

**IN THE STATE COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

MATTHEW HERNANDEZ *and* )  
WILAIRAT “TUCKEY” HERNANDEZ )  
*Plaintiffs,* )

vs. )

Civil Action File No.  
25A04450

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ADRIAN RICHARDS, TIM CONNER, )  
Individually and in their Official Capacities )  
as Employees of the Forsyth County Sheriff’s )  
Office, CAMILLE WIGGINS, Individually )  
and in her Official Capacity as Forensic )  
Interviewer, STEPHANIE V. BLANK )  
CENTER FOR SAFE AND HEALTHY )  
CHILDREN, INC., DR. STEPHEN A. )  
MESSNER, M.D., DR. EMMANUEL )  
PENA, M.D., DR. RACHEL KRIEGER, )  
M.D., CHILDREN’S HEALTHCARE OF )  
ATLANTA, INC., CANDICE BROCHE, )  
Individually and in her Official Capacities )  
as Georgia Dept. of Human Services and )  
Director of the Georgia Dept. of Family and )  
Children Services, CARA BOWEN, )  
Individually and in her Official Capacity as )  
the Director of the Fulton County Dept. of )  
Family and Children Services, MACKENZIE )  
MCCRAY, NIKKI CANNON, Individually )  
and in their Official Capacities as Case )  
Managers for the Forsyth County Dept. of )  
Family and Children Services, SARA )  
ELLERS, Individually and in her Official )  
Capacity as DFCS Investigator, *and* )  
ASHLEY SMITH, Individually and in her )  
Official Capacity as the Case Plan Supervisor )  
for the Fulton County Dept. of Family and )  
Children Services, )  
*Defendants.* )

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**JURY TRIAL DEMANDED**

**COMPLAINT FOR DAMAGES DUE TO VIOLATIONS OF 42 U.S.C. § 1983 AND  
STATE LAW**

NOW COMES Plaintiffs Matthew Hernandez (“Plaintiff Hernandez”), Wilairat “Tuckey” Hernandez (“Plaintiff Tuckey”) (together “Plaintiffs”), and file this Complaint, showing the Court as follows:

**PART I. JURISDICTION AND VENUE**

1.

Plaintiffs are subject to the jurisdiction and venue of this Court.

2.

Defendant **ADRIAN RICHARDS** (“Defendant Richards”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **100 East Courthouse Square, Cumming, GA 30040**.

3.

Defendant **TIM CONNER** (“Defendant Conner”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **100 East Courthouse Square, Cumming, GA 30040**.

4.

Defendant **CAMILLE WIGGINS** (“Defendant Wiggins”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **5304 Dunwoody Gables Dr., Dunwoody, GA 30338**.

5.

Defendant **STEPHANIE V. BLANK CENTER FOR SAFE AND HEALTHY CHILDREN by CHILDREN’S HEALTHCARE OF ATLANTA** (“Defendant SVB Center”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **192 Anderson Street SE, Suite 125, Marietta, GA 30060.**

6.

Defendant **DR. STEPHEN A. MESSNER, M.D.** (“Defendant Messner”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **816 Ponce de Leon Place NE, Atlanta, GA 30306.**

7.

Defendant **DR. EMMANUEL PENA, M.D.** (“Defendant Pena”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **1285 Little Willeo Rd., Marietta, GA30068** or **192 Anderson Street SE, Suite 125, Marietta, GA 30060.**

8.

Defendant **DR. RACHEL KRIEGER, M.D.** (“Defendant Krieger”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **192 Anderson Street SE, Suite 125, Marietta, GA 30060.**

9.

Defendant **CHILDREN’S HEALTCHARE OF ATLANTA** (“Defendant CHOA”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **192 Anderson Street SE, Suite 125, Marietta, GA 30060**.

10.

Defendant **CANDICE BROCHE** (“Defendant Broche”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **87 Littlefield Rd., Adairsville, GA 30103**.

11.

Defendant **CARA BOWEN** (“Defendant Bowen”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **6435 Shiloh Rd. Suite C, Alpharetta, GA 30005**.

12.

Defendant **MACKENZIE MCCRAY** (“Defendant McCray”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **2370 Main Street, Apt. 2208, Duluth, GA 30096**.

13.

Defendant **NIKKI CANNON** (“Defendant Cannon”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this

matter, and may be served at **6435 Shiloh Rd. Suite C, Alpharetta, GA 30005.**

14.

Defendant **SARA ELLER** (“Defendant Eller”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **3133 Brookshire Way, Duluth, GA 30096.**

15.

Defendant **ASHLEY SMITH DELIFER** (“Defendant Smith”) is one of the persons who is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs in this matter, and may be served at **103 Bristol Sq., Woodstock, GA 30188 or 6435 Shiloh Rd., Suite C, Alpharetta, GA 30005.**

## **PART II. FACTUAL BACKGROUND OF CLAIMS**

16.

Plaintiffs share two biological children together, Arya Hernandez and Emma Hernandez.

17.

On March 13, 2023, Plaintiff Tuckey gave birth to baby Emma.

18.

Plaintiff Tuckey’s labor and delivery with Baby Emma was difficult, which included an induction with Pitocin that forces contractions, which lasted for over 17 hours.

19.

Plaintiffs noticed differences between Baby Emma and her older sister, Arya, such as strange markings that Arya never presented with during her newborn or infancy stages.

20.

On June 6, 2023, Plaintiffs brought Baby Emma to Dr. Ananda Chunduri, Baby Emma's pediatrician, after noticing Baby Emma's left leg swollen.

21.

At this pediatrician visit, Plaintiffs showed Dr. Chunduri a photo of a bruise that appeared behind Baby Emma's ear that disappeared the week prior to the visit.

22.

Dr. Chunduri referred Plaintiffs to Children's Healthcare of Atlanta ("CHOA") for further diagnostics, to include x-rays, and took Baby Emma to CHOA the same day pursuant to the medical advice of the pediatrician.

23.

Baby Emma was admitted into CHOA for further testing, which included x-rays that were reviewed by Defendant Dr. Stephen A. Messner, M.D. ("Defendant Messner").

24.

Defendant Messner is one of the few Child Abuse Pediatricians ("CAP") employed at CHOA.

25.

After spending less than two hours reviewing Baby Emma's case, Defendant

Messner diagnosed Baby Emma with “non-accidental trauma” (“NAT”), or child abuse.

26.

When coming to his child abuse diagnosis, Defendant Messner never reviewed any of Baby Emma’s birth records, Plaintiff Tuckey’s prenatal medical history or either of Plaintiffs’ parental medical history, and only gathered some information at bedside.

27.

In reaching his child abuse diagnosis, Defendant Messner also ignored Baby Emma’s Platelet and D-Dimer levels, as well as the observation of low vitamin D levels discovered by his colleague, Dr. Dana C. Olszewski, who serves as a pediatric orthopedic specialist at CHOA.

28.

Defendant Krieger, a radiologist at CHOA, performed and reviewed x-rays on Baby Emma, as well as consulted with Dr. Chunduri after Defendant Messner misdiagnosed Baby Emma with NAT/child abuse.

29.

Dr. Chunduri informed Defendant Krieger that there were no previous concerns for NAT with the Hernandez family, and that Baby Emma “was overall well-appearing except for the leg when she saw them [that] morning.”

30.

Defendant Krieger also noted the times when Plaintiffs noticed medical concerns for

Baby Emma and sought medical care for those concerns, and that Baby Emma was current on all recommended preventive care.

31.

Defendant Krieger only considered the radiology reports and Defendant Messner's note of NAT diagnosis when making her decisions on diagnostics or treatments.

32.

Defendant Kreiger failed to consider Baby Emma's abnormal platelet and D-Dimer levels and deferred to Defendant Messner's lack of diagnostic investigation in deciding to diagnose Baby Emma with NAT.

33.

Defendants Messner and Krieger made false accusations of child abuse against Plaintiff Tuckey allegedly committed against Baby Emma to the Georgia Department of Family and Children Services.

34.

Defendant Sara Eller ("Defendant Eller") was the on-call Investigator for Family Preservation at the Georgia Department of Family and Children Services who was dispatched to CHOA upon Defendant Messner's false report of child abuse.

35.

On or about June 6, or June 7, 2023, Plaintiff Tuckey was asked to come out of the hospital room in the middle of the night while Plaintiff Hernandez slept, under the pretense



that the doctor had questions about her breastfeeding.

36.

Upon leaving the hospital room to speak with the doctor, Plaintiff Tuckey was ambushed by Defendant Richards, and Defendant Conner, and Defendant Eller, who attempted to interrogate her about alleged child abuse against Baby Emma.

37.

During this interrogation, Defendant Eller lied to Plaintiff Tuckey by telling her that she worked for CHOA, and not that she was an investigator with DFCS.

38.

Plaintiff Tuckey is an immigrant from Thailand and requires an interpreter for certain instances, such as discussing medical issues, in order to have a full understanding of what is being asked or said.

39.

Plaintiff Tuckey was not provided an interpreter during this ambush and interrogation that occurred in the middle of the night.

40.

Plaintiff Tuckey requested to get her husband, Plaintiff Hernandez, or to record the conversation in order to have her husband involved to have a full understanding of what was going on, what all was being asked, and what all was being stated.

41.

Defendants Messner, Richards, Conner, and Eller denied Plaintiff Tuckey access to an interpreter.

42.

On or about June 8, 2023, Baby Emma was discharged from CHOA to her aunt and uncle, Tuk and Tony Schulz, as “relative placement.”

43.

On or about June 13, 2023, a Parent-to-Parent (P2P) meeting was due to be held under the Georgia Department of Human Services (“DHS”) Partnership Parenting Guide, which was never performed.

44.

On June 15, 2023, visitation was set up at THRIVE Center in Forsyth, Georgia where Mr. Schulz was interviewed by Defendant Eller.

45.

On or about June 15, 2023, Debora Cox served as the Court Appointed Special Advocate (“CASA”) for the Hernandez children and visited the Schulz home and observed that the children were “obviously happy and cared for.”

46.

On or about June 22, 2023, Defendant Richards applied for an arrest warrants against Plaintiff Tuckey for aggravated battery and cruelty to children against Baby Emma.

47.

On the Affidavit in support of the arrest warrant application, Defendant Richards intentionally made false statements stating such as “[Plaintiff Tuckey] did maliciously cause bodily harm to the person of Emma Hernandez by rendering useless a member of Emma’s body: left side of rib cage, to wit: accused caused fractures to three, possibly four of the victim’s ribs on the left side of her body” and “did . . . willfully deprive the child of necessary sustenance to the extent that the child’s health or well-being is jeopardized, to wit: accused caused fractures to the victim’s right femur and right tibia.”

48.

Defendant Richards made these assertions under oath or affirmation for Plaintiff Tuckey’s arrest, despite no investigation ever being done to determine that a crime had been committed, nor to determine that Plaintiff Tuckey committed the alleged crimes.

49.

At a later hearing, Defendant Eller would admit on the stand in open court while under oath that no DFCS investigation was ever conducted in this case.

50.

Law enforcement did no investigation independent from DFCS.

51.

Plaintiffs were deprived of the custody and parental rights of their children solely based on the false accusations of Defendant Messner who performed very little diagnostic testing before erroneously diagnosing Baby Emma with NAT/child abuse.

52.

On or about June 22, 2023, Plaintiff Tuckey was arrested pursuant to the warrants obtained by Defendant Richards through false statements made to the magistrate in application for the warrants, which included two counts of aggravated battery and two counts of cruelty to children in the first degree.

53.

Plaintiff Tuckey spent approximately four days in jail prior to posting bond, but was subjected to a no-contact order, which prohibited her from having any contact with her children, Emma and Arya, as well as her husband, Plaintiff Hernandez.

54.

Plaintiff Tuckey was permitted to take her breast pump with her into the jail and continue pumping, but her milk was thrown out due to the lack of freezer to keep the milk fresh.

55.

During her incarceration, Plaintiff Tuckey's attorney, Tracey Waldrop, attempted to conduct an attorney-client privileged visit with Plaintiff Tuckey, but was refused access to Plaintiff Tuckey by Defendants Conner and Richards.

56.

Plaintiff Tuckey entered into an agreement with Defendants McCray and Cannon in order to continue providing breast milk for Baby Arya, to be dropped off with McCray or

Cannon, who would then transport the milk to the Schulz home.

57.

On or about June 23, 2023, Baby Emma went for a follow-up skeletal exam with Defendant Pena.

58.

During this June 23, 2023 exam, Defendant Pena performed an invasive, internal pelvic exam on Baby Emma, an infant, which was not supported or justified by any of the symptoms with which Baby Emma presented, and despite no child sexual abuse being suspected.

59.

At no time was Plaintiff Hernandez, who still had his legal parental rights intact, ever informed of this pelvic exam, nor did Dr. Pena or any agent of CHOA seek to obtain Plaintiff Hernandez's informed consent for the exam.

60.

On that same day, Meghan Noblett served as the attorney and Guardian ad Litem for Emma and Arya Hernandez and visited the Schulz's home.

61.

On or about July 6, 2023, Mackenzi McCray is assigned as the new DFCS case manager for the Hernandez case.

62.

On or about July 8, 2023, the DFCS case manager was required to submit the Case Plan to present to the Hernandez family under O.C.G.A. § 15-11-200, which was never completed or presented.

63.

On or about July 10, 2023, the Schulz noticed redness or a rash on the bottom of Baby Emma's feet and were referred to CHOA by DFCS.

64.

On or about July 11, 2023, Arya was removed from the Schulz home and placed into the foster home of Kymberly Cromartie while Baby Emma remained at CHOA.

65.

On or about July 12, 2023, Baby Emma was put on a feeding tube while admitted into CHOA, despite CHOA failing to obtain informed consent or even to inform the parents or guardians of her condition. In addition, CHOA, its doctors, nurses, or other agents administered 4 vaccines without a call to parents or guardians to inform them or obtain their informed consent.

66.

During Baby Emma's six-day stay at CHOA beginning on or about July 10, 2023, treatments were apparently approved by Defendant Nikki Cannon ("Defendant Cannon"), one of the DFCS case managers who supervised Defendant McCray.

67.

Also during this stay, Baby Emma was subjected to an invasive, internal pelvic exam by Defendant Pena, despite there being no evidence of sexual abuse or other grounds to order or perform such an exam on an infant.

68.

At no time up to this point did Plaintiff Hernandez lose legal custody to make medical decisions for his children and should have been the sole decision maker of medical care provided to the children at the time of these treatments and diagnostics.

69.

Defendant Cannon falsely accused the Schulzs of allowing Plaintiff Tuckey to come over and abuse Baby Emma during her July 2023 stay at CHOA.

70.

On or about July 19, 2023, the Schulz family discovered a disturbing Instagram post by Defendant Eller that included a video posted on October 3, 2022 where Defendant Eller discusses details of incurring brain damage and multifaceted mental health issues and admitting that she should not be working due to needing a year of rehabilitation.

71.

Mr. Schulz downloaded Defendant Eller's Instagram video and ailed it to Governor Brian Kemp's office.

72.

Also on or about July 19, 2023, Plaintiff Hernandez and the Shulzs had a 2:00 p.m.

visitation scheduled with the children, where Defendant McCray transported the children to THRIVE Center.

73.

At this visitation, Defendant McCray arrived thirty (30) minutes late with no baby bag or diapers, no bottles, no milk, and no blanket for Baby Emma, and where Baby Emma was clothed in nothing but a short-sleeved outfit with her skin cold to the touch and mottled.

74.

When Plaintiff Hernandez confronted Defendant McCray of Baby Emma's conditions, Defendant McCray was very dismissive and told him that the air conditioning was not on her.

75.

In addition to these things, Plaintiff Hernandez noticed mild spots of discoloration on Baby Emma's right leg during a diaper change, which were confirmed not to be present at the six-day stay at CHOA prior to the visitation.

76.

Plaintiff Hernandez also noticed that Defendant McKenzie did not properly install the car seats when transporting the children.

77.

On or about August 8, 2023, Plaintiffs received a copy of a forensic interview performed on Arya on June 6, 2023 by Defendant Camille Wiggins, LMSW, a forensic



specialist at the Stephanie V. Blank Center for Safe and Healthy Children.

78.

During this forensic interview, Plaintiffs discovered that Defendant Wiggins engaged in abusive and coercive conduct during the interview with Arya in order to obtain incriminating statements against Plaintiff Tuckey.

79.

These abusive and coercive interrogation tactics by Defendant Wiggins included asking leading questions to a three-year-old, not permitting Arya to leave until she tells Defendant Wiggins that “Mommy hurt Emma”, and lying in her report in stating that Arya stated things like “Mommy lies” when Arya really said “Mommy lost,” or that “Mama hurt Emma” and “Mama and Dada fight and is mean to Baby Emma and Emma crying,” or during the interview replacing the word “stomach gas” with “stomach gash”, “fly to head” as “fight head”, when in reality, these things were intentionally redefined by Defendant Wiggins in order to make the interview sound incriminating against Plaintiffs.

80.

From about August 3, 2023 through August 8, 2023, the children were placed in the home of Jonathan and Jennifer Williams who provided respite care while Kym, the children’s foster parent, attended a conference for work.

81.

During the time that the children were in the Williams home, the Williams family

noticed presentation of symptoms that indicated Baby Emma might have medical issues, such as a sunken/misshaped skull, holding her joints in an unnatural way, consistent constipation, among other things. Upon noticing these issues, Jennifer Williams informed DFCS of her observations.

82.

On various occasions, Defendants under DFCS refused to inform Defendant Hernandez of medical appointment locations or dates of Baby Emma, or why she was attending these appointments.

83.

Despite the Partnership Parenting Guide by DFCS and DHS requiring that biological parents receive photos and communications on an ongoing and consistent basis during placements, Plaintiffs did not receive any photos of the children until September of 2023, and the children missed various visitation appointments or arrived late.

84.

Also throughout various times in which the children were placed within foster care or the Schulzs' home, Defendants Cannon, McCray and Smith would not permit Plaintiff Hernandez to tell Arya the truth about why she could not come home.

85.

Defendants Cannon, McCray and Smith further told Plaintiff Hernandez to lie to Arya and tell her that "mommy was cleaning up the house for [the children] to come home"

or other things that Plaintiff Hernandez could tell Arya instead of the truth.

86.

During an adjudication hearing on or about October 4, 2023 through October 6, 2023, imaging performed by CHOA between June and July of that same year were presented that showed that Baby Emma suffered from bone demineralization of the skull of lambdoid sutures, further pointing to Baby Emma being a medically fragile child and not a victim of child abuse.

87.

On or about October 30, 2023, both CASA and GAL Noblett testified that reunification should be the goal of the case.

88.

After testifying in Plaintiffs' favor at the adjudication hearing, Jennifer Williams contacted Rebecca Davidson, the DFCS Regional Lead for the Williams' area, informing her of how scared Williams was for testifying favorably for Plaintiffs, stating that she feared retaliation against her family for her testimony.

89.

In response to Jennifer Williams's candidness about her fears of retaliation, Davidson informed Williams that "Forsyth County beats to their own drum," and counseled Williams not to accept anymore children from that county.

90.

A few days later, Jennifer Williams received a letter from DFCS informing her that her home would be closed and the Williams family would no longer receive placements, citing “personal family reasons”, insinuating that the closure was voluntary.

91.

On or about October 19 2023, Jennifer Williams emailed Davidson summing up their phone conversation from a few days prior to the home closure, and making it clear that the closure was not voluntary and the assertion that the reason for the closure was due to “personal family reasons” was false.

92.

On or about November 11, 2023, the Williams family spoke with Annette Gary, an assistant in Defendant Broce’s office, to inquire about their home being closed to foster care in apparent retaliation for supporting the Hernandez family.

93.

During this conversation, the Williams family reiterated that there are plenty of qualified biological relatives and fictive kin that would be able to take in the children for placement in lieu of foster care, and expressed concerns that this was not being considered by the DFCS agency against its own policies.

94.

The Williams family further voiced their concerns that the children were not allowed to see relatives that they grew up with, nor were they being exposed to their Thai culture or

attending their extracurricular activities.

95.

At all times throughout this conversation, the Williams family expressed that the issue of their home's closure was secondary to the children having a stable relative placement rather than the current foster home that, at that time, had close to a dozen respite placements.

96.

In November, Defendants Cannon and McCray approved of the children traveling out of state on a plane with their foster mom, Cromartie, without consulting with Plaintiff Hernandez, because this would take away Plaintiff Hernandez's visits with Arya and Emma.

97.

Defendants Cannon's and McCray's approval of this out-of-state trip without consulting with Plaintiff Hernandez was also against DFCS policy materials, and required Plaintiff Hernandez's counsel to bring up these policies in order to prevent the trip.

98.

Throughout the foster placement of the children, Arya becomes depressed and disinterested in normal activities in which she once loved taking part.

99.

On or about November 28, 2023, Plaintiff Hernandez received information that the children were being placed in another foster home with Jacques and Jessica Ervin, despite

biological relatives and fictive kin being available, once again against DFCS policy.

100.

In addition to the new foster placement, Plaintiff Hernandez was informed that visitations would be reduced from 6 times per week to 3 times per week, and that the purpose of the new placement was a foster-to-adopt.

101.

On or about November 28, 2023, Jennifer Williams contacted Defendant Cannon to inquire as to why DFCS policies were not being followed, why no relatives or fictive kin placements were being considered, and why DFCS was failing to abide by protocol by examining each home, checking if the placements are CPR-certified, and other policies and regulations that were being violated in the Hernandez case.

102.

During this conversation, Jennifer Williams offered to open her home as fictive kin, to which Defendant Cannon replied that she “does not owe [them] a reason why [their] home was not being considered for fictive kin placement.”

103.

During this conversation, Defendant Cannon remained hostile and aggressive, dismissive of Jennifer Williams’s legitimate concerns, and provided no comment when asked whether she realized the trauma her actions are causing to the children.

104.

Throughout the time in which the children were placed in the Ervin home on a foster-to-adopt basis, Baby Emma attended multiple sick visits, which include bleeding in the diaper that Jessica Ervin did not address until therapist, Erin Wallis, tells her that this requires a physician visit.

105.

The Ervins also tell the children to call them “Mommy” and “Daddy,” and call their son “brother”, despite there being no adoption at this time.

106.

On or about December 4, 2023, after refusing to lie and say that Plaintiff Tuckey abused their children, both Plaintiffs were indicted on two counts of aggravated battery, family violence, and two counts of cruelty to children in the first degree.

107.

On or about December 13, 2023, Defendants Cannon, McCray and Smith told Plaintiff Tuckey not to record conversations she had with them because they “need Tuckey to trust [them] because they trust Tuckey.”

108.

On or about January 18, 2024, Judge Heather Dunn of the Forsyth County Juvenile Court finally permitted Plaintiffs to get additional testing for Baby Emma, so long as they notified DFCS and ordered DFCS to submit a reunification plan, effectively ending DFCS’s attempt at fostering-to-adopt.

109.

At no time during DFCS's attempts at fostering-to-adopt the children were Plaintiffs ever convicted of any wrongdoing.

110.

On or about February 26, 2024, Dr. Jeffrey Sacks, M.D., a pediatric cardiologist with Kaiser Permanente, examined Baby Emma and diagnosed her with acrocyanosis, a medical condition that causes the hands, feet, and other parts of the body to present with a bluish, white, or gray coloration. Defendant Smith was present at this visit.

111.

Throughout March of 2024, Plaintiffs work to get DFCS to make appointments for Baby Emma with various medical providers, including Dr. Carolyn Lovell with Augusta Genetics Counseling, as well as with holistic physicians and pulmonologists that required referrals, and Krishnamurthy Genetics.

112.

Defendant Cannon consistently held a hostile attitude towards the Hernandez family, including calling Arya Hernandez a racist on at least one occasion for hiding behind Plaintiff Hernandez after being frightened by Defendant Cannon's attitude.

113.

Around March of 2024, the children were briefly placed in another foster home before being placed back into the Schulzs' home.



114.

On June 10, 2025, Plaintiffs were acquitted of all charges against them.

115.

During the two-week trial, the State did not call a single law enforcement officer to testify against Plaintiffs or state under oath before a jury that Plaintiffs abused their children.

116.

The State's case-in-chief consisted solely on the testimony of CHOA doctors and DFCS agents, including, but not limited to Defendants Eller and McCray.

117.

At all relevant times, Defendants Messner, Pena and Krieger were agents of CHOA and the Stephanie V. Blank Center for Safe and Healthy Children ("SVB Center") and working at the direction and in the furtherance of the interests of CHOA and SVB Center.

118.

At all relevant times, Defendant Wiggins was an agent of the SVB Center and working at the direction and in the furtherance of the interests of CHOA and SVB Center.

119.

At all relevant times, Defendant Smith worked as the Case Plan Supervisor/Administrator for the Forsyth County DFCS Office, and was responsible for directing, supervising and training Defendants McCray and Cannon, and to ensure compliance with DFCS policies, procedures, regulations, and Georgia law.

120.

At all relevant times, Defendants McCray, Cannon, and Eller worked under the supervision, at the direction, and in furtherance of the interests of Defendants Smith

121.

At all relevant times, Defendant Cara Bowen worked as the Director of the Forsyth County DFCS Office, and was responsible for directing, supervising, and training Defendants McCray, Cannon, Eller, and Smith, and to ensure her entire office's and its agents' compliance with DFCS policies, procedures, regulations, and Georgia law.

122.

At all relevant times, Defendant Broce worked as the Commissioner of the Georgia Department of Human Services and Georgia Department of Family and Children Services, and was responsible for ensuring that all DFCS offices in the State of Georgia complied with DFCS policies and procedures, as well as all regulations and Georgia law.

123.

Defendant Broce was also responsible for ensuring compliance with training requirements and that no on particular office in the State felt free to do its own thing apart from what was permitted by law.

124.

Defendants Smith, Bowen and Broce were also aware of the mental health issues experienced by Defendant Eller, and that Defendant Eller was not fit to perform her duties

at all relevant times of her involvement in this case.

125.

Each Defendant receives federal and state funding for their work in alleged child abuse cases, and each works closely together for the furtherance of the same goals.

126.

Each Defendant has gone beyond the statutorily-authorized powers and duties under the Children's Justice Act and other relevant laws, and have worked together to deprive innocent families of their parental rights while denying adequate medical care to medically fragile children suffering from undiagnosed conditions that lead to their illnesses and injuries.

### **PART III. FEDERAL CLAIMS UNDER § 42 U.S.C. 1983**

#### **Count 1: False Arrest**

127.

Plaintiffs incorporate all previous paragraphs.

128.

Plaintiffs have a clearly-established constitutional right to be free from unlawful searches, seizures, and arrest without probable cause, or arguable probable cause.

129.

Defendant Richards violated Plaintiff Tuckey's rights under the Fourth Amendment by stating in his warrant application that the grounds for his probable cause were an

assertion that Plaintiff Tuckey committed acts that constituted aggravated battery and cruelty to children in the first degree, despite doing no investigation apart from Defendant Messner's misdiagnosis, and having no evidence, circumstantial or otherwise, that Plaintiff Tuckey was the one who committed any alleged crime against Baby Emma.

130.

Defendant Richards intentionally made false and misleading statements to the magistrate to obtain the arrest warrant against Plaintiff Tuckey.

131.

Because of these false and misleading statements, Plaintiff Tuckey was arrested, spent 4 days in jail while having to have her breast milk dumped due to lack of proper refrigeration, was subsequently prosecuted for these charges until the nightmare ended two years later with a full acquittal, and suffered severe mental, emotional, reputational, and monetary damages.

132.

All wrongful charges alleged by this violation resolved in Plaintiff Tuckey's favor.

### **Count 2: Malicious Prosecution**

133.

Plaintiffs incorporate all previous paragraphs.

134.

Defendant Richards violated Plaintiff Tuckey's clearly-established rights under the

Fourth Amendment by stating in his warrant application that the grounds for his probable cause were an assertion that Plaintiff Tuckey committed acts that constituted aggravated battery and cruelty to children in the first degree, despite doing no investigation apart from Defendant Messner's misdiagnosis, and having no evidence, circumstantial or otherwise, that Plaintiff Tuckey was the one who committed any alleged crime against Baby Emma.

135.

Defendant Richards intentionally made false and misleading statements to the magistrate to obtain the arrest warrant against Plaintiff Tuckey.

136.

Because of these false and misleading statements, Plaintiff Tuckey was arrested, spent 4 days in jail while having to have her breast milk dumped due to lack of proper refrigeration, was subsequently prosecuted for these charges until the nightmare ended two years later with a full acquittal, and suffered severe mental, emotional, reputational, and monetary damages.

137.

Given the willful and intentional lie on his application for an arrest warrant before a magistrate, Defendant Richards's prosecution against Plaintiff Tuckey was done with malice and conscious disregard for Plaintiff Tuckey's rights.

138.

All wrongful charges alleged by this violation resolved in Plaintiff Tuckey's favor.

**Count 3. Violation of Right to Parent**

139.

Plaintiffs incorporate all previous paragraphs.

140.

At all relevant times, Defendants Messner, Pena and Krieger, as well as Defendants CHOA and SVB Center, were working alongside DFCS and its agents to build a false case against Plaintiffs, effectively becoming the sole investigators for the case.

141.

At all relevant times, no independent investigation was done by DFCS, its agents, or law enforcement apart from the incomplete diagnostic testing performed by Defendants Messner, Pena and Krieger.

142.

Defendants Richards and Conner assisted Defendant Eller in interrogating Plaintiff Tuckey without an interpreter, falsely accusing her of child abuse, without an attorney present, without mirandizing her, and all under the pretense of a doctor needing to talk to her about breastfeeding in the middle of the night while her husband, Plaintiff Hernandez, slept in their daughter's hospital room.

143.

This interrogation was done for the purpose of depriving Plaintiffs of their rights to live freely and parent their own children without the interference or intrusion of

government.

144.

Defendant Richards then sought an arrest warrant against Plaintiff Tuckey by intentionally providing false and misleading information to a magistrate judge as the basis for his probable cause.

145.

Defendants Messner, Pena, and Krieger, while acting under the supervision and at the direction of Defendants CHOA and SVB Center, and in furtherance of Defendants CHOA's and SVB Center's interests, purposely failed to perform adequate diagnostic testing and ignored evidence that should have alerted them that Baby Emma was medically fragile, which was the cause of her ailments for which her parents brought her to CHOA.

146.

At all relevant times, Defendants Messner, Pena, and Krieger, while acting under the supervision and at the direction of Defendants CHOA and SVB Center, and in furtherance of Defendants CHOA's and SVB Center's interests, were acting at the direction of law enforcement by essentially being delegated all investigative and decision-making authority.

147.

Defendants Messner, Pena, and Krieger, while acting under the supervision and at the direction of Defendants CHOA and SVB Center, and in furtherance of Defendants CHOA's and SVB Center's interests, performed continuous medical testing and treatments

without obtaining informed consent from Plaintiff Hernandez, who never lost legal custody or decision-making authority over Baby Emma's medical care.

148.

Defendant Pena performed an unnecessary and invasive internal pelvic exam on Baby Emma, an infant at the time, without justification, and without obtaining informed consent from Plaintiffs for the procedure.

149.

Defendants McCray, Cannon, and Smith repeatedly caused the children to miss visitation appointments, made medical decisions without legal authority, failed to obtain informed consent from Plaintiff Hernandez regarding medical testing and treatment before approving these treatments, attempted to adopt Plaintiffs' children out to another family despite no adjudication of guilt in the criminal case that remained pending when the children were placed in a foster-to-adopt home (despite the criminal case still pending and against the recommendation of CASA and the GAL), refused to place the children with relatives or fictive kin without a court order, despite that being DFCS policy, demanded that Plaintiff Hernandez lie to his children about why they could not come home, and failed to follow basic policies, procedures, regulations, and federal and state laws in their handling of the Hernandez case.

150.

Defendant Eller failed to do her job and investigate the Hernandez case prior to



removing Arya and Baby Emma from the home of their loving parents.

151.

Defendant Wiggins, under the direction and supervision of Defendant SVB Center, conducted a biased, leading forensic interview with Arya and intentionally made false statements and misinterpretations and misrepresentations in her report on the forensic interview.

152.

Defendants Broce and Bowen directed, or at least failed to supervise, the misconduct committed by their DFCS co-defendants, and permitted Defendant Eller to work the Hernandez case in its early stages, despite knowing that Defendant Eller suffered from mental instability and was not fit to return to work.

153.

At all relevant times, Defendants acted under color of law.

154.

Defendants' actions caused Plaintiffs to lose physical custody of their children for two years, with months of zero contact with their children and with each other, and deprived Plaintiffs from their right to make medical decisions or bring their children up with their religious and cultural values.

**Count 4. Violation of Sixth Amendment Right to Counsel**

155.

Plaintiffs incorporate all previous paragraphs.

156.

Defendants Richards and Conner violated Plaintiff Tuckey's clearly-established right to counsel under the Sixth Amendment by denying her access to her attorney while she was incarcerated while acting under color of law, which was done intentionally and with a conscious indifference to Plaintiff Tuckey's rights.

**Count 5. Conspiracy to Violate Rights**

157.

Plaintiffs incorporate all previous paragraphs.

158.

Defendants violated various clearly-established rights held by Plaintiff, including all rights listed in each count of this Complaint.

159.

At all relevant times, Defendants each were acting under color of law.

160.

Defendants' conduct demonstrate an agreement between Defendant CHOA, Defendant SVB Center, its agents Defendants Messner, Pena, Krieger and Wiggins, as well as DFCS and its agents, Defendants McCray, Cannon, Eller, Smith, Bowen, and the Forsyth County Sheriff's Office and its agents, Defendants Richards and Conner, to maliciously accuse, prosecute, incarcerate, and break apart Plaintiffs and their family.

161.

Because of Defendants' agreement and conduct to violate Plaintiffs' rights, Plaintiffs were deprived of various rights under the First, Fourth, and Fourteenth Amendments, as well as others.

**Count 6. First Amendment Retaliation Claim**

162.

Plaintiffs incorporate all previous paragraphs.

163.

Plaintiff Hernandez had a clearly-established right to speak the truth to his daughters as to why they were not permitted to come home, which was protected speech under the First Amendment.

164.

Defendants McCray, Cannon and Smith violated Plaintiff Hernandez's clearly-established First Amendment rights by forcing him to lie to his children about why they could not come home instead of telling them the truth.

165.

Defendants McCray, Cannon and Smith repeatedly violated Plaintiff Hernandez's rights to his children, including in making medical decisions, visitations, and attempting to adopt the children out to another family, all due to Plaintiff Hernandez's protests to being forced to tell lies to his children and the way in which DFCS was handling their case.

166.

Plaintiff Hernandez was then indicted after further protests and refusal to turn on his wife, Plaintiff Tuckey and lie to say that she abused Baby Emma when she did no such thing.

167.

Defendants McCray's, Cannon's, and Smith's bad conduct as described in the foregoing paragraphs were for the purpose of chilling speech.

#### **PART IV. STATE LAW CLAIMS**

##### **Count 7. False Imprisonment**

168.

Plaintiff incorporates all previous paragraphs.

169.

Defendants Messner, Pena and Krieger made false accusations based on professionally inadequate diagnostic testing and assumptions referred Plaintiffs to DFCS and law enforcement.

170.

Defendant Richards applied for an arrest warrant application against Plaintiff Tuckey without evidence sufficient to establish probable cause, and therefore intentionally lied, embellished, and misconstrued facts presented to the magistrate judge in order to obtain the warrant.

171.

Defendant Richards's facts alleged in the warrant application were largely due to the false statements made by Defendants Messner, Pena and Krieger, who were at all times working as agents of Defendants CHOA and SVB Center.

172.

Plaintiff Tuckey was arrested pursuant to the arrest warrant despite the lack of evidence to establish probable cause, or even arguable probable cause, that she specifically committed any crime.

#### **Count 8. Defamation**

173.

Plaintiffs incorporate all previous paragraphs.

174.

Defendants Messner, Pena and Krieger made false allegations against Plaintiffs of child abuse based on professionally inadequate diagnostic testing, including ignoring certain medical information that should have alerted them to an underlying medical condition as the cause of Baby Emma's injuries.

175.

Defendants' allegations against Plaintiffs were of the nature of a crime, which led to criminal prosecutions against both Plaintiffs.

176.

Plaintiffs suffered damages as a result of the defamatory statements.

**Count 9. Negligence**

177.

Plaintiff incorporates all previous paragraphs.

178.

Defendant Richards has a statutory duty pursuant to O.C.G.A. § 16-5-41 to protect against false imprisonment.

179.

Defendant Richards failed in that duty by failing to adequately investigate the Hernandez case and knowingly and intentionally making false allegations against Plaintiff Tuckey in an arrest warrant application that led to her arrest.

180.

Defendants Eller, McCray, Cannon, Smith, Bowen, and Broce have a statutory duty pursuant to O.C.G.A. § 49-5-8, as well as other statutory and regulatory provisions, as well as their own policies, to investigate accusations of child abuse, as well as follow their own policies and procedures, and federal and state laws when handling cases.

181.

Defendants Eller, McCray, Cannon, Smith, Bowen, and Broce failed to abide by their duty to investigate the Hernandez case, as well as by refusing to abide by policies, procedures, and federal and state laws when handling the Hernandez case.

182.

Defendants CHOA, SVB Center, and their agents, Defendants Messner, Pena, and Krieger had a duty to perform adequate diagnostic testing and to obtain informed consent from the legal parent or guardian before administering any treatments or tests.

183.

Defendants CHOA, SVB Center, Messner, Pena, and Krieger failed to provide the adequate diagnostic testing, and failed to obtain informed consent on medical treatment and testing performed.

184.

Defendants Richards and Conner had a duty to respect and uphold the constitutional rights of Plaintiff Tuckey when her attorney attempted to visit her during her unfortunate incarceration.

185.

Defendants Richards and Conner failed to respect and uphold the constitutional rights of Plaintiff Tuckey when they denied her access to her attorney.

186.

Defendant Wiggins had a duty to perform an independent and unbiased forensic interview of Arya Hernandez, and provide factual and truthful findings in her report.

187.

Defendant Wiggins failed to perform an independent and unbiased forensic interview

of Arya Hernandez and failed to provide a report with factual and truthful findings.

189.

Because of Defendants' various breaches in their duties, Plaintiffs suffered harm, including, but not limited to deprivation of rights, a broken family, not being permitted to see or interact with their children, mental and emotional harms, and monetary damages.

190.

Plaintiff suffered emotional, mental, reputational, and monetary damages as a result of Defendant Jefferson's and Defendant Ireland's actions of having Plaintiff detained, arrested, and imprisoned, and Plaintiff is entitled to relief for these damages, which caused Plaintiff to suffer significant pain and distress during and after the illegal arrest and incarceration.

#### **Count 10. Attorney's Fees**

191.

Plaintiffs incorporate all preceding paragraphs.

192.

Plaintiffs suffered reputational, and monetary damages as a result of Defendants' actions of having Plaintiffs detained, arrested, imprisoned, deprived of their parental rights, and incurring at least tens of thousands of dollars of damages in litigating and defending their innocence, and therefore Plaintiffs are entitled to all attorney's fees and costs of this action when resolved in their favor.



193.

Plaintiffs' claims arise under the 42 U.S.C. §1983 Civil Rights Act, and Plaintiffs are therefore entitled to attorney's fees pursuant to 42 U.S.C. § 1988.

**Count 11. Punitive Damages**

194.

Plaintiffs incorporate all preceding paragraphs.

195.

The actions of each of the Defendants, as set forth above, show intentional and willful misconduct, wantonness, and that entire want of care which raises the presumption of a conscious indifference to the consequences of their actions. Accordingly, Plaintiffs seek punitive damages pursuant to O.C.G.A. § 51-12-5.1 and Federal law.

**WHEREFORE**, Plaintiffs pray:

- (a) That Summons issue requiring Defendants to be and appear in this Court within the time provided by law to answer this Complaint;
- (b) That Plaintiffs receive a Jury Trial;
- (c) That Plaintiffs receive favorable Judgment against Defendants for Compensatory Damages and General Damages as provided by law;
- (d) That Plaintiffs be awarded Punitive Damages and Attorney's Fees as provided by law including but not limited to 42 U.S.C. §1988;

(e) That Plaintiffs have such other additional relief as the Court may consider equitable and/or appropriate, given the circumstances of this case.

(f) A Jury Trial of 12.

Respectfully Submitted, this 23rd day of June, 2025.

/s/ Jessica Burton

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