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Attorney for Plaintiffs

Jamel Billups  
600 Valley Pine Court  
Chambersburg, PA 17202

Jacqueline Rosario  
600 Valley Pine Court  
Chambersburg, PA 17202

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

Plaintiffs

v.

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

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

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

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

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

UNITED STATES  
DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF  
PENNSYLVANIA

JURY TRIAL DEMANDED

Franklin County  
14 N. Main Street  
Chambersburg, PA 17201

Franklin County Office of Children,  
Youth and Families  
425 Franklin Farm Lane  
Chambersburg, PA 17201

Tammie Lay  
961 Doubling Gap Road  
Newville, PA 17241

Dawn M. Watson  
40 Montsera Road  
Carlisle, PA 17015

Kari Coccagna  
15 Noble Drive  
Shippensburg, PA 17257

Minnie Tuner  
539 Rife Street  
Chambersburg, PA 17201

Matthew Fogel  
157 Lincoln Way East  
Chambersburg, PA 17201

COMPLAINT

Lauren Sulcove  
157 Lincoln Way East  
Chambersburg, PA 17201

Borough of Chambersburg  
100 South 2<sup>nd</sup> Street  
Chambersburg, PA 17201

William C. Frisby, Jr.  
100 South 2<sup>nd</sup> Street  
Chambersburg, PA 17201

Defendants

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Plaintiffs, Jamel Billups, Jacqueline Rosario, T.R. and L.B. allege the following:

**JURISDICTION**

1. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1985 and the Fourth, Fifth and Fourteenth Amendment of the Constitution of the United States.
2. The jurisdiction of the Court is predicated on 28 U.S.C. § 1343(a),(1), (2), (3) and (4) and 28 U.S.C. § 1331.

**ALLEGATIONS-PARTIES**

3. Plaintiff, Jamel Billups, hereinafter “Jamel” at all relevant times to this complaint was a resident of Franklin County, Pennsylvania. Jamel is the father of two children T.R. and L.B. and, when the Penn State Hershey Medical Center’s Child Safety Team falsely attributed L.B.’s childhood stroke and congenital rickets to child abuse, Jamel was incarcerated for 414 days and was listed as a perpetrator of child abuse on Childline. Jamel was acquitted of all criminal charges that he abused his daughter, L.B.
4. Plaintiff, Jacqueline Rosario, hereinafter “Jackie” at all relevant times to this complaint was a resident of Franklin County, Pennsylvania. Jackie is the mother of T.R. and L.B. and, when the Penn State Hershey Medical Center’s Child Safety Team falsely attributed L.B.’s childhood stroke and congenital rickets to child abuse, lost custody of her children and was listed as a perpetrator of abuse on Childline.
5. Plaintiff, T.R., a minor, is the first child of Jamel and Jackie, was born in 2007 and at all relevant times was a resident of Franklin County, Pennsylvania. When the Penn State Hershey Medical Center’s Child Safety Team falsely attributed L.B.’s childhood stroke and congenital rickets to child abuse, T.R. was removed from the care, custody and control of her mother and her father and placed in foster care.

6. Plaintiff, L.B., a minor, is the second child of Jamel and Jackie, was born in 2009 and at all relevant times was a resident of Franklin County, Pennsylvania. L.B. suffered from congenital rickets and on October 19, 2009 L.B. suffered a childhood stroke (thrombosis). The Child Safety Team at the Penn State Milton S. Hershey Medical Center falsely attributed L.B.'s stroke and congenital rickets to child abuse. As a result of the false allegations of child abuse, L.B. was removed from the care, custody and control of her mother and her father and placed in foster care.

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

8. Defendant Mark S. Dias, M.D. is an employee of Penn State and a resident of Pennsylvania. Defendant Dias is a neurosurgeon, a Fellow of the American Academy of Pediatrics and has served as the co-director of the Penn State Child Safety Team since 2009. Defendant Dias holds himself out as an expert in child abuse who can determine whether an injury was caused by abuse and

frequently testifies with the full faith and credit of Penn State for the prosecution in criminal cases. Defendant Dias was appointed by the Attorney General of Pennsylvania to serve on the Attorney General's Medical/Legal Advisory Board on Child Abuse. Defendant Dias was not the surgeon at Penn State who performed surgery on L.B. Defendant Dias attributed L.B.'s venous childhood stroke to a congenital anomaly (an anatomic impossibility) and with reckless indifference to the truth wrote a report rendering the false conclusion that L.B.'s injuries were caused by abuse on Penn State letterhead, testified at Jamel's criminal trial that Defendant Dias was a professor at Penn State and, upon belief, was paid by, and enjoyed the liability insurance, of Penn State when he participated in the investigation of whether L.B.'s injuries were caused by abuse and testified at Jamel's criminal trial. At no time relevant to this complaint was Defendant Dias ever L.B.'s treating physician. In 2010, Defendant Dias wrote a chapter of a book about child abuse entitled "The Case for Shaking". It was Defendant Dias' published efforts that enabled Penn State to receive the CDC 2.8 million dollar grant to "educate" parents about shaken baby syndrome.

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

Crowell was qualified as an expert in child abuse for the first time in her life at the dependency hearing for L.B. and T.R on December 18, 2009. Defendant Crowell was qualified as an expert in child abuse for the second time in her life at Jamel's preliminary criminal hearing on December 28, 2009. Dr. Crowell acknowledged under oath at Jamel's criminal trial that she misrepresented medical evidence critical to L.B.'s case when she testified at Jamel's preliminary hearing. Defendant Crowell testified that she was an assistant professor at Penn State and, upon belief, Defendant Crowell was paid by, and enjoyed the liability insurance, of Penn State when she participated in the investigation of whether L.B.'s injuries were caused by abuse and testified at Jamel's preliminary hearing and criminal trial and the dependency hearing of T.R. and L.B. At no time relevant to this complaint was Defendant Crowell ever L.B.'s treating physician.

10. Defendant Arabinda K. Choudhary, M.D. is an employee of Penn State and a resident of Pennsylvania. Defendant Choudhary graduated from medical school and is licensed to practice medicine in Pennsylvania however, at all times relevant to this complaint, Defendant Choudhary was not board certified by the American Board of Radiology nor does he possess any certificates of additional qualifications in pediatric radiology or neuro-radiology. At all times relevant to this complaint, Defendant Choudhary served as a member of the Penn State Child Safety Team and held the title of Director of Pediatric Neuroradiology. Defendant Choudhary, with reckless indifference to the truth, changed his initial diagnosis of L.B.'s venous stroke from possible thrombosis to the anatomically impossible diagnosis of a congenital/developmental anomaly. Defendant Choudhary testified that he was an assistant professor at Penn State and, upon belief, Defendant Choudhary was paid by, and enjoyed the liability insurance, of Penn State when he participated in the investigation of whether L.B.'s injuries were caused by abuse and testified at Jamel's criminal trial. At no time relevant to this complaint was Defendant Choudhary L.B.'s treating physician.

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

12. Defendant Franklin County is a political subdivision of the Commonwealth of Pennsylvania. The Franklin County Commissioners are annually licensed by the Commonwealth of Pennsylvania's Department of Public Welfare to operate a child protective services agency on behalf of the Commonwealth, Defendant Franklin County Children and Youth Services, pursuant to 55 Pa. Code Chapter 3130 hereinafter "FCCYS". Defendant FCCYS has a policy of relying upon doctors affiliated with the American Academy Pediatrics, whose opinions are tainted by a burden shifting medical presumption that the cause of any intracranial injury in a child under the age of one year is caused by abuse unless the parents provide an accidental explanation, to perform the medical investigation into whether injuries suspected to have been caused by child abuse were, in fact, caused by child abuse.

13. Defendants Tammie Lay and Dawn M. Watson are employees of FCCYS and residents of Pennsylvania. Defendants Lay and/or Watson made ex parte communications with the Franklin County Court of Common Pleas and obtained an ex parte order granting custody of T.R. and L.B. to FCCYS. Defendants Lay and/or Watson followed the policy of FCCYS that Defendant FCCYS employees rely upon doctors affiliated with the American Academy of Pediatrics to investigate and conclude whether suspected child abuse is, in fact, actually child abuse. In the alternative, Defendants Lay and Watson failed to conduct their own independent non-presumption tainted investigation.

14. Defendants Kari Coccagna and Minnie Tuner are employees of FCCYS and residents of Pennsylvania. After Jamel was acquitted of criminal charges, FCCYS, Coccagna and Tuner threatened to immediately send the police to forcibly remove T.R. and L.B. from Jamel and Jackie if Jamel and Jackie did not agree to a “voluntary” safety plan. The “voluntary” safety plan required that Jamel “agree” that he would not be alone with his children and required Jackie and Jamel to “agree” to unannounced visits from employees of defendant FCCYS or suffer the immediate removal of their children from their care by the police. At all times relevant to this complaint, Defendant Franklin County and Defendant FCCYS had a policy of using safety plans as voluntary placement agreements and extending those agreements beyond 30 days in violation of 55 Pa.Code §3130.65. Defendants Franklin County, FCCYS, Coccagna and Tuner extended the voluntary placement agreement beyond 30 days without obtaining a court order in violation of Pennsylvania law and Jamel’s and Jackie’s right to due process pursuant to Franklin County and FCCYS policy or, in the alternative, Defendants Coccagna and Watson violated the due process protection provided in 55 Pa.Code §3130.65 and failed to obtain a court order to extend the “voluntary” safety plan beyond 30 days on their own.

15. Defendant Matthew Fogel, at all times relevant to this action, was the elected District Attorney of Franklin County and is sued in that capacity. Defendant Fogel has a policy of

relying upon doctors affiliated with the American Academy pediatrics, whose opinions are tainted by a burden shifting medical presumption, to perform the medical investigation into whether injuries suspected to have been caused by child abuse were, in fact, caused by child abuse. Defendant Lauren Sulcove is an employee of Defendant Franklin County and/or Defendant Fogel and was at all times relevant to this complaint, the Assistant District Attorney investigating the false allegation that Jamel abused L.B. and is sued solely in her role of investigating the false allegations of abuse prior to the arrest of Jamel. Pennsylvania law mandated that Defendant Fogel convene an investigative team upon the report of L.B.'s suspected abuse in October of 2009 to avoid duplication of fact finding-efforts with such team consisting of a minimum of a health care provider, county caseworker and law enforcement official. Defendant Sulcove led and/or was a member of the team and either followed the policy of the District Attorney's office to exclusively rely upon doctors affiliated with the American Academy of Pediatrics to make conclusions about whether suspected child abuse was, in fact, child abuse or Defendant Sulcove individually failed to ensure that the investigation into allegations of abuse against Jamel was not tainted with the burden shifting medical presumption of doctors affiliated with the American Academy of Pediatrics.

16. Defendant Borough of Chambersburg, hereinafter "Chambersburg", is a political subdivision of the Commonwealth of Pennsylvania. Chambersburg has a policy of relying upon doctors affiliated with the American Academy pediatrics, whose opinions are tainted by a burden shifting medical presumption, to perform the medical investigation into whether injuries suspected to have been caused by child abuse were, in fact, caused by child abuse. Defendant William C. Frisby, Jr., at all times relevant to this complaint, was an employee of Defendant Chambersburg. Defendant Frisby was the detective assigned to investigate the allegations of abuse against Jamel and is sued solely in his role of investigating the allegations against Jamel. Defendant Frisby either followed the policy of Defendant

Chambersburg to rely upon doctors affiliated with the American Academy of Pediatrics for child abuse investigations or Defendant Frisby individually failed to ensure that the investigation into allegations of abuse against Jamel was not tainted with the burden shifting medical presumption of doctors affiliated with the American Academy of Pediatrics.

**ALLEGATIONS - FACTUAL**

17. In October of 2009, Jackie was employed as a phlebotomist at the Norland Family Practice in Chambersburg, Pennsylvania and Jamel was the primary caretaker of Jackie and Jamel's two children, T.R. and L.B.

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

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

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

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

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

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

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

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

26. An abdominal CT scan and skeletal surveys demonstrated no internal injuries associated with the sixteen (16) bilateral rib fractures found in the anterior region of L.B.'s ribs. No rib fractures were acute and all of the rib fractures were aged from "4 to 8 weeks" old. No rib fractures

were identified at the posterior end of L.B.'s ribs. In multiple studies of traumatic fractures, patients suffering traumatic rib fractures also suffered associated internal injuries such as injury to the lung, throat, liver, kidney and liver. In one study cited by proponent(s) of the shaken baby syndrome hypothesis, 100% of patients with four (4) or more traumatic rib fractures had associated internal injuries. L.B.'s ribs demonstrated sixteen (16) rib fractures, more than four (4) times the number of rib fractures that produce internal injuries 100% of the time with trauma, yet L.B. suffered absolutely no internal injuries making it a virtual certainty that L.B.'s rib fractures were a result of weak bones rather than abusive trauma.

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

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

29. On October 20, 2009, Defendant FCCYS asked for and obtained an ex parte order granting FCCYS temporary custody of T.R. and L.B. On October 20, 2009, FCCYS filed a dependency petition seeking the custody of T.R. and L.B. and the court appointed an attorney for Jackie. The court also ordered a psychological evaluation of Jamel and Jackie.

30. Defendants FCCYS, Lay and Watson relied exclusively upon the conclusion of Defendant Penn State's Child Safety Team and Defendants Dias, Crowell and Choudhary that L.B.'s intracranial hemorrhages were caused by abuse on the afternoon of October 19, 2009 and rib fractures were caused by abuse 4 to 8 weeks prior to her hospitalization without conducting any independent medical review or confirmation of their own.

31. On October 21, 2009, eight days before Jamel was arrested, Defendant Sulcove emailed Defendant Dias to introduce herself as the prosecutor that would be handling the case against Jamel.

32. On October 28, 2009, with reckless indifference to the truth and the Billups' family civil rights, Defendant Crowell issued a report on Penn State letterhead falsely concluding that L.B.'s childhood stroke and 16 rib fractures without internal injuries were caused by abuse. Defendant Crowell's report stated that L.B. "does not have any evidence of coagulopathy or bleeding disorder" and concluded that 16 anterior rib fractures without any associated internal injuries "occurred as a previous incident of inflicted trauma" concluding that "this is a clinical picture of inflicted trauma" of "some event...likely a short time before [L.B.] had difficulty breathing".

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

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

In his affidavit of probable cause, Frisby claimed that a crime had been committed and identified Jamel as the alleged perpetrator. Frisby charged Jamel with felony aggravated assault and endangering the welfare of a child.

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

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

37. On December 18, 2009, Defendant Crowell testified that she reviewed the x-rays herself with the radiologist and that "[t]he radiologist indicated they were on the posterior side" of L.B.'s ribs. Crowell further testified that rib fractures in child abuse were "typically lateral or posterior". On October 22, 2009, the Penn State radiologist reported that L.B.'s rib findings were "at the anterior axillary line" and the "lateral aspect and anterior axillary line". Contrary to Crowell's testimony, no Penn State radiologist ever reported that any of L.B.'s rib findings were posterior.

38. Posterior rib fractures have been considered by proponents of the shaken baby syndrome hypothesis as pathognomonic, or having a virtual 100% predictive diagnostic value, of the

diagnosis of abuse in the medical literature. Whether L.B.'s rib fractures were located posterior, in the back near the spinal column, or anterior in the front, as was L.B.'s rib findings, has been considered by proponents of shaken baby syndrome as critical to making conclusion of child abuse.

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

40. On December 28, 2009, Defendant Crowell was qualified as an expert in child abuse for the second time in her life at Jamel's preliminary criminal hearing. Crowell testified that she was "an assistant professor of pediatrics" at Penn State at Jamel's criminal trial.

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

42. In direct contradiction to Defendant Crowell's December 28, 2009 testimony, with reckless indifference to the truth, Defendant Dias reported that L.B. "had a paucity of veins draining toward the superior sagittal sinus. This was initially thought to represent either thrombosis of the veins on the left side or a congenital venous anomaly unrelated to her presumed traumatic injuries.

The developmental/congenital nature of these veins was confirmed on an MRI ... which showed the same anomaly, similar in appearance to the original MRI performed during her acute admission.”

43. Upon information and belief, after Choudhary spoke with Dias, Choudhary changed his initial differential diagnosis of L.B.’s “superficial cortical vessels on the left side” that were “not visualized” from possible thrombosis to a “developmental/congenital” “anomaly”. The proposition that the “superficial cortical vessels on the left side” that were “not visualized” in L.B.’s brain were a “developmental/congenital” “anomaly” is anatomically impossible. If, in fact, the vessels in the left side of L.B.’s head had never developed, the left side of L.B.’s brain would not have developed normally in utero or in her first three months of life.

44. On December 18, 2009, T.R. and L.B. were found to be children dependent on the State with no parents fit to care for them. In support of its December 18, 2009 finding of dependency, the Franklin County Court of Common Pleas stated, “The child had ... a cluster of symptoms indicative of shaken baby syndrome. Furthermore, her parents could offer no plausible explanation for her symptoms and tests ruled out potential non-abusive causes. ... in light of the comprehensive tests run on L.B. at [Penn State] Hershey Medical Center and L.B.’s symptoms, it is highly unlikely that any credible expert could have come to a different conclusion at all different than that at which Dr. Crowell arrived ... testimony from a retained expert would not have had a high degree of likelihood of changing the result in this case, since the evidence in favor of dependency came from a treating physician and was so credible and overwhelming.”

45. At no time was Defendant Crowell ever L.B.’s treating physician. Five credible experts rendered conclusions differing from Defendant Crowell’s and the Penn State Child Abuse team, including one other Penn State doctor.

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

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

48. Dr. Barnes is a board certified by the American Board of Radiology with added certification in neuro-radiology with 32 years of experience. Dr. Barnes has extensive peer reviewed medical journal publications including publications in the area of pediatric neuro-radiology, congenital rickets and the misdiagnosis of metabolic disorders as child abuse. Dr. Barnes, *inter alia*, serves on the Child Safety Team and as the Director of the Pediatric MRI & CT Center at the Stanford University Medical Center's Lucile Packard Children's Hospital.

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

50. On January 15, 2010, Defendant Lay filed an "indicated" report of child abuse naming both Jamel and Jackie as perpetrators of abuse with Childline.

51. Defendant Lay's filing of the indicated Childline report on or about January 15, 2010 was solely an administrative act completed by Lay without any court proceeding.

52. Defendants FCCYS, Lay, and Watson relied exclusively upon the conclusion of Defendant Penn State's Child Safety Team and Defendants Dias, Crowell and Choudhary that L.B.'s intracranial hemorrhage was caused by abusive trauma on the afternoon of October 19, 2009 and 16 rib fractures with no internal injuries were caused by abusive trauma 4 to 8 weeks prior to her hospitalization without any independent medical review or confirmation of their own.

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

54. Although legal custody of T.R. and L.B. continued to remain with Defendant FCCYS, on February 15, 2010, physical custody of T.R. and L.B. was returned to Jackie.

55. Dr. Mack reviewed L.B.'s case and agreed with Dr. Barnes' interpretation of L.B.'s brain imaging. Dr. Mack was concerned that the Penn State Child Safety Team had mistakenly concluded that L.B.'s thrombosis and congenital rickets was caused by abuse. Upon information and belief, Dr. Mack contacted Defendants Crowell and Choudhary and Dr. Mark Iantasco, L.B.'s attending physician – a neurosurgeon, to explain why Dr. Mack believed the Child Safety Team's conclusions about L.B.'s imaging findings were wrong. Dr. Mack's requests to discuss the case were not well received.

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

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

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

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

60. To date, with reckless indifference to the truth, Defendant Crowell has not corrected her false testimony with either the dependency court or the preliminary hearing criminal court.

61. Subsequently, with reckless indifference to the truth, Defendant Crowell revoked the invitation she made to Dr. Mack to present her imaging interpretations and explain why Dr. Mack believed the Child Safety Team was wrong about L.B.'s condition.

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

63. On April 5, 2010, the Court's Order of dependency was terminated and legal custody of T.R. and L.B. was returned to Jackie.

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

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

66. On May 21, 2011, Defendant Sulcove filed a motion stating, "On May 19, 2010, after numerous attempts were made to communicate with Dr. Dias about the Court's Order, the Commonwealth was informed by Dr. Dias that he is too busy with other consultations to participate in this litigation. Dr. Dias suggested that the Commonwealth contact Mark Iantasco, M.D., Associate Professor of Neurosurgery at [Penn State] Hershey Medical Center to inquire whether he would be available to prepare a report and testify at trial. Dr. Dias noted that Dr. Iantasco was directly involved in [L.B.'s] care while she was at the Hershey Medical Center. In addition, he served in a supervisory role to Kathryn Crowell, M.D., who prepared the Final Consultation Report." Sulcove requested, and was granted, an extension of time until June 21, 2010 to obtain a report from Dr. Iantasco.

67. On June 15, 2011, in lieu of a report from L.B.'s treating physician Dr. Iantasco, Defendant Dias issued an expert report, written on Penn State stationary and containing the Penn State logo, to Sulcove and Sulcove identified Dias as the expert witness she would call at trial rather than L.B.'s treating doctor and neurosurgeon, Dr. Iantasco.

68. Though the medical literature widely recognizes a low Protein S level as a risk factor for thrombosis and childhood stroke and the literature widely recognizes maternal vitamin D deficiency as a risk factor for congenital rickets, with reckless indifference to the truth, Defendant Dias completely ignored L.B.'s low Protein S level in his report and he completely ignored Jackie's non-existent vitamin D2 level and severely deficient vitamin D3 level in his June 15, 2010 report.

69. On July 2, 2011, Dr. Mack issued a detailed report explaining her conclusion that thrombosis (blood clots) caused L.B.'s intracranial bleeding and noted that L.B.'s vitamin D levels could not have been higher than Jackie's at birth and that the presence of a large number of asymptomatic rib fractures is suggestive of an underlying bony mineralization disorder.

70. Dr. David Ayoub, is a board certified radiologist with an academic interest in infant bone disease and has been an invited speaker about rickets and bone fractures misdiagnosed as child abuse. Dr. Ayoub was invited by Defendant Dias to present "Congenital Rickets and Misdiagnosed Child Abuse" at a conference on pediatric abusive head trauma hosted by Defendant Penn State in San Francisco in July of 2011. Dr. Ayoub issued a report rendering an opinion that L.B.'s rib fractures "did not possess highly specific radiographic signs of abuse" and "the symmetrical and multiple nature of the rib fractures suggest that that the rib fractures occurred under the circumstances of normal stresses upon fragile bones".

71. Dr. Holmes Morton is a board certified pediatrician who serves as the Director of The Clinic for Special Children in Lancaster County, Pennsylvania. Dr. Morton serves on the

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

72. On December 12, 2010 during Jamel's criminal trial, Defendant Crowell admitted under oath that she had misrepresented the location of L.B.'s rib findings as being posterior in the preliminary criminal hearing on December 18, 2009 and in the dependency trial on December 28, 2009, when, in fact, they were anterior and no rib fracture was posterior. Crowell could not recall why she had been incorrect and testified "I'll be honest with you. When I realized that I had been inaccurate in describing the rib fractures I tried to rectify the situation. I met with the hospital attorney and he submitted a letter to the lawyers and the Court that corrected that statement."

73. Crowell's testimony on December 12, 2010 that Penn State's attorney had sent a letter to the lawyers and the Court was also false, no letter was ever sent to "the lawyers and the Court".

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

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

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

77. On December 17, 2010, a unanimous jury acquitted Jamel of all charges.

78. On December 17, 2010, Jamel was released from jail having remained continuously incarcerated for 414 days since October 29, 2009.

79. On December 20, 2010, FCCYS threatened to immediately remove T.R. and L.B. from Jamel and Jackie’s custody unless they “voluntarily” agreed for Jamel to not be alone with his children. The Third Circuit Court of Appeals characterized the use of the threat to remove children in order to secure a parent’s “voluntary” agreement to curtail a parents’ right to the custody, care and control of their children as a “blatantly coercive” act triggering due process considerations.

80. Under the threat of having their children immediately removed from their home, on December 20, 2010, Jamel and Jackie were coerced into signing a “voluntary” safety plan in which Jamel agreed not to be alone with his children and Jamel and Jackie waived their fourth amendment right to be secure in their home with no government intrusion except upon

probable cause by “agreeing” to unannounced and announced visits from employees of Defendant FCCYS.

81. The “voluntary” safety plan in which Jamel could not be alone with his children and Jamel and Jackie consented to the warrantless entry into their home, remained in effect for 180 days, from December 20, 2010 until June 18, 2011 without a court order or any court oversight.

82. Defendant Coccagna, Tuner and FCCYS failed to obtain a Court order to extend the “voluntary” safety plan beyond 30 days as required by 55 Pa.Code §3130.65.

83. On June 18, 2011, FCCYS closed its case with the Billups family and terminated the “voluntary” safety plan.

### COUNT I

**SUBSTANTIVE DUE PROCESS CLAIM**  
**AGAINST PENN STATE, DIAS, CROWELL AND CHOUDHARY**  
**FOR RECKLESS INDIFFERENCE TO THE TRUTH AND GROSS NEGLIGENCE IN**  
**FAILING TO ENSURE A COMPLETE WORKUP**  
**FOR THROMBOSIS AND METABOLIC BONE DISEASE**  
**PRIOR TO CLAIMING TO HAVING RULED OUT**  
**ALL OTHER EXPLANATIONS FOR L.B.’S FINDINGS**

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

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

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

87. The medical literature and the CDC recognize an epidemic in vitamin D deficiency in the United States, particularly among non-white mothers and in northern latitudes. The medical literature recognizes that “Ongoing rickets will manifest itself as acute and healing fractures, most commonly seen at the ribs and forearms.”

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

89. Four months later, after Dr. Barnes reviewed the L.B.’s case and issued his report in which he described the standard of care, that a thrombophilia workup and patient/maternal vitamin D testing should be done, L.B. tested abnormally low for the clotting factor, Protein S, and Jackie tested severely deficient in vitamin D. Jackie’s medical treatment for vitamin D deficiency since March of 2009 has been unable to raise her vitamin D levels to normal levels.

#### **PENN STATE, DIAS, CROWELL AND CHOUDHARY ARE STATE ACTORS**

90. Defendant Penn State’s website declares its “Public Character” as follows, “The Pennsylvania legislature designated Penn State as the Commonwealth’s sole land-grant institution in 1863, ... Although the University is privately chartered by the Commonwealth, it was from the outset considered an ‘instrumentality of the state,’ that is, it carries out many of the functions of a public institution and promotes the general welfare of the citizenry. The Governor

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

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

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

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

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

95. Upon information and belief, Defendant Penn State receives Federal and/or State funding used for the investigation of suspected child abuse and to make a determination of whether the suspected child abuse is, in fact, actual child abuse. In addition, in 2007 Defendant Penn State received a 2.8 million dollar grant to “educate” parents about shaken baby syndrome from the Federal Agency, the Center for Disease Control.

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

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

98. Defendant Dias was appointed by the Attorney General of Pennsylvania to serve on the Attorney General’s Medical/Legal Advisory Board on Child Abuse. According to

literature published by the Pennsylvania Attorney General, “The Pennsylvania Attorney General’s Medical/Legal Advisory Board on Child Abuse is a body of approximately 50 child abuse experts who meet bimonthly to provide professional consultation to the prosecution, law enforcement and child protective services communities ... The Board’s membership includes Pennsylvania’s premier medical experts ... Rounding out the expertise of the Board are district attorneys, investigators, representatives from state and local child protective services agencies ... The Board functions as a consulting and advisory body in cases of child homicide, abuse (both physical and sexual) and neglect which are under investigation by a child protective service agency or law enforcement agency ... The Board also assists investigators and prosecutors in further defining the goals of an investigation ... Examples of topics and questions posed to the Board include: what key questions should be asked of suspects and witnesses in the course of an investigation; and whether existing evidence is sufficient for prosecution, and if not, how further evidence should be gathered.”

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

100. Defendant Crowell’s employment by Penn State, an institution of “Public Character”, and her service as co-director of Penn State’s Child Safety Team, and the reliance upon Defendant Crowell’s conclusion by Defendants FCCYS, Lay and Watson and Defendants

Fogel, Sulcove and Frisby renders her activities during the investigation of whether suspected child abuse is, in fact, child abuse, fairly attributable to the state.

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

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

103. Defendant Dias, as co-director of the Child Safety Team, Defendant Crowell, as co-director of the Child Safety Team and author of the Child Safety Team report on L.B. and Defendant Choudhary, as a member of the Child Safety Team, who identified thrombosis as a potential cause of L.B.'s neurological imaging, and Penn State's Child Safety Team are state actors and were recklessly indifferent to the truth and grossly negligent for misrepresenting that thrombosis had been ruled out when thrombosis was identified as a possibility in L.B. and no testing for known risk factors for thrombosis and no thrombophilia workup had been performed.

104. Dr. Barnes identified the standard of care in a child abuse investigation in his report regarding multiple bilateral healing rib fractures with no associated internal injuries, “[t]he skeletal findings are old and may easily date back to birth. Furthermore, a bone fragility disorder (e.g. maternal-fetal vitamin D deficiency with congenital rickets) should be considered and fully evaluated.”

105. Defendant Dias, as co-director of the Penn State Child Safety Team, Defendant Crowell, as co-director of the Penn State Child Safety Team and author of the Penn State Child Safety Team report on L.B. and Defendant Choudhary, as a member of the Penn State Child Safety Team, were recklessly indifferent to the truth and grossly negligent for misrepresenting that L.B.’s rib “fractures occurred as a result of a previous incident of trauma” and that metabolic bone disease had been ruled out when no testing on L.B. or Jackie for even the most common form of metabolic bone disease, vitamin D deficient rickets, had been performed.

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

107. As a direct and proximate result of the misrepresentations and gross negligence of Defendants Penn State, Dias, Crowell and Choudhary, Jamel and Jackie lost

custody of T.R. and L.B., had to defend a dependency petition, were listed as perpetrators of child abuse with Childline, Jamel was incarcerated for over 13 months and had to defend criminal charges. Jamel, Jackie, T.R. and L.B., suffered damages as a result of the reckless indifference to the truth and gross negligence of Defendants Penn State, Dias, Crowell and Choudhary as detailed below.

## COUNT II

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

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

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

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

111. In the official position paper issued by the American Academy of Pediatrics Committee on Child Abuse and Neglect entitled, “Shaken Baby Syndrome: Rotational Cranial Injuries – Technical Report” in 2001, the Academy stated, “Although physical abuse in

the past has been a diagnosis of exclusion, data regarding the nature and frequency of head trauma consistently support the need for a presumption of child abuse when a child younger than 1 year has suffered an intracranial injury.”

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

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

114. Another doctor, one who served as the Chair of the American Academy of Pediatrics Committee on Child Abuse and Neglect in 2009 when it issued its last position statement on shaken baby syndrome, served on the executive committee and as chair of the American Academy of Pediatrics Section on Child Abuse and Neglect and is “a leading figure at the National Center on Shaken Baby Syndrome”, in an interview on July 18, 2011 stated, “[t]he Shaken Baby Syndrome diagnosis presumes a mechanism—major traumatic injury to the head ... Sometimes it's obviously [that]. Sometimes it's not.” In L.B.’s case there is no obvious trauma to L.B.’s head, there was no bruising, abrasions, scalp swelling or skull fractures.

115. Defendant Dias, co-director of Penn State’s Child Safety Team, explicitly stated that a presumption of trauma was operative during the investigation of L.B.’s suspected

abuse in his report that L.B. “had a paucity of veins draining toward the superior sagittal sinus. This was initially thought to represent either thrombosis of the veins on the left side or a congenital venous anomaly unrelated to her presumed traumatic injuries.”

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

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

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

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

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

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

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

reckless misrepresentation of medical evidence of a condition that explains L.B.'s intracranial hemorrhage.

123. After the Defendants performed only a nominal workup and then misrepresented that "an extensive screen" indicated "no evidence of a bleeding problem", the Defendants' adoption of the presumption of abuse shifted the burden to the Jamel and Jackie to prove their innocence with an accidental "explanation", when the explanation for L.B.'s injuries lurked in the metabolic testing the Penn State Defendants decided not to perform because they presumed abuse.

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

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

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

127. The American Academy of Pediatrics Committee on Child Abuse and Neglect's position statement entitled "Abusive Head Trauma in Infants and Children" confirms what the vast literature on child abuse from various medical disciplines and common sense tells us which is, before a conclusion of child abuse is made, "a thorough and objective medical evaluation of infants and children who present for medical care with signs and symptoms of potential" abuse should be performed.

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

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

130. The Penn State Defendants adoption of the American Academy of Pediatrics' presumption of abuse caused them to only require and accept a nominal workup for alternative medical causes for L.B.'s intracranial bleeding and fractures and willfully misrepresent the nominal workup as "extensive". Once the nominal workup revealed no abnormal results, then the Defendants recklessly misrepresented that all other causes of L.B.'s intracranial hemorrhages and rib fractures had been ruled out. Once all alternative causes of

L.B.'s intracranial hemorrhages and rib fractures were purportedly ruled out, trauma remained as the only "explanation". Then, when Jamel and Jackie failed to prove that L.B. suffered an "accidental trauma" that was consistent with her injuries (and there are none), the presumption of trauma and their guilt remained. Defendants FCCYS, Lay, Watson, Coccangna, Tuner, Chambersburg and Frisby all relied upon the presumption tainted investigation and reckless misrepresentations of the Penn State Defendants (Penn State Child Safety Team, Dias, Crowell and Choudhary) without any independent, non-presumption tainted investigation of their own.

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

132. As a direct and proximate result of the substantive due process violations of Defendants Penn State, Dias, Crowell and Choudhary, Jamel and Jackie lost custody of T.R. and L.B., had to defend a dependency petition, were listed as perpetrators of child abuse with Childline, Jamel was incarcerated for 414 days and had to defend criminal charges. Jamel, Jackie, T.R. and L.B., suffered damages as a result of the due process violations of Defendants Penn State, Dias, Crowell and Choudhary as detailed below.

### **COUNT III**

#### **SUBSTANTIVE DUE PROCESS CLAIM AGAINST FCCYS**

#### **FOR POLICY OF RELYING EXCLUSIVELY UPON THE PRESUMPTION TAINTED MEDICAL INVESTIGATION AND CONCLUSION OF THE PENN STATE CHILD SAFETY TEAM, DIAS, CROWELL AND CHOUDHARY WITHOUT ANY INDEPENDENT UNTAINTED MEDICAL REVIEW AND**

**WITHOUT TRAINING THE PENN STATE CHILD SAFETY TEAM, DIAS, CROWELL  
OR CHOUDHARY ABOUT HOW A  
PRESUMPTION SHIFTS THE BURDEN OF PROOF IN  
VIOLATION OF DUE PROCESS**

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

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

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

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

137. Defendant FCCYS' policy of relying exclusively upon presumption tainted medical experts to conduct the medical investigation, policy of failing to conduct its own non-presumption tainted medical investigation and policy of failing to train the medical experts upon whom they exclusively rely about how a presumption shifts the burden of proof in violation of due process, or some combination of one or more of these policies violated the Billups family's right to the presumption of innocence and due process during the investigation of whether the report of L.B.'s suspected child abuse was in fact, actually child abuse.

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

**COUNT IV**

**SUBSTANTIVE DUE PROCESS CLAIM  
AGAINST LAY AND WATSON FOR  
FAILING TO CONDUCT AN INDEPENDENT  
NON-PRESUMPTION TAINTED INVESTIGATION AND FOR  
RELYING EXCLUSIVELY UPON THE  
PRESUMPTION TAINTED MEDICAL INVESTIGATION AND CONCLUSION OF  
THE PENN STATE CHILD SAFETY TEAM, DIAS, CROWELL AND CHOUDHARY**

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

140. Either Defendant FCCYS has a policy of exclusively relying upon the presumption tainted medical investigation by doctors affiliated with the American Academy of Pediatrics such as those on Penn State's Child Safety Team, including Defendants Dias, Crowell and Choudhary, or FCCYS did not have such a policy and Defendants Lay and Watson failed to conduct or procure their own independent medical non-presumption tainted burden shifting investigation and relied upon Defendants Dias, Crowell and Choudhary.

141. With reckless indifference to the due process rights of the Billups family, Defendants Lay and Watson failed to conduct or procure their own independent medical non-presumption tainted burden shifting investigation in violation of the Billups family's right to the presumption of innocence and due process during the investigation of whether the report of L.B.'s suspected child abuse was in fact, actually child abuse.

142. As a direct and proximate result of the substantive due process violations of Defendants Lay and Watson, Jamel and Jackie lost custody of T.R. and L.B., had to defend a dependency petition, were listed as perpetrators of child abuse with Childline, Jamel, Jackie, T.R. and L.B., suffered damages as detailed below.

**COUNT V**

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

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

144. Defendant Chambersburg and Defendant Fogel, in his official capacity as the District Attorney of Franklin County, both have a policy of exclusively relying upon presumption tainted medical experts affiliated with the American Academy of Pediatrics, including the Penn State Child Safety Team, Dias, Crowell and Choudhary for the medical investigation into whether suspected child abuse is, in fact, actually child abuse.

145. Defendant Chambersburg and Fogel have a policy of doing no independent medical investigation of their own into whether suspected child abuse is, in fact, actually child abuse, that is not tainted with the presumption of abuse propounded by the American Academy of Pediatrics.

146. Defendant Chambersburg and Fogel have a policy of not training the medical experts upon whom they exclusively rely for medically investigating whether suspected

child abuse is, in fact, actually child abuse, including the Penn State Child Safety Team, Dias, Crowell and Choudhary, that a presumption shifts the burden of proof in violation of due process.

147. Defendant Chambersburg's and Defendant Fogel's policy of relying exclusively upon presumption tainted medical experts to conduct the medical investigation, policy of failing to conduct its own non-presumption tainted medical investigation and policy of failing to train the medical experts upon whom they exclusively rely about how a presumption shifts the burden of proof in violation of due process, or some combination of one or more of these policies violated the Billups family's right to the presumption of innocence and due process during the investigation of whether the report of L.B.'s suspected child abuse was in fact, actually child abuse.

148. As a direct and proximate result of the substantive due process violations of the policy or policies of Defendant Chambersburg and Defendant Fogel, Jamel was incarcerated for 414 days and had to defend criminal charges and as a direct and proximate result Jamel, Jackie, T.R. and L.B., suffered damages as detailed below.

#### **COUNT VI**

**SUBSTANTIVE DUE PROCESS CLAIM AGAINST**  
**FRISBY AND SULCOVE FOR**  
**FAILING TO CONDUCT AN INDEPENDENT**  
**NON-PRESUMPTION TAINTED INVESTIGATION AND FOR**  
**RELYING EXCLUSIVELY UPON THE**  
**PRESUMPTION TAINTED MEDICAL INVESTIGATION AND**  
**CONCLUSION OF THE PENN STATE<sup>9</sup> CHILD SAFETY TEAM,**  
**DIAS, CROWELL AND CHOUDHARY**

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

150. Pursuant to Pennsylvania law, “for any case of child abuse involving crimes against children”, “[t]he district attorney shall convene an investigative team” that includes “a health care provider, county caseworker and law enforcement official” “to avoid duplication of fact-finding efforts and interviews”. Upon information and belief, Defendant Sulcove was the representative of the District Attorney charged with convening the mandated investigative team, a team consisting of, at a minimum, Defendants Dias, Lay and Frisby.

151. Upon information and belief, Defendant Sulcove emailed Defendant Dias on October 21, 2009, 8 days prior to Jamel’s arrest, and indicated she was “the lead prosecutor on a case the Chambersburg police are investigating” and that she was “looking forward to ... working with” Defendant Dias. Upon information and belief, Defendant Frisby “updated” Sulcove “as much as possible”. Defendant Sulcove is sued to the extent she participated in the investigation of L.B.’s clinical and imaging findings prior to the filing of charges and the arrest of Jamel.

152. Either Chambersburg and/or Fogel have a policy of exclusively relying upon the presumption tainted medical investigation by doctors affiliated with the American Academy of Pediatrics such as those on Penn State’s Child Safety Team, including Defendants Dias, Crowell and Choudhary, or they did not have such a policy and Defendants Frisby and Sulcove, with reckless indifference to the substantive due process rights of Jamel, failed to conduct or procure their own independent medical non-presumption tainted burden shifting investigation and relied exclusively upon Defendants Dias, Crowell and Choudhary and Defendant Penn State’s Child Safety Team.

153. The failure of Defendants Frisby and Sulcove to conduct or procure their own independent medical non-presumption tainted burden shifting investigation violated Jamel’s

right to the presumption of innocence, an unbiased investigation and due process during the investigation of whether the report of L.B.'s suspected child abuse was in fact, actually child abuse.

154. As a direct and proximate result of the substantive due process violations of Defendants Frisby and Sulcove, Jamel was incarcerated for 414 days and had to defend criminal charges and Jamel, Jackie, T.R. and L.B., suffered damages as detailed below.

### **COUNT VII**

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

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

156. In January of 2010, Jackie was not satisfied that Penn State's Child Safety Team had insisted upon a complete workup for alternative medical explanations, and sought a second opinion about what might have caused L.B.'s intracranial hemorrhage and 16 asymptomatic rib fractures with no associated internal injuries from Penn State radiologist Dr. Julie Mack. Dr. Mack is an assistant professor of radiology employed by Defendant Penn State. Dr. Mack is the principle investigator of two research projects at Penn State involving pediatric neuro-imaging funded by Penn State's Center for Emerging Neurotechnology and Imaging within the Penn State's department of Neurosurgery. Dr. Mack has recently published articles in peer reviewed medical journals about the source of infant subdural hemorrhage. Dr. Mack's papers suggest that the long held hypothesis of the shaken baby syndrome that bridging veins are torn from violent shaking is anatomically unlikely and is considered controversial by proponents of the shaken baby syndrome hypothesis such as Defendants Dias, Crowell and Choudhary.

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

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

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

160. In 2010, Defendant Dias wrote a chapter of a book edited by Carole Jenny about child abuse. The chapter authored by Defendant Dias is entitled, "The Case For Shaking". Defendant Dias concedes that violent shaking may not be the cause of brain injury directly, as has been hypothesized by proponents of the shaken baby syndrome for over 30 years. Dias continues to defend the shaking mechanism, "To those who argue that the contribution of shaking to the pathophysiology of AHT [stands for Abusive Head Trauma - the new term for shaken baby syndrome] is a hypothesis lacking a sufficient evidentiary base, the consistent and repeated observation that confessed shaking results in stereotypical injuries that are so frequently encountered in AHT ... *is* the evidentiary basis for shaking." Emphasis in the original.

161. No credible doctor or scientist would consider "confessions" scientific evidence of any hypothesis, particularly when the "confessions" are procured by prosecutors offering to remove the threat of the death penalty if the parent "confesses" and/or by County

agencies offering to return children to one parent if the other parent “confesses” to shaking the child. That law enforcement can obtain confessions from innocent defendants, even confessions to murder and rape, has been well documented by the Innocence Project with DNA evidence.

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

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

164. Upon information and belief, Penn State Hershey Medical Center is a medical facility, children’s hospital and medical school wholly owned by the Pennsylvania State University whose mission is “enhance the quality of life” through, among other things, “the discovery of knowledge that will benefit all.”

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

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

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

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

169. In 2009, Dr. Squier and Dr. Mack co-authored an article entitled "Anatomy and development of the meninges: implications for subdural collections and CSF circulation" in the medical journal *Pediatric Radiology*. The article is a seminal paper that challenged the long held hypothesis that the subdural hemorrhage in shaken baby cases was caused by violent tearing of the bridging veins, veins that traverse from the surface of the brain the superior sagittal sinus, and suggested that the blood vessels in the dura itself are a more anatomically likely source of the hemorrhage often found in alleged shaken baby cases. The significance of subdural bleeding originating from the dural vessels is that dural vessels leaking blood does not presuppose violent trauma as does the bridging vein rupture hypothesis advocated by doctors affiliated with the American Academy of Pediatrics. Some proponents of the shaken baby syndrome, and in particular, doctors affiliated with the American Academy of Pediatrics, consider Dr. Mack's and Dr. Squier's paper to be controversial.

170. Upon information and belief in late September of 2010, Defendant Dias, a doctor in the neurosurgery department, on at least one occasion, went to office of Defendant Eggli, the chair of the radiology department, and demanded that Eggli forbid Dr. Mack from

writing expert reports and testifying for criminal defendants and parents in dependency proceedings.

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

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

173. Upon information and belief, this policy was not applied by Penn State to Defendant Crowell in her investigation and testimony of whether suspected child abuse was, in fact, actually child abuse on behalf of the Commonwealth of Pennsylvania and Defendant FCCYS in Jamel's case or in any other criminal or dependency cases.

174. Upon information and belief, this policy was not applied by Penn State to Defendant Dias in his investigation and testimony of whether suspected child abuse was, in fact,

actually child abuse on behalf of the Commonwealth of Pennsylvania in Jamel's case or in other criminal cases and on behalf of County Children and Youth agencies in dependency cases.

175. Counsel for the Jamel filed a motion for a protective order against Penn State to enjoin Penn State from prohibiting Dr. Mack from testifying at Jamel's criminal trial that she was an assistant professor of radiology at Penn State. The Franklin County Court of Common Pleas denied the motion.

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

177. On December 12, 2010, the jury heard Defendant Crowell testify that she was a Penn State assistant professor of pediatrics at Jamel's criminal jury trial. Upon information and belief, Crowell was paid by Penn State and was covered by the liability insurance policy of Penn State for the time she testified.

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

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

180. On December 14, because she was testifying for a criminal defendant accused of child abuse and pursuant to the policy imposed upon her by Defendant Eggli and

Penn State, the jury did not hear that Dr. Mack was a Penn State assistant professor of radiology at Jamel's criminal jury trial. Dr. Mack was not paid by Penn State and was not covered by the liability insurance policy of Penn State for the time she testified.

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

182. As a result, the policy of Penn State continues to restrict Dr. Mack from testifying that she holds a faculty appointment with Penn State and that the policy continues to deny Dr. Mack the other accoutrements of her employment with Penn State that have been and upon information and belief, will be, afforded to Defendants Dias, Crowell and Choudhary, should the FCCYS call them as witnesses in the FAIR Hearing on Jamel and Jackie's request for expungement, thus putting Jamel and Jackie at a distinct disadvantage as a result of Penn State's policy.

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

184. Penn State's policy and practice violates the public service mission of the Pennsylvania State University and the mission of the Penn State Hershey Medical Center to "enhance the quality of life" through, among other things, "the discovery of knowledge that will

benefit all". Penn State's "discovery of knowledge" should truly be available to "all" including criminal and dependency defendants and not just to the prosecution.

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

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

187. In cases where it is claimed that the medical evidence purportedly proves abuse was committed and even purportedly proves the time frame the abuse was allegedly committed, such as L.B.'s and other alleged shaken baby cases, Penn State's policy regarding expert witness reports and testimony in criminal and dependency cases puts all defendants in such cases and parents at a significant disadvantage in securing the opinions of physicians at Penn State and violated Jamel's and Jackie's, and all defendants similarly situated, right to prepare a defense and to effective assistance of counsel and to due process rights secured by the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendment of the U.S. Constitution and the Pennsylvania Constitution.

188. It is clearly established federal law that due process at a minimum requires prosecutors (and County agencies) and the experts providing reports to prosecutors not have a presumption and burden shifting bias and to refrain from recklessly misrepresenting facts and/or medical research in order to secure a conviction or guilty plea and that a defendant has a right to prepare a defense and to effective assistance of counsel to test the prosecution's case. Due process also provides

defendants with a right to effective assistance of counsel to test the prosecution's case, including the retention of medical experts to review and interpret radiology and medical records.

189. As a direct and proximate result of Penn State's policy and practice of withholding the use of Penn State's letterhead and logo, withholding the use of faculty title in communications and withholding the benefit of liability insurance for physicians testifying for the defense but not withholding such for physicians testifying for the prosecution, Jamel and Jackie were denied effective assistance of counsel and right to test the prosecution's case and their right to a fair trial under due process of law causing them anxiety and emotional distress.

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

activity is within the scope of their employment. The Billups family seeks to have Penn State apply that policy uniformly to those employees who are willing to testify for defendants and parents accused of shaking their children.

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

**COUNT VIII**

**SUBSTANTIVE DUE PROCESS CLAIM AGAINST  
FRANKLIN COUNTY AND FCCYS FOR A  
POLICY OF EXTENDING VOLUNTARY PLACEMENT AGREEMENTS  
BEYOND 30 DAYS AND FAILING TO CONTAIN DUE PROCESS NOTICES IN  
VIOLATION OF PENNSYLVANIA LAW AND IN  
VIOLATION OF DUE PROCESS OF LAW AND FOR  
FAILING TO TRAIN EMPLOYEES ABOUT  
DUE PROCESS CONSIDERATIONS OF VOLUNTARY SAFETY PLANS**

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

193. It is well-established law that parents have a fundamental right to the care, custody and control of their children that cannot be curtailed without due process, even when there is a compelling state interest to investigate allegations of child abuse.

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

195. Defendant Franklin County and/or Defendant FCCYS have a custom, practice and policy of extending voluntary safety plans and voluntary placement agreements beyond 30 days in violation of Pennsylvania law and in violation of due process of law.

196. Franklin County and/or FCCYS have a custom, practice and policy of failing to provide notice of due process rights to parents as provided in 55 Pa. Code § 3130.65 which mandates that any voluntary placement agreement “shall contain, (1) A statement of the parents' or legal guardian's right to be represented by legal counsel or other spokesperson during conferences with the county agency about voluntary placement. (2) A statement of the parent's or legal guardian's right to refuse to place the child. (3) A statement of the parents' or legal guardian's right to visit the child, to obtain information about the child, and to be consulted about and approve medical and educational decisions concerning the child while the child is in voluntary placement. (4) A statement of the parents' or legal guardian's right to the immediate return of the child upon request of the parent or guardian, unless the court orders the legal custody of the child to be transferred to the county agency.”

197. The very form provided by Defendant Franklin County and Defendant FCCYS demonstrates a policy of failing to provide the notices required by Pennsylvania law in voluntary placement agreements because such notices are absent and lacking from the form provided by Franklin County and FCCYS for voluntary placement agreements.

198. Such mandatory notices are absent and lacking from the voluntary placement agreement prepared by Defendant Coccagna on the form provided by FCCYS and entered into by the Billups family on or about December 20, 2010.

199. Defendant Franklin County and Defendant FCCYS failed to train its employees that requiring a parent to agree not to be alone with his children is a curtailment of the fundamental right of a parent to the care, custody and control of his children.

200. Defendant Franklin County and Defendant FCCYS failed to train its employees that requiring a parent to agree to unannounced and announced visits by FCCYS employees is a curtailment of the fundamental right of a person to be secure in their home from warrantless government intrusion.

201. Defendant Franklin County and Defendant FCCYS failed to train its employees about the procedural due process considerations of the use coercive threats to remove children if parents don't agree to voluntary safety plans and/or voluntary placement agreements that curtail parental rights to the care custody and control of their children and the right to be secure in their home without warrantless government intrusion.

202. The policy of Defendant Franklin County and Defendant FCCYS not to provide required notices and the policy to extend the voluntary safety plans and voluntary placement agreements beyond 30 days and not to train its employees about the procedural due process considerations of the use of voluntary safety plans and/or voluntary placement agreements which curtail parental rights, are a direct and proximate cause of Jamel's loss of the right to be alone with his children and Jamel's and Jackie's right to be secure in their home without warrantless government intrusion for more than 30 days without a court order in violation of due process protections against such arbitrary actions afforded under the 4<sup>th</sup> and 14<sup>th</sup> amendments of the United States Constitution and Pennsylvania law.

203. The policy resulted in the coerced "voluntary" curtailment of Jamel's right to be alone with his children and Jamel's and Jackie's coerced waiver of their right to be secure in their home for 180 days without court supervision or due process over the arbitrary actions of the Defendants in violation of due process and caused the Billups family damages.

204. The Billups family seeks Injunctive relief to prevent Franklin County and FCCYS from continuing to violate due process in the coercive use of “voluntary” safety plans against other families similarly situated.

205. The Billups family seeks compensatory and punitive money damages as articulated below against Defendant Franklin County and Defendant FCCYS for the period of time in violation of Pennsylvania law and constitutionally impermissible 150 days, from January 19, 2011 to June 18, 2011, during which Jamel could not be alone with his own children and Jamel and Jackie were subject to announced and unannounced visits from Defendant Coccagna and Tuner, as a result of the policy of the Defendants not to provide required notices, the Defendants’ policy to extend the voluntary placement agreements beyond 30 days and Defendant FCCYS’ failure to train its employees about due process considerations when they threaten to remove children from parents unless the parents agree to curtail their right to the care, custody and control of their children and their right to be secure in their home.

**COUNT IX**

**DEFENDANTS TUNER AND COCCAGNA**  
**VIOLATED PLAINTIFFS’ DUE PROCESS RIGHTS BY**  
**EXTENDING THE VOLUNTARY PLACEMENT AGREEMENT**  
**BEYOND 30 DAYS AND BY**  
**FAILING TO PROVIDE THE REQUIRED NOTICES**

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

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

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

209. Defendants Tuner and Coccagna knew or should have known of the due process provisions contained in Pennsylvania law concerning voluntary placement agreements that required notice in the agreement of the right for a parent to be represented in discussions about the voluntary placement agreement with the agency, the right to refuse to enter into a placement agreement, the right to information about their children during the term of the placement agreement and the right to demand the immediate return of their children.

210. Defendants Tuner and Coccagna knew or should have known of the due process provisions contained in Pennsylvania law, and required by the 14<sup>th</sup> Amendment, concerning voluntary placement agreements mandating that a voluntary placement agreement, including a voluntary placement agreement in which the county agency decides the child(ren) can be placed in the home of the parent with supervision and is called a “voluntary safety plan” cannot be extended beyond 30 days without a court order.

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

212. With reckless indifference to the due process rights of the Billups family, Defendants Tuner and Coccagna failed to provide any due process to the Billups family or to ensure that the voluntary safety plan prepared by the Defendants on or about December 20, 2010, contained a notice of the right for a parent to be represented in discussions about the voluntary placement agreement with the agency, the right to refuse to enter into a placement agreement, the right to information about their

children during the term of the placement agreement and the right to demand the immediate return of their children or that the plan not extend beyond 30 days.

213. With reckless indifference to the due process rights of the Billups family, Defendants Tuner and Coccagna extended the voluntary placement agreement for 180 days, a full 150 days beyond that permitted by Pennsylvania law and due process of law as provided in the 4<sup>th</sup> and 14<sup>th</sup> amendments of the United States Constitution.

214. The reckless indifference of Defendants Tuner and Coccagna to the due process rights of the Billups family in failing to provide the required notices in the voluntary placement agreement and in extending the voluntary placement agreement beyond 30 days from January 19, 2011 to June 18, 2011, without a court order is a direct and proximate cause of Jamel not being able to be alone with his own children and Jamel and Jackie being subject to announced and unannounced visits from Defendants Coccagna and Tuner without any court order or court supervision over the arbitrary actions of the Defendants in violation of due process protections against such arbitrary actions afforded under the 4<sup>th</sup> and 14<sup>th</sup> amendments of the United States Constitution and Pennsylvania law.

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

216. The Billups family seeks punitive and compensatory money damages as articulated below against Defendants Tuner and Coccagna for the period of time in violation of Pennsylvania law and the constitutionally impermissible 150 days, from January 19, 2011 to June 18, 2011, during which Jamel could not be alone with his own children and Jamel and Jackie were subject to unannounced visits from Defendants Coccagna and Tuner.

**DAMAGES**

217. Jamel, Jackie, T.R. and L.B. seek compensatory, punitive and other damages as the court may find appropriate for the following:

- a. For the 414 days that Jamel was incarcerated for a crime he did not commit and was separated from Jackie, T.R. and L.B., from October 29, 2009 to December 17, 2010.
- b. For the 169 days T.R. and L.B. were in the legal custody of FCCYS, from October 19, 2009 to April 5, 2010.
- c. For the 120 days T.R. and L.B. were in foster care and the physical custody of FCCYS, from October 19, 2009 to February 15, 2010.
- d. For the 150 days during which the voluntary placement agreement was extended beyond the 30 days permitted by Pennsylvania law and in violation of due process of law, from January 19, 2011 through June 18, 2011, that Jamel could not be alone with his children and Jamel and Jackie were subject to warrantless announced and unannounced visits from FCCYS.
- e. The cost of daycare for T.R. and L.B. during the 594 days in which Jamel was either incarcerated for a crime he did not commit or was denied the right to be alone with his children after his acquittal as a result of being coerced into a “voluntary” safety plan, from December 29, 2009 to June 18, 2011.
- f. Attorneys’ fees, costs and other expenses to expunge the Childline report and defend and appeal the dependency.
- g. Attorneys’ fees and costs to defend Jamel’s criminal charges.
- h. Jamel and Jackie experienced anxiety and emotional distress as a result of their separation and separation from their children.

- i. The false Childline report adversely impacts Jamel's and/or Jackie's ability to seek employment as an educator, daycare provider or any other occupation requiring a child abuse background check.
- j. The false Childline report adversely impacts Jamel's and/or Jackie's ability to volunteer to help with children's programs at church, participate in scouting type programs, coach baseball, softball, football or any other of their children's sport's teams or participate in any activity that requires a child abuse background check.
- k. T.R. and L.B. will have to live the rest of their lives, and emotionally cope, with the knowledge that their mother and father were both indicated for abusing L.B., that Jamel was arrested and incarcerated and falsely accused of abusing L.B. and that they both were taken away from their parents and placed in foster care.

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

Respectfully submitted,

/s/ Mark D Freeman  
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**DECLARATION**

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

Signed this 26 day of September, 2011

Jamel Billups  
Jamel Billups

Jacqueline Rosario  
Jacqueline Rosario