

way and protect children in a different culture a different way.

409. There must be one uniform standard of protecting children; there can be no exceptions for this culture, but not for that culture.

410. Thus, section 626.556, subd. 2(r) violates the Equal Protection Clause:

(r) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

By its own terms, paragraph (r) impermissibly requires the “accepted child-rearing practice of the culture in which a child participates and accepted teacher discipline practices” to be taken into account in child protection assessments and investigations.

411. Additionally, section 626.556, subd. 2(f)'s last seven words—“with due regard to the child's culture”—violate the Equal Protection Clause:

(f) “Mental injury” means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

The words focused on culture constitute a prepositional phrase, one that appears to be a postpositive series modifier. The phrase appears to modify the preceding words “performance and behavior.” In context, the phrase looks like it means that whoever is applying the definition of “mental injury” or “emotional harm” is to determine what constitutes the child's culture. But, again, a child's culture is an unconstitutional categorization in determining a child protection matter.

412. Similarly, section 626.556, subd. 2(g) on “neglect” violates the Equal Protection Clause:

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that

is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

This subdivision contains yet another unconstitutional category of "culture" used as a legal criterion for terminating parental rights.

413. Minnesota's statutes terminating parental rights violate the Equal Protection Clause.

414. Because of Defendants' actions, SCPS and its members, including the Mitchell family, suffer deprivations of rights guaranteed to them by the Fourteenth Amendment's Equal Protection Clause.

415. Defendants' actions have damaged SCPS and its members, including the Mitchell family.

416. The Plaintiffs seek a judgment against the defendants as stated in the prayer for relief.

COUNT VI
42 U.S.C. § 1983

Minnesota Statutes section 260C.007, subd. 6(2)(i)–(iii)'s provision for greater derivative protection than direct protection lacks even a rational basis.

417. Plaintiffs incorporate this complaint's previous paragraphs.

418. Minnesota Statutes section 260C.007, subd. 6(2)(i)–(iii)'s provision for greater derivative protection than direct protection lacks even a rational basis required under the U.S. Constitution, Fourteenth Amendment's Due Process Clause.

419. As the Minnesota Supreme Court explained in *In re Welfare of Children of N.F.*, the version of section 260C.007, subd. 6(2) applied by the court "delineates two categories of children in need of protection or services: those who are themselves victims of physical abuse, sexual abuse, or emotional maltreatment (subdivision 6(2)(i) and (iv)); and those who are in need of protection or services only because they reside with victims of domestic child abuse or with

perpetrators of domestic child abuse or child abuse (subdivision 6(2)(ii) and (iii)).” 749 N.W.2d 802, 807 (Minn. 2008). Here is the version of section 260C.007, subd. 6(2) applied by the court in that case:

(2)(i) has been a victim of physical or sexual abuse, (ii) resides with or has resided with a victim of domestic child abuse as defined in subdivision 5, (iii) resides with or would reside with a perpetrator of domestic child abuse or child abuse as defined in subdivision 5, or (iv) is a victim of emotional maltreatment as defined in subdivision 8.

In re Welfare of Children of N.F., 749 N.W.2d at 806 (quoting Minn. Stat. § 260C.007, subd. 6(2) (2006)).

420. In the version of section 260C.007 applied in *Children of N.F.*, neither the definition of “child abuse” nor the definition of “domestic child abuse” used the term “physical abuse” or “sexual abuse.” Minn. Stat. § 260C.007, subs. 5, 13 (2006). The legislature added these terms to the definitions, along with cross references to section 626.556, subd. 2, by amendments that had already been signed into law when the case was decided, but that had not yet become effective. Licenses and Permits—Foster Care—Children and Minors, 2008 Minn. Sess. Law Serv., ch. 361, art. 6 § 25 (amending Minn. Stat. § 260C.007, subd. 5), § 27 (amending Minn. Stat. § 260C.007, subd. 13).

421. The current version of section 260C.007, subd. 5, reflects this recent amendment to it:

Subd. 5. Child abuse. “Child abuse” means an act that involves a minor victim that constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.2242, 609.322, 609.324, 609.342, 609.343, 609.344, 609.345, 609.377, 609.378, 617.246, *or that is physical or sexual abuse as defined in section 626.556, subdivision 2*, or an act committed in another state that involves a minor victim and would constitute a violation of one of these sections if committed in this state.

(emphasis added). Here is the current version of section 260C.007, subd. 13, which reflects this recent amendment to it:

Subd. 13. **Domestic child abuse.** “Domestic child abuse” means:

(1) any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means;

(2) subjection of a minor family or household member by an adult family or household member to any act which constitutes a violation of sections 609.321 to 609.324, 609.342, 609.343, 609.344, 609.345, or 617.246; *or*

(3) *physical or sexual abuse as defined in section 626.556, subdivision 2.*

(emphasis added).

422. Under the current version of section 260C.007, subd. 6(2), a child is a CHIPS if the child:

(2)(i) has been *a victim of physical or sexual abuse as defined in section 626.556, subdivision 2*, (ii) resides with or has resided with *a victim of child abuse as defined in subdivision 5 or domestic child abuse as defined in subdivision 13*, (iii) resides with or would reside with *a perpetrator of domestic child abuse as defined in subdivision 13 or child abuse as defined in subdivision 5 or 13*, or (iv) is a victim of emotional maltreatment as defined in subdivision 15.

(emphasis added).

423. These recent amendments have a bizarre implication. Because of the way that the current section 260C.007, subd. 5’s definition of “child abuse” incorporates section 626.556, subd. 2’s definitions of “physical abuse” and “sexual abuse,” in addition to various sections of the penal code, the universe of acts constituting “child abuse” is much broader than the category of acts constituting “physical abuse” or “sexual abuse,” and hence is broader than the acts conferring CHIPS status on a child under section 260C.007, subd. 6(2)(i), which refers to “physical or sexual abuse,” but not to “child abuse” or “domestic child abuse.” This means that, under subd. 6(2)(ii), child *A* could be a CHIPS because he resides with child *B* who has been victimized in some way, even if child *B*’s victimization does not confer CHIPS status on child *B*. Similarly, under subd. 6(2)(iii) child *A* could be a CHIPS because he resides with a person who has committed “child abuse” or “domestic child abuse” against child *B*, even if the act constituting “child abuse” or “domestic child abuse” does not constitute “physical or sexual

abuse” of child *B* and hence is not reason for treating child *B* as a CHIPS under subd. 6(2)(i).

The universe of acts conferring derivative protection is broader than the universe of acts conferring direct protection—the opposite of what was true under the law applied in *Children of N.F.*

424. There is no question that chapter 260C.007 serves a legitimate state interest: protecting children. But subd. 6’s categorization of those who are CHIPS because they have been abused and those who are CHIPS because they live with someone who has been abused or has committed abuse bears no rational relation to this goal.

425. Minnesota Statutes section 260C.007, subd. 6(2)(i)–(iii) is therefore unconstitutional under the Fourteenth Amendment’s Due Process Clause, which requires that each law restricting a liberty interest have a rational relation to a legitimate state interest.

426. Because of Defendants’ actions, SCPS and its members, including the Mitchell family, suffer deprivations of rights guaranteed to them by the U.S. Constitution..

427. Defendants’ actions have damaged SCPS and its members, including the Mitchell family.

428. SCPS and Mitchell seek a judgment against the as stated in the prayer for relief.

COUNT VII

The Mitchells’ Cause of Action for Violation of Civil Rights (42 U.S.C. § 1983) (Procedural Due Process, Unlawful Removal, and Familial Association) Against Defendants Boreland, Stang, and Yunker

429. The plaintiffs incorporate this complaint’s previous paragraphs.

430. Under this case’s circumstances, Mitchell and his children had the right to be free from the removal of the children from their family home under the Fourteenth Amendment’s Due Process Clause.

431. This right is “clearly established” such that a reasonable social worker in

Defendants' situation would know it is wrong to interfere in a child's right to remain with his parent in the absence of exigent circumstances, and that such right may not be impinged upon without first obtaining a warrant or other court order to do so.

432. It is equally well established that a person in Mitchell's and the children's position has a constitutional right to be free from the removal of the children from the family home pursuant to illegally obtained court orders, or court orders obtained by fraud or artifice.

433. In the absence of exigent circumstances, and without any evidence to suggest that AM or XM was in imminent danger of suffering serious bodily injury at the hands of their father or step-mother, Defendants, and each of them, acting under color of law and without a warrant or court order, did unlawfully remove AM and XM from their family and the love, comfort, care and affection of their father, Dwight Mitchell.

434. Thereafter, Defendants, and each of them did continue to unlawfully detain AM and XM from the care of their father. Defendants' conduct was without proper justification or authority, and without probable cause, consent, exigency, or lawfully obtained court order.

435. Defendant Boreland, Stang and Yunker are vicariously liable for the conduct of each other..

436. Boreland, Stang, and Yunker, inclusive, and each of them, acted with malice and with the intent to cause injury to Mitchell and his children, or acted with a willful and conscious disregard for Mitchell's and his children's rights in a despicable, vile, fraudulent, and contemptible manner.

437. Further, Defendants' actions were taken with deliberate indifference to Mitchell's and the children's rights.

438. As a direct and foreseeable consequence of these actions, Mitchell and his children were deprived of their rights under the Fourteenth Amendments to the United States

Constitution.

439. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT VIII
The Mitchells' Cause of Action for Violation of Civil Rights
(42 U.S.C. § 1983) (Procedural Due Process)
Against All Defendants

440. The plaintiffs incorporate this complaint's previous paragraphs.

441. Under this case's circumstances, Mitchell and his children had the right to be free from the unlawful retention of the children under the Fourteenth Amendment's Due Process Clause. This right is "clearly established" such that a reasonable person in the defendants' situation would know it is wrong to interfere in a child's right to remain with its parents in the absence of exigent circumstances, and that such right may not be impinged upon without first lawfully obtaining a warrant or legally obtained court order to do so.

442. It is equally well established that a person in Mitchell's and the children's position has a constitutional right to be free from unreasonable retention of the children pursuant to illegally obtained court orders or court orders obtained by fraud, fabricated evidence or artifice.

443. It was unlawful for the Defendants to lie, mislead, fabricate evidence, fabricate testimony, fabricate inculpatory evidence, or suppress exculpatory evidence in sworn affidavits, sworn petitions, court reports or Juvenile Dependency Petitions filed or otherwise with the court to affect the removal of a child from their home and to retain illegal custody in contradiction of clearly established UCCJEA requirements.

444. Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Defendants, and each of them, acting under color of law, failed to follow any of the legal statutory requirements, agreed or conspired to deceive the juvenile dependency court by intentionally ignoring the requirements of the UCCJEA in order to obtain an order authorizing the removal of AM, XM, and BM from their family and comfort and care of their father Dwight Mitchell.

445. Thereafter, Defendants, and each of them failed to follow any of the legal statutory requirements, and acting on aforesaid scheme, did unlawfully detain AM, XM, or BM from the care of their father.

446. Defendants' conduct was without proper justification or authority by usurping subject matter jurisdiction from New Jersey.

447. Further, Defendants' actions were taken with deliberate indifference to Mitchell's and the children's rights.

448. Furthermore, Defendants were aware of the New Jersey UCCJEA proceedings of Mitchell's wife Litvinenko, acted and performed properly with respect to applying the UCCJEA laws to her case, and were aware Mitchell had the same legal right.

449. Defendants intentionally failed to notify the courts and provide Mitchell with the legally required UCCJEA hearing to determine subject matter jurisdiction, usurped jurisdiction from New Jersey and conspired to hide this information from the Dakota County court system.

450. Defendants' conduct was without proper justification or authority.

451. Further, Defendants' actions were taken with intentional malice and deliberate indifference to Mitchell's rights.

452. Furthermore, the Defendants caused continued separation of the children from Mitchell by the Defendants. The Defendants refused to return children to Mitchell's home for a

period of five months for AM and twenty-two months for XM despite obtaining no additional evidence, during that time, that the children were in any danger, or otherwise permit Mitchell to have contact and familial relations, visitation or association with XM.

453. Defendants failed to show or prove parental unfitness as a required proof at any time during the proceedings for “best interests of child”, although not required under the provisions of the UCCJEA, to illegally maintain retention or breakup of Mitchell’s family..

454. As a direct and proximate result of these Defendants’ actions, Mitchell and his children have suffered, and will continue to suffer irreparable harm to their reputations.

455. Defendants inclusive, and each of them, acted with malice and with the intent to cause injury to Mitchell and his children, or acted with a willful and conscious disregard of the rights of Mitchell and his children in a despicable, vile, fraudulent, and contemptible manner.

456. As a direct and foreseeable consequence of these actions, Mitchell and his children were deprived of their rights under the Fourteenth Amendments to the United States Constitution.

457. As a direct and proximate result of these Defendants’ actions, Mitchell and his children have suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT IX

The Mitchells’ Cause of Action for Violation of Civil Rights (42 U.S.C. § 1983)--Substantive Due Process, The Right to be Free from the Use of Fabricated Evidence and Deception in Judicial Proceedings, and Family Integrity (Against All Individual Defendants)

458. The plaintiffs incorporate this complaint’s previous paragraphs.

459. The right to familial association is guaranteed by the Fourteenth Amendment of the U.S. Constitution. .

460. This right is “clearly established” such that a reasonable person in Defendants' situation would know it is unlawful to remove and detain a child from the care, custody, and control of its parents based upon fabricated evidence.

461. In addition, there is a clearly established due process right not to be subjected to false accusations or false evidence that was deliberately fabricated by the government such that a reasonable person in Defendants' situation would know it is unlawful to lie, mislead, fabricate evidence, fabricate testimony, manipulate witnesses, manipulate minor children, fabricate inculpatory evidence or suppress exculpatory evidence in sworn affidavits, sworn petitions, court reports or Juvenile Dependency Petitions filed or otherwise before the court to effect the removal and retention of a child from the care and custody of their parent.

462. Furthermore, Defendants imposed illegal and unconstitutional requirements of Mitchell, including the requirement of undergoing psychological evaluation and testing; but, most importantly, even after Mitchell passed all of the DCSS requirements, the Defendants refused to take the actions necessary to allow Mitchell to meet the DCSS reunification demands to have XM returned home and continually lied to the court and filed false and fabricated evidence regarding the reunification efforts and progress status to illegally retain custody of XM after two DCSS psychologist recommended his return to Mitchell.

463. Furthermore, Defendants interfered with Mitchells' right to privacy as it relates to BM, including contacting, exercising care and control over BM while he was at his out of State Military school in Virginia, having any and all contact with BM while he was at school in Virginia when Defendants knew that the State of Minnesota and DCSS didn't have custody over BM while he was not in Minnesota, and advising the Administration of FUMA that the State of Minnesota an DCSS had custody over BM when he was not in Minnesota, when Defendants knew this was not true.

464. In doing the things alleged above, Defendants and each of them, interrupted and impaired the familial rights of Mitchell and his children by unlawfully removing AM, XM, and BM from the custody and care of their father and continuing to illegally retain them despite their knowledge that AM, XM, and BM were removed and detained based on Defendants' lies, suppression of evidence, and fabrications of evidence.

465. As to Defendants Sirr and Derby, they knowingly, intentionally, and voluntarily collaborated with the remaining defendants, and each of them, in effectuating their unlawful scheme/plan to keep AM, XM, and BM from the care, custody, and control of their father, and out of their family home for as long as possible in their effort to transfer the children to Spain.

466. In doing the things alleged hereinabove, Defendants, and each of them, were acting under color of state law. They did these things without proper justification, authority, cause, or exigency.

467. Further, Defendants' actions were taken with deliberate indifference to Mitchell's and his children's rights to uninterrupted familial association or privacy.

468. As to Derby, her conduct was also undertaken in direct breach of her fiduciary duties to her client, XM. As to Sirr, his conduct was also undertaken in direct breach of his guardian ad litem duties to AM and XM.

469. Defendants, and each of them, maliciously conspired to violate the civil rights of Mitchell and his children, including violation of Mitchell's and the children's rights found in the Fourteenth Amendment of the United States Constitution, by, but not limited to, removing, detaining, and continuing to retain, AM, XM, and BM from the care, custody, and control of their father, without proper or just cause or authority; by the use of coercion and duress to obtain evidence and testimony; and by maliciously falsifying evidence, and presenting fabricated evidence to the court, and maliciously refusing to present exculpatory evidence.

470. Defendants, inclusive, and each of them acted with malice and with the intent to cause injury to Mitchell and his children or acted with a willful and conscious disregard of the rights of Mitchell in a despicable, vile, and contemptible manner.

471. By these actions, Defendants violated Mitchell's and his children's constitutional right to a fair trial under the Fourteenth Amendment.

472. Each of them directly interfered or attempted to interfere with Mitchell's parental rights and constitutional rights to familial association and privacy under the Fourteenth Amendment.

473. As a direct and foreseeable consequence of these actions, Mitchell and his children were deprived of their rights under the Fourteenth Amendments to the United States Constitution.

474. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT X

**The Mitchells' Cause of Action for Violation of Civil Rights (42 U.S.C. § 1983)
Violation of Equal Protection of the Laws
Against Boreland, P'Simer, Stang, Yunker, Kopesky, and Coyne**

475. The plaintiffs incorporate this complaint's previous paragraphs.

476. Under this case's circumstances, Mitchell and his children who are African-American, had the right to be free from discriminatory practices under the Fourteenth Amendment's Equal Protection Clause.

477. This right is "clearly established" such that a reasonable person in Defendants' situation would know it is wrong to subjected Mitchell and his children to different treatment

than that received by similarly situated individuals on the basis of Mitchell's African-American racial background.

478. The Defendants' different and inferior treatment of African-American parents and children accords with Minnesota statutes requiring county social workers investigating child protection issues to take a "child's culture" into account.

479. The different and inferior treatment includes Department of Human Services reports at least since 2002 confirming that Minnesota's child protection services have a racial disparity problem treating African-American parents and children, as well as the parents and children of other minorities, differently than white parents and children.

480. The different and inferior treatment, included, *inter alia*, Boreland specifically assuming that all black fathers are unfit to be parents. More specifically, Boreland said to Mitchell "Why are all black families so quick to spank their children? You [i.e., African Americans] are unfit to be parents and don't deserve to have children." as well as other comments during their first meeting, evidences Boreland's prejudice against African-Americans parents and their children.

481. Boreland stated in the second meeting with Mitchell and Litvinenko on February 20, 2014, "I am going to do everything in my power to see that the children are never returned to your custody" simply because of Mitchell's race, color, or national origin, because Boreland stated course of action is totally disproportionate to the facts presented to Boreland of one spanking resulting in no injury to Mitchell's child.

482. Furthermore, Boreland fabricated evidence and intentionally failed to submit known information to the court to deny Mitchell his required UCCJEA hearing and usurp subject matter jurisdiction and custody from New Jersey. Thereafter, Boreland perpetuated a conspiracy with the other Defendants to terminate Mitchell's parental rights permanently so that BM and

XM could be raised by their Caucasian mother in Spain.

483. As set forth above, Boreland, motivated by animus against Mitchell's African-American or racial background willfully and maliciously conspired with P'Simer, Sirr, Scott, Swank and Derby to deprive Mitchell and his children of their rights, fabricating evidence after the February 16, 2014 removal, such as Boreland's "Amended Petition", "Final Assessment", false court reports, and Boreland's March 2014 "interview" of Tanisha Wellard. The alleged "Wellard" interview supposedly took place 3-weeks after she was transferred off the case based upon the date on the DCSS CRU report. Boreland's actions deprived Mitchell and his children of their right to be free from arbitrary, egregious, and oppressive interference with their protected family relationship, Mitchell and his children's right to be provided with fundamentally fair procedures when faced with the disruption of his family relationships and to be free from unreasonable seizures.

484. Based on animus against, and stereotypical perceptions of Mitchell based on his race, color, or national origin, Defendant Boreland willfully or recklessly initiated DCSS interference into the Mitchells' protected family relationships in a discriminatory manner.

485. Boreland discriminatorily fabricated and reported allegations against Mitchell to DCSS and the court with the intent and effect of triggering destructive state interference into Mitchell's family life. Boreland selected her course of action at least in part for the purpose of causing an adverse effect on Mitchell and his children because of Mitchell's status as an African American male, his race, color, or national origin.

486. Defendant Boreland deprived Mitchell and his children of their right to equal protection of the laws by denying Mitchell custody of his sons for reasons grounded in discriminatory perceptions of his ethnic and cultural practices. Rather than seeking less drastic alternatives to abrupt state custody, and detention as required under Minnesota State law,

Defendant Boreland removed Mitchell's children immediately from their father's custody and care. "Boreland's" actions were motivated by discriminatory animus against Mitchell as an African-American male since the interests of DCSS, if any, could have been achieved utilizing the least restrictive means to achieve the perceived goals of DCSS for a spanking, such as an agreed-to safety plan, which is required by Minnesota State law, when children must be returned to the care of their parents.

487. All Defendants further deprived Mitchell and his children of their equal protection rights by condoning Boreland's making racially disparaging and derogatory remarks and failing to take any steps or provide services to facilitate the legal requirement of remediation for discrimination that would have been provided to non-African-American fathers and similarly situated individuals.

488. All Defendants further deprived Mitchell and his children of their equal protection rights by failing to take any steps or provide services to facilitate the legal requirement of reunification that would have been provided to non-African-American fathers and similarly situated individuals.

489. All Defendants further deprived Mitchell and his children of their equal protection rights by failing to take any steps or provide services to facilitate the legal requirement of visitation with XM that would have been provided to similarly situated individuals.

490. All Defendants further deprived Mitchell and his children of their equal protection rights by failing to take any steps or provide services to facilitate the legal requirement of Mitchell's UCCJEA hearing that was provided to Mitchell's Caucasian wife Litvinenko and that would have been provided to similarly situated individuals.

491. P'Simer, Sirr and Yunker further deprived Mitchell and his children of their equal protection rights by filing a petition to terminate Mitchell's parental rights and recommending

custody of XM be transferred to his Caucasian mother but failing to require Campos to participate in all of the parental fitness testing as Mitchell and other similarly situated individuals. Campos was only required to take one psychological test, the evaluation came back negative, and Dr. Lopno did not recommend that Campos receive custody of XM, yet Defendants still recommended transferring custody to Campos.

492. The Defendants' failure to take any action to return XM to Mitchell's constitutionally protected custody was grounded in part in their desire to see XM with his Caucasian mother, whom they viewed as a superior guardian compared to Mitchell, despite Campos's criminal past. This unequal treatment stemmed from a discriminatory intent evidenced by, inter alia, Defendant Borelands statements of "Why are all black families so quick to spank their children? You are unfit to be parents and don't deserve to have children!" and a conspiracy that carried on throughout the case to send BM and XM to their mother in Spain.

493. Defendants, and each of them, were the knowing agents and alter egos of one another, and those Defendants directed, ratified, and approved the conduct of each other, and each of their agents or employees. Moreover, all the Defendants agreed upon, approved, ratified, or conspired to commit all the acts or omissions alleged and continued from February 16, 2014 – December 4, 2015.

494. Defendants, inclusive, and each of them, acted with malice and with the intent to cause injury to Mitchell and his children or acted with a willful and conscious disregard of the rights of Mitchell and his children in a despicable, vile, fraudulent, and contemptible manner.

495. As a direct and foreseeable consequence of these actions, Mitchell and his children were deprived of their rights under the Fourteenth Amendments to the United States Constitution.

496. As a direct and proximate result of these Defendants' actions, Mitchell and his

children have suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XI

The Mitchells' Cause of Action for Violation of Civil Rights (42 U.S.C. §1983) Violation of Equal Protection of the Laws "Class of One" Against All Individual Defendants

497. The plaintiffs incorporate this complaint's previous paragraphs.

498. Under this case's circumstances, Mitchell and his children had the right to be free from discriminatory practices under the Fourteenth Amendment's Equal Protection Clause.

499. This right is "clearly established" such that a reasonable person in Defendants situation would know it is wrong to subject Mitchell and his children to different treatment than that received by similarly situated individuals.

500. The Defendants' different and inferior treatment, included, inter alia:

- a) Boreland: Making racially disparaging and derogatory remarks. Lying and misleading the family court, fabricating evidence, fabricating testimony, fabricating inculpatory evidence, suppressing exculpatory evidence, supplying New Jersey Order to family court for Litvinenko, but intentionally not supplying New Jersey Order to family court for Mitchell when the cases were being handle at the same time, intentionally having the UCCJEA subject matter jurisdiction determination hearing for Litvinenko, but not for Mitchell when the cases were being handle at the same time. Making false conclusionary statements, conspiracy, interfering in a matrimonial relationship and interference with Mitchell's constitutional right to a fair trial.
- b) Akolly: Internationally interfering in a matrimonial relationship.
- c) Swank: Conspiracy.
- d) P'Simer, Yunker: Conspiracy and subjecting Mitchell to a full battery of tests, home studies, parent assessments, and psychological evaluations, while requiring that Mitchell pass them all, along with positive evaluations, but not requiring the same of Campos.
- e) Sirr: Conspiracy, not following court orders and telling minor child to lie to the court and other officials, that he was sending the children to live with their

mother in violation of a New Jersey Court Order, not to participate in court order visitation and not to have any contact with his father for no rational reason. Additionally, subjecting Mitchell to a full battery of tests, home studies, parent assessments, and psychological evaluations, while requiring that Mitchell pass them all, along with positive evaluations, but not requiring the same of Campos.

- f) Swank: Conspiracy, telling minor child to lie to the court and other officials, that she was sending the children to live with their mother in violation of a New Jersey Court Order, not to participate in court order visitation and not to have any contact with his father for no rational reason.
- g) Scott: For signing and vouching for the accuracy of Boreland petitions when Scott knew the documents contained false information. In signing the documents Scott was acting as a witness and not in the capacity of a prosecutor. Conspiracy and supplying New Jersey Custody Court Order to Minnesota family court for Litvinenko, but intentionally not supplying New Jersey Order to Minnesota family court for Mitchell when the cases were being handle at the same time, intentionally having the UCCJEA subject matter jurisdiction determination hearing for Litvinenko, but not for Mitchell when the cases were being handle at the same time.
- h) P'Simer: Lying and misleading the family court, fabricating evidence, fabricating testimony, fabricating inculpatory evidence, suppressing exculpatory evidence, supplying New Jersey Order to family court for Litvinenko, but intentionally not supplying New Jersey Order to family court for Mitchell when the cases were being handle at the same time, intentionally having the UCCJEA subject matter jurisdiction determination hearing for Litvinenko, but not for Mitchell when the cases were being handle at the same time. Making false conclusionary statements, conspiracy, interfering in a matrimonial relationship and interference with Mitchell's constitutional right to a fair trial. Additionally, subjecting Mitchell to a full battery of tests, home studies, parent assessments, and psychological evaluations, while requiring that Mitchell pass them all, along with positive evaluations, but not requiring the same of Campos.
- i) Yunker: Lying and misleading the family court, fabricating evidence, fabricating testimony, fabricating inculpatory evidence, suppressing exculpatory evidence, supplying New Jersey Order to family court for Litvinenko, but intentionally not supplying New Jersey Order to family court for Mitchell when the cases were being handle at the same time, intentionally having the UCCJEA subject matter jurisdiction determination hearing for Litvinenko, but not for Mitchell when the cases were being handle at the same time. Making false conclusionary statements, conspiracy, interfering in a matrimonial relationship and interference with Mitchell's constitutional right to a fair trial. Additionally, subjecting Mitchell to a full battery of tests, home studies, parent assessments, and psychological evaluations, while requiring

that Mitchell pass them all, along with positive evaluations, but not requiring the same of Campos.

- j) Stang: Lying and misleading the family court, fabricating evidence, fabricating testimony, fabricating inculpatory evidence, suppressing exculpatory evidence, supplying New Jersey Order to family court for Litvinenko, but intentionally not supplying New Jersey Order to family court for Mitchell when the cases were being handle at the same time, intentionally having the UCCJEA subject matter jurisdiction determination hearing for Litvinenko, but not for Mitchell when the cases were being handle at the same time. Making false conclusionary statements, conspiracy, interfering in a matrimonial relationship and interference with Mitchell's constitutional right to a fair trial. Additionally, subjecting Mitchell to a full battery of tests, home studies, parent assessments, and psychological evaluations, while requiring that Mitchell pass them all, along with positive evaluations, but not requiring the same of Campos.
- k) Boreland, P'Simer, Yunker and Stang failed to create a valid case plan for the Mitchell. This didn't provide Mitchell with the same opportunity as other individuals in similarly situated circumstances with DCSS.
- l) Boreland, P'Simer, Yunker and Stang failed to create a valid reunification plan for the Mitchell. This didn't provide Mitchell with the same opportunity as other individuals in similarly situated circumstances with DCSS.
- m) Boreland, P'Simer, Yunker and Stang failed to conduct a "Fit Parent Test" on Campos, Home visits and supervised visits.
- n) Coyne, Kopesky: Supplying New Jersey Order to family court for Litvinenko, but intentionally not supplying New Jersey Order to family court for Mitchell when the cases were being handle at the same time, intentionally having the UCCJEA subject matter jurisdiction determination hearing for Litvinenko, but not for Mitchell when the cases were being handle at the same time. Making false conclusionary statements, conspiracy, interfering in a matrimonial relationship and interference with Mitchell's constitutional right to a fair trial. Additionally, subjecting Mitchell to a full battery of tests, home studies, parent assessments, and psychological evaluations, while requiring that Mitchell pass them all, along with positive evaluations, but not requiring the same of Campos.

501. As set forth supra, Defendants, motivated by animus against Mitchell and his children based on no rational explanation for the difference in treatment, they intentionally, willfully and maliciously acted to deprive Mitchell and his children of their rights by lying and misleading the family court, fabricating evidence, fabricating testimony, fabricating inculpatory

evidence, suppressing exculpatory evidence, making false conclusory statements, conspiracy, and interfering in a matrimonial relationship.

502. This deprived Mitchell and his children of his right to be free from arbitrary, egregious, and oppressive interference with his constitutional rights and liberties as it relates to due process and a fair trial.

503. Based on animus against, and stereotypical perceptions of Mitchell and his children for no rational basis for the difference in treatment, Defendants intentionally, willfully or recklessly lied and mislead the family court, fabricating evidence, fabricating testimony, fabricating inculpatory evidence, suppressing exculpatory evidence, supplying New Jersey Order to family court for Litvinenko, but intentionally not supplying New Jersey Order to family court for Mitchell when the cases were being handle at the same time, intentionally having the UCCJEA subject matter jurisdiction determination hearing for Litvinenko, but not for Mitchell when the cases were being handled at the same time.

504. They made false conclusory statements, and conspired, against Mitchell to the court with the intent and effect of damaging Mitchell at least in part for the purpose of causing an adverse effect on Mitchell for no rational basis in the different treatment whatsoever.

505. Defendants, and each of them, were the knowing agents and alter egos of one another, and those Defendants directed, ratified, and approved the conduct of each other, and each of their agents or employees. Moreover, all the Defendants agreed upon, approved, ratified, or conspired to commit all the acts or omissions alleged from February 16, 2014 – December 4, 2015.

506. Defendants, inclusive, and each of them, acted with malice and with the intent to cause injury to Mitchell or acted with a willful and conscious disregard of the rights of Mitchell in a despicable, vile, fraudulent, and contemptible manner.

507. As a direct and foreseeable consequence of these actions, Mitchell and his children were deprived of their rights under the Fourteenth Amendments to the United States Constitution.

508. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XII

Dwight Mitchell's Cause of Action for Violation of Civil Rights (42 U.S.C. § 1983)-- Violation of Fundamental Right of Marriage and Intimate Association Against Defendants Boreland, P'Simer, Akolly, Stang, Coyne, Kopesky and Yunker Inclusive

509. The plaintiffs incorporate this complaint's previous paragraphs.

510. Under this case's circumstances, Dwight Mitchell had the right to be free from unreasonable forced marital separation under the First and Fourteenth Amendments.

511. This right is "clearly established" such that a reasonable social worker in Defendants' situation would know it is wrong to interfere in a matrimonial relationship and that such right may not be impinged upon without first obtaining a warrant or other court order to do so.

512. The act or policy of removing the suspected parent from the family home or making couples separate during the pendency of child abuse investigations absent any procedural safeguards is a violation of procedural due process.

513. It is equally well established that a person in Mitchell's position have a constitutional right to be free from forced familial separation for 5-months without court orders or with court orders obtained by fraud, artifice and maliciously refusing to provide exculpatory evidence.

514. Defendants did not have reasonable grounds that Litvinenko or ML were abused or were in imminent danger of abuse. Defendants had no physical evidence of abuse with which to base an opinion. Record evidence establishes that Defendants lacked any objective evidence of abuse, and, indeed, that Defendants had no belief that such abuse had ever occurred or would occur in the future.

515. The actions of DCSS are subject to strict scrutiny. The interests of DCSS, if any, could have been achieved through less restrictive means. Considering the circumstances surrounding the ultimatum, Defendant's conduct was an arbitrary abuse of government power.

516. The foregoing acts and omissions of the Defendants were the proximate result of a policy, practice or custom of DCSS, were at the specific direction of, through the participation of, or with the knowing acquiescence of Coyne, Kopesky, Stang, and Yunker, were made with the knowing acquiescence of Coyne, Kopesky, Stang, and Yunker or DCSS or Dakota County, or were otherwise the result of DCSS and the Dakota County's deliberately indifferent failure to train, supervise, or discipline its employees and agents regarding the requirements to cause families to be separated or removed from their home and parents' /guardians' care, utilizing the least restrictive means to achieve the perceived goals of DCSS, when children must be returned to the care of their parents or guardians, and when parents or guardians may be denied the right to have contact with their family. Defendants Boreland, Akolly, Stang, Yunker, Kopesky, and Coyne are vicariously responsible for the conduct of each other, inclusive, under applicable statutory and case law.

517. Boreland, Akolly, Stang, Yunker, Kopesky, and Coyne each acted with malice and with the intent to injure Mitchell or acted with a willful and conscious disregard of Mitchell's rights.

518. As a direct and foreseeable consequence of these Defendants' actions, Mitchell

was deprived of his rights under the Fourteenth Amendment.

519. As a direct and proximate result of these Defendants' actions, Mitchell has suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy, and irreparable harm to his marital relationship and reputation all to an extent and in an amount subject to proof at trial.

COUNT XIII

Dwight Mitchell and Children Cause of Action (42 U.S.C. § 1983)

***Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1977)**

Against Coyne, Kopesky, Stang, Yunker, Scott, and Swank in their official capacities and County of Dakota

520. The plaintiffs incorporate this complaint's previous paragraphs.

521. Defendant County of Dakota, including through its entity Dakota County Social Services Agency, established or followed policies, procedures, customs, usages or practices (hereinafter referred to collectively as "policy" or "policies") which policies were the moving force behind the violations of Mitchell's constitutional rights as alleged hereinabove, including those arising under the Fourteenth Amendments to the United States Constitution, by and through, but not limited to, the following policies, practices, customs or procedures:

- a. the custom or policy of detaining or removing children from their family and homes without exigent circumstances (imminent danger of serious physical injury), court order or consent;
- b. the custom or policy of removing children from their family and their homes without first obtaining a warrant or other court order when no exigency exists;
- c. the custom or policy of forcing husband and wife to separate and move from their family and their homes without first obtaining a court order when no exigency exists;
- d. the custom or policy of examining (medically) children without exigency, need, or proper court order, and without the presence or consent of their parent or guardian;
- e. the custom or policy of requiring parents to give up their constitutional right to enter contracts freely by forcing them to sign legally binding documents against

their will through intimidation, coercion and under duress. Then, if the parents refuse to sign the documents, social services advise the court that the parent is being “uncooperative” and recommends to the court that they sign the documents. This includes but is not limited to; granting social services unlimited access to schools, doctors, medical records, dental records and payment obligations for out of home placements services.

- f. the custom or policy of not working with parents or guardians to develop and implement the required safety plan to prevent the placement of the children in foster care as required pursuant to “Reasonable efforts to prevent placement”;
- g. the custom or policy of removing and detaining children, and continuing to detain them for an unreasonable period after any alleged basis for detention is negated;
- h. the custom or policy of using trickery, duress, fabrication or false testimony or evidence, and in failing to disclose exculpatory evidence, in preparing and presenting reports and documents to the Court, causing an interference with the Mitchell’s rights, including those as to familial relations;
- i. The custom or policy of not following Minnesota UCCJEA statutes and requirements which violate constitutionally protected parental rights of custody by illegally usurping “Subject Matter Jurisdiction” by acting with deliberate indifference in implementing a policy of inadequate training, or by failing to train its officers, agents, employees and state actors, in providing the constitutional protections guaranteed to individuals, including those under the Fourth and Fourteenth Amendments, when performing actions related to child abuse and dependency type proceedings, subject matter jurisdiction, UCCJEA requirements and procedures, fabrication or false testimony or evidence, and in failing to disclose exculpatory evidence;
- j. by acting with deliberate indifference in implementing a policy of inadequate supervision, or by failing to adequately supervise its officers, agents, employees and state actors, in providing the constitutional protections guaranteed to individuals, including those under the Fourth and Fourteenth Amendments, when performing actions related to child abuse, dependency type proceedings, Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) proceedings, subject matter jurisdiction, fabrication or false testimony or evidence, and in failing to disclose exculpatory evidence;
- k. The policy of making false allegations in Juvenile Dependency Petitions, i.e. alleging that a spouse has failed to protect a child under Minnesota Statutes § 260C.007, where there is no evidentiary basis to support the charge. Such a similar practice by Dakota County has been undertaken with a deliberate indifference to the rights of the accused parent and the affected child. With regard to this particular practice, the conduct of Defendants in this case is not an “isolated incident.” Rather, it is a well-established custom, practice, and usage of the agency and its workers of which the County has knowledge yet has

deliberately failed to ameliorate the problem through the promulgation of policies to regulate the conduct of its social workers. Moreover, the County has failed to implement training and oversight for its workers to prevent them from engaging in such unconstitutional conduct;

1. The policy of permitting social workers to make and publish premature conclusions of maltreatment. These maltreatment determinations, based upon allegations which have not been heard by the court, may result in denial of a license application or background study disqualification related to employment or services that are licensed by the Department of Human Services, the Department of Health, the Department of Corrections, and from providing services related to an unlicensed personal care provider organization. These determinations may have a negative impact on job or volunteer work with children, elderly, disabled, or other vulnerable people. With regard to this particular practice, the conduct of Defendants in this case is not an “isolated incident.” Rather, it is a well-established custom, practice, and usage of the agency and its workers of which the County has knowledge yet has deliberately failed to ameliorate the problem through the promulgation of policies to regulate the conduct of its social workers. Moreover, the County has failed to implement training and oversight for its workers to prevent them from engaging in such unconstitutional conduct.

522. The above policies and customs are part and parcel of an effort by the County of Dakota to fraudulently boost its intervention statistics to obtain greater State and Federal funding for its social services programs through Child Welfare – Targeted Case Management (CW-TCM). Under Minn. Stat. § 256B.094, subd. 8, which has been in effect since 1993, CW-TCM benefits are a) a reimbursable Medicaid service, b) a revenue source for counties and tribal agencies, c) a revenue source that may be used to maintain or expand designated preventative services, and d) a revenue source that can fund positions.

523. In this case, Dakota County Social Services was able to bill MHCP for one case manager, each month, per child, for the time of the illegal retention of BM, XM, and AM, foster care, therapy and all services in support of the children. In turn, MHCP retained a portion of the federal share of the reimbursement for administrative services.

524. Later, Dakota County Social Services billed Mitchell for all or part of the unnecessary foster care and continues to bill each month as of the filing of this complaint.

525. County of Dakota breached its duties and obligations to Mitchell and his children by, including but not limited to, failing to establish, implement and follow the correct and proper Constitutional policies, procedures, customs and practices; by failing to properly select, supervise, train, control, and review its agents and employees as to their compliance with Constitutional safeguards with deliberate indifference; and by knowingly, or with deliberate indifference, permitting Boreland, Stang, P'Simer, Yunker, Kopesky, Coyne, Scott, and Swank to engage in the unlawful and unconstitutional conduct described in this complaint.

526. County of Dakota knew, or should have known, that by breaching the above-mentioned duties and obligations that it was foreseeable that said failure would, and did, cause Mitchell and his children to be injured and damaged, and his constitutional rights to be impaired, by the wrongful policies and acts as alleged herein, and that such breaches occurred in contravention of public policy and Defendants' legal duties and obligations to Mitchell and his children; and that such policies, practices, customs and procedures were the moving force behind the constitutional violations alleged herein above.

527. As a direct and foreseeable consequence of these actions, Mitchell and his children were deprived of their rights under the Fourteenth Amendments to the United States Constitution.

528. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XIV

The Mitchells' Cause of Action (42 U.S.C. § 1983)—Supervisory Violations Against Defendants Coyne, Kopesky, Stang, and Yunker in their individual capacities

529. The plaintiffs incorporate this complaint's previous paragraphs.

530. Under the circumstances of this case, outlined above, Mitchell and his children have the right to be free from detention without due process of law under the Fourteenth Amendment of the Constitution of the United States.

531. This right is “clearly established” such that a reasonable social worker in Defendants’ situation would know it is wrong to interfere in a child’s right to remain with its parents in the absence of exigent circumstances, and that such right may not be impinged upon without first obtaining a warrant or other court order to do so.

532. It is equally well established that a person in Mitchell and the children’s position have a constitutional right to be free from unreasonable seizure pursuant to court orders obtained by fraud or artifice.

533. In addition, there is a clearly established due process right not to be subjected to false accusations on the basis of false evidence that was deliberately fabricated by the government such that a reasonable social worker in Defendants’ situation would know it is unlawful to lie, fabricate evidence, manipulate witnesses, manipulate Mitchell’s minor children, or suppress exculpatory evidence in sworn affidavits, sworn petitions, court reports or Juvenile Dependency Petitions filed with the court.

534. In the absence of exigent circumstances, and without any evidence to suggest that AM, XM, or BM was in imminent danger of suffering serious bodily injury at the hands of their father, and forgoing the requirements of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Defendants, and each of them, acting under color of law, agreed, or conspired to deceive the juvenile dependency court in order to obtain an order authorizing the seizure of AM, XM, or BM from their family and comfort and care of their father Dwight Mitchell.

535. Thereafter, Defendants, and each of them acting on aforesaid scheme, did

unlawfully seize and detain AM, XM, or BM from the care of their father. Defendants' conduct was without proper justification or authority, and without probable cause, consent, exigency, or lawfully obtained court order.

536. Further, Defendants' actions were taken with deliberate indifference to Mitchell and his children's rights.

537. The failure of Coyne, Kopesky, Stang, and Yunker to train, control, and supervise Boreland and P'Simer with regard to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), led to violations of Mitchell and the children's constitutional rights.

538. During the course of the investigation and dependency proceedings, Boreland, P'Simer, Stang and Yunker individually and in concert, engaged in a number of investigative abuses, including intimidation of witnesses and the Mitchells, manufacturing of false evidence, suppression of exculpatory evidence, manipulation of witnesses, and manipulation of Mitchell's children.

539. Coyne, Kopesky, Stang, and Yunker knew, or should have known, about these abuses and failed to take meaningful preventative or remedial action.

540. Coyne, Kopesky, Stang, and Yunker actions evidenced a reckless and callous disregard for, and deliberate indifference to, Mitchell's constitutional rights.

541. The failure of Coyne, Kopesky, Stang, and Yunker to supervise the dependency investigation and proceedings resulted in violations of Mitchell's constitutional rights.

542. Defendant Coyne, Kopesky, Stang, and Yunker are vicariously liable for the conduct of their subordinates, inclusive, under applicable statutory and case law.

543. Coyne, Kopesky, Stang, and Yunker, and each of them, acted with negligence and indifference and as such, caused injury to Mitchell and his children, or acted with a willful and conscious disregard of the rights of Mitchell in a despicable, vile, fraudulent, and contemptible

manner.

544. As a direct and foreseeable consequence of these actions, Mitchell and his children were deprived of their rights under the Fourteenth Amendments to the United States Constitution.

545. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XV

The Mitchells' Cause of Action (42 U.S.C. §1983) Conspiracy Against Defendants Boreland, P'Simer, Stang, Yunker, Sirr, Derby, Scott, and Swank in their individual capacities and official capacities

546. The plaintiffs incorporate this complaint's previous paragraphs.

547. Boreland, P'Simer, Stang, Yunker, Sirr, Derby, Scott, and Swank are "persons," as that term is used in 42 U.S.C. §1983.

548. Under color of state law, Boreland, P'Simer, Stang, Yunker, Sirr, Derby, Scott, and Swank conspired and entered into express or implied agreements, understandings, or meetings of the minds among themselves to deprive Mitchell and his children of their constitutional rights by illegally detaining his children without proper subject-matter jurisdiction under Minnesota's Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minnesota Statutes §§518D.101–518D.317 (2014) with the conspiracy to "Terminate Parental Rights" of Mitchell and transfer custody of XM and BM to their biological mother in Spain.

549. Boreland, P'Simer, Stang, Yunker, Sirr, Derby, Scott, and Swank willfully participated in this illegal objective by various means, with the intent to further their illegal conspiracy to send the children to their mother in Spain, including, for example:

- a) participating in the required New Jersey UCCJEA Hearing on subject matter jurisdiction for Litvinenko, Mitchell's wife, but denying a Hearing for Mitchell, when they both had New Jersey custody orders from previous relationships and both Petitions were being prosecuted simultaneously by Scott in order to illegally seize jurisdiction and keep the case in Minnesota to affect their conspiracy;
- b) revoking visitation in the face of supporting evidence from the full-time nanny of 1-year and part-time baby sitter of 6-months that the Mitchell was not violent, they had never seen bruises on any of the boys in the past, this was the first time they had ever seen Mitchell use corporal punishment on the boys and that the boys were not afraid of their father;
- c) revoking visitation and requesting a DANCO (Domestic No Contact Order) in the face of supporting positive visitation evidence from DCSS hired, independent third-party supervision firm of Nystrom & Associates.
- d) "Boreland's" offer to immediately send BM to his mother in Spain upon his arrival to Minnesota for the first time in March 2014 before officially registering his arrival with DCSS manipulating BM to get expelled from Fork Union Military Academy to facilitate his return to Minnesota and DCSS illegal custody to further the conspiracy to send BM to his mother in Spain publishing false statements to the court that XM did not wish contact or visitation with Mitchell when the exact opposite was true;
- e) manipulating XM regarding visitation by advising him that because he was to go and live with his mother in Spain, he was not allowed to have contact and visitation with his father;
- f) concealing information from the court that XM requested to come home to Mitchell numerous times;
- g) fabricating evidence, lying, manufacturing and approving misleading and deceptive court reports;
- h) advising AM, XM, and BM to make false evidence statements and witnesses tampering;
- i) publishing false and inflammatory CRU case entries and statements regarding Mitchell, yet disregarding and concealing "terrorist threats" by the boy's mother Campos to the foster family when DCSS advised them to call the police and to file felony charges of "Terrorist Threats and that DCSS has suspended all contact between Campos and the children;
- j) concealing information from the court early in the case that Campos had a change of heart and requested twice that XM be returned to his father Dwight Mitchell's custody after Campos had initially requested that custody be returned to her in Spain;

- k) agreeing to make false and materially incomplete statements to the court that returned the February 2014 decision of removal of the children from Mitchell's custody; and
- l) fabricating additional false evidence after the February 2014 removal, such as Boreland's "Amended Petition" with false Piscataway, NJ police report information and allegations, "Final Assessment", and Boreland's March 2014 "interview" of Tanisha Wellard, but failing to include the positive interviews from the full-time nanny of 1-year Broders, part-time baby sitter of 6-months Hardy who initially reported the incident, XM and AM teachers, and the school principle. Furthermore, Defendants did not submit any of the positive DCSS testing results or positive psychological evaluation that proved Mitchell was a fit parent.

550. Boreland, P'Simer, Stang, Yunker, Sirr, Derby, Scott, and Swank actions evidenced a reckless and callous disregard for, and deliberate indifference to, Mitchell's and his children's constitutional rights.

551. Defendants, and each of them, acted with malice and with the intent to cause injury to Mitchell or acted with a willful and conscious disregard of the rights of Mitchell in a despicable, vile, fraudulent, and contemptible manner.

552. As a direct and foreseeable consequence of these actions, Mitchell and his children were deprived of their rights under the Fourteenth Amendments to the United States Constitution.

553. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

Count XVI
The Mitchells' Cause of Action (42 U.S.C. §1986)—
Conspiracy-Dakota County Social Services
Against Defendants Coyne, Kopesky, Stang, and Yunker in their individual capacities and
official capacities; and the County of Dakota

554. The plaintiffs incorporate this complaint's previous paragraphs.

555. Coyne, Kopesky, Stang, Yunker, and the County are "persons," as that term is used in 42 U.S.C. § 1986.

556. Coyne, Kopesky, Stang, Yunker, and the County had prior knowledge of the wrongs conspired to be committed by Defendants Boreland, P'Simer, Yunker, and Stang.

557. Coyne, Kopesky, Stang, Yunker, and the County had the power to prevent or aid in preventing the commission of the wrongs conspired to be committed by Defendants Boreland, P'Simer, Yunker, and Stang, and which by reasonable diligence could have been prevented, but they neglected or refused to exercise such power after being informed.

558. As a direct and proximate result of the neglect or refusal of Coyne, Kopesky, Stang, Yunker, and the County to prevent or to aid in preventing the commission of the wrongs conspired to be committed by Defendants Boreland, P'Simer, Yunker, and Stang, Mitchell and his children suffered injuries and damages as alleged herein.

559. The actions of Coyne, Kopesky, Stang, Yunker, and the County evidenced a reckless and callous disregard for, and deliberate indifference to, Mitchell's and his children's constitutional rights.

560. Defendants, and each of them, acted with malice and with the intent to cause injury to Mitchell and his children or acted with a willful and conscious disregard of the rights of Mitchell and his children in a despicable, vile, fraudulent, and contemptible manner.

561. As a direct and foreseeable consequence of these actions, Mitchell and his

children were deprived of their rights under the Fourteenth Amendments to the United States Constitution.

562. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XVII
The Mitchells' Cause of Action (42 U.S.C. §1986)—
Conspiracy-Dakota County Attorney's Office
Against Defendants Scott and Swank in their individual capacities and official capacities;
and the County of Dakota

563. The plaintiffs incorporate this complaint's previous paragraphs.

564. Scott, Swank, and the County are "persons," as that term is used in 42 U.S.C. §1986.

565. Scott, Swank, and the County had prior knowledge of the wrongs conspired to be committed by Boreland, P'Simer, Scott, and Swank.

566. Scott, Swank, and the County had the power to prevent or aid in preventing the commission of the wrongs conspired to be committed by Defendants Boreland, P'Simer, Scott and Swank, and which by reasonable diligence could have been prevented, but they neglected or refused to exercise such power.

567. As a direct and proximate result of the neglect or refusal of Scott, Swank and the County of Dakota to prevent or to aid in preventing the commission of the wrongs conspired to be committed by Defendants Boreland, P'Simer, Scott, and Swank, Mitchell and his children suffered injuries and damages as alleged herein.

568. The actions of Boreland, P'Simer, Scott, Swank, and the County evidenced a reckless and callous disregard for, and deliberate indifference to, Mitchell's and his children's

constitutional rights.

569. Defendants, and each of them, acted with malice and with the intent to cause injury to Mitchell or acted with a willful and conscious disregard of the rights of Mitchell in a despicable, vile, fraudulent, and contemptible manner.

570. §As a direct and foreseeable consequence of these actions, Mitchell and his children were deprived of their rights under the Fourteenth Amendments to the United States Constitution.

571. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer damages, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XVIII

The Mitchells' Intentional Infliction of Emotional Distress and Conspiracy Claim Against Defendants Boreland, P'Simer, Akolly, Sirr, Derby, Stang, Yunker, Kopesky, and Coyne in their individual capacities and official capacities

572. The plaintiffs incorporate this complaint's previous paragraphs.

573. Boreland, P'Simer, Akolly, Sirr, Derby, Stang, Yunker, Kopesky, and Coyne acted individually and in concert to illegally force the separation of Mitchell from his wife, conceal UCCJEA hearing requirements for subject matter jurisdiction, formed a conspiracy to terminate the parental rights of Mitchell and transfer custody to Campos, manufacture inculpatory evidence and to conceal exculpatory evidence for the purpose of perpetuating a civil action against the Mitchell's in furtherance of said conspiracy, manipulating witnesses with the intention of perpetuating civil proceedings against the Mitchell's, illegally detaining AM for 5 months, and illegally detaining XM for 22 months, while refusing Mitchell all visitation and communication, and while simultaneously refusing to create a reunification or out-of-home

placement plan as required by law.

574. In combination with conduct described above, these actions evidenced a pattern of extreme and outrageous behavior pursued with the intent to cause Mitchell and his children to suffer severe emotional distress.

575. Because of Defendants' intentional and outrageous conduct, Mitchell and his children have suffered, and continue to suffer from, emotional and mental conditions generally recognized and diagnosed by trained professionals as stated above.

576. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer, economic, physical, mental, emotional injury, loss of liberty, loss of privacy, and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XIX

**The Mitchells' Negligence by Dakota County Social Services, Guardian Ad Litem and Public Defender Claim
Against Defendants Boreland, P'Simer, Sirr, and Derby
in their individual and official capacities and the County**

577. The plaintiffs incorporate this complaint's previous paragraphs.

578. At the time of the State of Minnesota and Dakota County Statements described above, Defendants' owed Mitchell and his children a duty to use due care with respect to statements concerning the investigation of the Campos claims.

579. At the time of the events alleged above, Boreland, P'Simer, Sirr, and Derby owed Mitchell and his children a duty to use due care with respect to the investigation of Campos allegations.

580. At the time Boreland made her Dakota County Statements, she knew or should have known that such statements were false and inflammatory and likely to cause Mitchell and his children harm.

581. At the time Boreland, P'Simer, Sirr, and Derby committed the acts and omissions alleged above, they knew or should have known that they violated or departed from Minnesota State and Dakota County policies and procedures, violated or departed from professional standards of conduct, violated constitutional rights, and were likely to cause Mitchell and his children harm.

582. In committing the aforementioned acts or omissions, Boreland, P'Simer, Sirr, and Derby negligently breached said duties to use due care, which directly and proximately resulted in the injuries and damages to the Mitchell and his children as alleged herein.

583. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer economic, physical, mental, emotional injury, loss of liberty, loss of privacy, and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XX

The Mitchells' Negligence by Dakota County Social Services Supervisors Claim Against Defendants Coyne, Kopesky, Stang, and Yunker in their individual and official capacities and the County

584. The plaintiffs incorporate this complaint's previous paragraphs.

585. At the time of the events alleged above, Coyne, Kopesky, Stang, Yunker, and the County owed Mitchell and his children a duty to use due care in the hiring, training, supervision, discipline, and retention of Dakota County Social Services personnel, including the personnel involved in the investigation of Campos claims.

586. At the time of the events alleged above, Boreland, P'Simer, Stang, and Yunker owed Mitchell and his children a duty to use due care with respect to the investigation of Campos allegations.

587. At the time Boreland made her Dakota County Statements, she knew or should

have known that such statements were false and inflammatory and likely to cause Mitchell and his children harm.

588. Coyne, Kopesky, Stang, and Yunker negligently supervised Defendant Boreland by assigning her to the investigation into Campos's allegations, notwithstanding Boreland's lack of experience in major interstate UCCJEA investigations and P'Simer's international experience.

589. Coyne, Kopesky, Stang, and Yunker negligently supervised Defendants Boreland and P'Simer, failed to provide them with proper training, and failed to outline proper procedure to them in various respects relating to the appropriate conduct of interstate and international dependency investigations and proceedings, including by way of example:

- a) the appropriate chain of command in interstate / international dependency investigations;
- b) the issuance of false, manufactured, misleading or unverified statements relating to an open investigation;
- c) the proper procedures for handling UCCJEA Petitions, Subject Matter Jurisdiction and UCCJEA dependency investigations;
- d) the prohibiting threats, inducements, or intimidation of witnesses and spouses;
- e) the standards for DCSS reports, investigator's notes, and other reports of investigations, including the timely and truthful preparation of such documents; and
- f) the standards for Petition, Affidavits and Court reports, including the timely and truthful preparation of such documents.

590. Coyne, Kopesky, Stang, and Yunker further negligently supervised Boreland and P'Simer by ignoring evidence presented by Mitchell and Litvinenko demonstrating the misconduct underlying the investigation, and instead continuing to allow Boreland to have primary responsibility for the investigation, and P'Simer to continue to serve on the dependency case.

591. Coyne, Kopesky, Stang, and Yunker further negligently supervised Boreland by

ignoring the false, fabricated and inflammatory Boreland Statements, failing to retract such statements or correct Petitions for UCCJEA requirements, failing to reprimand Boreland for such false statements, and failing to remove P'Simer from his role as a Case Worker for failure to correct known UCCJEA requirements. To the contrary, Coyne, Kopesky, Stang, and Yunker condoned Boreland and P'Simers action, approved their false court reports and continued providing them with their full support.

592. In committing the aforementioned acts or omissions, Coyne, Kopesky, Stang, and Yunker negligently breached said duties to use due care, which directly and proximately resulted in the injuries and damages to the Mitchell and his children as alleged herein.

593. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer, economic, physical, mental, emotional injury, loss of liberty, loss of privacy, and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XXI

The Mitchells' Negligent-Infliction-of-Emotional-Distress Claim Against Defendants Boreland, P'Simer, Akolly, Sirr, Derby, Stang, Yunker, Kopesky, and Coyne in their individual and official capacities

594. The plaintiffs incorporate this complaint's previous paragraphs.

595. Boreland, P'Simer, Akolly, Sirr, Derby, Stang, Yunker, Kopesky, and Coyne acted individually and in concert to illegally force the separation of Mitchell from his wife, conceal UCCJEA hearing requirements for subject matter jurisdiction, conspiracy to terminate the parental rights of Mitchell and transfer custody to Campos, manufacture inculpatory evidence and to conceal exculpatory evidence for the purpose of perpetuating a civil action against the Mitchell's in furtherance of said conspiracy, manipulating witnesses with the intention of perpetuating civil proceedings against Mitchell, illegally detaining AM for 5-months, illegally

detaining XM for 22 months while refusing Mitchell all visitation and communication while simultaneously refusing to create a reunification or out-of-home placement plan as required by law.

596. In combination with conduct described above, these actions evidenced a pattern of extreme and outrageous behavior pursued with the intent to cause Mitchell and his children to suffer severe emotional distress.

597. Because of Defendants' intentional and outrageous conduct, Mitchell and his children have suffered and continue to suffer from emotional and mental conditions generally recognized and diagnosed by trained professionals.

598. As a direct and proximate result of these Defendants' actions, Mitchell and his children have suffered, and will continue to suffer, economic, physical, mental, emotional injury, loss of liberty, loss of privacy and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XXII
The Mitchells' Malicious-Prosecution Claim

599. The plaintiffs incorporate this complaint's previous paragraphs.

600. Defendant County and Boreland, P'Simer, Akolly, Sirr, Derby, Stang, and Yunker in their individual capacities and official capacities maliciously prosecuted Mitchell in the civil child-protection proceedings which culminated in a meritless petition for termination of parental rights filed on the 15-month anniversary of XM being taken from Mitchell and placed in foster care.

601. The County, Boreland, P'Simer, Akolly, Sirr, Derby, Stang, and Yunker acted individually and in concert through court processes to illegally detain XM for 22 months while refusing Mitchell all visitation and communication while simultaneously refusing to create a

reunification or out-of-home placement plan as required by law.

602. The Defendants' petition for termination of Dwight Mitchell's parental rights and to transfer custody to Campos in Spain was intentionally and maliciously instituted and pursued.

603. The Defendants filed the petition on about the 15-month anniversary of XM being transferred to foster care—in order to continue to qualify for federal funding.

604. The federal funding for foster care is not available after 15 months of foster care absent exigent circumstances.

605. The Defendants filing the meritless petition for termination of parental rights to continue qualifying for federal funding was an improper governmental motivation—intentional and malicious.

606. The County, Boreland, P'Simer, Akolly, Sirr, Derby, Stang, and Yunker acted intentionally and maliciously by instituting and pursuing a civil legal action brought without probable cause..

607. Because the county's position was meritless, the District Court dismissed the whole petition in favor of the victim Dwight Mitchell.

608. As a direct and proximate result of these Defendants' actions, Dwight Mitchell, Bryce Mitchell, XM, and AM have suffered, and will continue to suffer, economic, physical, mental, emotional injury, loss of liberty, loss of privacy, and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XXIII
The Mitchells' Abuse-of-Process Claim

609. The plaintiffs incorporate this complaint's previous paragraphs.

610. The County and Boreland, P'Simer, Akolly, Sirr, Derby, Stang, and Yunker in their individual and official capacities abused process against Dwight Mitchell in the civil child

protection proceedings by filing a meritless petition for termination of parental rights filed on the 15-month anniversary of XM being taken from Dwight Mitchell and placed in foster care.

611. The County, Boreland, P'Simer, Akolly, Sirr, Derby, Stang, and Yunker acted individually and in concert through the meritless petition for termination of parental right to illegally detain XM for an additional 30 days after the November 2, 2015 Court Hearing on the motion to dismiss for lack of Subject Matter Jurisdiction when they knew that Dwight Mitchell was a fit parent and had an immediate write to XM

612. The Defendants' petition for termination of Mitchell's parental rights and to transfer custody to Campos in Spain was intentionally and maliciously instituted and pursued—and abuse of process.

613. The Defendants filed the petition on the 15th anniversary of XM being transferred to foster care—in order to continue to qualify for federal funding.

614. The federal funding for foster care is not available after 15 months of foster care absent exigent circumstances.

615. The Defendants filing the meritless petition for termination of parental rights to continue qualifying for federal funding was an improper governmental motivation—intentional and malicious.

616. The County, Boreland, P'Simer, Akolly, Sirr, Derby, Stang, and Yunker acted intentionally and maliciously by instituting and pursuing the petition to terminate parental rights against Dwight Mitchell brought without probable cause.

617. Because the county's petition to terminate Dwight Mitchell's parental rights was meritless, the District Court dismissed the whole petition in favor of the victim Dwight Mitchell.

618. As a direct and proximate result of these Defendants' actions regarding the filing and pursuit of the petition for termination of parental rights, Mitchell, Bryce Mitchell, XM, and

AM have suffered, and will continue to suffer, economic, physical, mental, emotional injury, loss of liberty, loss of privacy, and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XXIV

**XM's and AM's False-Imprisonment Claim
Against Defendants Boreland, P'Simer, Sirr, Derby, Stang, Yunker, Kopesky, and Coyne
in their individual and official capacities**

619. The plaintiffs incorporate this complaint's previous paragraphs.

620. Boreland, P'Simer, Sirr, Derby, Stang, Yunker, Kopesky, and Coyne acted individually and in concert to illegally detain AM for 5 months, illegally detain XM for 22 months while refusing Mitchell all visitation and communication while simultaneously refusing to create a reunification or out-of-home placement plan as required by law.

621. In combination with conduct described above, these actions evidenced a pattern of extreme and outrageous behavior pursued with the intent to falsely imprison XM and AM.

622. Because of Defendants' intentional and outrageous conduct, XM and AM suffered and continue to suffer from emotional and mental conditions generally recognized and diagnosed by trained professionals.

623. As a direct and proximate result of these Defendants' actions, XM and AM have suffered, and will continue to suffer economic, physical, mental, emotional injury, loss of liberty, loss of privacy, and irreparable harm to reputation all to an extent and in an amount subject to proof at trial.

COUNT XXV

**Mitchell's challenge to County Invoice for Child-Protection Services
Declaratory Judgment Claim Against County Defendant**

624. The plaintiffs incorporate this complaint's previous paragraphs.

625. The County has invoiced Mitchell as recently as March 31, 2018 for family foster

care and related charges of \$16,840.20 relating to XM and AM.

626. The County may have invoiced Mitchell for other charges.

627. All charges were the result of the County's illegal detention of XM and AM.

628. Mitchell and the children never contracted, requested, or needed the County's services.

629. The County violated its legal duties to Mitchell and his children by unnecessarily detaining XM and AM.

630. Consequently, the County's invoices are unenforceable.

631. The Court should award Mitchell a declaratory judgment declaring the County's invoices null and void.

DEMAND FOR JURY TRIAL

The Plaintiffs hereby request a trial by jury on all claims so triable.

PRAYER FOR RELIEF

Therefore, to redress the injuries caused by Minnesota's laws terminating parental rights and caused by the defendants' conduct and to prevent the substantial risk of future irreparable injury to persons in Minnesota as a result of the defendants' laws, policies, customs, practices, and supervisory misconduct, the plaintiffs request the following relief:

- a. nominal, general, special, and compensatory damages in an amount exceeding \$100,000 to be established at trial;
- b. declaratory judgment that any invoices Defendants or agents have given to Mitchell for child protection costs, including foster care costs, are null, void and unenforceable;
- c. preliminary and permanent statewide injunction, including but not limited to enjoining enforcement of those statutory provisions referenced above in the Counts;
- d. an award of attorneys' fees, including attorneys' fees under 42 U.S.C. § 1988(b),

and any other appropriate statutes;

e. an award for reasonable and customary costs, expenses, and pre-judgment, and post-judgment interest; and

f. any other legal or equitable remedy available to the court that it thinks is just.

Dated: June 4, 2018

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