

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

DWIGHT D. MITCHELL,  
INDIVIDUALLY AND ON BEHALF OF  
HIS CHILDREN X.M. AND A.M. AND  
BRYCE MITCHELL, AND STOP  
CHILD PROTECTION SERVICES  
FROM LEGALLY KIDNAPPING,

Plaintiffs,

vs.

DAKOTA COUNTY SOCIAL  
SERVICES; COUNTY OF DAKOTA;  
EMILY PIPER, individually and 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-  
KOPECKY, 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

Case No.: 17-cv-01693-WMW-KMM

COMPLAINT

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, LUCINDA JESSON, individually and in her official capacity as Commissioner of Department of Human Services;

Defendants,

For their Complaint, Plaintiffs Stop Child Protection Services From Legally Kidnapping (SCPS) and Dwight Mitchell, individually and on behalf of X.M. and A.M. and Bryce Mitchell, allege and state as follows.

### **PRELIMINARY STATEMENT**

This complaint at Counts I through 4 contains claims that facially challengestatewide application of Minnesota’s child protection laws as unconstitutionally vague, unconstitutionally overbroad, failing strict scrutiny and lacking a rational basis. The remaining Counts are as-applied constitutional claims and state law claim particular to the Defendants’ application and actions to the Mitchell family specifically. The remedies sought include broad injunctions against the Defendants so that what happened to the Mitchell family does not occur again.

### **JURISDICTION AND VENUE**

1. The Plaintiffs bring this civil rights lawsuit pursuant to 42 U.S.C. §

1981, 42 U.S.C. § 1983, 42 U.S.C. § 1985, 42 U.S.C. § 1986, and 42 U.S.C. § 1988 to redress the deprivation by Defendants, at all times herein acting under color of state law, of rights secured to Plaintiffs under the United States Constitution, including the First, Fourth, and Fourteenth Amendments, and under federal and state law where applicable.

2. This Court has supplemental jurisdiction over Plaintiffs' Mitchell's state law claims pursuant to 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 pursuant to 28 U.S.C. § 1332 because this action is between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

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

### **PARTIES**

4. At all times relevant to this Complaint, 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 legal conforming to the U.S. Constitution to protect parental rights as required by the U.S. Constitution. These individuals are all residents and citizens of the United States and Minnesota. 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. At all times relevant to this Complaint, Dwight D. Mitchell (Mitchell) is a citizen of the United States, who is African American and was, and is currently a resident of New Jersey. As of February 16, 2014, Mitchell, a Management Consultant in the computer arena, was in Minnesota from New

Jersey to complete a temporary contractual work engagement for a limited time for CHS (Cenex Harvest States).

6. Bryce Mitchell, X.M. and A.M. are all children of Mitchell. They reside in New Jersey with Mitchell. At all relevant times to this Complaint, they were minors. Bryce Mitchell is now an adult.

7. At all times applicable herein, the County of Dakota (County) was and is a public entity and a political subdivision of the State of Minnesota.. . The County of Dakota has purchased liability insurance sufficient under Minnesota Statutes § 3.736 to waive its immunity against civil liability.

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

9. At all times applicable herein, the Dakota County Department of Social Services (Agency or DCSS) was and is a subdivision or entity of the County.

10. Defendant Emily Piper (Piper) is the Commissioner of the Minnesota Department of Human who is legally obligated to ensure the provisions of Minnesota Statute § 518D are enforced. This would include, but is not limited to, the implementation of the Department, training, creating manuals, enforcing and disciplining social workers for non-compliance on matters of custody. She is sued in her official capacity as an employee of the State of Minnesota. Piper is a citizen and resident of Minnesota.

11. Defendant Lucinda Jesson (Jesson) was the Commissioner of the Minnesota Department of Human at the time that events referenced in this complaint took place, who was legally obligated to ensure the provisions of Minnesota Statute § 518D were enforced. This would include, but is not limited to, the implementation of the Department, training, creating manuals, enforcing and disciplining social workers for non-compliance on matters of custody. She is sued in her individual capacity as an employee of the State of Minnesota. Jesson is a

citizen and resident of Minnesota.

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

13. Defendant Elizabeth Swank (Swank), at all times relevant to the allegations of this Complaint, is an Assistant County Attorney with Dakota County, and acted during her employment and/or under color of state law. Swank led and directed the criminal factual investigation of the allegations against Mitchell. She is sued in both her individual capacity and in her official capacity as an employee of the County of Dakota. Swank is a citizen and resident of Minnesota.

14. Defendant Patrick Coyne (Coyne), at all times relevant to the allegations of this Complaint, was an Executive Director with DCSS and in that capacity served in a supervisory and/or policymaking role and acted during his employment and/or under color of state law. He is sued in both his individual capacity and in his official capacity as an employee of the County of Dakota. Coyne is a citizen and resident of Minnesota.

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

16. Defendant Leslie Yunker (Yunker), at all times relevant to the allegations of this Complaint, is a Supervisor with DCSS and in that capacity

served in a supervisory and/or policymaking role with respect to this investigation and case and acted during her employment and/or under color of state law. She is sued in both her individual capacity and in her official capacity as an employee of the County of Dakota. Yunker is a citizen and resident of Minnesota.

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

18. Defendant Susan Boreland (Boreland), at all times relevant to the allegations of this Complaint, is a Social Worker with DCSS and acted during her employment and/or under color of state law. She is sued in both her individual capacity and in her official capacity as an employee of the County of Dakota. Boreland is a citizen and resident of Minnesota.

19. Defendant Chris P'Simer (P'Simer), at all times relevant to the allegations of this Complaint, is a Social Worker with DCSS and acted during his employment and/or under color of state law. He is sued in both his individual capacity and in his official capacity as an employee of the County of Dakota. P'Simer is a citizen and resident of Minnesota.

20. Defendant Jacob Trotzky-Sirr (Sirr), at all times relevant to the allegations of this Complaint, is a Guardian Ad-Litem with Dakota County, and acted during his employment and/or under color of state law. He is sued in both his individual capacity and in his official capacity as an employee of the State of Minnesota. Sirr is a citizen and resident of Minnesota.

21. Defendant Tanya Derby (Derby), at all times relevant to the allegations of this Complaint, is a Public Defender with Dakota County, and acted during her employment and/or under color of state law. She is sued in both her

individual capacity and in her official capacity as an employee of the State of Minnesota. Derby is a citizen and resident of Minnesota.

**FACTS**

**MITCHELL AND HIS CHILDREN RESIDED IN NEW JERSEY,**

**BUT LIVED IN MINNESOTA**

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

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

24. Mitchell has continually filed federal and New Jersey State income taxes using his New Jersey address for the entire 22-year period.

25. 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.

26. Mitchell maintained a New Jersey driver's license and New Jersey automobile insurance for his vehicles for the entire 22-year period.

22. Mitchell has his voter's registration, received W-2's, received banking, telephone and utility bills continually at the same address for the entire 22-year period and continues now.

23. No matter where Mitchell has been temporarily contracted to worked, he has flown home and voted in every election, in the same voter's registration district for his home address in Piscataway, New Jersey for 22-years.

24. Previous court filings in other cases initiated, including Dakota County, Minnesota court filings, were sent to this same New Jersey address.

25. As of the date of the filing of this complaint, Mitchell is still working in Minnesota Monday through Friday and commuting home to New Jersey on the

weekends.

### **ILLEGAL REMOVAL OF MITCHELL CHILDREN FROM FAMILY HOME**

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

27. On February 16, 2014, Mitchell and his wife Tatiana 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 offenses 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.

28. When XM was returned to Mitchell's custody, he told Mitchell it was he who told Hardy to call the police. His mother 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.

29. Hardy advised Mitchell she told Boreland and the police that she had never seen corporal punishment used on or reported by any of the children prior to that evening's incident in the six months she had been working for the family. Also, Hardy stated 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.

30. Boreland and the police questioned the children and took statements without Mitchell's knowledge or consent. XM and AM stated 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)

31. 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 they failed to act upon the information or prosecute Mitchell on any of the allegations from Campos. (Exhibit 002)

32. 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’ 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. Campos did not have legal custody of the children; but, nonetheless, Campos 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 the 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.

33. 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 for refusing to speak without a lawyer present. Next, the police called the assistant county attorney; then the Judge to request that the Mitchell be denied bail. The request was granted. All of information in this statement is evidenced in the Dakota County Discovery police statements that were provided to Mitchell as further detailed below. (Exhibit 003)

34. Litvinenko, XM, AM and ML were interviewed on the same evening by Boreland. Litvinenko told Mitchell 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. Boreland and the police commenced their interrogation. All of information in this statement is evidenced in the Dakota County Discovery police statements that were provided to Mitchell as further detailed below.

35. Boreland working in concert with the police used illegal and improper questioning techniques to intimidate, harass, cause fear, entrap and make Litvinenko an accomplice to the allegations of long-term child abuse which were not true. All of information in this statement is evidenced in the Dakota County Discovery police statements that were provided to Mitchell as further detailed below.

36. 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.

37. 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.

38. Litvinenko told Boreland that Mitchell was not abusive and that she had never seen Mitchell spank the boys before, 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 information in this statement is evidenced in the Dakota County Discovery police statements that were provided to Mitchell as detailed further below. (Exhibit 004)

39. Litvinenko told Mitchell that Boreland said that she did not believe

Litvinenko, and that Litvinenko neglected to stop the abuse; and, she, Boreland, was going to do everything in her power to make sure the children were never returned to the family.

40. 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.

41. Kendall Broders (Broders), the full-time nanny for one year, advised Mitchell she told Boreland that she was with the children daily, bathed them each night and had never seen any bruises or signs of abuse on any of the three (3) children in the 1 year 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 until this incident, they seeme like a normal happy, loving family with no issues. Broders also told Boreland that none of the children were afraid of Mitchell and were always happy to see him come home from work daily, gave him hugs and kisses; each night, they had dinner together as a family in which she participated.

42. 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 she was keeping XM and AM, refused to explain why, and refused to provide any additional information regarding the involuntary retention of XM and AM.

#### **THE AFTERMATH OF THE ILLEGAL REMOVAL OF MITCHELL CHILDREN**

43. On February 18, 2014, based upon the document date of the Discovery information, 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 Courts NJ. Furthermore, Boreland, Scott and Swank had received all official documents and reports relating to Mitchells' family from the Piscataway NJ Police Department. Below is a listing of information received.

44. On November 07, 2008, Campos is arrested for theft N.J.S.A. 2C:20-11B (2). She attempts to steal 22 video games from Walmart, valued at \$451.05 by placing items in her purse.

45. On January 9, 2009, Campos is arrested; (2C:12.-3) for terroristic threats. Campos called Piscataway Police Dispatcher and stated she will kill her husband. A Temporary Restraining Order (TRO) is issued against Campos.

46. On January 10, 2009, Campos violates TRO(2C:18-3A) by criminal trespass. Campos attempts to enter home of Mitchell. The incident is reported to the Piscataway Police. This incident was in violation to the Temporary Restraining Order (TRO) issued against Campos.

47. On January 13, 2009, Campos violates TRO. (2C:29-9B) The issue becomes contempt of Court Order - calling and harassing Mitchell.

48. On February 06, 2009, Campos violates TRO. (2C:18-3B) The issue becomes defiant trespasser. Campos attempts to enter home of Mitchell and leaves multiple text messages. A no bail warrant is issued by the Court for Campos' arrest.

49. On February 13, 2009, Campos called Middlesex County Social Services for the first-time alleging Child Abuse/Neglect against Mitchell concerning BM, XM and AM The Child Protection Services conducted its required investigation and determined that the allegations against Mitchell were unfounded.

50. On February 22, 2009, Campos calls Middlesex County Social Services again alleging Child Abuse/Neglect concerning BM, XM and AM The

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

51. On March 01, 2009, Campos violates visitation order. Mitchell called the police to resolve.

52. On March 10, 2009, Campos tells XM to tell his teacher that Mitchell hit him on his rear end. The school called police who in turn contacted Middlesex County Social Services. XM alleges Mitchell hit him on his rear end and the school is required to report this. Per the Piscataway Police Report, Principal McFall tells the police that there is no history of child abuse or suspicious injuries involving the child at the school. The Division conducted its required investigation and upon seeing no marks or bruising determined that the allegations of abuse against Mitchell were unfounded.

53. On March 13, 2009, after numerous violations of the TRO, Campos attempted to abduct the oldest child BM from his school. The school principal notifies Mitchell, who in turn notified Piscataway Police. 'Campos' is arrested on the charge of violation of restraining order, spends 13 days in jail, pleads guilty, paid fine and was released on March 30, 2009.

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

55. On April 27, 2009, Campos filed a complaint regarding violation of visitation. No action taken.

56. On April 29, 2009, Campos was arrested with boyfriend Jose Rodriguez; (for Conspiracy - "For Hire" -- hit man and kidnapping plot for that night. Campos offered to pay undercover Police Officer \$75,000.00 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 is set at \$25,000.

Both defendants posted bond and were released. On April 30, 2009, Campos was arrested for the second time with boyfriend Jose Rodriguez; for Conspiracy – second kidnapping attempt in two days. Campos called Police and filed 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 the police officer, Campos was speaking with BM on his cell phone. Campos told BM to grab XM and 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.

57. On May 1, 2009, Police take BM to UMDMJ for Psychology welfare evaluation for suicidal statements if he is not allowed to live with his mother. To highlight, nowhere in the evaluation does BM tell anyone that Mitchell had ever been physically or mentally abusive to him all those years. 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 didn’t have suicidal tendencies as he told his teacher and the police, and admitted he lied, to go and live with his mother.

58. On July 30, 2009, Campos is indicted on the following charges under New Jersey Statutes

- 2C:5-2 (2) Conspiracy—agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime,
- 2C:5-1 (c) Criminal Attempt two counts—conduct designed to aid another in commission of a crime.
- 2C:39-4D Weapon Possession Unlawful Purpose – Other—any person who has in his possession any weapon, except a firearm, with a purpose to use it unlawfully against the person or property of another is guilty of a crime of the third degree; and
- 2C:39-5D Unlawful Possession Weapon – Other—Any person who knowingly has in his possession any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.

59. On November 2, 2009, the New Jersey prosecutor offers Campos a plea agreement with lowered charges. Campos pleaded guilty to conspiracy, 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 is unhappy with the plea agreement. His statements were as follows:

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.

60. On February 18, 2014, the official New Jersey reports explicitly and conclusively 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 abuse by Mitchell were false and not substantiated by any of the 250+ pages of New Jersey official records.

61. 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 as of this date of February 18, 2014.

62. 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.

63. Additionally, the records evidence 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 on numerous occasions in her attempt to regain custody of the children, no matter what the lie or the cost.

64. As mentioned above, based upon the inbound document receipt date on the discovery information Mitchell received from Dakota County, 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)

65. On February 19, 2014, Mitchell is released from Dakota County jail after being retained for three days. Upon returning home, Mitchell learned XM and AM had been removed from the family home by Dakota County Social Services. There is a letter waiting for the Mitchell requesting 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)

66. On February 20, 2014, 9:30 AM, Mitchell and Litvinenko arrive 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."

67. Mitchell advised Boreland aside from this incident, Campos and the children were lying and had tried the exact same tactic in the past.

68. 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!"**

69. Although shocked by the racially discriminative, negative, and generalized statement from a Social Worker, Mitchell responded, "first, this is not true, and you will never understand us because you are a White American and not African-American. You have no true concept of the underlying racism against

African-Americans while you live in safe middle-class suburbia. Our children must learn 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 Penal population prior to this was never greater than 500,000 inmates. There is daily documented evidence of this, videos on the Internet, TV and Newspapers. Second, there is 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.”

70. Boreland responded, **“I understand African-Americans very well. My brother in-law is African American and I have African American relatives and furthermore, we have requested all of the State of New Jersey records and will conduct our investigation of long term abuse.”**

71. Boreland knew these racial comments were discriminatory, inappropriate, meant to intimidate and that racism by government officials is legally prohibited. .

72. On February 20, 2014, XM had his first meeting with both Boreland and Scott. Within 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, prior to 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 she Boreland, still wanted to transfer custody of

Mitchell's children to their mother in Spain. Scott told Boreland 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 Campos in Spain. Scott told Boreland that XM and AM would have to remain in the 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 she, Scott, would make sure 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 she would do as Scott advised and follow her instructions not to tell the court about Mitchell's New Jersey background and 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 XM and AM stayed in Minnesota and would not return to New Jersey with Mitchell and family. During the meeting described in this paragraph, Boreland and Scott came to an agreement to work together to illegally and wrongfully usurp custody from Mitchell, usurp jurisdiction from the State of New Jersey, terminate Mitchell's parental rights and transfer custody to Campos in Spain.

73. On February 20, 2014, Mitchell and Litvinenko met with Scott outside the courtroom to discuss the case prior to the Petition being filed with the court. Mitchell advised Scott that aside from this incident, Campos and the children were lying and had tried the exact 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, discussed them with Boreland and will be conducting further investigations into the allegations of long term child abuse.

74. On February 20, 2014, Boreland submitted 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)

75. 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 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) Boreland and Scott knew the Petition was deficient, omitted evidence, 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 20, 2014 in the Petition to further the conspiracy as discussed above.

76. On February 20, 2014, Boreland met with Mitchell and his wife Litvinenko to serve Litvinenko with a separate DCSS petition which had been filed with the court. Without any proof of abuse on the part of Litvinenko, and knowing the children provided statements acknowledging that Litvinenko was never abusive to them, Boreland separately named Litvinenko in her own dependency petition pursuant to Defendant's standard policy, i.e. their standard operating procedure, to allege "failure to protect" against the non-offending spouse (in this instance Litvinenko), without any further information, other than the allegation that the other parent may have been neglectful or harmful. More specifically, based upon official Minnesota documentation it was and remains, Defendants' 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.

77. 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.

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

79. Mitchell advised Boreland this was illegal, unconstitutional, and that Boreland was just being mean, evil and spiteful.

80. Litvinenko told Boreland, "My son and I are perfectly safe with Mitchell, he is not violent and has never laid a hand on either of us in anger or rage. You interviewed my son and I and I know we do not fear Mitchell".

81. Boreland threatened Litvinenko by responding that if Litvinenko

didn't move out of the family home immediately she would remove ML from her custody and place him in a foster home."

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

83. Boreland told Mitchell and Litvinenko that she 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.

84. 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 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 she 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 Campos 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 help DCSS retain permanent custody of Mitchell's children on the criminal side of the matter. Boreland told Swank 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 the plan that Scott and Boreland had agreed to was good and to stick to this plan on the civil side of the matter. Swank told Boreland that she Swank could help by seeking to make the "no contact order" permanent on the criminal side of the proceedings to further assist in denying visitation to Mitchell and that she Swank would increase the charges against Mitchell and would do whatever

else she could to help. Swank also told Boreland this would help in retaining custody in Minnesota, denying visitation, and assist in the termination of Mitchell's parental rights and transfer of custody to the children's mother Campos 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 usurp custody from Mitchell, usurp jurisdiction from the State of New Jersey, terminate Mitchell's parental rights and transfer custody to Campos in Spain.

### **EMERGENCY PROTECTIVE HEARING REGARDING MITCHELL CHILDREN**

85. On February 26, 2014, at the CHIPS Emergency Protective Hearing - First Appearance, ten days after the initial removal of the children from the home, intentionally and with malice, Boreland submitted an amended deficient Petition / Affidavit to the Court which contained fabricated evidence, 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 the power and authority of her position.

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

Mitchell's "Home State." They knew Minnesota 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.

87. Boreland does not amend paragraph "C" of the Petition regarding the false statement of AM saying he was spanked with a belt. On the night of the incident at the Police station, XM, the 10-year old brother of AM advised Boreland that AM had never been spanked with a belt. ML tells Boreland that AM has never been spanked with a belt. Litvinenko tells Boreland that AM has never been spanked with a belt. Mitchell tells Boreland that AM has never been spanked with a belt. Hardy, the babysitter, advised Boreland she had never seen any bruises or signs of abuse and that none of the children had ever advised her that they had been spanked. These statements are corroborated in the discovery information on the police statements of the above-mentioned individuals. Boreland is aware the statement by 6-year old AM is false; but nevertheless, Boreland intentionally includes this false information and does not include the exculpatory information or statements from the other individuals as mentioned above.

88. 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 the Discovery information on the police statement.

89. Boreland" changes original Petition paragraph "G" regarding Campos's statements to paragraph "H" and inserts fabricated evidence into amended petition. Boreland stated she had obtained and reviewed 200+ pages of New Jersey police reports. None of the police reports applied to Mitchell. Boreland intentionally misled the court into thinking the domestic violence police reports

from New Jersey applied to Mitchell when they applied to Campos, the biological mother of XM and AM. Mitchell has provided the detail of the New Jersey police reports that was omitted to the court in the paragraph above. Boreland had in her possession confirmed proof that Campos, BM and XM lied to her and the Apple Valley police; therefore, this is the first instance that Boreland supplied fabricated evidence to the court in her amended Petition to cause Mitchell harm.

90. Boreland has confirmed proof that the long-term abuse allegations by Campos, BM and XM were false and that the exact same allegations Campos told Minnesota officials were reported to New Jersey authorities, adjudicated by the New Jersey officials and the New Jersey county court system during the criminal defense side of Campos's trials. Boreland intentionally fabricated evidence and hid exculpatory evidence to the court for the second time in her amended Petition to prejudice and mislead the Court against Mitchell to cause him harm.

91. Boreland changes original Petition paragraph "H" regarding BM statements to paragraph "I." Boreland fabricated that Mitchell chased his oldest son BM down the street, pushed him to the ground and stepped on his head. Boreland has official proof these events did not take place based on the New Jersey Police reports. Boreland intentionally fabricated evidence and hid exculpatory evidence to the court for the third time in her amended Petition to prejudice and mislead the Court against Mitchell to cause him harm.

92. Boreland fabricated evidence in paragraph "J" of her amended Petition regarding the demeanor and credible 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 investigations prior to filing the amended Petition and that she had documented proof that all of the children had lied to her on multiple occasions based on the New Jersey records. Boreland intentionally fabricated evidence and hid exculpatory evidence to the court for the fourth time in her amended Petition to prejudice and mislead the Court against

Mitchell to cause him harm.

93. Boreland interviewed impartial witnesses during her investigation. Boreland spoke with the full-time nanny Broders of one year, the part-time baby sitter Hardy of 6 months 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 confirmed and supported Litvinenko statements of no prior abuse in the home. Boreland knew or should have known the boys were not telling the truth when they said they were terrified of their father. All of information in this statement is evidenced in the Dakota County Discovery information and statements that were provided to Mitchell. Boreland intentionally hides exculpatory evidence to the court for the fifth time in her amended Petition to prejudice and mislead the Court against Mitchell to cause him harm.

94. Boreland fabricated evidence in her amended Petition by stating that Mitchell's stepson ML needed protection also. ML mother Litvinenko and ML, advised Boreland they had never been harmed by Mitchell, nor were they in fear they would be harmed in the future, nor did seek for or ask for protection from DCSS. ML and Litvinenko requested multiple times to Boreland to continue to reside in the family home with Mitchell. All of information in this statement is evidenced in the Dakota County Discovery information and statements that were provided to Mitchell. Boreland intentionally fabricated evidence and hid exculpatory evidence to the court for the sixth time in her amended Petition to prejudice and mislead the Court against Mitchell to cause him harm.

95. Boreland was required and intentionally omitted the requirement in her amended Petition to show the court "what reasonable efforts were made to eliminate the removal of the children and to make it possible for the children to return home", which should have included a safety plan at a minimum before children are removed from their parents, pursuant to Minnesota Statute § 260.012

(d) (1). Boreland” intentionally hid exculpatory evidence to the court for the seventh time in her amended Petition to prejudice and mislead the Court against Mitchell to cause him harm.

96. 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 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. Boreland and Scott knew the Amended Petition was deficient, omitted information, 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)

**UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**  
 **(“UCCJEA”) AS TO MITCHELL CHILDREN**

97. Boreland was required and legally bound to supply the Minnesota

court with the State of New Jersey court information in her first pleading or affidavit pursuant to UCCJEA Minnesota Statute § 518D.209. Boreland did not do this. Furthermore, Boreland and the other Defendants had a continuing obligation to present to the court the State of New Jersey court information pursuant to Minnesota Statute § 518D.209 (a) (3) (d) and deliberately failed to do so for 14 months. This intentional failure illegally kept the case in Minnesota. Minnesota Statute § 518D.209 specifically states:

(a) Subject to sections 518.68, subdivision 1, and 518B.01, subdivision 3b, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, **shall** give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period.

The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by paragraph (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in paragraph (a), clauses (1) to (3), is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

***(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.***

(Emphasis added.)

98. Minnesota codification of the UCCJEA, Minn. Stat. § 518D, required specific outcomes. “What *“shall be done”* is clearly identified. Specifically, courts in UCCJEA states must comply with the statute when custody and visitation issues arise in proceedings for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence. The UCCJEA eliminates the term "best interests" in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children.

99. Boreland did not follow the Minnesota codification of the UCCJEA, Minn. Stat. § 518D, to further the conspiracy as discussed above. The state statutes create a chain of mandatory events and gives specific directives to the decision-maker that if the statute's substantive predicates are present, a particular outcome must follow.

100. The court read and considered the deficient amended Petition with fabricated evidence and false statements by Boreland and certified by Scott. The court was not able to fully examine, hear or consider intrinsic information and other material matters pertinent to the court's jurisdiction and the disposition of the case because of Boreland’s and Scott’s violative actions. The amended Petition was granted by the Minnesota district court judge based upon fabricated evidence and false statements. Subject matter jurisdiction and custody was usurped from New Jersey as well as 13 additional mandatory legal requirements because of the intentional concealment of intrinsic information by Boreland and Scott pursuant to UCCJEA, Minnesota Statute § 518D.209, 518D.202, 518D.204, 518D.207, 518D.303, 518D.304, and 518D.313.

101. 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.

102. Mitchell is ordered to participate in a psychological evaluation, parenting evaluations, anger assessments, AAPI2 Testing, and to follow all recommendations of the evaluations including the reunification plan. Mitchell follows the court orders by participating in, and completing all parenting evaluations, tests and DCSS requests.

103. The court makes 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."

104. Mitchell was never supplied with a case plan or reunification plan by Boreland, P'Simer or any member of DCSS to review or sign as ordered or required under Minnesota state law to further the conspiracy as discussed above.

105. On March 5, 2014, a transition meeting takes place between Boreland and P'Simer. P'Simer is the newly assigned case worker to Mitchell's case. Boreland advised P'Simer the request for the State of New Jersey custody court order was still outstanding. Mitchell advised Boreland and P'Simer that he would email it to them immediately and does so. That request for the New Jersey custody order was fulfilled within 7 days of the initial request from Boreland. (Exhibit 009)

106. On March 5, 2014, Mitchell sends P'Simer additional documents via email in an effort to bring him up to speed quickly on the deficient petition of Boreland, missing police report information, and other subsequently omitted information to the court:

- a. NJ Complaint 7-12-09 All Threats from Campos to Mitchell;
- b. Violation Restraining Order Prosecution for "Campos;
- c. NJ Complaint for Shop Lifting 1217 W 2008 for Campos;
- d. NJ DFYUS Social Services Negative Outcome of Abuse

- e. Allegation by “Campos 03-31-2009”;
- f. Judgement of Conviction Campos;
- f. Cert of Dwight D. Mitchell in opposition to motion for visitation 05-27-10; and
- g. UMDMJ Psychiatric evaluation BM

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

107. 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 have the official New Jersey Court Order and are aware Minnesota lacks subject matter jurisdiction and intentionally withhold the New Jersey court order from the Minnesota court in order to mislead the Minnesota court and illegally retain custody of Mitchell’s children.

108. Boreland and P’Simer intentionally do not amend the deficient petition or correct the misrepresentations to the Court after the receipt of the New Jersey custody court order on March 5, 2014 although required to do so pursuant to Minnesota Statute § 518D.209 to further the conspiracy as discussed above.

109. Scott intentionally does not mention the receipt of the New Jersey court order to the Minnesota Court on March 5, 2014 or require Boreland to amend her Petition, although required to do so pursuant to Minnesota Statute § 518D.209 to further the conspiracy as discussed above.

110. Scott intentionally does not mention the receipt of the New Jersey Court Order in any court hearings that went forward from March 5, 2014 to further the conspiracy as discussed above.

111. Boreland severed the initial Petition that jointly contained both Mitchell and Litvinenko based on the same allegations. Litvinenko is provided with a separate Petition and case number.

112. Boreland, P'Simer, Akolly , Stang, Yunker, Kopesky and Scott are in contact with the Middlesex County New Jersey courts pursuant to UCCJEA proceedings on "Subject Matter Jurisdiction" for the "Litvinenko's" case as required by law, but intentionally do not initiate UCCJEA proceeding as required on Mitchell's case when the cases were being prosecuted simultaneously.

113. There is official DCSS documentation from Discovery along with email exchanges between Mitchell, Boreland, Akolly, and P'Simer to corroborate this information. (Exhibit 010)

114. New Jersey had its UCCJEA Hearing on "Continuing Exclusive Jurisdiction" to determine if New Jersey will retain "Subject Matter Jurisdiction" over the Litvinenko custody court order or relinquish jurisdiction to Minnesota.

115. Boreland, P'Simer, Akolly , Stang, Yunker, Kopesky, Scott and the Dakota County are aware the court had suspended proceedings in the Litvinenko case pending the outcome of the New Jersey UCCJEA hearing.

116. There is official DCSS documentation from Discovery along with email exchanges between Mitchell, Boreland, Akolly, and P'Simer to corroborate this information. (Exhibit 011)

117. On March 6, 2014, Mitchell and Litvinenko spoke to Mitchell's new case worker P'Simer regarding the illegality of the forced separation mandate of Boreland and that this was a violation of the couple's civil rights.

118. 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 she, Litvinenko and ML were perfectly safe in the family home and that Mitchell had never physically abused either of them.

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

120. Mitchell asked P'Simer for the grounds of the forced separation.

121. P'Simer refused to provide any response. P'Simer told Mitchell and Litvinenko that Boreland told him that if Mitchell and Litvinenko did not separate immediately, their plan was to remove ML from the family home and place him in foster care.

122. On or about March 6, 2014, Mitchell and Litvinenko spoke to Litvinenko's new case worker Akolly regarding the illegality of the forced separation mandate of Boreland and that this was a violation of the couple's civil rights.

123. Mitchell and Litvinenko told Akolly that Boreland told them that she would remove ML from the family home if the couple did not separate.

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

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

126. Mitchell asked Akolly for the grounds of the forced separation and Akolly refused to provide any. Akolly told Mitchell and Litvinenko that Boreland told her that if Mitchell and Litvinenko did not separate immediately, their plan was to remove ML from the family home and place him in foster care.

127. There is official DCSS documentation from Discovery along with email exchanges between Mitchell, Boreland, Akolly, and P'Simer to corroborate this information.

128. As a result of the intentional and illegal coercion, demand, threats and duress of Boreland, Akolly and P'Simer, Mitchell and Litvinenko complied with the request and Litvinenko and ML were forced to move out of the family home. Written confirmation was provided to Boreland, P'Simer and Akolly.

129. There is official DCSS documentation from Discovery along with

email exchanges between Mitchell, Boreland, Akolly, and P'Simer to corroborate this information. (Exhibit 012)

130. Mitchell and Litvinenko were forced to live separately from March 2014 until they returned to New Jersey at the end of 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 advised the court that they told Mitchell and Litvinenko to separate. Boreland, P'Simer and Akolly were required to obtain a court order prior to telling Mitchell and Litvinenko to separate and failed to do so.

133. Boreland, P'Simer and Akolly intentionally and with malice interfered in the marital relationship of Mitchell and Litvinenko. 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. There is official DCSS documentation from Discovery along with email exchanges between Mitchell, Boreland, Akolly, and P'Simer to corroborate this information. (Exhibit 011)

135. Boreland, P'Simer, Akolly , Stang, Yunker, Kopesky and Scott were involved in the Mitchell and Litvinenko case at the same time and were aware 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 are aware that pursuant to Minnesota Statute § 518D.202 and 518D.204 regarding UCCJEA requirements to determine "continuing exclusive jurisdiction"

137. Boreland, P'Simer, Akolly , Stang, Yunker, Kopesky or Scott should have contacted New Jersey on Mitchell's case to have a New Jersey hearing to determine subject matter jurisdiction.

138. Boreland, P'Simer, Akolly , Stang, Yunker, Kopesky and Scott should have mentioned the requirement for a second hearing for the Mitchell's case to the Dakota County Court or when they were in contact with New Jersey for the Litvinenko UCCJEA Hearing, but Boreland, P'Simer, Akolly , Stang, Yunker, Kopesky and Scott intentionally do not mention the need or requirement for a second hearing to New Jersey or the Dakota County court.

139. Boreland, P'Simer, Akolly , Stang, Yunker, Kopesky and Scott all received the NJ UCCJEA determination for Litvinenko and are aware Minnesota does not have "subject matter jurisdiction" over the Mitchell's case, but Boreland, P'Simer, Akolly , Stang, Yunker, Kopesky and Scott intentionally did not mention this to the Minnesota court and illegally usurped subject matter jurisdiction from New Jersey and kept the case in Minnesota. Pursuant to Minnesota Statute § 518D.209 and 518D.202 and 518D.204 regarding UCCJEA requirements to determine "continuing exclusive jurisdiction", Minnesota courts *shall* contact the New Jersey courts 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 are aware that it is axiomatic that a court must possess subject matter jurisdiction to hear any portion of a family law dispute; otherwise, it is powerless to proceed and general principles associated with the exercise of subject matter jurisdiction are well known. Furthermore, Scott as a senior prosecutor knew or should have known that in the context of a family law dispute, 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

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 relating to the conspiracy of being sent back to Spain to live with their mother between Boreland, P'Simer, Scott, SIRR and Derby.

143. Litvinenko told Mitchell that Boreland was in direct email and telephone contact with the former partner of Litvinenko Suren Ter-Saakov, with the intent of destroying the marital union of Litvinenko and Mitchell. Litvinenko told Mitchell that Boreland was definitely aware of the New Jersey UCCJEA hearing from commencement. Litvinenko provided copies of the email correspondence between Boreland and Ter-Saakov to Mitchell.

144. Litvinenko told Mitchell that Boreland maliciously and intentionally conspired with Ter-Saakov to destroy the marital union of Litvinenko and Mitchell. Litvinenko spoke with Ter-Saakov who provided Litvinenko copies of the email's exchanged between Boreland and Ter-Saakov.

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

146. To that end, Boreland requested that Ter-Saakov make a motion in

New Jersey court for custody, and to further request that New Jersey retain “continuing exclusive jurisdiction”.

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. Prior to this Boreland requested 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 preceding two years prior to filing this first custody motion in New Jersey at Boreland’s request. Litvinenko supplied Mitchell with the email documentation as well.

149. Coyne, Kopesky, Stang, Yunker, Boreland, P’Simer, SIRR and Derby were all aware Mitchell case fell under UCCJEA guidelines and that the UCCJEA eliminates the term “best interests” test to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children. The “best interest” language in the jurisdictional sections was removed so that courts could not address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that “best interests” considerations should override jurisdictional determinations or provide any additional jurisdictional basis. Yet, each of the Defendants mentioned above repeatedly used this illegal rationale of “best interest” for the retention of the children for every recommendation that was made to the court despite no 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 BM met with Boreland at the Minneapolis-St. Paul airport while visiting Minneapolis for

spring break. BM told Mitchell that before he and Boreland depart from the airport, Boreland advised BM that she had been in contact with Campos that week, had a ticket for BM to go to Spain, and that Boreland had agreed to send BM to Spain immediately upon his arrival to Minnesota. Boreland further advised BM that he would not be able to visit with his brothers, and that she, Boreland, would tell her colleagues that BM didn't arrive as scheduled. BM advised 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 have to wait to return to his mother because the process of transferring custody takes time. BM advised Boreland that he would wait and 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, keep the children and case in Minnesota instead of returning it to New Jersey, and that when he 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 working with her on the conspiracy to send BM and XM to Spain to live with their mother. Boreland told BM that P'Simer, Sirr and Swank would be contacting him, and to do and say whatever they requested of him to further the conspiracy.

151. March 7, 2014, P'Simer visited Mitchell at a rented house in Apple Valley, Minnesota. Mitchell provided P'Simer with a listing and the contact information of all the live-in nannies he had had since the time of his divorce, copies of XM's Journal, which plainly documents events of his life and showed in XM's own handwriting that he was happy, healthy, had normal sibling rivalry, but had no documentation or related issues of spankings or child abuse up through and including December 2013. Also, Mitchell provided P'Simer with a copy of the New Jersey court ordered psychiatric evaluation from Campos which clearly stated Mitchell was not a child abuser and there was never any violence in 11 years of marriage. Additionally, Mitchell provided P'Simer with a copy of the New Jersey

Social Services psychiatric evaluation from BM which clearly stated Mitchell was not a child abuser and that BM lied at the request of his mother, to go and live with her.

152. Mitchell advised P'Simer of the racially discriminatory comments against African-Americans made by Boreland and her statement regarding "doing everything in her power to see that Mitchell's children are never returned to him", and her discriminatory practices. Mitchell requested to lodge a formal complaint against Boreland and provided all the details to P'Simer. P'Simer advised Mitchell he will investigate the allegations and get back to him. Mitchell and P'Simer also discuss the NJ UCCJEA determination hearing of Litvinenko. P'Simer is fully aware that Mitchell is from New Jersey, has a New Jersey state custody court order and that this case also falls within the statutes of New Jersey and Minnesota regarding the UCCJEA. (Exhibit 009)

153. On March 07, 2014, Mitchell and Litvinenko speak with Supervisor Yunker regarding the "Letter of Findings" from Boreland which stated after her investigation both were found to have committed abuse against Mitchell's children. Mitchell advised Yunker that the reports are not valid and discuss at length Boreland and her promise to do everything in her power to see that Mitchell's children are never returned to him, her racist comments and discriminatory practices. Mitchell advises that Yunker that he is from New Jersey and has a New Jersey Court child custody order. They discuss his current wife Litvinenko's NJ UCCJEA determination. Yunker is indifferent and advised Mitchell and Litvinenko that she had thoroughly reviewed the case files and is supportive of the actions of Boreland. Yunker advised Mitchell and Litvinenko that she did not wish to see additional official New Jersey documentation to prove they were innocent of long term abuse. Yunker advised Mitchell and Litvinenko to speak with Kopesky the Assistant Director, if he has further grievances concerning this matter, but ignores the actions of Boreland, although she is her Supervisor, is

aware of what has transpired and was asked to intercede by Mitchell.

154. On March 07, 2014, Mitchell and Litvinenko speak with Supervisor Stang regarding the “Letter of Findings” from Boreland which stated, after her investigation, that both were found to have committed abuse against Mitchell’s children. Mitchell advised Stang the reports are not valid and discuss at length Boreland and her promise to do everything in her power to see that Mitchell’s children are never returned to him, her racist comments and discriminatory practices. Mitchell advises Stang that he is from New Jersey and has a New Jersey Court Order. They discuss his current wife Litvinenko’s NJ UCCJEA determination. Stang is indifferent, advised Mitchell and Litvinenko that she had thoroughly reviewed the case files and is supportive of the actions of Boreland. Stang advised Mitchell and Litvinenko that she did not wish to see additional official New Jersey documentation to prove they were innocent of long term abuse. Stang advised Mitchell and Litvinenko to speak with Kopesky, the Assistant Director, if he has further grievances concerning this matter, but ignores the actions of Boreland, although she is her Supervisor, is aware of what has transpired and was asked to intercede by Mitchell.

155. On March 08, 2014, Mitchell and Litvinenko spoke with Assistant Director Kopesky regarding the “Letter of Findings” from Boreland which stated, after her investigation, that both were found to have committed abuse against Mitchell’s children. Mitchell advises Kopesky the reports are not valid and discuss at length Boreland and her promise to do everything in her power to see that Mitchell’s children are never returned to him, her racist comments and discriminatory practices. Mitchell advises Kopesky that he is from New Jersey and has a New Jersey Court Order. They discuss his current wife Litvinenko’s NJ UCCJEA determination. Kopesky is indifferent, advised Mitchell and Litvinenko that she had thoroughly reviewed the case files and is supportive of the actions of Boreland. Kopesky advised Mitchell and Litvinenko that she did not wish to see

additional official New Jersey documentation to prove they were innocent of long term abuse. Kopesky advised Mitchell to write a letter to Coyne the Director if he has further grievances concerning this matter but ignores the actions of Boreland, although she is aware of what has transpired and was asked to intercede by Mitchell.

156. On March 08, 2014, Mitchell and Litvinenko send Coyne letters requesting the reconsideration of the two “Letters of Findings” from Boreland. Mitchell and Litvinenko wrote and advised Coyne that the report is not accurate and requested that DCSS wait until after the court proceedings are finalized to render this decision. On March 13, 2014, Mitchell and Litvinenko speak with Director Coyne regarding the “Letters of Findings” from Boreland which stated after her investigation that both were found to have committed abuse against Mitchell’s children. Mitchell advises Coyne the reports are inaccurate and discuss at length Boreland and her promise to do everything in her power to see that Mitchell’s children are never returned to him, her racist comments and discriminatory practices. Mitchell advised Coyne that he is from New Jersey, has a New Jersey Court Order. They discuss his current wife Litvinenko’s NJ UCCJEA determination. Coyne is indifferent, advised Mitchell he will take the allegations and statements under advisement, review the case thoroughly, speak with his subordinates and respond in writing. Coyne advised Mitchell and Litvinenko that he did not wish to see additional official New Jersey documentation to prove they were innocent of long term abuse. Coyne responded to Mitchell and Litvinenko in writing. Coyne is supportive of the actions of Boreland, ignores the racist comments of Boreland, and ignores Minnesota’s UCCJEA requirements. Coyne advised Mitchell and Litvinenko to write to the State if they had further grievances concerning this matter. Coyne does nothing further although asked to directly intercede by Mitchell and Litvinenko. (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 Boreland P'Simer and Sirr at the Dakota County Social Services prior to a formal interview being 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 the New Jersey Police reports failed to demonstrate that Mitchell had a history of child abuse as Boreland had hoped. 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 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 the children's mother Campos in Spain. Boreland told BM that 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 custody court order. Boreland told BM that Scott would make sure the case remained in Minnesota. P'Simer and Sirr stated they would support this by creating their reports with omitted New Jersey information, while recommending the children remain in foster care in Minnesota, and 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 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 he would 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 they could arrange to send them to Campos in Spain. During the meeting described in this paragraph, Boreland, P'Simer and SIRR came to an agreement to work together to illegally and wrongfully usurp custody from Mitchell, usurp jurisdiction from the State of 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 fails 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 he is in violation of 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 is the second time a Dakota County Social Service employee intentionally fails to mention or provide the New Jersey custody court order in their official Court Report as required by law. After thoroughly reviewing the discovery information, P'Simer intentionally does not mention or present the New Jersey Custody Order in any Court Report or court appearance from March 2014 through March 2015, nor does P'Simer present it to the court for filing as required by law although there have been discussions with Mitchell concerning this topic. It isn't until P'Simer requests the Termination of Parental Rights fourteen months later, does P'Simer finally present the New Jersey Custody Court Order before the Dakota County court for the first time. (Exhibit 016)

159. P'Simer intentionally conceals the exculpatory evidence Mitchell provided to him for over one year as it relates to Boreland's deficient Petition, omissions, fabrications, lies and UCCJEA requirements after having had several

discussions regarding this matter to further the conspiracy to illegally send BM and XM to their mother in Spain.

160. On March 20, 2014, Boreland inserts a fabricated interview with former Nanny Tanisha Wellard based on the CHIPS Chronology Summary report that was sent with the Dakota County Discovery Information to Mitchell. Although Boreland was officially transitioned off the case 15 days prior, she was still actively working behind the scenes, to fulfill her promise to Mitchell, **“she will do everything in her power to see that the children are never returned to him.”** Up to this point in time, Boreland had created only long, totally biased, one sided, negative case reports against Mitchell which were not supported by facts. Boreland’s actions of withholding exculpatory evidence, along with the false statements and illegal actions, shows 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 receives a court report from DCSS. P’Simer again fails to specify the New Jersey Court Order and fails to amend the Original Petition as required by law. As Boreland, Scott, Swank, P’Simer and Sirr agreed, the visitation update falsely states the two oldest children BM and XM do not wish to have visitation. Nothing of the reunification plan for BM or XM is mentioned as required by law or previous court order. (Exhibit 018)

162. The Court Report and recommendation of P’Simer are approved and co-signed by Supervisor Stang, although both knew they were inaccurate, deficient and contained false information and fabricated evidence because P’Simer had received the official New Jersey information on March 7, 2014 with the true information as documentary evidence as well as the Piscataway, NJ Police reports on February 18, 2014.

163. The court approved all of P’Simer’s recommendations and requests

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 XM met with Boreland and Derby together. XM related the following statements made between Boreland and Derby while he was in the meeting with Boreland and Derby 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 the New Jersey Police reports failed to demonstrate that Mitchell had a history of child abuse as Boreland had hoped. 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 the Mitchell's children in Minnesota, deny visitation, terminate Mitchell's parental rights and then transfer custody to the children's mother Campos in Spain. Boreland told Derby that 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 custody court Order. Boreland asked Derby to help them keep the case in Minnesota by not mentioning the family was returning to New Jersey or the New Jersey custody court Order. Boreland asked Derby to tell the court that XM did not wish to visit or live with their father but instead XM wanted to live with his mother in Spain. Derby agreed to Boreland's request and stated she would not

mention anything relating to New Jersey before the court, would state XM did not want to visit his father, but instead wanted to go and live with his mother in Spain. 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 the State of 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 moves the court for a domestic abuse no-contact order (DANCO) in furtherance of conspiracy to deny visitation to the Mitchell as mentioned above. What makes this motion odious, is 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 continue as she had initially requested and received when filing the initial complaint. The DANCO was requested by Swank to further the conspiracy to illegally send BM and XM to their mother in Spain. (Exhibit 019)

166. The Minnesota District Court Judge, realizing it for a sneak attack, asked Swank if proper notice had been given. When advised it had not, the Judge denied the motion.

167. On May 3, 2014, a DCSS CRU Intake form is completed where Campos complains of emotional abuse of XM because his iPod was taken away as a discipline measure by the foster parents. Campos told the foster parents that this is emotional abuse and much worse than the physical abuse that Mitchell had done. Campos got very angry and was demanding 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 advised foster parents that she will call DCSS the next day to request XM be returned to Mitchell. The DCSS Intake

Specialist advised foster family to file a police report for terroristic threats. Further, Campos tells DCSS to return the children to Mitchell the next day. (Exhibit 020)

168. Now, as if the New Jersey police reports were not enough, DCSS is now fully aware Campos has lied to them and the Apple Valley police. Mitchell is not the abusive monster Campos previously alleged. Campos would never have requested, suggested or even remotely hinted at the children being returned to Mitchell, especially after claiming she spent 6 years trying get the children away from the allegedly “abusive” Mitchell.

169. DCSS is also aware the terrorist threats displayed by Campos to the foster family may tie in with the violent tendencies displayed in the New Jersey police reports that the Defendants have suppressed. The CRU Intake Report was sent to Tom Bergstrom, Carol Duerr, P’Simer, Stang and Yunker. Defendants continued to illegally detain and attempt to transfer the children to their mentally unstable mother in “Spain” despite these facts. This option, taken by DCSS, was unavailable in the first place pursuant to Minnesota state law and the New Jersey Custody Court Order. (Exhibit 021)

170. This information was discussed with all the Dakota County Defendants, and yet they still allowed XM to continue his Skype visits with his mother but continued to deny Mitchell his legal visitation rights or return XM to Mitchell’s custody. This information was intentionally hidden and never provided to the Court for consideration in any Court Report by the Defendants.

171. On May 07, 2014, as instructed by Boreland, P’Simer, and Sirr, BM gets expelled from Fork Union Military Academy (FUMA) in Virginia to further the conspiracy to illegally send BM and XM to their mother in Spain. BM calls Sirr to come and retrieve him from school and return him to Minnesota. Sirr contacts P’Simer, who in turn contacts Mitchell to retrieve BM from school and return him to Minnesota. P’Simer told Mitchell BM was 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 told Mitchell that although Dakota County purchased an airline ticket to send BM back to school after spring break, they do not have the authority to go out of state to Virginia, retrieve him and bring him back to Minnesota. Mitchell would have to bring BM back to Minnesota for the custody order to take effect. (Exhibit 022)

172. Mitchell calls FUMA and is made aware by the school Commandant that FUMA called Dakota County because they had received court orders and documentation from P'Simer that said Dakota County had custody over BM, and that this is where he would be returning at the end of the semester.

173. When BM was returned to Mitchell's custody, he told Mitchell that he was shocked when he learned he was being transported to another school and that DCSS was not picking him up to return him to Minnesota as he had been told by Boreland, P'Simer and Sirr because he done exactly as he had been instructed to do by them,. BM repeatedly told the school transporters, Chuck and Rhonda Mapes from Safe Passage Adolescent Services, to call P'Simer and Sirr, provide the transporters their phone numbers, and told them that this was a mistake, that transporting BM to another school was illegal, and that he was supposed to returning to Minnesota. (Exhibit 023)

174. Mitchell sustained the following monetary damages relating to FUMA" expulsion: lost tuition because of the expulsion \$30,000 and safe passage transport cost \$5,065. The Pinnacle School tuition from May 2014 to September 9, 2014 cost \$44,475. Mitchell called over 30 schools and none would accept BM because of his expulsion from FUMA. Diamond Ranch Academy agreed to accept BM with the expulsion but at a steep premium of \$74,200 per year. 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.

175. On May 13, 2014, the Litvinenko case is dismissed by DCSS. Mitchell

and Litvinenko call Boreland, P'Simer and Akolly to remove the terms of the forced separation. Boreland, P'Simer and Akolly refused and stated that the couple must stay separated until all the DCSS proceedings were completed or they will immediately take away custody and put ML in a foster home. Despite their actions not being legally authorized, Boreland, P'Simer and Akolly continue nevertheless with their malicious actions. Defendants knew there were no allegations of abuse by Litvinenko or ML and no probable cause to expect any abuse of Litvinenko or ML by their own police statements and numerous discussions. (Exhibit 024)

176. On May 27, 2014, Mitchell returns to criminal court for his trial on malicious punishment of a child. At the commencement of the hearing Judge Spicer asks if there are any pre-trial motions. Swank, as before, and without prior attorney notice to Mitchell's attorney, stated she wishes to amend the charges to **add felony "Terroristic Threats"** when she already knew Mitchell was not a child abuser. This is clearly malicious prosecution and everyone in the court room is shocked because it takes the case from a misdemeanor to a felony.

177. Judge Spicer immediately calls both attorneys to the bench. After some discussion and fearing a miscarriage of justice for a parent's ordinary corporal punishment, Judge Spicer tells Swank that she will withdraw the motion and that he will be offering Mitchell an "Alford Plea." Mitchell thanks Judge Spicer for the offer, but requests to proceed to trial because Mitchell will not plead guilty to charges he is innocent of. Also, Mitchell needs the trial to be completed so that his children can be returned to him. Judge Spicer calls for a break in the proceeding and requests that Mitchell speak with his attorneys before refusing the offer. Swank is visibly upset

178. Mitchell's attorney then advised him that "he has been sent a gift from heaven" based upon what Swank was attempting to do. They advised that it is extremely rare for a judge to intervene in a case and offer a plea agreement. They explained the "Alford Plea" allowed the case to be completed, while Mitchell

maintained his innocence. Mitchell was advised that even had he won the case and was found innocent by the jury, and there was a high probability that he would, he 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 for the appellate process that the County Attorney would surely file. Meanwhile his children would remain in foster care the entire time. If he lost at the trial and appellate court levels, Mitchell could face a maximum prison sentence of 5 years or a maximum fine of \$10,000, or both. Also, Mitchell would have a felony conviction record, lose the ability to vote, lose the ability to possess firearms, may not be able to live in some apartments, suffer potential loss of a professional license and have potential disqualifications from certain jobs. Additionally, a conviction under this statute could mean that Mitchell could not volunteer at things like school functions, coaching youth sports, boy scouts, etc. Also, Judge Spicer was obligated to accept Swank's motions if Mitchell continues to trial. Swank was attempting to use the judicial system to make sure Mitchell didn't get his children back in furtherance of their conspiracy with the other Defendants. As well, Swank was ensuring Mitchell's entire life, including his job, social and community standing would be in complete and absolute ruin simply for spanking his misbehaving son..

179. In view of the fact that Mitchell's civil proceeding on the child protection case could not be concluded until the criminal proceedings had completed, the family was scheduled to return to New Jersey now, DCSS would not return Mitchell's children prior to the completion of the child protection civil matter and Mitchell loved and missed his children and was afraid of losing them forever, Mitchell decided to accept the "Alford Plea" agreement for the allegation of malicious punishment of a child while maintaining his innocence.

180. Upon recommencement of the Hearing, Judge Spicer stated he was glad that Mitchell had reconsidered and decided to accept his offer. Judge Spicer then charged Mitchell with a misdemeanor offence, imposed a minimal fine of

\$100 and an \$80 court cost. The criminal proceedings that gave rise to the delay in finalizing the civil proceedings were thus completed. (Exhibit 025)

181. On June 1, 2014, as part of BM's counseling, The Pinnacle School recommended 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 which took place for the instant case. 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 the above-mentioned Defendants refused. When BM was returned to Mitchell's custody, BM told Mitchell his mother requested help from Boreland to keep the children in Minnesota and to transfer the custody of the children to Campos in Spain. (Exhibit 026)

182. On June 14, 2014, Dr. Michael Ferrarese completed a five-week Parent/Psychological Evaluation of Mitchell for DCSS. Dr. Ferrarese recommends that the children be returned to the Mitchell. Despite the fact the physiological evaluations proved Mitchell's fitness as a parent, DCSS continue to illegally detain Mitchell's children. (Exhibit 027)

183. On June 27, 2014, Kim Surve, the assigned child therapist for the boys, advised P'Simer she is cancelling the counseling services he scheduled for failure to attend. Only one therapy session took place for XM and BM in 4 months when they were scheduled to attend twice a week. P'Simer failed to provide any family reunification efforts. (Exhibit 028)

184. On July 10, 2014, a court-ordered settlement conference hearing 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 are aware Mitchell and part of his family are returning to New Jersey on July 21, 2014.

185. Mitchell attends court-ordered Settlement Conference in yet another

attempt to get his children returned to his custody. P'Simer, Yunker, Stang and Sirr finally agreed to return AM and BM to Mitchell's custody. But there is a caveat, P'Simer, Yunker, Stang, and Sirr will only do this if Mitchell acknowledges and accepts the demand of DCSS and of P'Simer, Yunker, Stang, and Sirr that XM needs protective services, leave him behind and to request a change to the final judgment court order from the criminal side of the proceedings to state that Mitchell will use no physical discipline on the children in the future. To make this a condition of the return of Mitchell's two children was a violation because Mitchell was a fit parent. What P'Simer, Yunker, Stang, and Sirr were basically saying, "If you don't submit to me. You'll never see any of your children again!" (Exhibit 029)

186. Based on all past P'Simer, Yunker, Stang, and Sirr court report recommendations being carried out verbatim by the court, Mitchell knows he is in a no-win situation. Take two of his children and going home to New Jersey or take none of them and continue to fight, when the youngest AM, who is 6 years old, has been emotionally tortured and begging to come home since this whole incident started. Mitchell has told P'Simer, Yunker, Stang, and Sirr many times there is nothing wrong with his family and the children do not need therapy. P'Simer advised Mitchell that the therapy was not for him or for the children directly, but for the trauma of the children being separated from their families. P'Simer further elaborated that CPS provides therapy to all children who are separated from their parents, guardians and/or families. P'Simer makes the court aware of these same statements from Mitchell in his court report of April 23, 2014. P'Simer, Yunker, Stang, and Sirr forced Mitchell to admit to something he has repeatedly told them he does not need or agree with, and a change to his final judgment in the criminal proceedings in order to get two of his three children back.

187. Out of fear, duress, and heartbreak especially for his 6-year-old AM's emotional torture, Mitchell is coerced and forced into agreeing that XM needs

“Protection or Services” as P’Simer, Yunker, Stang and Sirr demanded and forced Mitchell to change to his final judgement in the criminal proceedings, while knowing deep in his heart this is wrong, illegal and a complete abuse of process. Mitchell reasoned this would gain the family some stability and normalcy in their lives. Although Mitchell is emotionally shattered regarding XM, the petitions with respect to BM and AM are dismissed by the court.

188. After five months, the court once again orders 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 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 disobey the direct court order, Minnesota state statutes, and refused to create the formal reunification plan. This has been a recurring, intentional, and illegal theme since the beginning of the case. (Exhibit 029)

189. On July 21, 2014, Mitchell leaves Minnesota with part of his family and returns to their home in New Jersey. Mitchell spent three additional months in Minnesota, unemployed fighting to get his children back. Counsel for Mitchell continued to fight for the release of XM from the custody of DCSS with mounting expenses.

190. On August 14, 2014, Kim Surve, XM ‘s Therapist, provides her Assessment. 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. Despite this recommendation and XM’s request, DCSS continue to illegally detain XM. (Exhibit 030)

191. On August 16, 2014, after XM was returned to Mitchell’s custody, XM told Mitchell about the time 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 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 is unhappy about the denials to return home. He then runs away from the foster family's home. This information can be corroborated on the DCSS documentation in the Discovery information provided by the Dakota County Attorney's office. (Exhibit 031)

192. After XM was returned to Mitchell's custody, XM told Mitchell about the time 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 he was in the meeting with P'Simer and Sirr. P'Simer again told XM that although he wanted to return home, he could not because his father no longer wanted him and abandoned him in Minnesota. Sirr stated that DCSS was going to send him XM to Spain to live with his mother. Sirr further stated that if XM agreed to not run away again they 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 fraudulently told XM that his father had abandoned him in Minnesota and this is why 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 further agreement to continue to illegally and wrongfully usurp custody from Mitchell, usurp jurisdiction from the State of New Jersey, terminate Mitchell's parental rights and transfer custody to Campos in Spain. (Exhibit 031)

193. After XM was returned to Mitchell's custody, XM told Mitchell about the time XM met with Derby shortly after he had run away from the foster home. XM related the following statements made by Derby while he was in the meeting with Derby. 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 stated that she had spoken to both P'Simer and Sirr and that

they had agreed to send him XM to Spain to live with his mother. Derby further stated that if XM agreed to not run away again 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. Derby fraudulently told XM that his father had abandoned him in Minnesota and this is why he could go home or have any contact with Mitchell. During the meeting described in this paragraph, Derby came to further agreement with P'Simer and Sirr to continue to illegally and wrongfully usurp custody from Mitchell, usurp jurisdiction from the State of New Jersey, terminate Mitchell's parental rights and transfer custody to Campos in Spain.

194. 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. These statements by P'Simer and Sirr were a lie. 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 court order of July 10, 2014 to create a case plan and reunification plan, which was 40-days prior. P'Simer and Sirr also lied and omitted the following information from their court reports. (Exhibit 032):

- 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, or that XM had requested 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 reunification take place over video conferencing or Skype like DCSS had been performing with Campos. Mitchell has the email correspondence to corroborate the above statements.
- c) Sirr fabricated evidence by stating; "XM remained unwilling to work towards reunification with his father." Upon "XM's return to Mitchell, XM

advised Mitchell that he never said these statements and that he was willing to work towards reunification. Sirr told XM he would not be allowed to see Mitchell.

d) P'Simer and Sirr intentionally did not report to the court that XM's therapist Kim Suave told P'Simer that XM told her he wanted to go home to New Jersey on August 11, 2014.

e) P'Simer and Sirr intentionally did not report to the court that on August 14, 2014 XM's therapist Kim Suave submitted her formal evaluation and 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) Judge McDonald provided DCSS with the authority to place Xander 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 session prior to 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 he provided his contact information for the therapy sessions for after Mitchell's return to New Jersey. Mitchell attended one session where XM was a "no-show", was waiting for others, but P'Simer refused to bring him to therapy, because according to P'Simer, XM said he didn't need therapy, refused to go, and P'Simer and Sirr refused to mandate that he attend the sessions or to personally bring him to the therapy sessions. Yet both P'Simer and Sirr lied to the court and stated Mitchell was not willing 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 Mitchell requested a trial pursuant to 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.

195. On August 20, 2014, after XM was returned to Mitchell's custody, XM told Mitchell about the time XM met with Derby at the court house prior to the August 20, 2014 hearing. XM related the following. XM advised Derby to tell the court that he wanted to go home to live with his father. Derby advised XM that she would tell the court that wanted to go home to live with his father, but at the hearing Derby did not tell the court that XM wanted to go home to live with this

father and refused to allow XM to speak in court and tell the Judge his desire to return home to Mitchell. After the hearing, Derby again told XM again that his father had abandoned him in Minnesota, and that she met with P'Simer, Sirr, Scott just prior to the hearing and agreed not to tell the court XM wanted to go home to live with his father, because P'Simer, Sirr, Scott and Derby had discussed the matter once and agreed it was in XM's "best interest" to send XM 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 the State of New Jersey, terminate Mitchell's parental rights and transfer custody to Campos in Spain.

196. At a November 19, 2014 court hearing, P'Simer continues to make fabricate evidence, make false statements as he did in the prior court, dissembles and lies to the court in his reports in furtherance of the conspiracy to send XM to his mother in Spain. The report states P'Simer moved XM to a new foster home. XM is happy, healthy, doing fine. **XM no longer wishes to return home**, but instead wishes to go to Spain to live with his mother. **Note, up to this point in time, P'Simer has neither mentioned verbally or in writing to the court that XM advised his psychologist, P'Simer, Sirr and Derby that he wished to return home on numerous occasions.** As mentioned above, P'Simer, Sirr and Derby have intentionally withheld this information from the court. This writing "error" and/or contradiction on P'Simer's part, further demonstrates the conspiracy between P'Simer, Sirr and Derby to illegally send XM to his mother in Spain. (Exhibit 033)

197. The court report from November 19, 2014 further shows a conspiracy existed between P'Simer, Sirr and Yunker to send XM to Spain to live with his mother because the court reports of P'Simer and Sirr were worded identically with fabricated evidence and false statements from the August 20, 2014 court report. P'Simer's report was approved by DCSS Supervisor Yunker although they both know the report contained fabricated evidence, false statements and is deficient.

P'Simer requested superfluous extensions of time in the permanency proceedings against Minnesota State Statutes in furtherance of their conspiracy to deliver XM to Campos. DCSS met none of the Minnesota Statute timelines as it related to the permanency proceedings.

198. Between November 2014 and April 2015, every court report by P'Simer and Sirr contained lies to affect 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 Mitchell wanted and requested the matter be decided at trial. During this time period, Mitchell was not allowed any contact or visitation with his son.

199. After 15 months of these unnecessary proceedings against, to secure continued federal funding of foster care which would end at the 15<sup>th</sup> month anniversary of foster care, P'Simer commenced the illegal process of termination of parental rights and the transfer of custody to XM's biological mother in Spain. P'Simer knew that a petition for termination of parental rights had to be filed against Mitchell to pursue continued federal funding.

200. P'Simer knew the entire process was illegal and against Minnesota state statutes. P'Simer and Sirr knew they had failed to prove Mitchell was an unfit father; therefore, both P'Simer and Sirr lied to the court, and told the court **Mitchell had abandoned his son in Minnesota** to further their conspiracy to illegally send XM to his mother in Spain. (Exhibit 034)

201. On February 15, 2015, Mitchell emailed P'Simer and Sirr that a written and signed reunification or case plan has never been provided to Mitchell or the Court; yet, P'Simer and Sirr lied to the court by stating the reunification effort had failed when there was never a reunification plan in place. It is impossible for a plan to fail that was intentionally never established. Boreland,

202. 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 advised the court of the New Jersey Custody Court Order after 14 months of possession, and that Mitchell is a resident of New Jersey. Mitchell spoke with P'Simer, Sirr, and Yunker repeatedly and continued to ignore Mitchell's objections to these non-conforming acts of law and Mitchell's constitutional rights.

203. In P'Simer's haste to finalize the conspiracy to send XM to Spain, P'Simer lies 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. More specifically, there are DCSS Case Notes and email exchanges since February 17, 2015 up to and including the date of the Affidavit to confirm and facilitate visitation and joint therapy in an effort for Mitchell to regain custody of XM. (Exhibit 036)

204. To further demonstrate the illegal conspiracy regarding the transfer of custody to Campos, it violated MN DHS Social Services Manual requirements, as well as Minnesota state statutes. Furthermore, there was no plan for supervision or oversight in place for XM if he went to Spain. Below are further examples to elaborate this point.

205. Campos had physically threatened the foster family earlier in the year for taking away iPod from XM 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 tells DCSS to return XM to Mitchell. This information is documented and shared with DCSS Social Workers and

Supervisory Defendants. (Exhibit 020 and 021)

206. 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)

207. To further demonstrate the conspiracy to send XM to his mother in Spain, the only prerequisite that Campos had to complete prior to the Transfer of Custody petition being filed with the court and the recommendation of Termination of Parental Rights by both P’Simer and Sirr was a psychological evaluation by a new Doctor named Lupno, that wasn’t favorable, and did not recommend that Campos receive custody of XM. The entire evaluation process of parental fitness and safe home requirement failed MN DHS Social Services Manuel requirements and Minnesota state statutes. (Exhibit 037)

208. In the new psychological evaluation by Dr. Lopno, Campos told the doctor she and the children were physically abused for over three years by the Mitchell in New Jersey. P’Simer, Sirr and Yunker knew this was a lie because they read all of the New Jersey official documents where Campos admitted to the court that there was no abuse for the 11 years that Mitchell and Campos were married.

209. To further demonstrate the conspiracy to send XM to Spain, Dr. Lopno, the psychiatrist who performed the psychological evaluation on Campos, and reviewed the report with both P’Simer and Yunker on January 20, 2015, does not recommend that Campos receive custody of XM at all. In fact, Dr. Lopno states just the opposite and does not recommend that Campos receive custody. P’Simer, Yunker and Sirr knew that Dr. Lopno’s report contained fabricated information by Campos, that what was presented to Dr. Lopno as factual events was false, and failed to mention to the court that the report contained 573 words or four full paragraphs of fabricated information by Campos of long term abuse that is not consistent with the New Jersey official documents or

the statements made by Campos in the original Apple Valley police report. Dr. Lopno specifically points this out in his report to P'Simer and Yunker. (Exhibit 038)

210. As it relates to mandatory MN-DHS requirements, there was no home visit, no home study, no contact with a sister type agency in Spain, the recommended psychological counseling was not complete, there was no plan to physically monitor the child in Spain, XM had not physically seen his mother in almost 7 years, there was no reunification plan, no plan to supervise the parent child interaction, no plan or recourse if there was an issue between XM and his mother on how to get him back from Spain and under the care of DCSS or a sister agency. (Exhibit 039)

211. Furthermore, XM does not speak Spanish. Additionally, Campos lives in the northern part of Spain where they speak Catalan, a completely different dialect than in Madrid, so XM would not be able to attend school or communicate with anyone else.

212. DCSS refused to release XM back to Mitchell who had physical and legal custody, was parentally fit, was recommended by DCSS certified psychologist and completed all DCSS required psychological tests / requirements and DCSS had already returned Mitchell's 6-year old son to his custody. Instead, P'Simer and Yunker were willing to give Campos custody of the 10 year old XM when no DCSS requirements had been met, with no conditions, and under absurd living conditions and circumstances.

213. On June 4, 2015, the marriage to Litvinenko was dissolved due to the intentional infliction of emotional distress caused by Boreland, Akolly, P'Simer, Yunker, Stang, Kopesky and Coyne. Due to the illegal forced separation of Mitchell from Litvinenko for five months and the continued detention of XM, Mitchell suffered "Post Traumatic Stress Syndrome" from 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.

214. Because of this, Mitchell was unable to work from May of 2015 to December of 2015 when his son was finally returned. The legally unauthorized DCSS proceedings put a tremendous strain on Mitchell and the marriage, causing the marriage to fail. Prior to 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 marriage separation and the ongoing conduct of Boreland, Akolly, P'Simer, Yunker, Stang, Kopesky and Coyne changed Mitchell's life forever.

215. On July 22, 2015, Mitchell demands visitation with his son XM to P'Simer in writing. XM and Mitchell finally commence weekly Skype sessions while waiting for the trial date. (See Exhibit 040)

216. On July 23, 2015, Supervised Therapy Session, Twin Cities Play Therapy Center, Mitchell is finally allowed to speak to his son XM after 15 months of separation. **The very first question XM asked is why the 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 can be confirmed in supervisor Shawn Bulgatz session summary report to P'Simer dated September 3, 2015.** P'Simer and Sirr had been lying to the court, XM and Mitchell, about XM not wanting to have visitation, contact or returning home to Mitchell. (Exhibit 041)

217. After XM was returned to Mitchell's custody, XM told Mitchell about numerous meetings XM had with Boreland, P'Simer, Sirr and Derby over the twenty-two-month period. XM related the following statements made between

Boreland, P'Simer, SIRR and Derby. XM advised Mitchell that he wanted to have contact and visitation, but Boreland, P'Simer, SIRR and Derby told him 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 he could not speak with his father or visit him.

218. 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 the care, custody, and control, and love of his father Dwight Mitchell, 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 in order to illegally send him to his mother in Spain.

219. On August 21, 2015, Assistant County Attorney Jenny Nystrom is assigned to take over the case from Scott who has retired.

220. On September 17, 2015, Assistant County Attorney Jenny Nystrom requests a special hearing to address the Middlesex County New Jersey custody court order. Ms. Nystrom advised the court there was no determination in the file that New Jersey had relinquished subject matter jurisdiction, that a hearing had never taken place or that New Jersey had even been contacted as required under UCCJEA statutes. The matter was scheduled for an in-court review hearing on September 21, 2015. (Exhibit 042)

221. On October 19, 2015, Mitchell filed 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)

222. The County filed and served its Memorandum of Law on Jurisdiction on October 23, 2015. Mitchell filed and served his Memorandum of Law on October 30, 2015. At the November 4, 2015 court hearing, Judge McDonald

presided over the hearing on lack of subject matter jurisdiction. Instead of ruling on the matter of subject matter jurisdiction, Judge McDonald postponed the ruling for an additional 30 days and scheduled the ruling date for December 4, 2015.

223. At the December 4, 2015 court hearing relating to 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 the case be dismissed. Judge McDonald dismissed the case and declined to rule on lack of subject matter jurisdiction motion due to mootness. Mitchell requested twice unsuccessfully that Judge McDonald rule on the matter of no subject matter jurisdiction and vacate all prior decisions in the case. . (Exhibit 044) The judge refused to address subject matter jurisdiction and vacate all the prior orders.

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

225. Mitchell has incurred significant expenses, including, approximately \$167,940 for the FUMA incident, approximately \$16,840.00 to pay for the care of his children during their time in Foster Care, approximately \$9,600.00 for Lodging, approximately \$5,000.00 for airfare, approximately \$692.00 for car rental, approximately \$900.00 for food, and approximately \$63,172.00 for legal fees incurred to date related to the DCSS proceedings that were initiated and maintained based on false and misleading information.

226. Jesson was the Commissioner of Minnesota's Department of Human Services between January 2011 and December 2014, and as such, she and her office had the following powers, duties and responsibilities pursuant to Minn. Stat. § 256.01 and additional state statutes as listed below:

Subd. 2(a) – Specific Powers

(1) require county agency participation in training and technical assistance programs to promote compliance with statutes, rules, federal laws,

- regulations, and policies governing human services;
- (2) monitor, on an ongoing basis, the performance of county agencies in the operation and administration of human services, enforce compliance with statutes, rules, federal laws, regulations, and policies governing welfare services and promote excellence of administration and program operation;
  - (3) develop a quality control program or other monitoring program to review county performance and accuracy of benefit determinations;

Subd. 2(b) Inform county agencies, on a timely basis, of changes in statute, rule, federal law, regulation, and policy necessary to county agency administration of the programs.

Subd. 2(c) 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.

Subd. 2(g) Establish and maintain any administrative units reasonably necessary for the performance of administrative functions common to all divisions of the department.

Subd. 4 – Duties as state agency

(1) supervise the administration of assistance to dependent children under Laws 1937, chapter 438, by the county agencies in an integrated program with other service for dependent children maintained under the direction of the state agency;

(2) establish adequate standards for personnel employed by the counties and the state agency in the administration of Laws 1937, chapter 438, and make the necessary rules to maintain such standards;

Minn. Stat. § 393.01; Refers to “Local Social Services Agency Establishment”

Minn. Stat. § 393.04; Refers to “Local Social Services Agency Organization”

The agency shall appoint a director and such assistants and clerical help as it may deem necessary to perform the work of the agency. The appointment of the director shall be made in accordance with rules to be adopted by the commissioner of human services and the director shall be chosen upon the basis of experience, training, and general qualifications for the work.

Minn. Stat. § 393.07; Refers to “Local Social Services Agency Powers and Duties”

Subd. 2. Administration

The local social services agency, subject to the supervision of the commissioner of human services, shall administer all forms of public welfare, both for children and adults, responsibility for which now or hereafter may be imposed on the commissioner of human services by law, including general assistance, aid to dependent children, county supplementation, if any, or state aid to recipients of Supplemental Security Income for aged, blind and disabled, child welfare services, mental health services, and other public assistance or public welfare services, provided that the local social services agency shall not employ public health nursing or home health service personnel other than homemaker-home help aides, but shall contract for or purchase the necessary services from existing community agencies. The duties of the local social services agency shall be performed in accordance with the standards and rules which may be promulgated by the commissioner of human services to achieve the purposes intended by law and in order to comply with the requirements of the federal Social Security Act in respect to public assistance and child welfare services, so that the state may qualify for grants-in-aid available under that act. To avoid administrative penalties under section 256.017, the local social services agency must comply with (1) policies established by state law and (2) instructions from the commissioner relating (i) to public assistance program policies consistent with federal law and regulation and state law and rule and (ii) to local agency program operations. The commissioner may enforce local social services agency compliance with the instructions, and may delay, withhold, or deny payment of all or part of the state and federal share of benefits and federal administrative reimbursement, according to the provisions under section 256.017.

227. Jesson had these legal obligations as Commissioner.:Pursuant to Minn. Stat. § 256.01, Minn. Stat. § 393.01, Minn. Stat. § 393.04, and Minn. Stat. § 393.07, Jesson as the Commissioner of MN-DHS and a state agent possessing final authority, was legally obligated to ensure the provisions of all Minnesota Statutes and laws relating to DHS were enforced, specifically Minn. Stat. § 518D. . Because Jesson intentionally did not perform her job responsibilities, this caused Mitchell harm.

228. Between January 2011 and December 2015, no MN-DHS Social Services Manuals, training curriculum, PIP guidelines, and/or updates through

2015 contain or mention anything relating to UCCJEA and Minn. Stat. § 518D as required by law.

229. Jesson failed to properly implement Minn. Stat. § 518D between January 2011 and December 2015.

230. Jesson failed to create and provide documentation, train, update, maintain and monitor her staff, subordinates, county administrators, county offices or county office staff members on any portions of Minn. Stat. § 518D. Most importantly, Jesson failed to rain on the matters of child custody and constitutional violations.

231. Jesson acted outside of her scope of her official duties by intentionally not implementing training, manuals, enforcing and disciplining social workers for non-compliance on matters of custody and official misconduct on Minnesota Statute § 518D.

232. Minn. Stat. § 518D was enacted in 1997. For five years, Jesson did not implement any provision of Minn. Stat. § 518D. Five years was enough time for the proper implementation of this state statute along with policies and procedures to document, train, update, maintain and monitor her staff, subordinates, county administrators, county offices or county office staff members on the legal requirements of Minn. Stat. § 518D.

233. Jesson failed to implement, document, train, update, maintain and monitor her staff, subordinates, county administrators, county offices or county office staff members on any portions of Minn. Stat. § 518D, because of this, Mitchell's children were illegally removed and detained from the Mitchell's care and custody for 5 months for AM and 22 months for XM, respectively.

234. Jesson failed to implement, document, train, update, maintain and monitor her staff, subordinates, county administrators, county offices or county office staff members and/or supervise the implementation, documentation, training, update, maintenance and monitoring" staff, subordinates, county

administrators, county offices or county office staff members over the course of 5 years establishes a policy and/or custom and amounts to deliberate indifference to the rights of persons with whom the social workers come into contact with regarding UCCJEA and this failure is the "moving force behind the constitutional violation of Mitchell."

235. Jesson's actions and/or inactions violated Mitchell's fourth and fourteenth amendment rights under the constitution and caused Mitchell irreparable harm.

236. Piper has been the Commissioner of Minnesota's Department of Human Services since January 2015, and as such, she and her office have the powers, duties and responsibilities pursuant to Minn. Stat. § 256.01 and additional state statutes as listed above. Pursuant to Minn. Stat. § 256.01, Minn. Stat. § 393.01, Minn. Stat. § 393.04, and Minn. Stat. § 393.07, Piper as the Commissioner of MN-DHS and a state agent possessing final authority, is legally obligated to ensure the provisions of all Minnesota Statutes and laws relating to DHS were enforced, specifically Minn. Stat. § 518D.

237. By intentionally not performing her job responsibilities, Piper causes harm to other similarly situation individuals like Mitchell.

238. Between January 2015 and present, no MN-DHS Social Services Manuals, training curriculum, PIP guidelines, and/or updates contain or mention anything relating to UCCJEA and Minn. Stat. § 518D as required by law.

239. Piper failed to properly implement Minn. Stat. § 518D between January 2015 and present.

240. Piper failed to create and provide documentation, train, update, maintain and monitor her staff, subordinates, county administrators, county offices or county office staff members on any portions of Minn. Stat. § 518D.

241. Piper acted outside of her scope of her official duties by intentionally not implementing training, manuals, enforcing and disciplining social workers for

non-compliance on matters of custody and official misconduct on Minnesota Statute § 518D.

242. Minn. Stat. § 518D was enacted in 1997. For two years, Piper has not implemented any provision of Minn. Stat. § 518D. Two years was enough time for the proper implementation of this state statute along with policies and procedures to document, train, update, maintain and monitor her staff, subordinates, county administrators, county offices or county office staff members on the legal requirements of Minn. Stat. § 518D.

243. Piper failed to implement, document, train, update, maintain and monitor her staff, subordinates, county administrators, county offices or county office staff members on any portions of Minn. Stat. § 518D, because of this, other families are at risk of illegal removal and detention of the care and custody of their children.

244. Piper and/or her office failed to implement, document, train, update, maintain and monitor her staff, subordinates, county administrators, county offices or county office staff members and/or supervise the implementation, documentation, training, update, maintenance and monitoring” staff, subordinates, county administrators, county offices or county office staff members over the course of two years establishes a policy and/or custom and amounts to deliberate indifference to the rights of persons with whom the social workers come into contact with regarding UCCJEA and this failure will be the "moving force behind the constitutional violation” of families.

245. The citizens of the USA and Minnesota live in a transient society where corporate executive, along with their families are constantly being transferred between positions in other states. This is no longer an option, but an expected norm in corporate America for any individual to climb the corporate ladder.

246. Mitchell filed a “Notice of Tort Claim” to all State and County

Agencies on February 27, 2016.

247. Mitchell filed this case pro se on May 22, 2017. The case number was 17-CV-01693-WMW-KMM with the same set of facts. The Reports and Recommendations of the Magistrate Judge was for the dismissal of the case with prejudice. Mitchell filed a notice of voluntary dismissal of his case without prejudice, retained the law office of Mohrman, Kaardal & Erickson, P.A. for representation, and refiled the instant case with the same set of facts, albeit with additional claims and additional exhibits constituting the official DCSS documentation from discovery to prove the facts that the Magistrate Judge did not accept as true.

#### **DAKOTA COUNTY SOCIAL SERVICES DISCOVERY**

248. On February 18, 2014, DCSS Case Notes, Boreland wrote; “Dwight has full physical and legal custody. and all court documents are in Middlesex Courts NJ.” Boreland never reports this information to the court although legally required pursuant to Minn. Stat. § 518D.209. (Exhibit 045)

249. On February 18, 2014, Case Notes, Boreland wrote; I contacted Piscataway Police and the Division of Child Protection and requested records. (Exhibit 045)

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

251. On February 20, 2014, Mitchell receives Service of Petition. Boreland requested and received a First Appearance date of February 26, 2014. This is ten days after the illegal removal of the children without court order or warrant. (Exhibit 007)

252. On February 26, 2014, Boreland files amended CHIPS Petition, which Scott signs as a witness, with fabricated evidence and lies based on the above mention demonstrative evidence of the official Piscataway Police reports that Boreland and Scott received eight days prior. (Exhibit 008)

253. On March 5, 2014, Email to P'Simer with Mitchell's New Jersey Custody Court Order and other official documents as listed on the email attachments. (Exhibit 009)

254. 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 eight (8) days after the commencement of the proceedings against Mitchell and his wife Litvinenko. (Exhibit 047)

255. 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)

256. On March 18, 2014, 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 pursuant to 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)

257. On April 1, 2014, Internal DCSS email from Yunker to P'Simer and Stang advising them Mitchell has full physical and legal custody from New Jersey. Yunker to P'Simer and Stang never report this information to the court although legally required pursuant to Minn. Stat. § 518D.209. (Exhibit 050)

258. On April 1, 2014, Case Notes; from Mitzi Mabry states that Yunker, P'Simer and Stang commence discussing Campos as a placement option in Spain. Mitchell is 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)

259. On April 23, 2014, 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)

260. On April 30, 2014, 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 is intentionally and clearing controlling the flow of information from Campos to other members of DCSS in the initial stages of the investigation. (Exhibit 053)

261. On May 2, 2014, DCSS, Email sent to P'Simer and Supervisor Stang from foster Dad stating Campos said that she wished that XM was back with his Dad". (Exhibit 054)

262. On May 3, 2014, DCSS CRU Intake Notes, Supervisor Stang Mom had also said to the foster dad "May Allah protect you children. An eye for an eye". Diane spoke with Matt 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)

263. On May 3, 2014, DCSS CRU Intake Notes, Supervisor Stang wrote the following statements; "Campos said that she was going to call child protection to have the kids taken from the foster family and placed with their father. (Exhibit 056)

264. On May 7, 2015, 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)

265. On June 20, 2014, Case Notes; P'Simer wrote; "This worker met with Dwight to review case plan goals and court recommendations. This is not true, there was no Case Plan and Mitchell was never provided with a Case Plan. (Exhibit 058)

266. On June 20, 2014, Case Notes; 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)

267. On June 30, 2014, P'Simer creates and/or updates Child Welfare-Targeted Case Management (CW-TCM) for AM, the Plan Dates at the top say 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.", AM will receive case management services as identified in the completion of a written case", "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, 2) I received a copy of the plan. None of these tasks ever take place. The document is signed by P'Simer and Supervisor Yunker directly below Mitchells signature line. P'Simer and Yunker are fully aware of their job responsibilities and legal requirements as it relates to AM and intentionally do not present it to Mitchell to sign as required pursuant to Minn. Stat. § 260C.212. (Exhibit 060)

268. On June 30, 2014, P'Simer creates and/or updates Child Welfare-Targeted Case Management (CW-TCM) for XM, the Plan Dates at the top say 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.", XM will receive case management services as identified in the completion of a written case", "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, 2) I received a copy of the plan. None of these tasks ever take place. The document is signed by P'Simer and Supervisor Yunker directly below Mitchells signature line. P'Simer and Yunker are fully aware of their job responsibilities and legal requirements as it relates to XM and intentionally do not present it to Mitchell to sign as required pursuant to Minn. Stat. § 260C.212. (Exhibit 061)

269. On July 10, 2014, court hearing, P'Simer and Yunker make the following requests in their court report settlement recommendations;

- a) 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.
- b) 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.
- c) 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.**

an 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. This task did not take place as ordered. (See Exhibit 062)

270. On July 10, 2014, P’Simer creates and/or updates Out of Home Placement Plan for AM, the Plan State Dates at the top say 02/16/2014. In the document P’Simer wrote the following; 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.”

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.”, 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. None of these tasks ever take place. The document is signed by P’Simer and Supervisor Yunker directly below Mitchell’s signature line. P’Simer and Yunker are fully aware of their job responsibilities and legal requirements as it relates to AM and intentionally do not present it to Mitchell to sign as required pursuant to Minn. Stat. § 260C.212. (Exhibit 063)

271. On July 10, 2014, P’Simer creates and/or updates Out of Home Placement Plan for XM, the Plan State Dates at the top say 02/16/2014. In the document P’Simer wrote the following; 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. As stated above, Boreland and P’Simer told XM 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.”, 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. None of these tasks ever take place. The document is signed by P’Simer and Supervisor Yunker directly below Mitchell’s signature line. P’Simer and Yunker are fully aware of their job responsibilities and legal requirements as it relates to XM and intentionally do not present it to Mitchell to sign as required pursuant to Minn. Stat. § 260C.212. (Exhibit 064)

272. 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 custody, but XM was not returned and there is no rational reason for this decision.

273. As explained above, although Mitchell met all DCSS requirements when AM was returned, they 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 intentionally subverted Minn. Stat. § 260C.212, and all Minnesota Department of Health and Services requirements which resulted in the illegally retention of Mitchells son XM.

274. On August 11, 2014, Case Notes; P'Simer wrote that XM wants to return home. P'Simer further wrote that he told XM the following “**this worker did not feel that it was in his best interest to go home**”. This statement and rationale is illegal under UCCJEA State Statutes, and as stated above based on Discovery evidence, P'Simer was fully aware of this, yet presents 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)

275. On August 18, 2014, 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)

276. On September 30, 2014, 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)

277. On November 10, 2014, Case Notes; P'Simer “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 continue illegal discussion on sending XM to Spain to live with his mother. (Exhibit 068)

278. On November 19, 2014, Court Report; Sirr fabricated evidence and wrote; “Neither Xander, nor his father, have expressed any desire to engage in services.

Guardian ad Litem Rationale and illegal UCCJEA Best Interest

Recommendations:

- 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)

279. November 19, 2014, 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 reviews and signs “P'Simer's” report with fabricated evidence and lies. (Exhibit 069)

280. 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 outline 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 a fabricated case and/or reunification plan evidence to the court and lied to the court to further their illegal acts of sending XM to Spain to live with his mother. (Exhibit 069)

281. On December 15, 2014, Case Notes, 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)

282. On January 20, 2015, Case Notes, "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. Also present was supervisor L. Yunker". (Exhibit 071)

283. 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 been ordered by the court on numerous occasions. (Exhibit 072)

284. On February 15, 2015, Dr. Lopno presents psychological report to P'Simer, Yunker and Sirr. Dr. Lopno does not recommend that Campos receive custody of XM. In fact, Dr. Lopno recommends just the opposite, along with 6-12 months therapy prior to possibly providing positive recommendation. The report contained 573 words or four full paragraphs of fabricated information by Campos of long term abuse that is not consistent with the New Jersey official documents or the statements made by Campos in the original Apple Valley police report and Dr. Lopno specifically points this out in his report. (Exhibit 073)

285. On February 17, 2015, Case Notes, P'Simer; "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)

286. On February 18, 2015, P'Simer Court Report; Despite Dr. Lopno's negative review and recommendation that Campos **NOT** receive custody of XM, (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. (Exhibit 075)

287. On February 19, 2015 – April 21, 2015, for months Mitchell continued to follow up on reunifying with XM with P'Simer and Sirr via email correspondence. (Exhibit 076)

288. On April 21, 2015, P'Simer creates and/or updates Out of Home Placement Plan for XM, the Plan State Dates at the top say 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. 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. This is lie, XM wanted to participate but P'Simer and SIRR refused to allow this.*

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. This is a lie P'Simer and SIRR refused to allow reunification.* (Exhibit 076)

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. This is lie. P'Simer contradicts his earlier statement in item number 3 from directly above.*

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”. **This is a lie. P'Simer and SIRR**

refused to allow XM to opportunity for reunification. 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.

**This is not true and contradicts P'Simer early reports of 8-11-2014 when XM requested to return to his father, P'Simer refused to allow XM to return home and XM ran away from the foster home.**

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.", 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. None of these tasks ever take place. The document is signed by P'Simer and Supervisor Yunker directly below Mitchells signature line. P'Simer and Yunker are fully aware of their job responsibilities and legal requirements as it relates to XM and intentionally do not present it to Mitchell to sign as required pursuant to Minn. Stat. § 260C.212. (Exhibit 077)

289. April 21, 2015, P'Simer signed Affidavit for the Termination of Parental Rights against Mitchell. "P'Simer **falsely swears the following**, "Affiant has had no contact with or from the father", and "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”, and “The father also has abandoned the child in the State of Minnesota and that he has never attempted to reconcile with his son”, and “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)

290. On April 21, 2015, **Against Dr. 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**”. 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 files for the Termination of Parental Rights of Mitchell. (Exhibit 079)

292. On October 15, 2015, Mitchell files Motion to Dismiss for Lack of Subject Matter Jurisdiction and Memorandum of Law. (Exhibit 080)

293. On October 15, 2015, Mitchell files Motion to Vacate all Orders. (Exhibit 081)

294. On October 15, 2015, Mitchell files Motion to Enforce New Jersey Custody Court Order of Mitchell. (Exhibit 082)

295. On December 4, 2015, Hearing for “Subject Matter Jurisdiction”, “Motion to Vacate”, and “Motion to Enforce New Jersey Custody Court Order”; Case number 19HA-JV-15-1014, filing Pro Se Mitchell submits official Dakota

County evidence which demonstrates conclusively to the court that State and County Defendants fabricated evidence, lie 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, Ruling Hearing for "Subject Matter Jurisdiction", "Motion to Vacate", and "Motion to Enforce New Jersey Custody Court Order"; Prior to the commencement of the hearing and ruling on the above captioned matter, Assistant Dakota County Attorney Jenny Nystrom requests that the CHIPS Petition be dismissed, the Termination of Custody Petition be dismissed, 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, false statements and intentional omission of 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)

#### **ALLEGATIONS REGARDING IMMUNITY DEFENSES OF SPECIFIC INDIVIDUAL DEFENDANTS**

**State defendants Piper, Jesson, Sirr and Derby are not entitled to Eleventh Amendment immunity nor qualified immunity.**

299. 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, Jesson, Sirr 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.

300. As it relates to Jesson's individual capacity claims, although the Court have concluded that normally awards against state defendants in their official capacities are not allowed, the defendant Jesson 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." In turn, with respect to a prima facie defense of official immunity, the defendant must demonstrate that they acted within the scope of their official duties—which is not the case here.

301. "Piper" and "Jesson" are/were the Commissioner of Minnesota's Department of Human Services, and as such, they and her office have the following powers, duties and responsibilities pursuant to Minn. Stat. § 256.01 and additional state statutes as listed below:

Subd. 2(a) – Specific Powers

- (1) require county agency participation in training and technical assistance programs to promote compliance with statutes, rules, federal laws, regulations, and policies governing human services;
- (2) monitor, on an ongoing basis, the performance of county agencies in the operation and administration of human services, enforce compliance with statutes, rules, federal laws, regulations, and policies governing welfare services and promote excellence of administration and program operation;
- (3) develop a quality control program or other monitoring program to review county performance and accuracy of benefit determinations;

Subd. 2(b) Inform county agencies, on a timely basis, of changes in statute, rule, federal law, regulation, and policy necessary to county agency administration of the programs.

Subd. 2(c) 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.

Subd. 2(g) Establish and maintain any administrative units reasonably necessary for the performance of administrative functions common to all divisions of the department.

Subd. 4 – Duties as state agency

(1) supervise the administration of assistance to dependent children under Laws 1937, chapter 438, by the county agencies in an integrated program with other service for dependent children maintained under the direction of the state agency;

(2) establish adequate standards for personnel employed by the counties and the state agency in the administration of Laws 1937, chapter 438, and make the necessary rules to maintain such standards;

Minn. Stat. § 393.01 refers to “Local Social Services Agency Establishment.”

Minn. Stat. § 393.04 refers to “Local Social Services Agency Organization”:

The agency shall appoint a director and such assistants and clerical help as it may deem necessary to perform the work of the agency. The appointment of the director shall be made in accordance with rules to be adopted by the commissioner of human services and the director shall be chosen upon the basis of experience, training, and general qualifications for the work.

Minn. Stat. § 393.07 refers to “Local Social Services Agency Powers and Duties”:

Subd. 2. Administration

The local social services agency, subject to the supervision of the commissioner of human services, shall administer all forms of public welfare, both for children and adults, responsibility for which now or hereafter may

be imposed on the commissioner of human services by law, including general assistance, aid to dependent children, county supplementation, if any, or state aid to recipients of Supplemental Security Income for aged, blind and disabled, child welfare services, mental health services, and other public assistance or public welfare services, provided that the local social services agency shall not employ public health nursing or home health service personnel other than homemaker-home help aides, but shall contract for or purchase the necessary services from existing community agencies. The duties of the local social services agency shall be performed in accordance with the standards and rules which may be promulgated by the commissioner of human services to achieve the purposes intended by law and in order to comply with the requirements of the federal Social Security Act in respect to public assistance and child welfare services, so that the state may qualify for grants-in-aid available under that act. To avoid administrative penalties under section 256.017, the local social services agency must comply with (1) policies established by state law and (2) instructions from the commissioner relating (i) to public assistance program policies consistent with federal law and regulation and state law and rule and (ii) to local agency program operations. The commissioner may enforce local social services agency compliance with the instructions, and may delay, withhold, or deny payment of all or part of the state and federal share of benefits and federal administrative reimbursement, according to the provisions under section 256.017.

302. Minn. Stat. § 518D, adopting the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), was enacted in 1997. Plaintiffs have copies of the MN-DHS Social Services Manuals, training curriculum, PIP guidelines, and/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.

303. Pursuant to all of the state statutes mention 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 statue, 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 are directly responsible for Plaintiffs constitutional injuries. Inaction and/or action

constitute the same principle of conscience, deliberate, intentional choice. *Issaenko v. Univ. of Minn.*, 57 F. Supp. 3d 985, 1011-12 (D. Minn. 2014).

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

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

306. 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.

307. 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.

308. 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)

309. 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.

310. 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.

311. 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)

312. 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 X.M. from his father and brothers.

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

314. Their failure is the "moving force behind the constitutional violation."

**State Defendants SIRR and Derby are not entitled to absolute quasi-judicial immunity.**

**SIRR is not entitled to guardian ad litem immunity.**

315. 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. 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.

316. Accordingly, Plaintiff alleges that 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. Pursuant to 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.

317. Plaintiffs' allegations against Sirr fall outside his statutory responsibilities. For example, Sirr: 1) intentionally not following multiple Minnesota court orders; 2) telling Plaintiff's son XM not to follow Minnesota court orders; 3) telling Plaintiff's son XM not to return home in August of 2014 when XM requested to return to his father; 4) telling Plaintiff's son XM that his father had abandoned him in Minnesota and didn't want him any longer; 5) and telling Plaintiff'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 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.

318. 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.

319. Allegations of conspiratorial action must be made with sufficient specificity and factual support so as to suggest a "meeting of the minds." In the instant case, Plaintiff and his children have pled 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, and Sirr is a state employee. Sirr is sued in his individual and official capacity as a state employee. Therefore, because his actions are not immune, the GAL program and the state are also not immune.

**Derby is not entitled to public defender immunity.**

320. 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, 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.

321. 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."

322. 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.

323. Allegations of conspiratorial action must be made with sufficient specificity and factual support so as to suggest a "meeting of the minds." In the instant case, Plaintiff 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.

324. Both the plaintiff and XM have been damaged by the acts of the defendants Derby, Guardian Ad Litem Sirr, County Attorney "Scott" and Social Worker "P'Simer" conspiring herein, who are the parties who should be held responsible for said damages. Derby may not request immunity be invoked if the attorney, exceeding the bounds of this unique agency relationship, either is dominated by her own personal interest or knowingly participates with her client in the perpetration of a fraudulent or unlawful act.

325. Plaintiffs' allegation against Derby fall outside her responsibilities and constitute fraud. For example, Derby: 1) worked with County Attorney Scott to

deprive Plaintiffs of their constitutional rights of family association; 2) intentionally not following multiple Minnesota court orders; 3) telling Plaintiff's son XM not to follow Minnesota court orders; 4) telling Plaintiff's son XM not to return home in August of 2014 when XM requested to return to his father; 5) telling Plaintiff's son XM that his father had abandoned him in Minnesota and didn't want him any longer; 6) telling Plaintiffs 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.

326. Plaintiffs allege 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.

327. 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, and Derby is a state employee. 'Derby' is sued in her individual and official capacity as a state employee. Therefore, because her actions are not immune, the Public Defender program and the state are also not immune.

**County defendants are not entitled to immunity.**

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

328. Plaintiff has not alleged any claims with regard to Scott and Swank from the initiation and pursuit of a prosecution or presenting the state's case. Plaintiffs' claims regarding Scott and Swank arise from the investigative functions, prior to the initiation of the case, conspiracy, and when they were acting outside their proper prosecutorial capacity.

329. 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.

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

331. During the acquisition of evidence, Scott and Swank discovered that Campos, BM, XM and AM the accusers of long-term abuse had lied to them and that no long-term abuse had ever taken place. That Plaintiff was a New Jersey resident, with a New Jersey custody court order and that Minnesota lack subject matter jurisdiction in the juvenile proceedings. Plaintiffs' 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, was not part of the prosecutor's trial preparation or review process and was not a part of the judicial proceedings.

332. Misrepresentation and omitting evidence of subject matter jurisdiction to illegally usurp and retain it from a foreign US state was not "protected by a well-established common-law privilege in 1871, when § 1983 was enacted.

333. 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.

334. 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 Plaintiffs by the illegal retention of their children for twenty-two-months.

**Boreland and P'Simer are not entitled to absolute immunity.**

335. Plaintiffs incorporate by reference his discussion on Absolute Immunity claims, supra, as they apply to Boreland and P'Simer. Defendants, Boreland and P'Simer are not entitled to absolute immunity with regard to Plaintiffs' claims. As explained above, Plaintiffs' claims do not arise from or relate to the filing of the Petition to initiate proceedings, because there was a county prosecutor, but even if there were, they would still not be immune as discussed above.

336. 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 plot/scheme to send the children to their biological mother.

337. At all times during the case, the County Attorney fulfilled the role of "prosecutor," Defendants were merely investigators. Thus, prosecutorial immunity cannot apply.

338. The focus of Plaintiffs' suit 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;

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.

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

340. Defendants' actions are no different than the investigative and administrative actions of the child welfare workers in the aforementioned cases. Therefore, Defendants are not entitled to absolute immunity for their actions.

### **County Defendants Are Not Entitled to Qualified Immunity**

341. 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 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 Defendants must meet their burden of establishing their entitlement to qualified immunity.

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

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

343. As discussed, supra, the complaint alleges Boreland, illegally removed children from their home when no exigent circumstances existed, and she had the time and opportunity to obtain a court order first. A seizure pursuant to a court order violates the Fourth Amendment. The Fourth Amendment guarantees individuals the right to be secure in their persons against unreasonable seizures by government officials. This right extends to children.

344. Thereafter, Boreland conspired with Scott, Swank and P'Simer to cause, and did cause, pursuant to UCCJEA requirements, the retention of Plaintiffs' 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 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. Deliberately fabricating evidence in civil child abuse proceedings violates the Due Process clause of the Fourteenth Amendment when a liberty or property interest is at stake. Here, a liberty interest is indisputably at stake.

345. Thereafter, for five months for AM and twenty-two months for XM, P'Simer conspired with Boreland, Sirr, Derby, Stang and Yunker to cause, and did cause, and retained them 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. Plaintiff was not

346. As discussed above Boreland, P'Simer and Akolly illegally forced Plaintiff and his wife "Litvinenko" to separate for over five-months. 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 issue. Plaintiffs incorporate by reference his discussion of their material association rights claims, supra. 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. Plaintiff had a constitutionally protected right to "familial association" with his wife. Families have a well-elaborated constitutional right to live together without governmental interference. The right is an essential liberty interest protected by the Fourteenth Amendment.

347. Plaintiffs have pled a viable federal claim of substantive due process. To support a § 1983 claim of judicial deception, a plaintiff must show that the Defendant deliberately or recklessly made false statements or omissions that were material to the juvenile court's decision. The knowing presentation of false

evidence is material if there is any reasonable likelihood that the false testimony could have affected the judgment.

348. 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 cause the removal of Plaintiffs children from his 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 Judge "triggered" him to order the children 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 which "triggered" the court to continue to retain custody until the termination of the case.

349. None of the Defendants are entitled to qualified immunity.

## COUNT I

### 42 U.S.C. § 1983 Claim

#### **Certain provisions of Minnesota's child-protection statutes affecting a parent's ordinary corporal punishment are unconstitutionally vague.**

350. Plaintiffs incorporate this complaint's previous paragraphs.

350. 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.

351. Certain provisions of Minnesota's child-protection statutes are unconstitutionally vague because they do not give ordinary people fair notice of the

conduct that they prohibit— and are so standardless regarding a parent’s ordinary corporal punishment that it invites arbitrary enforcement.

352. Under Minnesota Statutes section 260C.007, subd. 6, the statutory provision that defines a “[c]hild in need of protection or services”—a “CHIP” in the lingo of the juvenile-justice system—a child is a CHIP 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.

353. Section 626.556 is Minnesota’s mandatory-reporting law. The section’s subd. 3 requires certain persons to inform an appropriate governmental authority if the person “knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2.” Subdivision 6 provides that a failure to make a required report is a crime.

354. Subdivision 2 contains a list of definitions applicable to section 626.556, and the subdivision’s paragraph (k) contains the definition of “physical abuse” that is incorporated into section 260C.007, subd. 6(2)(i) and section 626.556, subds. 3 and 6:

(k) “Physical abuse” means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child’s care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child’s history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 125A.0942 or 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of

reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following:

- (1) throwing, kicking, burning, biting, or cutting a child;
- (2) striking a child with a closed fist;
- (3) shaking a child under age three;
- (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
- (5) unreasonable interference with a child's breathing;
- (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;
- (7) striking a child under age one on the face or head;
- (8) striking a child who is at least age one but under age four on the face or head, which results in an injury;
- (9) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;
- (10) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or
- (11) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

355. The paragraph's second sentence—"Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury"—appears to be an exception to the definition of "physical abuse" contained in the paragraph's first sentence: the second sentence appears to define a class of actions that are not "physical abuse" even though they otherwise would be under the first sentence. But, for "physical discipline" to be within the exception, the discipline must not only be "reasonable and moderate," but must also "not result in an injury." So even "reasonable and

moderate” corporal punishment is “physical abuse” if the punishment causes any injury whatsoever.

356. But the first sentence defines “physical abuse” to include any nonaccidental “physical injury, mental injury, or threatened injury” that the parent causes his child. The exception does not apply to corporal punishment that causes “an injury,” but if corporal punishment does not cause an injury—either “physical” or “mental”—then the punishment is not within the first sentence’s scope and would thus not be “physical abuse” even without the second sentence’s apparent exception to the first sentence. The exception for “reasonable and moderate” corporal punishment is thus illusory.

357. Since the inquiry about whether corporal punishment is “physical abuse” actually turns on whether the punishment causes “an injury” and not on whether the punishment is “reasonable and moderate,” a search of subd. 2 is necessary to see if it defines “injury,” “physical injury,” or “mental injury.” The first two expressions are conspicuously absent from the list of defined terms. Subdivision 2(f) contains only a definition of “mental injury,” but it is also vague:

(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 definition requires “an *injury* to the psychological capacity or emotional stability of a child” (emphasis added) not just poor psychological capacity or emotional instability, but this requirement returns the reader to the question of what counts as an “injury.” Again, that crucial term is undefined, even though the

definition subdivision—subd. 2—contains pages of definitions that are important to understanding the other provisions of section 626.556.

358. Paragraph (f) is also vague in that it provides that “an injury to the psychological capacity or emotional stability of a child” is not to be found unless the injury is “evidenced by an observable or substantial impairment in the child’s ability to function within a normal range of performance and behavior.” But the expression “observable or substantial” is disjunctive: the “impairment” need be only one or the other to clear the evidentiary bar. And the disjunctive expression has bizarre implications: a “substantial impairment” will do even if it is not “observable,” and an insubstantial “impairment” will do just as long as it is “observable.” The reader is likely to be left wondering whether moderate corporal punishment is prohibited or not.

359. Paragraph (f)’s last seven words are also vague: “with due regard to the child’s culture.” The words 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” is to determine what constitutes “a normal range of performance and behavior” for a child by looking at what is normal for a child of that child’s culture. But the statute provides no guidance as to how this is to work in practice, and at least one other interpretation is possible. A government decisionmaker might claim that some cultures are risk factors for abuse and are to taken into account accordingly.

360. Moreover, section 626.556, subd. 2, paragraph (r) states:

(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) does nothing to protect "child-rearing practices" unless they "are not injurious to the child's health, welfare, and safety." But if they are not considered "injurious," then they are not objectionable anyway. Like paragraph (k)'s second sentence, paragraph (r) provides only illusory protection for a parent's ordinary corporal punishment.

361. Additionally, a child need not be "a victim of physical or sexual abuse as defined in section 626.556, subdivision 2," Minn. Stat. § 260C.007, subd. 6(2)(i), to be a CHIPS under section 260C.007, subd. 6(2). Under section 260C.007, subd. 6(2)(ii), a child is a CHIPS if the child "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." So if a parent lives with two children, and if one child is the victim of "child abuse" or "domestic child abuse," then the other child is a CHIPS. Section 260C.007, subd. 5 defines "child abuse" as follows:

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.

This definition, like section 260C.007, subd. 6(2)(i), incorporates section 626.556, subd. 2's definitions of "physical abuse" and "sexual abuse." But section 260C.007,

subd. 5 also incorporates several sections of Minnesota’s penal code, and subd. 5 defines “child abuse” to include a violation of any of them. Subdivision 13 provides this complicated and partially overlapping definition of “domestic child abuse”:

- 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.

As the Minnesota Supreme Court explained in *In re Welfare of Children of N.F.*, section 260C.007, subd. 6(2) “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 child abuse (subdivision 6(2)(ii) and (iii)).” 749 N.W.2d 802, 807 (Minn. 2008).

362. 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).

363. These recent amendments had significant consequences for this void-for-vagueness claim. Because of the way that 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 in turn 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*. The universe of acts conferring derivative protection is broader than the universe of acts conferring direct protection.

364. Section 609.224, subd. 1, which is incorporated into section 260C.007, subd. 5, provides that a person is guilty of assault in the fifth degree if the person "intentionally inflicts or attempts to inflict bodily harm upon another."

365. This statutory text criminalizes commonplace parental corporal punishment.

366. Section 609.02, subd. 7 contains this definition of bodily harm, which applies to section 609.224: "Bodily harm' means physical pain or injury, illness, or any impairment of physical condition."

367. This means that if a spanking causes any pain at all, then the spanking causes “bodily harm.” If the parent intends to cause any pain at all, and if the spanking causes any pain at all, then the spanking constitutes fifth-degree assault.

368. Furthermore, a conviction of one of the crimes incorporated into section 260C.007, subd. 5 is not necessary for a finding of “child abuse,” only a “violation” of one of the listed sections if the violation “involves a minor victim.” A child-welfare worker or a court in a CHIPS proceeding might treat a spanking as an assault, even if a court would not treat it as an assault in a criminal case.

369. Section 609.377, which is incorporated into section 260C.007, subd. 5, defines the crime of “malicious punishment of a child”:

Subdivision 1. Malicious punishment. A parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child and may be sentenced as provided in subdivisions 2 to 6.  
Subd. 2. Gross misdemeanor. If the punishment results in less than substantial bodily harm, the person may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Subdivision 2 provides the penalty for a violation that “results in less than substantial bodily harm.” Section 609.02, in addition to containing the definition of “bodily harm,” subd. 7, also contains the definitions of two grades of bodily harm: “substantial bodily harm,” subd. 7a, and “great bodily harm,” subd. 8. So section 609.377’s criminalization of “excessive” punishment causing “less than substantial bodily harm” implies that any “bodily harm” no matter how slight is enough to result in criminal liability. This statutory text covers a parent’s ordinary corporal

punishment.

370. So section 609.377, subds. 1–2, criminalizes commonplace parental corporal punishment.

371. Section 609.06 provides for the criminal defense of “authorized use of force”:

Subdivision 1. When authorized. Except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other’s consent when the following circumstances exist or the actor reasonably believes them to exist:

(6) when used by a parent, guardian, teacher, or other lawful custodian of a child or pupil, in the exercise of lawful authority, to restrain or correct such child or pupil.

372. This defense’s very existence suggests that any spanking no matter how mild satisfies the elements of some crime: perhaps fifth-degree assault or malicious punishment of a child.

373. But the statutory text provides little or no guidance as to how reasonableness is to be determined.

374. Furthermore, this defense, unlike certain sections defining various crimes, is not explicitly incorporated into section 260C.007, subd. 5’s definition of “child abuse” or subd. 13’s definition of “domestic child abuse.”

375. Section 260C.007’s failure to incorporate section 609.06 might leave a parent who has corporally punished a child without an “authorized use of force” defense in a CHIPS proceeding in which the parent is accused of “child abuse” on the theory that the corporal punishment is an assault or malicious punishment.

376. For these reasons, Minnesota statutes fail to give ordinary people fair notice of whether even the mildest parental corporal punishment is prohibited and are so standardless that the statutes invite arbitrary enforcement against commonplace parenting practices.

377. In particular, the following Minnesota statutory provisions are void for unconstitutional vagueness:

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

378. SCPS and Mitchell seek judgment against the defendants in the form of prospective declaratory and injunctive relief as stated in the prayer for relief.

## COUNT II

### 42 U.S.C. § 1983 Claim

**Certain provisions of Minnesota’s child-protection statutes are unconstitutionally overbroad because child-protection proceedings are authorized when single fit parents parentally discipline with ordinary corporal punishment—which is constitutionally protected.**

379. Plaintiffs incorporate this complaint’s previous paragraphs.

380. Minnesota’s child-protection statutes are subject to strict scrutiny because they authorize government intervention in the constitutionally protected fundamental rights of a parent to raise a child.

381. Certain provisions of Minnesota’s child-protection statutes are unconstitutionally overbroad because they are so broad that they authorize child-protection services to intervene in the parent–child relationship based on constitutionally protected ordinary corporal punishment.

382. Minnesota’s definition of CHIPS, which authorizes governmental interference in the parent–child relationship, includes three definitions that prohibit a single parent’s use of ordinary corporal punishment.

383. The Plaintiffs claim in this Court that these definitions are unconstitutional because both definitions are unconstitutionally overbroad.

384. First, Minnesota Statutes § 260C.007, subd. 6, defines “child in need of protection or services” to include a prohibition on a parent’s ordinary corporal punishment.

385. In this case, each of the Defendants communicated, directly or indirectly, to Dwight Mitchell that ordinary corporal punishment is legally prohibited in Minnesota.

386. By banning ordinary corporal punishment, Minnesota Statutes § 260C.007, subds. 5-6, 13, violates parental constitutional rights to discipline their children because the definitions are unconstitutionally overbroad.

387. Alternatively, the Defendants have a custom and policy, consistent with the Minnesota statutes, of treating constitutionally protected ordinary parental corporal punishment as violative of Minnesota law.

388. To the contrary, the U.S. Constitution requires Minnesota to protect parents from child-protection proceedings based exclusively on ordinary parental corporal punishment.

389. Because Minnesota lacks a statute, custom, or policy limiting child-protection interventions when a parent exercises the constitutional prerogative to discipline children by ordinary corporal punishment, Minnesota statutes, policy and custom are unconstitutionally overbroad.

390. The Minnesota statutes, customs, and policies, by not distinguishing between fit parents whose discipline causes only “transient pain” or “minor temporary marks” and unfit parents who do “mental injury” beyond “transient pain” or “minor temporary marks,” fail to distinguish “fit parents” from “unfit parents.”

391. Fit parents using constitutionally protected methods of discipline have constitutional rights to exclusive decision-making responsibility for minor children. Unfit parents may not.

392. In other words, Minnesota law does not provide a safe harbor for fit parents' constitutionally protected right to parental discipline involving ordinary corporal punishment.

393. Consequently, single fit parents who have exercised their constitutionally protected right to ordinary corporal punishment find their children in Minnesota unconstitutionally determined to be CHIPS—as happened to Mitchell.

394. The Minnesota statutes, policy, and custom are unconstitutionally overbroad because fit parents exercising constitutional prerogatives to discipline children are being legally determined to be unfit parents whose children are CHIPS.

395. As detailed above, because of Defendants' actions, SCPS and its members, including Mitchell, 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.

396. The Minnesota statutes, policies, and customs at issue authorize unconstitutional intervention in the parent–child relationship because they are unconstitutionally overbroad.

397. SCPS and Mitchell seek a judgment against the defendants for prospective declaratory and injunctive relief as stated in the prayer for relief.

### COUNT III

#### 42 U.S.C. § 1983 Claim

**Certain provisions of Minnesota's child-protection statutes are not narrowly tailored to meet a compelling state interest because they authorize a child-protection proceeding when a parent engages in constitutionally protected parental discipline involving ordinary corporal punishment—and because the statutes are fatally underinclusive.**

398. Plaintiffs incorporate this complaint's previous paragraphs.

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

400. Minnesota’s child-protection statutes are not narrowly tailored to meet a compelling state interest because they authorize child-protection services to intervene in the parent–child relationship based on constitutionally protected ordinary corporal punishment.

401. Minnesota’s definition of CHIPS, which authorizes governmental interference in the parent–child relationship, includes provisions that prohibit a single parent’s use of ordinary corporal punishment.

402. The Plaintiffs claim in this count that those prohibitions are unconstitutional because they are not narrowly tailored to meet a compelling state interest.

403. In this case, each Defendant communicated, directly or indirectly, to Mitchell that ordinary corporal punishment is legally prohibited in Minnesota.

404. By banning ordinary corporal punishment, Minnesota Statutes § 260C.007, subds. 5–6, 13 violate parents’ constitutional right to discipline their children because the statutory provisions are not narrowly tailored to meet compelling state interest.

405. Alternatively, the Defendants have a custom and policy, consistent with the Minnesota statutes, of treating constitutionally protected ordinary parental corporal punishment as violative of Minnesota law.

406. Minnesota Statutes § 626.556 shows that the statute is fatally underinclusive. The text, “Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582” is not restricted by “which does not result in injury.” Only parents, not school employees, have the restriction on discipline “which does not result in injury.” If the Defendants were serious about their purported compelling state interest in prohibiting ordinary corporal punishment, it would prohibit ordinary corporal punishment even at all Minnesota schools as well as for parents. Because

Minnesota excludes private schools from its prohibition on ordinary corporal punishment, Minnesota's statute prohibiting ordinary corporal punishment is fatally underinclusive.

407. Another underinclusiveness problem is the "cultural" exception. Minnesota Statutes § 626.556, subd. 2(r) suggests that ordinary corporal punishment is legally authorized in at least some communities where ordinary corporal punishment as a child-rearing practice is accepted and not injurious, in the common sense, "to the child's health, welfare, and safety." Minnesota Statutes § 626.556, subd. 2(r) appears to authorize "accepted child-rearing practices of the culture in which a child participates":

(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.

The underinclusiveness problem is that the statute bans ordinary corporal punishment in some cultural communities, but in other cultural communities, it is legally authorized.

408. By prohibiting a parent's ordinary corporal punishment, Minnesota Statutes § 260C.007, subds. 5–6, 13 and the defendants' policy and custom violate parents' constitutional right to discipline their children because the statutory provisions are not narrowly tailored to meet a compelling state interest.

409. In these situations, the Fourteenth Amendment's Due Process Clause, which protects parental rights to discipline children, including ordinary corporal punishment, as fundamental rights, requires that the government investigation stop, that the investigative records be expunged, and that no criminal prosecution occur. In Minnesota, such government investigations are not stopped, and such

investigative records are not expunged, and criminal prosecutions do occur because the state statutes, the state agency's rules and policies, and the county's child-protection services do not require the proceeding to stop if there is only ordinary corporal punishment.

410. To the contrary, the U.S. Constitution requires Minnesota to have a bright-line rule protecting parents from child-protection proceedings based exclusively on ordinary corporal punishment.

411. Because of Minnesota's lack of a bright-line rule limiting child-protection interventions when a parent exercises the constitutional prerogative to discipline children by ordinary corporal punishment, Minnesota statutes are not narrowly tailored to meet a compelling state interest and are therefore unconstitutional.

412. The statutes, policy, and custom, by not distinguishing between fit parents whose discipline causes only "transient pain" and "minor temporary marks" and unfit parents who do "mental injury," beyond "transient pain" and "minor temporary marks," fail to distinguish "fit parents" from "unfit parents."

413. Fit parents using constitutionally protected methods of discipline have constitutional rights to decision-making responsibility for minor children. Unfit parents may not.

414. Thus the statutes, policy, and custom do not include any safe harbor for fit parents' constitutionally protected right to parental discipline involving ordinary corporal punishment.

415. Consequently, single fit parents who have exercised their constitutionally protected right to ordinary corporal punishment find their children in Minnesota unconstitutionally determined to be CHIPS—as happened to Mitchell.

416. The Minnesota statutes, policy, and custom are unconstitutional because fit parents exercising their constitutional prerogative to discipline children

are being legally determined to be unfit parents whose children are in need of protection and services.

417. As detailed above, because of Defendants' action, SCPS and its members, including Mitchell, have suffered deprivations of rights guaranteed to them by the Fourteenth Amendment's Due Process Clause, which protects parental rights as fundamental rights.

418. The Minnesota statutes, policy, and custom at issue authorize unconstitutional intervention in the parent-child relationship because they are not narrowly tailored to meet compelling state interest.

419. The Minnesota statutes, policy, and custom are not narrowly tailored to meet a compelling state interest.

420. The statutes, policy, and custom, by not distinguishing between fit parents whose discipline only causes "transient pain" and "minor temporary marks" and unfit parents who do "mental injury" beyond "transient pain" and "minor temporary marks," fail to distinguish between "fit parents" as opposed to "unfit parents."

421. Fit parents using constitutionally protected methods of discipline have constitutional rights to decision-making responsibility for minor children without governmental intervention. Unfit parents may not.

422. The statutes, policy, and custom do not attempt any tailoring for the constitutionally protected parental rights of "fit parents" when it comes to constitutionally protected parental discipline.

423. Fit parents who have exercised their constitutionally protected rights to ordinary corporal punishment causing only transient pain and minor temporary marks to their children find their children in Minnesota, unconstitutionally, determined to be "children in need of protection or services."

424. Other fit parents, concerned about the risks of a child protection proceeding, are chilled out of exercising their constitutional prerogative to the

reasonable parental discipline of corporal punishment a child causing transient pain and temporary minor marks.

425. Additionally, Minnesota’s laws, to the extent that they ban all corporal punishment, are under inclusive. For example, Minnesota permits corporal punishment in private schools. Minnesota Statutes § 121A.58 prohibits corporal punishment only in public schools, but not in private schools.

426. This underinclusiveness undermines any state argument that corporal punishment which causes transient pain and minor temporary marks is prohibited everywhere in Minnesota. It is not; Minnesota permits corporal punishment in private schools.

427. Thus the state’s credibility behind its statutes banning all physical and mental injury arising from corporal punishment, including transient pain and minor temporary marks arising from parental corporal punishment, is zero.

428. SCPS and Mitchell seek prospective declaratory and injunctive relief as stated in the prayer for relief.

#### **COUNT IV**

##### **42 U.S.C. § 1983 Claim**

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

429. Plaintiffs incorporate this complaint’s previous paragraphs.

430. 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)).

431. 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).

432. Here is the current version of section 260C.007, subd. 5, which 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).

433. 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).

434. 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.*

435. 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.

436. 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.

437. SCPS and Mitchell seek a judgment against the defendants for prospective declaratory and injunctive relief as stated in the prayer for relief.

#### COUNT V

**The Mitchell' 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**

438. Mitchell and children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

439. Under the circumstances of this case, outlined above, Mitchell and his children had the right to be free from the removal of the children from their family home under the Fourth Amendment and Fourteenth Amendment of the Constitution of the United States.

440. 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.

441. 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 court orders, or court orders obtained by fraud or artifice.

442. 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.

443. 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.

444. Defendant Boreland, Stang and Yunker are vicariously liable for the conduct of each other, inclusive, under applicable statutory and case law. 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 of the rights of Mitchell in a despicable, vile, fraudulent, and contemptible manner.

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

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

447. As a direct and proximate result of these Defendants' actions, the 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 VI**  
**The Mitchells' Cause of Action for Violation of Civil Rights**  
**(42 U.S.C. §1983)-- Procedural Due Process**  
**Against All Defendants Inclusive**

448. Mitchell and children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

449. Under the circumstances of this case, outlined above, Mitchell and his children had the right to be free from the unlawful retention of the children under the Fourth Amendment and Fourteenth Amendment of the Constitution of the United States. This right is "clearly established" such that a reasonable person 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 lawfully obtaining a warrant or legally obtained court order to do so.

450. 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.

451. It was unlawful for the Defendants to lie, mislead, fabricate evidence, fabricate testimony, fabricate inculpatory evidence and/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 retain illegal custody pursuant to clearly established UCCJEA requirements.

452. 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, and/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.

453. 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.

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

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

456. 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.

457. 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.

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

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

460. Furthermore, the continued separation of the children from Mitchell by the Defendants, and the refusal of Defendants 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 despite being legally required to do so.

461. Defendants failed to show or prove parental unfitness as a requisite 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 Mitchells family which further violated Mitchell's Fourth Amendment right to procedural due process.

462. 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. Defendants are vicariously liable for the conduct of each other inclusive, under applicable statutory and case law. 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. As a direct and foreseeable consequence of these actions, Mitchell and his children were deprived of his rights under the Fourth and Fourteenth Amendments to the United States Constitution.

463. 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 VII

**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 Inclusive)**

464. Dwight Mitchell and children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

465. The right to familial association is guaranteed under the Fourth Amendment and Fourteenth Amendment.

466. 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.

467. 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 and/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.

468. 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.

469. 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.

470. In doing the things alleged hereinabove, 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 evidences, and fabrications of evidence.

471. 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.

472. 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.

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

474. 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.

475. 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 and/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 provide exculpatory evidence during the pendency of the dependency proceedings in violation of Minnesota Statute § 626.556, Subdivision 4 & 5 and violating the Constitutional rights of Mitchell.

476. 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.

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

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

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

Mitchell was deprived of his rights under the Fourth and Fourteenth Amendments to the United States Constitution.

480. As the direct and proximate result of these Defendants' actions, Mitchell has 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 VIII**

#### **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, Coyne Inclusive**

503. Dwight Mitchell and children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

504. Under the circumstances of this case, outlined above, Mitchell and his children who are African-American, had the right to be free from discriminatory practices under the Fourteenth Amendment of the Constitution of the United States.

505. 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 and/or racial background.

506. 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.

507. 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 discriminating against African-American parents and children as well as other minorities.

508. The different and inferior treatment, included, inter alia, Boreland

making the racially derogatory remarks and generalizations 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!” as well as other comments during their first meeting, evidences her bias towards all African-Americans proclivity to use corporal punishment.

509. 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, and/or national origin, because Boreland stated course of action is totally disproportionate to the need presented because of a spanking.

510. 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.

511. As set forth supra, Boreland, motivated by animus against Mitchell’s African-American and/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. This deprived Mitchell and his children of their right to be free from arbitrary, egregious, and oppressive interference with his protected family relationship, his right to be provided with fundamentally fair procedures when faced with the disruption of his family relationships and to be free from unreasonable seizures.

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

513. 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 his status as an African American male, his race, color, and/or national origin.

514. 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 a safety plan, which is required by Minnesota State law, when children must be returned to the care of their parents.

515. 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.

516. 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.

517. 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.

518. 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.

519. P'Simer, Surr 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 Campos received custody of XM, yet Defendants still recommended transferring custody to Campos.

520. All Defendants failure to take any action to return XM to the constitutionally protected custody of his father was grounded in part in their desire to see XM with his Caucasian mother, whom they viewed a superior guardian compared to "XMs" father in spite of Campos 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.

521. 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, and/or conspired to commit all the acts and/or omissions alleged and continued from February 16, 2014 – December 4, 2015.

522. 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.

523. As a direct and foreseeable consequence of these Defendants' actions, Mitchell was deprived of his rights under the Fourteenth Amendment to the United States Constitution.

524. 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 Mitchell's 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)-- Violation of Equal Protection of the Laws "Class of One" Against All Individual Defendants, Inclusive**

525. Dwight Mitchell and children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

526. Under the circumstances of this case, outlined above, Mitchell and his children had the right to be free from discriminatory practices under the Fourteenth Amendment of the Constitution of the United States.

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

528. 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,

- 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.

529. 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 conclusionary statements, conspiracy, and interfering in a matrimonial relationship.

530. 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.

531. 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.

532. 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.

533. 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, and/or conspired to commit all the acts and/or omissions alleged from February 16, 2014 – December 4, 2015.

534. 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.

535. As a direct and foreseeable consequence of these Defendants' actions, Mitchell was deprived of his rights under the Fourteenth Amendment to the United States Constitution.

536. As a direct and proximate result of these Defendants' actions, Mitchell has 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 X**

**The Mitchells' 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**

537. Dwight Mitchell and children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

538. Under the circumstances of this case, outlined above, Mitchell and his children had the right to be free from unreasonable forced marital separation under the First Amendment and Fourteenth Amendment of the Constitution of the

539. 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.

540. 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.

541. It is equally well established that a person in Mitchell and the children'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.

542. 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.

543. 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.

544. 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 and/or DCSS and/or Dakota County, and/or were otherwise the result of DCSS and the Dakota County's deliberately

indifferent failure to train, supervise and/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.

545. Defendants Boreland, Akolly, Stang, Yunker, Kopesky and Coyne are vicariously responsible for the conduct of each other, inclusive, under applicable statutory and case law.

546. Boreland, Akolly, Stang, Yunker, Kopesky, Coyne 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.

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

548. 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 his marital relationship and reputation all to an extent and in an amount subject to proof at trial.

#### **COUNT XI**

**Dwight Mitchell and Children Cause of Action (42 U.S.C. §1983)  
--*MONELL V. DEPT' OF SOCIAL SERVS.*, 436 U.S. 658 (1977)  
Against Coyne, Kopesky, Stang, Yunker, Scott and Swank in their official  
capacities and County of Dakota**

549. Dwight Mitchell and children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

550. Defendant County of Dakota, including through its entity Dakota County Social Services Agency, established and/or followed policies, procedures, customs, usages and/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 Fourth and Fourteenth Amendments to the United States Constitution, by and through, but not limited to, the following policies, practices, customs and/or procedures:

- a. the custom and/or policy of detaining and/or removing children from their family and homes without exigent circumstances (imminent danger of serious physical injury), court order and/or consent; and
- b. the custom and/or policy of removing children from their family and their homes without first obtaining a warrant or other court order when no exigency exists; and
- c. the custom and/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; and
- d. the custom and/or policy of examining (medically) children without exigency, need, or proper court order, and without the presence and/or consent of their parent or guardian; and
- e. the custom and/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 and/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”; and
- g. the custom and/or policy of removing and detaining children, and continuing to detain them for an unreasonable period after any alleged basis for detention is negated; and
- h. the custom and/or policy of using trickery, duress, fabrication and/or false testimony and/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; and

i. The custom and/or policy of not following Minnesota UCCJEA statutes and requirements which violate constitutionally protected parental rights of custody by illegally usurping “Subject Matter Jurisdiction”.

j. by acting with deliberate indifference in implementing a policy of inadequate training, and/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 and/or false testimony and/or evidence, and in failing to disclose exculpatory evidence; and

k. by acting with deliberate indifference in implementing a policy of inadequate supervision, and/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 and/or false testimony and/or evidence, and in failing to disclose exculpatory evidence; and

l. The policy of making false allegations in Juvenile Dependency Petitions, i.e. alleging that a spouse has failed to protect a child under Minnesota Statute §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; and

m. 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.

551. The above policies and practices 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). Pursuant to Minn. Stat. 256B.094 subd. 8, which has been in effect 1993, CW-TCM benefits are; a) is a reimbursable Medicaid service, b) Revenue source for counties and tribal agencies, c) Money may be used to maintain and/or expand designated preventative services, d) Money can fund positions.

552. In the instant 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.

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

554. 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, Swank, inclusive, to engage in the unlawful and unconstitutional conduct as herein

alleged.

555. 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.

556. These actions, and/or inactions, of County of Dakota were the direct and proximate cause of the Mitchell's injuries, as alleged herein; and as a result, Mitchell and his children have sustained general and special damages, to an extent and in an amount to be proven at trial.

**COUNT XII**  
**The Mitchells' Cause of Action (42 U.S.C. §1983)—Failure to Implement and Train**  
**against Jesson in her individual capacity**

557. Dwight Mitchell and children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

558. Defendant Jesson, a state agent possessing final authority, including through its entity Minnesota Department of Health and Human Services, and individually, failed to follow Minnesota State Statutes and establish policies, procedures, training, supervision, oversight, customs, usages and/or practices, specifically with regard to custody, "subject matter jurisdiction", and non-compliance, and misconduct (hereinafter referred to collectively as "policy" or "policies") between January 2011 and December 2015, which the failure of establishing such policies since 2011 were the moving force behind the violations of Mitchell and his children's constitutional rights as alleged hereinabove, including those arising under the Fourth and Fourteenth Amendments to the

United States Constitution, by and through, but not limited to, the following;

a. Not implementing the provisions of Minnesota Statute § 518D (UCCJEA) and their requirements which violate constitutionally protected parental rights of custody and illegally usurping “Subject Matter Jurisdiction”.

b. by acting with deliberate indifference in implementing a policy of inadequate training, and/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 and/or false testimony and/or evidence, and in failing to disclose exculpatory evidence; and

c. by acting with deliberate indifference in implementing a policy of inadequate supervision, and/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 and/or false testimony and/or evidence, and in failing to disclose exculpatory evidence; and

d. by individually deciding not to implement a policy of inadequate training, and/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 and/or false testimony and/or evidence, and in failing to disclose exculpatory evidence acted outside the scope of her official duties; and

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

560. In the instant case, the State of Minnesota was able to bill the Federal Government for one case manager, each month, per child, for the time of the illegal retention of BM, XM and AM and illegally retained a portion of the federal share of the reimbursement for administrative services.

561. From 2011 – 2015 Jesson and her office received and were allocated \$250 million dollars in Federal and State monies to lower racial disparity against African Americans but failed to do so. ( Get specific detail and exact program names)

562. Jesson breached her duties and obligations to Mitchell 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 Coyne as the Director of DCSS, inclusive, to engage in the unlawful and unconstitutional conduct as herein alleged.

563. Jesson knew, that by breaching the above-mentioned duties and obligations that it was foreseeable that said failure would, and did, cause Mitchell

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 that such policies, practices, customs and procedures were the moving force behind the constitutional violations alleged herein above.

564. These actions, and/or inactions, of Jesson were the direct and proximate cause of Mitchell's and his children's injuries, as alleged herein; and as a result, Mitchell has sustained general and special damages, to an extent and in an amount to be proven at trial.

### COUNT XIII

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

565. Dwight Mitchell and his children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

566. Under the circumstances of this case, outlined above, Mitchell and his children have the right to be free from unreasonable seizure under the Fourth Amendment of the Constitution of the United States.

567. 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.

568. 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.

569. 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, and/or suppress exculpatory evidence in sworn affidavits, sworn petitions, court reports or Juvenile Dependency Petitions filed with the court.

570. 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, and/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.

571. 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.

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

573. 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.

574. 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 Mitchell's, manufacturing of false evidence, suppression of exculpatory evidence, manipulation of witnesses and manipulation of Mitchell's minor children.

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

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

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

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

579. 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.

580. As a direct and foreseeable consequence of these Defendants' actions, Mitchell and his children were deprived of his rights under the Fourth Amendment to the United States Constitution.

581. 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 XIV**

#### **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**

582. Dwight Mitchell and his children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

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

584. Under color of state law, Boreland, P'Simer, Stang, Yunker, Sirr,

Derby, Scott and Swank conspired and entered into express and/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 pursuant to Minnesota Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA), Minnesota Statute § 518D.101 – 317 (2014) with the conspiracy to “Terminate Parental Rights” of Mitchell and transfer custody of XM and BM to their biological mother in Spain.

585. 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 prior to officially registering his arrival with DCSS.

e) 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.

f) publishing false statements to the court that XM did not wish contact or visitation with Mitchell when the exact opposite was true;

g) 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;

- h) concealing information from the court that XM requested to come home to Mitchell numerous times;
- i) fabricating evidence, lying, manufacturing and approving misleading and deceptive court reports;
- j) advising AM, XM and BM to make false evidence statements and witnesses tampering;
- k) 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;
- l) 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 Mitchells custody after Campos had initially requested that custody be returned to her in Spain;
- m) 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;
- n) 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;

586. 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.

587. 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.

588. As a direct and foreseeable consequence of this conspiracy, Mitchell was deprived of his rights under the Fourth and Fourteenth Amendments to the United States Constitution

589. As a direct and proximate result of these Defendants’ actions, Mitchell was 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 XV**  
**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)

590. Dwight Mitchell and his children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

591. Coyne, Kopesky, Stang, Yunker and the County of Dakota are “persons,” as that term is used in the text of 42 U.S.C. § 1986.

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

593. Coyne, Kopesky, Stang, Yunker and the County of Dakota 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 and/or refused to exercise such power after being informed.

594. As a direct and proximate result of the neglect and/or refusal of Coyne, Kopesky, Stang, Yunker 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, Yunker and Stang, Mitchell and his children suffered injuries and damages as alleged herein.

595. Coyne, Kopesky, Stang, Yunker and the County of Dakota actions evidenced a reckless and callous disregard for, and deliberate indifference to,

Mitchell and his children's constitutional rights.

596. 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.

597. As a direct and foreseeable consequence of this conspiracy, Mitchell and his children were deprived of their rights under the Fourth and Fourteenth Amendments to the United States Constitution.

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 XVI**

**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**

599. Dwight Mitchell and children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

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

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

602. Scott, Swank and the County of Dakota 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 and/or refused to exercise such power.

603. As a direct and proximate result of the neglect and/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.

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

605. 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.

606. As a direct and foreseeable consequence of this conspiracy, Mitchell and his children were deprived of their rights under the Fourth and Fourteenth Amendments to the United States Constitution.

607. As a direct and proximate result of these Defendants' actions, Mitchell and his children 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 XVII

### **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**

608. Dwight Mitchell and his children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

609. 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 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.

610. 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.

611. 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.

612. 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 XVIII**

#### **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 capacities and official capacities and Dakota County**

613. Dwight Mitchell and his children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

614. 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.

615. 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.

616. 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.

617. 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.

618. In committing the aforementioned acts and/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.

619. 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 Supervisors Claim Against Defendants Coyne, Kopesky, Stang, and Yunker in their individual capacities and official capacities and Dakota County**

620. Dwight Mitchell and his children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

621. At the time of the events alleged above, Coyne, Kopesky, Stang, Yunker and the County of Dakota 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.

622. 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.

623. 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.

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

625. 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;

f. the standards for Petition, Affidavits and Court reports, including the timely and truthful preparation of such documents;

626. 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.

627. 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.

628. In committing the aforementioned acts and/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.

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

630. Dwight Mitchell and his children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

631. 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.

632. 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.

633. 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.

634. 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' Malicious Prosecution Claim**

635. Dwight Mitchell and his children reallege, and incorporates herein as if set forth in full, all paragraphs from above.

636. Defendant County and Boreland, P'Simer, Akolly, Sirr, Derby, Stang, and Yunker in their individual capacities and official capacities maliciously prosecuted Dwight Mitchell in the civil child protection proceedings which culminated in a meritless petition for termination of parental rights filed on the 15<sup>th</sup> month anniversary of X.M. being taken from Dwight Mitchell and placed in

foster care.

637. 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.

638. 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.

639. The Defendants filed the petition on the 15<sup>th</sup> anniversary of X.M. being transferred to foster care—in order to continue to qualify for federal funding.

640. The federal funding for foster care is not available after 15 months of foster care absent exigent circumstances.

641. 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.

642. 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..

643. Because the county's position was meritless, the District Court dismissed the whole petition in favor of the victim Dwight Mitchell.

644. As a direct and proximate result of these Defendants' actions, Dwight Mitchell, Bryce Mitchell, X.M. and A.M. 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' Abuse of Process Claim**

637. Dwight Mitchell and his children reallege, and incorporates herein as

if set forth in full, all paragraphs from above.

638. Defendant County and Boreland, P'Simer, Akolly, Sirr, Derby, Stang, and Yunker in their individual capacities 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<sup>th</sup> month anniversary of X.M. being taken from Dwight Mitchell and placed in foster care.

645. 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 X.M.

646. 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—and abuse of process.

647. The Defendants filed the petition on the 15<sup>th</sup> anniversary of X.M. being transferred to foster care—in order to continue to qualify for federal funding.

648. The federal funding for foster care is not available after 15 months of foster care absent exigent circumstances.

649. 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.

650. 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..

651. 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.

652. As a direct and proximate result of these Defendants' actions regarding the filing and pursuit of the petition for termination of parental rights, Dwight Mitchell, Bryce Mitchell, X.M. and A.M. 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**

#### **X.M. and A.M. False Imprisonment Claim**

#### **Against Defendants Boreland, P'Simer, Sirr, Derby, Stang, Yunker, Kopesky and Coyne in their individual capacities and official capacities**

653. X.M. and A.M. reallege, and incorporate herein as if set forth in full, all paragraphs from above.

654. 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.

655. In combination with conduct described above, these actions evidenced a pattern of extreme and outrageous behavior pursued with the intent to falsely imprison Bryce Mitchell, X.M. and A.M.

656. Because of Defendants' intentional and outrageous conduct, X.M. and A.M. suffered and continue to suffer from emotional and mental conditions generally recognized and diagnosed by trained professionals.

657. As a direct and proximate result of these Defendants' actions, X.M. and A.M. 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

### **Mitchell challenge of County Invoice for child protection services Declaratory Judgment Claim Against County Defendant**

658. Dwight Mitchell reallege, and incorporate herein as if set forth in full, all paragraphs from above.

659. The County has invoiced Mitchell as recently as March 31, 2018 for family foster care and related charges of \$16,840.20 relating to X.M. and A.M.

660. The County may have invoiced Mitchell for other charges.

661. All charges were the result of the County's illegal detention of X.M. and A.M.

662. Mitchell and the children never contracted, requested or needed the County's services.

663. The County violated its legal duties to Mitchell and his children by detaining X.M. and A.M. when it was unnecessary.

664. Consequently, the County's invoices are null, void and unenforceable.

665. The Court should award a declaratory judgment to Mitchell that the County's invoices are null, void and unenforceable.

## COUNT XXV

### **SCPS and The Mitchells' Cause of Action—*Injunctive Relief* Against All Defendants in their official capacity.**

550. Dwight Mitchell and his children reallege, and incorporate herein as if set forth in full, all paragraphs from above.

551. As stated herein, SCPS, Mitchell and his children, as citizens and individuals, are protected by the laws of the State of Minnesota, as well as those of the United States Constitution, including the Fourteenth Amendments thereto.

552. Stop Child Protection Services (CPS) From Legally Kidnapping (SCPS), including Mitchell, is an association of parents who have been

affected or may be affected by Minnesota's child protection statutes, Minnesota Department of Human Services' ("MN-DHS") rules and policies and Minnesota counties' child protection services.

553. As stated herein, Defendants, and each of them, have wrongfully, unlawfully, and with deliberate indifference to the rights of Plaintiffs, and with utter disregard of Defendants' duties and obligations to Plaintiffs, acted, practiced and/or adopted policies, practices, procedures and/or customs which are in violation of the rights of Plaintiff's including those to be free from governmental interference as to his privacy and familial associations, and from unreasonable searches, removals and detentions, including those relating to child abuse allegations and related actions and proceedings.

554. Defendants have failed to acknowledge their improper, unlawful and unconstitutional actions, conduct and policies at the time of the incidents at issue in the present action, and Plaintiffs are informed and believe, and on that basis, allege that presently Defendants have not changed or modified such actions, conduct and/or policies to conform to law despite several warnings to do so.

555. Defendants' wrongful and unlawful conduct, actions and/or policies, unless and until forced to promulgate policies, by order of this court, will cause, and continue to cause, great and irreparable injury to Plaintiffs, and other individuals and citizens, in that Defendants will continue to act in accordance with said unlawful policies, and with deliberate indifference to their duties and obligations under state and federal law, including those under the Fourth and Fourteenth amendments as alleged herein above.

556. As presently applied by MN-DHS and the County of Dakota, those portions of the Minnesota Statutes, which MN-DHS and the County of Dakota claims allow the misconduct set out above are unconstitutional in

the way they are applied pursuant to the regularly established customs, policies, and practices of MN-DHS and the County of Dakota.

557. Plaintiffs have no adequate remedy at law to prevent or prohibit Defendants from continuing, and/or repeating, their unlawful and unconstitutional conduct and policies other than through injunctive relief, and therefore seek an order directing MN-DHS and the County of Dakota to promulgate policies and implement training to prohibit its social workers from, but not limited to, the following:

- Detaining and/or removing children from their family and homes without exigent circumstances (imminent danger of serious physical injury), court order and/or consent;
- Removing children from the care of their family and from their homes without first obtaining a warrant when no legally recognized exigency exists;
- Forcing married couples to separate from the care of their family and from their homes without first obtaining a court order when no legally recognized exigency exists;
- Examining children without exigency, need, or proper court order, and without the presence of their proper custodian and/or guardian;
- the custom 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”;
- Removing and detaining children, and not returning them, beyond a reasonable period after the basis for detention is negated;

- Using trickery, duress, fabrication and/or false testimony or evidence, and in failing to disclose exculpatory evidence, in preparing and presenting reports and court documents to the Court; and
- Acting with deliberate indifference to the constitutional protections guaranteed to individuals, including those under the Fourth and Fourteenth Amendments, when performing actions related to child abuse, dependency type proceedings and Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) proceedings, subject matter jurisdiction, fabrication and/or false testimony and/or evidence, and in failing to disclose exculpatory evidence.
- Aiding and abetting in the violation of civil rights guaranteed to individuals, including those under the Fourteenth (protecting against invasion of autonomy privacy) Amendments, by engaging in the aforementioned conduct;
- Conspiring to violate civil rights guaranteed to individuals, including those under the Fourteenth (protecting against invasion of autonomy privacy) Amendments, by engaging in the aforementioned conduct.
- The policy of permitting Social Workers to make and publish premature conclusions of maltreatment and guilt prior to the completion of court proceedings.

### **Demand for Jury Trial**

The Plaintiffs demand a jury trial as to the issues so triable.

### **PRAYER FOR RELIEF**

WHEREFORE, to redress the injuries proximately and directly caused by Defendants' conduct as stated in all the Paragraphs above, and to prevent the

substantial risk of irreparable injury to other persons in the State of Minnesota as a result of the policies, customs, practices, and supervisory misconduct alleged herein, Mitchells hereby 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 provisions referenced above in the Counts;

d. an award of attorneys' fees, including attorneys' fees pursuant to 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.

### **JURY DEMAND**

The Plaintiffs hereby request a trial by jury on all claims so triable.

Dated:           , 2018

/s/Erick G. Kaardal  
Erick G. Kaardal, 229647  
Mohrman, Kaardal & Erickson, P.A.  
150 South Fifth Street, Suite 3100  
Minneapolis, Minnesota 55402  
Telephone: 612-341-1074  
Facsimile: 612-341-1076  
Email: kaardal@mklaw.com  
*Attorneys for Plaintiffs*