No. 15-

IN THE

Supreme Court of the United States

LEANNA SMITH,

Petitioner,

v.

STATE OF ARIZONA, KRISTI MUELLER, BRENT MUELLER, TAMMY MACALPINE, BONNIE BROWN, AMANDA TORRES, KATHRYN COFFMAN, DIGNITY HEALTH, CHILDHELP CHILDREN CENTER OF ARIZONA, KATRINA BUWALDA, BUWALDA PSYCHOLOGICAL SERVICES PLLC, BRENDA BURSCH, UNIVERSITY OF CALIFORNIA, LOS ANGELES and MARINA GRECO,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In a decision that conflicts with the prevailing rule in virtually every other Circuit, and affirms a District Court ruling that was based, in part, on a theory that has flatly been rejected by this Court, the Ninth Circuit affirmed the District Court's dismissal of a case asserting claims that accrued against largely unrelated parties *after* the filing of the initial complaint in a prior case, based on *res judicata* stemming from the subsequent judgment in the prior case. The same District Court had previously refused to allow the filing of an amended complaint in the prior case to assert the claims, instead directing that a new case be filed.

The questions presented are:

1. Whether claims that accrue *after* the filing of the initial complaint in a prior action, and in particular claims against parties who are largely unrelated to the parties in the prior proceeding, can be barred by *res judicata* stemming from the judgment in the prior action where the claims were neither added to the prior action by a supplemental pleading, nor tried in the prior action by consent, and, if so, under what circumstances?

2. Whether the Ninth Circuit committed plain error when it erroneously dismissed the wrong malicious prosecution claim

after expressly determining that a malicious prosecution claim would not be barred by *res judicata*?

PARTIES TO THE PROCEEDINGS

The Petitioner, Leanna Smith, is an individual and mother of a then-minor child referred to herein as "CR."

Respondents are two separate groups of care providers: (1) a pediatrics doctor, psychologists and therapists (collectively referred to as "Professional Respondents") that contracted with the State of Arizona to provide services to CR while CR was in the custody of Arizona's Child Protective Services (hereinafter, "CPS") and (2) CPS case workers and supervisors responsible to the care and treatment of CR while in CPS custody (hereinafter referred to as "CPS Employee Respondents"").

The Professional Respondents include Marina Greco (hereinafter, "Greco"), a therapist employed by Childhelp Children Center of Arizona who served as CR's therapist; Brenda Bursch (hereinafter, "Bursch"), a psychologist contracted by the State of Arizona to evaluate CR and provide therapy recommendations regarding CR; Katrina Buwalda (hereinafter, "Buwalda"), a psychologist contracted with the State of Arizona to handle visitation between CR and her mother; Buwalda's employer, Buwalda Psychological Services PLLC; Kathryn Coffman (hereinafter, "Coffman"), a pediatric doctor; and Dignity Health, fka Catholic Healthcare West dba St. Joseph's Hospital and Medical Center (hereinafter, "Dignity Health"), Coffman's employer who contracted with the State of Arizona to

investigate medical child abuse claims against Petitioner and provide recommendations to CPS regarding those claims.

The CPS Employee Respondents consist of Kristi and Brent Mueller, CR's CPS- appointed foster family; Tammy Macalpine, the CPS case manager responsible for CR; Bonnie Brown, a CPS supervisor; Amanda Torres, a CPS investigator; and the State of Arizona, employer of each of these individuals.

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The Ninth Circuit's opinion is unpublished. It is located at 2015 U.S. App. LEXIS 12864. A copy of the opinion is reprinted in the Appendix to the Petition ("App.") at App. A at p. 1a.

JURISDICTION

The Ninth Circuit entered judgment on July 24, 2015. The Ninth Circuit denied a Petition for Rehearing and Petition for Rehearing *en banc* on September 4, 2015. App. E at p. 25a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment to the U.S. Constitution. Parents have a fundamental liberty interest under the XIV Amendment to the U.S. Constitution in the care, custody and control of their children. *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923). This fundamental right includes a fundamental constitutionally protected liberty interest in ongoing "companionship and society" with the child, and this includes protection of the relationship between the parent and child even if the child is in state custody. *Kelson v. the City of Springfield*, 767 F.2d 651, 654 (9th Cir. 1985). This protected interest "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Conduct that deprives a parent of that interest violates due process. *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010), *cert. denied*, 562 U.S. 1219

(2011), citing *Porter v. Osborn*, 546 F3d 1131, 1137 (9th Cir. 2008).

2. 42 U.S.C. § 1983. Liability under § 1983 exists for damaging the parent child relationship where the conduct of the state actor is so intrusive "as to be the equivalent of termination of that relationship." *Kelson, supra* at 654 ("The parent-child relationship is constitutionally protected and governmental interference with it gives rise to a section 1983 action for damages."); see also *Harry A. v. Duncan*, 351 F. Supp. 2d 1060, 1068, 2005 U.S. Dist. LEXIS 1172, *18-19 (D. Mont. 2005).

3. The Fifth and Fourteenth Amendments to the U.S. Constitution. Parties have a right to their "day in court" before being precluded by a prior *in personam* judgment. The basis for limiting the operation of *res judicata* to parties involved in the previous litigation is the Due Process Clause. *Hansberry v. Lee*, 311 U.S. 32, 40-41 (1940) ("[i]t is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process….and judicial action enforcing [such as judgment] against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments requires."); *Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 327 n.7 (1979) (violation of due process for judgment to be binding on non-party litigant); *Martin v. Wilks,* 490 U.S. 755, 762 (1989) ("[E]veryone should have his day in court."); *Brown*

v. Ticor Title Ins. Co, 982 F.2d 386, 392 (9th Cir.1992), *cert. dismissed as improvidently granted*, 511 U.S. 117 (1994)(violation of due process to apply *res judicata* to preclude money claims by absent members of a class action settlement who did not have the right to opt out). See also *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. ___, 131 S. Ct. 2541, 2551 (U.S. 2011) (class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only").

INTRODUCTION

The Ninth Circuit applied the doctrine of *res judicata* to bar Petitioner's claims under § 1983 in the case below (hereinafter, "Smith III"), based on the judgment in a prior lawsuit (hereinafter, "Smith I"),[1] against largely unrelated parties. To the extent it applied *res judicata* to claims that accrued after the initial complaint in the prior suit, the Ninth Circuit's decision conflicts with the prevailing rule adopted in virtually every other Circuit, as well as in a prior panel decision in the Ninth Circuit itself, that such claims are *not* barred unless they have actually been added to the prior case by a supplemental pleading. To the extent it affirmed the District Court's *res judicata* ruling based on what the

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[1] The complaint asserting the claims at issue was originally filed in the District Court but that case (hereinafter, "Smith II") was dismissed without prejudice (App. A at pp. 2-3a, ¶2) and an identical complaint was filed in the Maricopa County Superior Court and thereafter removed to the District Court by Respondents. App. C at p. 13-14a, H at p. 49a, I at p. 58a and J at p. 117a. The Ninth Circuit found that the dismissal of Smith II was without prejudice or preclusive effect on Smith III. App. A at pp. 2-3a, ¶. 2.

District Court perceived to be privity between the Defendants in Smith I and those in Smith III, the Ninth Circuit's decision sanctions use of the "virtual representation" theory of *res judicata* that was rejected by this Court in *Taylor v. Sturgell*, 553 U.S. 880 (2008) (hereinafter, "*Taylor*").

The Ninth Circuit held that claims asserted in Smith III, including those against individuals who were not parties in Smith I, were precluded, even though the events giving rise to them occurred *after* the initial complaint in Smith I was filed, because those events occurred *before* a second amended complaint was filed in Smith I. App. A at p. 4a.[2] The Ninth Circuit ignored that, as an *amended,* as opposed to *supplemental* complaint, the second amended complaint in Smith I did not address claims that arose after the filing of the initial complaint but was limited to the transactions, occurrences, or events complained of in the initial Smith I complaint. It also ignored uncontroverted record evidence[3] that, although the events alleged in

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[2] The Ninth Circuit stated: "The operative complaint in *Smith I* was filed on December 23, 2010. We hold that any claim that was or could have been raised in that complaint is barred by res judicata…" App. A at p. 4a. But the pleading filed that day was Petitioner's second amended complaint (App. J).

[3] See Notice of Claim, reproduced at App. H at p. 47a, stating Petitioner discovered the facts that formed the basis for the Smith III complaint at the earliest on August 15, 2011, when the State of Arizona disclosed the records of CR's therapist, documenting her conversation with CR's psychologist in February, 2010, who directed the therapist to use the medical records and the psychologist's report to change CR's perception of her mother and how her medical condition had occurred

Smith III occurred before the second amended complaint was filed in Smith I, Petitioner did not learn of them until nearly eight months later. The Ninth Circuit further ignored, and therefore did not consider, that the liability of the Defendants in Smith III was in no way dependent upon the culpability of the Defendants in Smith I; that the events in Smith I or Smith III occurred at a different time and had a different motivation; and that the claims in Smith III can in no way be said to have arisen out of the same transaction or nucleus of facts. See *Lawlor v. National Screen Service Corp.,* 349 U.S. 322, 329 (1955); Compare App. I starting at p. 58a with App. J starting at p. 117a.

STATEMENT OF THE CASE

A. BACKGROUND OF THE LITIGATION.

CR was taken into CPS custody on September 3, 2008 based on reports by certain doctors and hospitals accusing Petitioner of Munchausen Syndrome by Proxy (medical child abuse). App. H at pp. 47-49a; App. I at p. 64a,¶ 25; and App. J at pp. 136a, ¶¶ 196, 199, p. 137a ¶¶ 205-06.

On March 22, 2010, Petitioner filed the complaint in Smith I against these doctors and hospitals for interference with parental custody by making false and malicious reports to CPS, resulting in CR being taken into CPS custody. App. G at pp. 39-40a; App H at pp. 47-48a. Petitioner included in that lawsuit claims against the Arizona CPS

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when she was younger . App. K at p 149a and L starting at p. 150a; See App. H at pp. 48a – 54a; App. I at p. 80-81a, ¶ 109 and p. 92a at ¶ 157.

investigators and case workers for taking custody based solely on the report without conducting any investigation into the allegations. App. F at pp. 32-33a at ¶¶ 5,6 and p. 34a; App. H at p. 47-48a; App. I at p. 85-86a ¶134; and App. G at p. 40a.

While Smith I was being litigated in the United States District Court for the District of Arizona, Arizona's Juvenile Court conducted a trial on a petition to terminate Petitioner's parental rights in CR. The allegations of medical child abuse were fully litigated before the Juvenile Court. After trial, the petition to terminate Petitioner's parental rights in CR was denied and the dependency petition was dismissed. App M at p. 154a.

After the Juvenile Court trial had concluded, but before the Juvenile Court entered its judgment, Petitioner filed a proposed third amended complaint (App. B at p. 8a)[4] to assert claims that were discovered shortly before the Juvenile Court trial commenced in August, 2011. Those claims involved manipulation of CR to believe her mother had caused her medical conditions. As a result of this

[4] A first amended complaint was filed by Petitioner prior to effecting service upon Defendants. The second amended complaint was filed on December 23, 2010, by Petitioner solely to correct various pleading deficiencies identified in the District Court's order denying Defendants' motion to dismiss. *Smith v. Barrow Neurological Inst.*, 2010 U.S. Dist. LEXIS 127313, 2010 WL 4955549 (D. Ariz. Dec. 1, 2010) ("Plaintiff believes that amending the complaint will cure any existing pleading defects as to Count II. Plaintiff is encouraged to do so, because the present complaint fails to allege the requisite state action with regard to, inter alia, Defendants Alfano and Retake.").

manipulation, CR did not attend the Juvenile Court trial and even today does not want any contact with her mother. App. M at p. 154a; App. I at p. 98a ¶ 177, p. 100a, ¶ 184.

The District Court denied leave to file the proposed third amended complaint precisely because it added new parties and new allegations. The District Court stated that Petitioner should file those claims in a separate case. App. G at p. 40a, discussed supra at pp. 24-25. Indeed, a different District Court judge in Smith I later concluded, without hearing, that it had been frivolous under 28 U.S.C. § 1927 for Petitioner even to have sought leave to file the proposed third amended complaint and imposed a sanction on Petitioner's counsel.[5] App. B at p. 7a; App. F at p. 37a ¶ 9; See *Smith v. Barrow Neurological Inst.*, 2013 U.S. Dist. LEXIS 18687 (D. Ariz. Feb. 11, 2013) ("It is ordered GRANTING defendants' request for sanctions under Rule 37(b) for discovery failures and 28 U.S.C. § 1927 for plaintiffs filing of a frivolous third amended complaint.")

Petitioner thereafter filed Smith II, containing the later accrued claims, in the District Court. Smith II was dismissed without prejudice and Smith III was filed in the Maricopa County Superior Court

[5] That ruling was reversed by the Ninth Circuit due to the absence of a hearing. On remand, after hearing, the District Court determined that seeking leave to file the third amended complaint had not been frivolous. App. F at p. 37a ¶9.

for the State of Arizona, prior to being removed to the District Court by Respondents. App. A at pp. 2-3a, ¶2; App. B at pp. 7-9a; and App. C at pp. 13-14a.

Following the filing of answers, a joint proposed scheduling order, and a scheduling conference, the District Court dismissed Smith III on its own motion, reasoning that the claims should have been filed in Smith I and were now barred by *res judicata,* extending its order to all of the Respondents, including three who had failed to assert *res judicata* as an affirmative defense in their answers. App. B, starting at p. 6a; App. C starting at p. 10a; and App D starting at p. 19a.

B. PARTIES TO SMITH I AND SMITH III

The Smith I Defendants consisted of Scott Elton M.D. at Banner Health hospital and Doctors Charles Alfano and Harold Rekate at Dignity Health hospital. These Defendants made the initial report to CPS and recommended CPS take CR into state custody. The State of Arizona individual defendants were Laura Pederson the CPS investigator, Tammy MacAlpine the CPS case worker and Bonnie Brown, MacAlpine's supervisor. App. B at p. 6a, fn 1; App. J at pp. 118-119a. No *Monell v. Dep't of Soc. Servs.,* 436 U.S. 658 (1978) claims were asserted against the State of Arizona, Banner Health and Dignity Health. They were sued solely for *respondeat superior* liability on the state tort claims for the acts of their employees. App. J at p. 120a ¶15.

After Smith III was filed, the District Court in Smith I granted summary judgment for Elton, Banner Health, State of Arizona, Pederson,

MacAlpine and Brown. Defendants Alfano, Rekate and Dignity Health were dismissed by stipulation of the parties. The granting of summary judgment in Smith I was appealed to the Ninth Circuit. The ruling was affirmed. App. F at p. 25a.

The Smith III Defendants were therapist Marina Greco (hereinafter, "Greco") at Child Help, psychologist Katrina Buwalda (hereinafter, "Buwalda") at Buwalda Psychological Services, psychologist Brenda Bursch (hereinafter, "Bursch") at University of California, Los Angeles, CR's foster parents, Kristi Mueller and Brent Mueller (hereinafter, "Foster Parents"), CPS investigator Amanda Torres (hereinafter, "Torres") and doctor Kathryn Coffman (hereinafter, "Coffman"). App. I at pp. 59-62a. These Defendants were not parties to Smith I; their acts occurred after the original complaint in Smith I was filed; and those acts were not discovered until nearly eight months after the second amended complaint in Smith I had been filed. Id; App. B at p. 6a, see fn 1; compare App. I starting at p. 58a with App. J starting at p. 117a. Child Help, Buwalda Psychological Service and University of California, Los Angeles were only Defendants in Smith III insofar as they had *respondeat superior* liability for the state tort acts of their employees and for their failure to train and supervise their employees. App. I at p. 61a ¶14 and p. 102a.

Defendants Tammy MacAlpine (hereinafter, "MacAlpine") and Bonnie Brown (hereinafter, "Brown") are the only individual defendants in Smith III that were also parties in Smith I, but the

claims against them in Smith III were based on acts that occurred *after* Smith I was filled and did not involve any of the custody claims that were litigated in Smith I. App. I at p. 79a ¶¶103-04, pp. 80-81a ¶¶ 109-110, 112, p. 87a ¶ 143 to p. 93a at ¶ 162; compare with App. J, starting at p. 117a. The State of Arizona's only liability in Smith III was *respondeat superior* liability for the state torts asserted therein against its employees, Amanda Torres, the foster parents, MacAlpine and Brown and the state tort claim for negligent hiring, training and supervision of said employees. Dignity Health also had only *respondeat superior* liability for the state tort claims against its employee, Kathryn Coffman. App. I at p. 61a ¶14 and pp. 102-3a, ¶¶197-202.

C. SEPARATE FACTUAL BASIS FOR SMITH I AND SMITH III

The claim in Smith I was for intentional interference with Petitioner's custody of CR. App J at p. 144a ¶ 229 and p. 145a ¶ 234; App. G at p. 40a.[6] The factual basis for the claim was the report to CPS made by the doctor defendants and the failure to conduct any investigation into those claims by the CPS defendants before CR was taken into custody on September 3, 2008. App. J at p. 144a, ¶¶229-230 and p. 145a ¶¶ 234-36; App. G at p. 40a ("These complaints, which name defendants including hospitals, state agencies, and numerous doctors, focus primarily on the defendants' allegedly

[6] Count One was gross negligence/intentional interference with custody of a child. Count Two was a 42 U.S.C. § 1983 claim based on the interference with the custody between Petitioner and CR. App. J at pp. 144-45a.

wrongful conduct in causing Plaintiff to lose custody of her minor child, CR.")

Plaintiff filed the Complaint in Smith I on March 22, 2010. App. G at p. 39a. A first amended complaint was filed on August 2, 2010 as a matter of right before service upon the Defendants. A second amended complaint was filed on December 23, 2010 to correct defects in the pleading required by the District Court when it denied Defendants' motion to dismiss. See *infra*, p.13, n.4. As pointed out above, it is the second amended complaint that is referred to by the Ninth Circuit in its decision as "the operative complaint."

On November 23, 2009, the Juvenile Court ordered reunification of CR with Petitioner, App. I at p. 67a ¶46, but the very next day, CR entered the hospital complaining of problems with a shunt that had been surgically inserted just prior to CR going into CPS custody. *Id*, at p. 68a ¶¶49-50; App I p. 103a ¶¶204, 206. The shunt had been inserted to reduce pressure in CR's brain cause by a medical condition known as *psuedotumor ceribri*.[7] App. N at

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[7] The original report to CPS said CR was faking her condition or that it was being caused by Petitioner, but doctors thereafter discovered that she suffered from a real medical condition. App. J at p.136a, ¶¶ 196-199, p. 137a ¶¶203-04; App N at p. 158a ¶15 ("The issues raised by those at Banner Desert Hospital was that there was no medical explanation for the current symptoms experienced by [CR] at Banner Desert or just prior to that, St. Joseph's Hospital and there was no medical explanation for [CR] prior medical history or respiratory arrest. When [CR] was diagnosed with pseudo-tumer cerebri and a

p. 158a ¶15. Dr. Elton reported to CPS he found a small amount of air in the shunt and ventricle of the brain (never seen after that on CT scan) and that he was concerned that the only way the air could get into the shunt and ventricle was if the air was mechanically injected into the shunt. App I at p. 69a ¶¶55-56. Brown, Torres and MacAlpine immediately blamed Petitioner and immediately obtained an order rescinding reunification. Id. The allegations of Petitioner's involvement were not substantiated. App. I at pp. 70-71a ¶¶63-66 and p. 77a ¶79.

On September 28, 2010, CPS filed a petition to terminate Petitioner's parental rights (hereinafter, "the severance petition") in CR. The severance petition went to trial before the Juvenile Court from August 18 to September 14 2011. On January 24, 2012 the Juvenile Court denied the severance petition and dismissed the dependency petition regarding CR. App. M at p. 154a.

On August 15, 2011, three days before the Juvenile Court trial was set to start, and *some eight months after* the filing of the second amended complaint in Smith I on December 23, 2010, Petitioner learned *for the first time* that those responsible for providing services to CR had manipulated her to irrationally believe that her mother had drugged her to cause her coma incidents when she was younger, as a result of which CR does no longer wishes to have any contact or relationship

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shunt put in to relieve pressure on [CR]'s brain, that explained the current symptoms that [CR] was experiencing…."

with her mother. The revelation came by virtue of the discovery of notes of the therapists that were produced to Petitioner that day. App. H at p. 47a, App. K and App. L.

Among the facts discovered on August 15, 2011 were:

(1) On February 12, 2010, Bursch had a telephone conference with Brown and MacAlpine regarding CR. App. O at p. 162a. As a result of this meeting, MacAlpine sent Greco, CR's therapist, an e-mail that same day authorizing her to consult with Bursch regarding CR's therapy. App. I at p. 79a ¶¶103-04 and p. 80a.

(2) On February 19, 2010, Greco documented she had a conversation with Bursch about CR's therapy. Greco documented that Bursch had "[s]uggested integration of old medical records into treatment, which may allow clt to re-think past events, entertaining an alternate story. By report, this may be helpful, as clt has more availability for abstract thinking aeb her current age and developmental stage. Some records will be forwarded to me, following her review and consultation." App. K at p. 149a.

3) On March 17, 2010, Greco reported that CR "shared she and Mom have been getting into arguments more than ever over the past

month. By report, these include issues related to wearing shorts and using a cuss word. Clt shares she get upset when Mom says, 'that's not what I taught you.' Clt shared she just has a different view from M. By report, mom believes she is disrespecting her body by wearing shorts, and she believes she is not disrespecting her body.' The foster family allowed CR to watch movies, listen to music, wear clothing and use cuss words that Smith disapproved of and, upon information and belief, the CPS Defendants and the Foster Parents knew that this would cause confrontation between CR and Smith." App. I at p. 85a ¶¶ 131-132.

4) On April 27, 2010, the Foster Mother sent MacAlpine an e-mail stating that "[y]esterday, she came home from the visit very upset. We talked with her for awhile. She ended up wetting the bed last night." On the same day, Tammy MacAlpine sent the e-mail to Buwalda, Greco and Brown and asked if visits with Mother should be continued. Buwalda responded that the visits are "tough" and that CR "becomes very angry with her mother in them. She accuses her mother of lying to her. Should we consult with Dr. Bursch?" App. L at pp. 150-53a and App. I at p. 92a ¶157.

5) On April 28, 2010, Brown responded "[t]he concerns that I have is that [CR] is opening up to exploring/evaluating the ideology that

she has been raised in, and even though it is traumatic, if we stop the contact, how would she continue getting answers to the questions she has? I believe that the support that Dr. Buwalda, Ms. Greco, the foster family and Tammy have provided has given her the safety and security to question her mother. I am so amazed at her progress!! I would defer to whatever is therapeutically recommended." Greco then recommended continuing visits and states "I order the book recommended by Dr. Birch, \sic\ as reported by [CR]. We agreed to read and discuss it like a book review. It should arrive on Friday or Monday." *Id.*

6) On May 13, 2010, Greco documented in a Progress Note that "client and foster parents completed the recommended reading of the book, Sickened. Client reports she experienced many feelings as she realized commonalities between herself and the writer (child character in the book)." CR then expressed concern for the safety of her sister and made spanking allegations. A list of the allegations of abuse that then came from CR as a result of her reading the book "Sickened" was prepared by Greco and provided to law enforcement. App. I at p. 93a ¶ 160. [8]

[8] The Tempe Police Department and CPS conducted a forensic interview of CR and found no abuse, sexual or otherwise of CR or her younger sister JS. App. I at pp. 95-96a ¶¶167-68. Tempe Police found that the allegations amounted to "necessary/reasonable for hygiene purpose and without sexual

D. REJECTION OF PROPOSED THIRD AMENDED COMPLAINT IN SMITH I

The proposed third amended complaint in Smith I was filed on November 11, 2011, before the Juvenile Court ruled in the severance trial. The District Court denied the motion for leave to file the third amended complaint because:

> Granting Plaintiff's proposed amendment would, in effect, require this litigation to start over. New defendants would need to be served. Motions to dismiss would surely be filed, by new defendants in the case and existing defendants against whom new claims are asserted, replicating two rounds of such motions already completed.

App. G at p. 42a. The District Court concluded that Petitioner could file new litigation regarding her new claims:

> To the extent Plaintiff believes that some of the claims have been discovered only recently, such as the claims related to the removal of JS, she can assert those claims in new litigation.

App. G at pp. 42-43a.

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intent." *Id.* CPS' Investigator concurred with this assessment. *Id.*

E. DISTRICT COURT PROCEEDINGS IN SMITH III

Based on the ruling of the District Court in Smith I, Petitioner filed her newly discovered claims in a separate case, originally in the District Court (Smith II) and later in the Superior Court (Smith III). App. B at pp. 6-8a. After Petitioner amended the Superior Court complaint, Smith III was removed to the District Court. App. B at 9a.

Following removal, each of the Respondents filed an answer, several of which failed to assert *res judicata.* App. D at p. 20 at fn 1. A joint proposed scheduling order was filed and the District Judge held a scheduling conference. Following the scheduling conference but before entering a scheduling order (App. B at p. 6a), the District Judge, who had not been involved in Smith I, entered a *sua sponte* order, styled an order to show cause but entered after briefing without conducting a hearing, dismissing Smith III on grounds of *res judicata*. App. B and C. The District Judge ruled that the judgment in Smith I barred Plaintiff from pursuing the claims set forth in Smith III, finding an identity of claims, even though admitting that the Smith III claims had "different factual predicates," because the subsequent conduct on which the Smith III claims were based had been "spawned" by the conduct that gave rise to Smith I. The District Judge further found that there was privity between the Smith I and Smith III Defendants because each group had played "some role" in interfering with petitioner's parenting rights. The District Judge expressly relied for this conclusion upon *Tahoe-*

Sierra Pres. Community, Inc. v. Tahoe Regional Planning Agency, 322 F.3d 1064 (9th Cir. 2003), a pre-*Taylor* decision that espoused a virtual representation theory of privity. App C at p. 16a. ("[Privity exists where] the interests of the nonparty and party are so closely aligned as to be virtually representative.") The District Judge rejected Petitioner's argument that those Defendants who had not asserted *res judicata* as an affirmative defense had waived it, erroneously relying on this Court's decision in *Arizona v. California*, 530 U.S. 392 (2000). App. D at p. 20a at fn 1.

F. PROCEEDINGS IN THE NINTH CIRCUIT

The District Court's order of dismissal was appealed to the Ninth Circuit, and the same panel that heard the appeal in Smith I, affirmed the ruling of the District Court in Smith III. App. A and F. The Ninth Circuit panel did not expressly address the District Court's finding of privity, but it affirmed the District Court's conclusion that there was an identity of claims because, it said, all of the claims, except the malicious prosecution claim, could have been asserted in the second amended complaint filed in Smith I on December 23, 2010. App. A at p. 4a.

That conclusion was incorrect on its face. It ignored the fact that that December 23, 2010 pleading was an *amended* pleading that related back to the matters alleged in the original March 22, 2010 complaint, not a *supplemental* complaint that sought to add subsequent matter. It ignored that a supplemental complaint is a permissive, not a mandatory, joinder of claims. It also ignored that

Petitioner did not discover the facts giving rise to the claims asserted in Smith III until nearly eight months after the filing of the second amended complaint and could not, therefore, have added them at that time.

REASONS FOR GRANTING THE WRIT

I. REVIEW SHOULD BE GRANTED TO RESOLVE THE CONFLICT CREATED BY THE NINTH CIRCUIT'S DECISION WITH THE RULE FOLLOWED IN VIRTUALLY EVERY OTHER CIRCUIT, AND PREVIOUSLY IN THE NINTH CIRCUIT ITSELF, THAT *RES JUDICATA* DOES NOT APPLY TO CLAIMS THAT ARISE AFTER THE FILING OF THE INITIAL COMPLAINT, AS WELL AS THE CONFLICT CREATED WITH RULE 15 (D) OF THE FEDERAL RULES OF CIVIL PROCEDURE, UNDER WHICH THE FILING OF A SUPPLEMENTAL COMPLAINT TO ADD POST-FILING CLAIMS IS PERMISSIVE, NOT MANDATORY.

It is undisputed in this case that the matters alleged in Smith III did not occur until *after* the original complaint in Smith I had been filed. Smith I was filed on March 22, 2010. The key events alleged above in Smith III occurred after March 22, 2010. It is also undisputed that the facts giving rise to the matters alleged in Smith III were not discovered by Plaintiff until August 15, 2011, during the Juvenile Court trial, nearly eight months later. None of the new allegations were added in Smith I by an amended or supplemental pleading. In fact, the

District Court *denied* leave to amend the complaint in Smith I to include them.

Prior to the panel decision below, it was uniformly held that it is the filing of the *initial* complaint in the prior case that sets the parameters of what "could have been brought" for the application of *res judicata*. The preclusion of claims that "could have been brought" does not include claims that arose after the filing of the initial complaint in the prior action, unless the claims have actually been asserted in a supplemental pleading or have been tried by consent.[9]

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[9] Although, as a result of sloppy practice, pleadings that should be denominated "supplemental," may sometimes erroneously be labeled "amended," the distinction between an amended pleading directed to the "conduct, transaction, or occurrences set out …in the original pleading" (Rule 15 (c) (1) (B), Fed. R. Civ. P.), and a supplemental pleading that sets out "any transaction, occurrence, or event that happened after the date of the pleading to be supplemented" (Rule 15, Fed. R. Civ. P. (d)), is well understood. 6 Wright & Miller, Federal Practice and Procedure § 1473 at 601 (2010) ("The defining difference between the two [amended and supplemental pleadings] is that supplemental pleadings deal with events that occurred after the pleading to be revised was filed, whereas amendments deal with matters that arose before the filing."). "An amended complaint filed pursuant to Federal Rule of Civil Procedure 15(a) typically relates to matters that have taken place prior to the date of the pleading that is being amended." *ConnectU LLC v. Zuckerberg*, 522 F.3d 82, 90 (1st Cir. 2008). In contrast, "Rule 15(d) permits the filing of a supplemental pleading which introduces a cause of action not alleged in the original complaint and not in existence when the original complaint was filed." *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir.1998) (citation omitted). While it is Rule 15(d) that provides the mechanism for parties to file additional causes of

In *Computer Assocs. Int'l, Inc. v. Altai, Inc.,* 126 F.3d 365, 369-70 (2d Cir. 1997), *cert. denied*, 523 U.S. 1106 (1998), the Second Circuit held that, "[f]or the purposes of *res judicata*, '[t]he scope of the litigation is framed by the complaint at the time it is filed,'" (citation omitted), concluding that, "[w]ithout a demonstration that the conduct complained of in the French action occurred prior to the initiation of the United States action, res judicata is simply inapplicable." In *Pleming v. Universal-Rundle Corp.*, 142 F.3d 1354, 1357 (11th Cir. 1998), the Eleventh Circuit, citing an earlier Eleventh Circuit decision (*Manning v. City of Auburn*, 953 F.2d 1355, 1358 (11th Cir.1992)), held:

> We do not believe that the res judicata preclusion of claims that 'could have been brought' in earlier litigation includes claims which arise after the original pleading is filed in the earlier litigation. Instead, we believe that, for res judicata purposes, claims that "could have been brought" are claims in existence at the time the original complaint is filed or claims *actually* asserted by supplemental pleadings or otherwise in the earlier action.

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action based on facts that did not exist when the original complaint was initially filed, *Eid v. Alaska Airlines, Inc.,* 621 F.3d 858, 874 (9th Cir.2010), it is nevertheless the substance of what a pleading seeks to add that is determinative. See *Northstar Financial Advisors, Inc. v. Scwab Investments,* 779 F.3d 1036, 1047 (9th Cir. 2015) ("A rule that would turn on the label attached to a pleading is difficult for us to accept.")

Id. Both the Fifth and Seventh Circuits adopted the same principle in earlier decisions. In *Commercial Box & Lumber Co. v. Uniroyal, Inc.,* 623 F.2d 371, 374 n. 2 (5th Cir.1980), the Fifth Circuit recognized that a Plaintiff is not required to amend the complaint to include claims that occurred during the prior action. In *Spiegel v. Continental Illinois Nat'l Bank,* 790 F.2d 638, 646 (7th Cir.), *cert. denied*, 479 U.S. 987 (1986), the Seventh Circuit held that because there were newly-asserted acts occurring after the filing of Spiegel I, Spiegel II was not barred by *res judicata*.

Virtually every other Circuit has since adopted the same "bright-line" rule that *res judicata* does not apply to claims that arise *after* the filing of the *initial* complaint in the prior case, unless added by a supplemental pleading or tried by consent in the prior case and several have elaborated upon it. In *Mitchell v. City of Moore*, 218 F.3d 1190, 1202-03 (10th Cir. 2000), the Tenth Circuit joined other circuits, stating:

> [W]e agree with those courts holding the doctrine of claim preclusion does not necessarily bar plaintiffs from litigating claims based on conduct that occurred after the initial complaint was filed.[10]

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[10] See also *Board of County Comm'rs of Johnson County, Kansas*, 1999 U.S. Dist. LEXIS 20801, No. 99-2289- JWL, 1999 WL 1423072, at *3-4 (D. Kan. Dec. 9, 1999) ("Because a plaintiff has no obligation to expand his or her suit in order to add a claim that he or she could not have asserted at the time the suit was commenced, several circuits have held that res

The Sixth Circuit did the same in *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 529 (6th Cir. 2006), (Plaintiff "could not have asserted a claim that [she] did not have" at the time the complaint was filed.) In *Storey v. Cello Holdings, L.L.C.*, 347 F.3d 370, 383 (2d Cir. 2003), the Second Circuit repeated its position that *res judicata* does not apply where the facts supporting a claim occur after the prior litigation is commenced and held that this remains true even if they are premised on facts representing a continuance of the same course of conduct. And in *Legnani v. Alitalia Linee Aeree Italiane, S.P.A.,* 400 F.3d 139, 141-42 (2d Cir. 2005), where the plaintiff-employee was not discharged until after the initial Title VII discrimination litigation commenced, the Second Circuit held that the claim for retaliatory discharge was not barred by *res judicata* because "[*t]he crucial date is the date the complaint was filed. Curtis v. Citibank, N.A.,* 226 F.3d 133, 139 (2d Cir. 2000) (Emphasis supplied). As the Second Circuit explained:

> [A]s a matter of logic, when the second action concerns a transaction occurring after the commencement of the prior litigation, claim preclusion generally does not come into play. Accordingly, if, after the first suit is underway, a defendant engages in actionable conduct, plaintiff may - but is not required to file a supplemental pleading setting forth defendant's subsequent conduct. Plaintiff's

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judicata does not bar a second lawsuit to the extent that suit is based on acts occurring after the first suit was filed.").

> failure to supplement the pleading of his already commenced lawsuit will not result in a res judicata bar when he alleges defendant's later conduct as a cause of action in a second suit. *Maharaj v. Bankamerica Corp.*, 128 F.3d 94, 97 (2d Cir. 1997) (internal citations omitted).

The Seventh Circuit similarly reiterated its position in *Smith v. Potter*, 513 F.3d 781, 783 (7th Cir. 2008):

> Res judicata does not bar a suit based on claims that accrue after a previous suit was filed. . . . It does not matter whether, as in the case of harassment, the unlawful conduct is a practice, repetitive by nature . . . that happens to continue after the first suit is filed, or whether it is an act, causing discrete, calculable harm, that happens to be repeated.

And in *Morgan v. Covington Township*, 648 F.3d 172, 177-78 (3d Cir. 2010), the Third Circuit, noting that it had not yet decided "whether *res judicata* may apply to events . . . that postdate – but relate to an earlier-filed lawsuit," observed that many other Courts of Appeals had already adopted "a bright-line rule" that "*res judicata* does not apply to events post-dating the filing of the initial complaint." *Id.* at p. 177. Stating that it could see "no reason to part with our sister Circuit Courts," the Third Circuit held:

> We hold that res judicata does not bar claims that are predicated on events that postdate the filing of the initial complaint.

The Fourth and Eighth Circuits appear to be in accord. The Fourth Circuit has held that "*res judicata* does not bar claims that did not exist at the time of the prior litigation." *Meekins v. United Transportation Union*, 946 F.2d 1054, 1057 (4th Cir. 1991). The Eighth Circuit has held that "claim preclusion does not apply to claims that did not arise until *after* the first suit was filed," *Baker Grp., L.C. v. Burlington N. Santa Fe Ry. Co.,* 228 F.3d 883, 886 (8th Cir. 2000) (emphasis in original). [11]

At least one earlier panel decision in the Ninth Circuit itself is squarely in accord with the foregoing authorities. See *Los Angeles Branch*

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[11] Even apart from the "bright-line" rule, none of the tests described in the Restatement (Second), Judgments § 24 to determine a common nucleus of operative facts apply to this case. The evidence is different. The wrongs alleged are not the same. The same rights are not involved. A judgment in Smith III would not impair any rights established in Smith I. The essential or operative acts are not the same. Indeed, the only facts common to Smith I and III are the fact that CR was under Juvenile Court jurisdiction and the fact that the Juvenile Court matter had moved from reinstatement to severance. The essential or operative acts in Smith I was the report to CPS and the investigation of that report that resulted in CR being placed in CPS custody in 2008. The essential and operative facts of Smith III involve the damage to the relationship between CR and her mother in 2010. Nor is the same transaction or series of connected transactions implicated in both actions. Moreover, Petitioner was precluded from asserting the Smith III claims in Smith I. See *Sidney v Zah*, 718 F2d 1453 (9th Cir. 1983).

NAACP v. Los Angeles Unified Sch. Dist., 750 F.2d 731, 739 (9th Cir.1984). Indeed, the Eleventh and Third Circuits both cited and relied upon it in their decisions for the proposition that parties frame the scope of litigation at the time the complaint is filed and that a judgment is only conclusive regarding the matters that the parties might have litigated at that time, not "new rights acquired, pending the action which might have been, but which were not required to be litigated." See *Pleming, supra* at 1357*; Morgan*, *supra*, at 177-8.

Like the claims in *Los Angeles Unified Sch. Dist.*, Petitioner's claims in Smith III were new claims that arose during the dependency of Smith I, and even though those claims might have been litigated in Smith I, had they been included by an amended (or, more properly, supplemental) pleading, Petitioner was not obliged to add them. The panel decision below irreconcilably and impermissibly conflicts with the panel decision in *Los Angeles Unified Sch. Dist.*, presenting an intra-Circuit conflict that should have been, but was not, resolved by the Ninth Circuit when *en banc* review was timely sought.

Petitioner's failed attempt to add her new claims in Smith I does not change the normal *res judicata* calculus from which the Ninth Circuit has now departed. The decision of the Second Circuit in *Legnani, supra,* is instructive.

In *Legnani*, the plaintiff had attempted unsuccessfully to amend her Title VII complaint to allege a subsequent retaliatory discharge claim, the same claim she later brought in a separate case. After rejecting application of *res judicata*, because the second action concerned an event occurring after the commencement of the prior litigation, the Second Circuit then addressed the effect of the plaintiff's failed attempt to add the subsequent claim in the first action, concluding that the failure was "without consequence" (*Id.* at 141-2):

> "[W]hen a plaintiff's motion to amend the complaint is denied and the plaintiff subsequently brings the amendment as a separate lawsuit, … the actual decision denying leave to amend is irrelevant to the claim preclusion analysis.'" *Id.* at 139 (quoting *Northern Assurance Co. of Am. v. Square D Co.,* 201 F.3d 84, 88 (2d Cir.2000)). "[T]he normal claim preclusion analysis" — asking whether the claims arose from the same transaction — "applies and the court must assess whether the second suit raises issues that should have been brought in the first." *Id.* at 139-40. Thus, "if, after [a] first suit is underway, a defendant engages in actionable conduct, [a] plaintiff may — but is not required to — file a supplemental pleading setting forth defendant's subsequent conduct." [Citation omitted]. A"[p]laintiff's failure to supplement the pleadings of his already commenced lawsuit will not result in a res judicata bar when he alleges defendant's

> later conduct as a cause of action in a second suit." [Citation omitted].

In other words, Petitioner would not have been required to add her Smith III claims for interference in the parent-child relationship in Smith I *even if* she had known of the events giving rise to those claims when she filed the second amended complaint in Smith I, and *even if* all of the defendants in Smith III had also been defendants in Smith I. *A fortiori*, where it is undisputed Petitioner *did not know* of the existence of the claims, and where most of the defendants in Smith III were not defendants in Smith I, the claims cannot be barred.

The Ninth Circuit's ruling that *res judicata* bars claims that arose after the initial complaint because they were not added when an amended complaint was filed, turns a well established principle of *res judicata* on its head, disrupts previous unanimity among the Circuits on the point, and would, if allowed to stand, create a common law mandatory joinder requirement that cannot be squared with the permissive supplementation of claims provided for in Rule 15(d) of the Federal Rules.

II. REVIEW SHOULD ALSO BE GRANTED BECAUSE THE NINTH CIRCUIT'S AFFIRMACE OF THE DISTRICT COURT'S DECISION THREATENS TO RESSURRRECT THE "VIRTUAL REPRESENTATION" THEORY REJECTED BY THIS COURT IN *TAYLOR.*

A nonparty normally is not bound by the outcome of a proceeding. *See supra*, pp.8-9. This Court has approved a finite number of exceptions to the rule against nonparty preclusion, but the District Judge below ignored those exceptions (none of which apply) and instead proceeded to apply *res judicata* on the assumption that the defendants in Smith I and Smith III had the same interests and that those interests had been adequately represented in the first litigation. App C at pp. 16-17a; App. D at pp. 22-23a; See 18-131 Moore's Federal Practice – Civil § 131.40(e) (i) (B).

That is the very "virtual representation" theory disapproved by this Court in *Taylor, supra.* In *Taylor*, this Court noted the limitations on nonparty preclusion (based on adequate representation) implemented by the procedural safeguards contained in Rule 23, Fed. R. Civ. P. See also *Brown, supra,* 511 U.S. at 120-21. In contrast, the virtual representation theory employed by the District Court effectively treated Petitioner's lawsuit as if it were a *de facto* common-law class action, with preclusion based on a supposed identity of interests and some kind of relationship between parties and nonparties, but without any of the procedural protections provided by Rule 23. As this Court

noted, *Taylor, supra*, at 901: "[V]irtual representation would authorize preclusion based on identity of interests and some kind of relationship between parties and nonparties, shorn of … procedural protections … grounded in due process …."

Although the Ninth Circuit based its affirmance on the District Court's erroneous determination that there was an identity of claims, rather than its determination that there was privity of parties, it did not reject the District Court's virtual representation theory or modify the judgment below in any way. As such, it must be taken to have affirmed the whole of the ruling below.

III. DISMISSAL OF THE MALICIOUS PROSECUTION CLAIM WAS BASED ON PLAIN FACTUAL ERROR.

The Ninth Circuit found all claims in Smith III were precluded by *res judicata* except the malicious prosecution claim. Normally, that would have resulted in a remand of the unbarred claim. The Ninth Circuit nonetheless dismissed that claim as well, finding that the malicious prosecution claim was based on the prosecution of "dependency" and that the District Court in Smith I found there was probable cause to take CR into "temporary protective custody." App A at p. 5a ¶4.

But the Ninth Circuit's reasoning was predicated on a plain factual error. The malicious prosecution claim was, on its face, based on the prosecution of the *severance*, not dependency, claims. App. A at pp. 4-5a ¶4. A dependency case addresses custody, while a severance addresses the

termination of parental rights. They have completely different statutory bases, different factual basis, and are subject to different legal standards.[12] The fact that there was probable cause to initiate dependency proceedings does not establish there was probable cause to seek severance long after dependency was found by the Juvenile Court.

Petitioner brought this obvious error to the attention of the Ninth Circuit at the first opportunity in its petition for rehearing, but the petition for rehearing was denied without comment. App. E at pp. 25-26a.

Plain errors, including plain errors of fact, may always be corrected by a reviewing court. See *Silber v. United States*, 370 U.S. 717 (1962); *see also Carlton v. United States*, 512 U.S. 26 (2015) (Statement of Justice Sotomayor) ("[W]e have never

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[12] Dependency is governed by A.R.S. §§ 8-201(13) and 8-841 to 844. It requires proof (y a preponderance of the evidence) that "the child is in need of proper and effective parental care and control." A.R.S. § 8-201(13); Smith I ER 21, at p. 413. Termination of parental rights is governed by A.R.S. §§ 8-531 to 539. It requires proof (by clear and convincing evidence) that the parent has neglected or willfully abused the child and (by a preponderance of the evidence) that severance of parental rights is in the best interest of the child. A.R.S. § 8-533(B). *Raymond F. v. Ariz. Dep't of Econ. Sec.,* 224 Ariz.373, 377 ¶15 n.2. and 379 ¶30, 231 P.3d 377, 381-383 (App. 2010) (citing *Kent K. v. Bobby M*, 210 Ariz. 279, 110 P.3d 1013 (Ariz. 2005).

suggested that plain-error review should apply differently depending on whether a mistake is characterized as one of fact or one of law. "). In the interest of justice and fairness, this aspect of the Ninth Circuit's decision should be remanded for reconsideration in light of the fact that the malicious prosecution claim was based on the prosecution of the severance action, not the dependency action.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 2, 2015

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 14-15390

LEANNA SMITH, an individual and as the mother of CR, a minor,
Plaintiff – Appellant,
v.
STATE OF ARIZONA, ET AL.,
Defendants – Appellees

No. 14-15473

LEANNA SMITH, an individual and as the mother of CR, a minor,
Plaintiff – Appellee,
v.
KATHRYN COFFMAN, M.D., et al.,
Defendants – Appellees
And
STATE OF ARIZONA, et al.,
Defendants.

Appeal from the United States District Court for the District of Arizona

MEMORANDUM

Filed July 24, 2015

Before: SCHROEDER and N.R. SMITH, Circuit Judges and GLEASON, District Judge.

Leanna Smith appeals from the district court's order granting Defendant-Appellees' motion to dismiss on claim preclusion grounds. Consolidated with that appeal is an appeal of the district court's order denying fees requested by Defendant-Appellants Kathryn Coffman and St. Joseph's Hospital and Medical Center. We have jurisdiction under 28 D.S.C. § 1291 and we affirm.

1. "This court reviews *de novo* a district court's dismissal based on res judicata." *W Radio Servs. Co., Inc.* v. *Glickman,* 123 F.3d 1189, 1192 (9th Cir. 1997) (citing *UPS, Inc.* v. *Cat. Pub. Uti!. Comm 'n,* 77 F.3d 1178, 1182 (9th Cir. 1996)). "Res judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action. In order for res judicata to apply there must be: 1) an identity of claims, 2) a final judgment on the merits, and 3) identity or privity between the parties." *Id.* (internal citations omitted). The district court accorded preclusive effect to two prior actions, *Smith* v. *Barrow Neurological Institute,* No. CV 10-01632-PHX-FJM, 2012 WL 4359057 (D. Ariz. Sept. 21,2012) *("Smith II"* and *Smith* v. *Arizona,* NO.2: 12-cv-00905-ROS *("Smith II"),* and dismissed all the claims in this action *("Smith II!").*

2. As to *Smith II,* most of the defendants in that action were dropped by the amendment of the complaint, which carries no preclusive effect. *Hells CanyonPres. Council* v. *U.S. Forest Serv.,* 403 F.3d

683, 686 (9th Cir. 2005). And although the district court granted summary judgment on the merits to the remaining defendants in *Smith II,* it subsequently issued an order dismissing the action without prejudice, which likewise lacks res judicata effect. *See* Fed. R. Civ. P. 41(a); *In re Corey,* 892 F.2d 829, 835 (9th Cir. 1989).

3. As to *Smith* 1, a final judgment on the merits resolved that case in favor of defendants.[1] And Smith is in privity because she was the plaintiff in *Smith I* and is the party against whom claim preclusion is being asserted here. *See California* v. *IntelliGender, LLC,* 771 F.3d 1169, 1176-77 (9th Cir. 2014). Therefore, res judicata will apply to the extent there is an identity of claims between *Smith I* and *Smith III.*

To determine whether an identity of claims exists, this court applies a four part test, examining

> (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action~ (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

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[1] We affirmed the district court's order granting summary judgment in *Smith I* in *Smith* v. *Banner Health Systems,* - F. App'x -,2015 WL 3758031 (9th Cir. June 17,2015).

Costantini v. *Trans World Airlines,* 681 F.2d 1199, 120 1-02 (quoting *Harris v. Jacobs,* 621 F.2d 341,343 (9th Cir. 1980». Whether the two suits arise out of the same transactional nucleus of facts is "the most important" criteria. *Id.*

Here, *Smith I* and *Smith III* arise out of the same transactional nucleus of facts--the taking into custody of CR by the State of Arizona and the subsequent treatment provided to CR while in state custody. And both cases involve the alleged infringement of Smith's parental rights. These factors weigh heavily in favor of finding an identity of claims. The other two *Costantini* factors also weigh in favor of such a finding.[2] The operative complaint in *Smith I* was filed on December 23, 2010. We hold that any claim that was or could have been raised in that complaint is barred by res judicata, and that all of the claims in this action could have been raised in the December 2010 *Smith I* complaint except the claim for malicious prosecution.

4. Smith's malicious prosecution claim could not have been brought until CR's dependency proceeding was concluded in January 2012. *See Giles* v. *Hill Lewis Marce,* 988 P.2d 143, 147 (Ariz. Ct. App. 1999) ("In an action for malicious

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[2] The rights or interests of the *Smith I* defendants could be impaired in this action through renewed exposure to liability stemming from the same acts. And the relevant evidence in the two actions is substantially the same.

prosecution, the plaintiff must show the defendant instituted a civil action which was motivated by malice, begun without probable cause, terminated in favor of the plaintiff, and damaged the plaintiff."). However, we need not remand on that claim because "[i]f support exists in the record, a dismissal may be affirmed on any proper ground." *Sinibaldi* v. *Redbox Automated Retail, LLC,* 754 F.3d 703, 706 (9th Cir. 2014). The district court in *Smith I* found that "[i]n light of the reports from CR's doctors and established law under A.R.S. § 8-821(B), a reasonable CPS investigator would have probable cause of believe that taking CR into temporary protective custody was lawful at the time." We hold that the district court's finding that CPS had probable cause to initiate proceedings related to CR is properly accorded collateral estoppel effect and forecloses Smith's malicious prosecution claim. *See B.* & *B. Hardware, Inc.* v. *Hargis Indus., Inc.,* 135 S. Ct. 1293, 1302-03 (2015).

5. "We review a district court's decision to grant attorneys' fees pursuant to 42 U.S.C. § 1988 for an abuse of discretion." *Galen* v. *Cnty. of Los Angeles,* 477 F.3d 652,658 (9th Cir. 2007) (citation omitted). We hold that the district court did not abuse its discretion in determining that Smith's pursuit of this action was not "unreasonable, frivolous, meritless or vexatious" and declining to award fees. *Christiansburg Garment Co.* v. *EEOC,* 434 U.S. 412,421 (1978).

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
No. CV-13-00332
Leanna Smith,
Plaintiff ,
v.
State of Arizona, et al.,
Defendants.
ORDER TO SHOW CAUSE
Filed October 1, 2013

In their Joint Proposed Case Management Plan, the parties brought to the Court's attention two other cases Plaintiff has initiated arising out of the removal of a child from her custody and subsequent child abuse investigation. (*See* Doc. 51, Joint Proposed Case Management Plan at 10, 24 (citing Case Nos. CV 10-1632-PHX-FJM (the "first" case) and CV 12-905-PHX-ROS (the "second" case)).) The Court has reviewed the complaints Plaintiff filed in those cases and believes that they deal with the same factual scenario undergirding this case. In the first case, Plaintiff alleged that a multitude of defendants had violated her constitutional right to parent her child. (*See* Case No. CV 10-1632-PHXFJM, Doc. 34, Am. Compl.)[1] Specifically, she

[1] The defendants in the first case were Barrow Neurological Institute of St. Joseph's Hospital and Medical Center, Catholic Healthcare West, Banner Health System, the State of Arizona, the Arizona Department of Economic Security ("DES"), Child

alleged that various physicians made false representations concerning child abuse that led the State of Arizona to remove Plaintiff's child from her custody and initiate proceedings against her. (*Id.*) After a lengthy delay, the Court granted summary judgment in favor of Defendants because the undisputed evidence showed that certain defendants were not involved in the child abuse investigation, other defendants were immune from suit, and that Plaintiff had produced no evidence to establish the liability of other defendants. (*See* Case No. CV 10-1632- PHX-FJM, Doc. 200, July 31, 2012 Order; Doc. 335, Feb. 12, 2013 Order.)[2] The Court eventually imposed sanctions against Plaintiff and her attorney. (*Id.* Doc. 373, May 29, 2013 Order.)

Part of the delay in the first case was caused by Plaintiff's attempt to file a third amended complaint. (*See id.*, Doc. 82, Mot. to Am. Compl.) The Court denied Plaintiff leave to file an amended complaint because Plaintiff sought to add new defendants that should have been added earlier and new allegations concerning the removal of a second child that were unrelated to the allegations concerning the first child and allowing Plaintiff to join those new parties and issues would have prejudiced the defendants by delaying an already

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Protective Services ("CPS") (a division of DES), Charles Alfano, Harold Rekate, Scott Elton, Laura Pederson, Tammy Hamilton-Macalpine, Bonnie Brown, and Marysol Ruiz. (*Id.*)

[2] Still other defendants were dismissed with prejudice by stipulation of the parties. (*See, e.g.*, *id.*, Doc. 235, Aug. 27, 2012 Order.)

drawn-out litigation. (*See id.*, Doc. 103, Jan. 17, 2012 Order.) As a result, Plaintiff decided to file the third amended complaint as an entirely new case about three months later on April 27, 2012—the case that the Court refers to here as the second case. (*See* Case No. CV 12-905, Docs. 1 (Compl.) and 39 (Sept. 24, 2013 Sealed Order) at 2-3.)[3] Accordingly, the complaint in the second case contains allegations concerning all of the same occurrences that Plaintiff raised in the first case, plus more. The Court dismissed the second case on September 24, 2013 because the allegations in the complaint were barred by the applicable statute of limitations. (*See id.*, Doc. 39, Sept. 9, 2013 Sealed Order.) In that Order, the Court also noted that the case was apparently identical to the first case and to this case. (*See id.* at 2-4.) The Court specifically stated that "[a]s far as the Court can tell, that lawsuit [(this case, the third case)] involves many of the same allegations presented in Plaintiff's second suit involving the custody of Plaintiff's child. There is no obvious explanation why Plaintiff filed her third suit rather than including the allegations in her second suit." (*Id.* at 3-4.) Though the Court granted Plaintiff leave to file one amended complaint by October 4, 2013, it emphasized that Plaintiff needed to "clearly

[3] The defendants in the second case were the State of Arizona, DES, CPS, Scott Elton, Laura Pederson, Tammy Hamilton-Macalpine, Bonnie Brown, Kathryn Coffman, Marina Greco, Childhelp Children Center of Arizona, Katrina Buwalda, Buwalda Psychological Services PLLC, Brenda Bursch, University of California Los Angeles, David Fink, Amanda Torres, and Banner Health Systems.

distinguish this case from the allegations made in CV-10- 1632 and CV-13-0332." (*Id.* at 8.)

Plaintiff filed this case in state court on August 14, 2012. (Doc. 1-2 at 4.) All Defendants were also defendants in one or both of the first two cases Plaintiff brought. (*See* Doc. 1-3, Am. Compl.) Plaintiff again is seeking recovery based on the removal of her child from her custody and the resulting investigation. (*See id.*) In light of these similarities, the Court orders Plaintiff to show cause why this case should not be dismissed as barred by either the doctrine of res judicata based on the summary judgment orders issued in the first case or the applicable statute of limitations based on the Court's analysis in the second case.

IT IS ORDERED requiring Plaintiff to show cause within ten days of this Order why this case should not be dismissed for the reasons stated above. Plaintiff's filing may not exceed ten pages. Defendants may respond to Plaintiff's filing within ten days and Plaintiff may reply in five days.

IT IS FURTHER ORDERED granting Plaintiff's Motions to Seal (Docs. 86, 89, 97).

Dated this 17th day of December, 2013.

/s/ Susan R. Bolton
United States District Court Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
No. CV-13-00332

Leanna Smith,
Plaintiff ,
v.
State of Arizona, et al.,
Defendants.

ORDER

Filed December 23, 2013.

The Court now considers Plaintiffs Response to Order to Show Cause ("PI.'s Resp.") (Doc. 138), Plaintiffs Motion to Strike Response Filed by Defendants Dignity Health and Coffman Regarding Order to Show Cause [sic] (Doc. 143), Plaintiffs Motion to Strike Defendants Katrina Buwalda, James Boller (Named in this Action as "Spouse Buwalda"), and Buwalda Psychological Services, PLLC's Joinder in the Response by Defendants Dignity Health and Coffman Regarding Order to Show Cause (Doc. 144), and Plaintiffs Motion to Strike Defendant Greco's Joinder in the Response by Defendants Dignity Health and Coffman Regarding Order to Show Cause (Doc. 145).

I. MOTIONS TO STRIKE

The Court gave Defendants ten days after Plaintiff filed a response to the Court's Order to Show Cause in which to file a response to her filing. *(See* Doc. 133, Oct. 1, 2013 Order to Show Cause ("OSC") at 3.) Plaintiff filed a response on October 9, 2013. October 19 (ten days later) was a Saturday. Defendants filed their response on October 24. Plaintiff argues that their response was due October 22. *(See* Doc. 144 at 1.)

The Federal Rules of Civil Procedure state that when a filing deadline falls on a weekend or holiday, it is considered to end on the next working day. Fed. R. Civ. P. 6(a)(I)(C). In addition, the mailing rule provides an additional three days to file. *See* Fed. R. Civ. P. 6(d). The issue is whether the adjustment made for periods ending on a weekend or holiday is made before or after adding the additional three days. Defendants adjusted for the original period ending on a Saturday by moving it to Monday (October 21) and then adding three days to reach October 24. Plaintiff added the three days at the end of the original deadline and made no weekend adjustment because the new time period ended on a Tuesday (October 22). The Court has researched the issue and determined that courts across the country have followed both methods of calculation. Consequently, the Court finds that Defendants' interpretation was reasonable and therefore finds Defendants' Responses timely. *See Ahanchian* v. *Xenon Pictures, Inc.,*13 624 F.3d 1253, 1258-59 (9th Cir. 2010) ("[R]ule [6(b)(l)], *like all the Federal Rules of Civil Procedure,* '[is] to be liberally construed to effectuate the general purpose of seeing that cases

are tried on the merits.'" (alteration in original) (quoting *Rodgers* v. *Watt,* 711 F.2d 456, 459 (9th Cir. 1983))). The Court denies Plaintiff's Motions to Strike.

II. RESPONSE TO THE ORDER TO SHOW CAUSE

The thrust of the Court's Order to Show Cause was that it appears possible that this case is barred by the doctrine of res judicata because it is similar to two previous lawsuits that Plaintiff has brought concerning child removal proceedings. *(See* OSC.)[1] "Res judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in [a] prior action." *Owens* v *Kaiser Found. Health Plan, Inc.,* 244 F.3d 708, 713 (9th Cir. 2001) (internal quotation marks omitted). "The doctrine is applicable whenever there is (1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties." *Id.*(internal quotation marks omitted).

A. Identity of Claims

To determine whether two lawsuits involve the same claim, courts consider four criteria:

> (1) whether the two suits arise out of the same transactional nucleus of facts; (2) whether

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[1] Plaintiff suggests throughout her Response that the Couli acted improperly by considering a sealed order in formulating its Order to Show Cause. *(See, e.g.,* PI.'s Resp. at 4 ("This Court's [sic] based its order to show cause on the Courts [sic] review of the original Complaint in case two which 'is' sealed.").) The Court directs Plaintiffs attention to Local Rule 5.6(f), which states that sealing a document has the effect of preventing "public access" to that document-not Court access.

> rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (3) whether the two suits involve infringement of the same right; and (4) whether substantially the same evidence is presented in the two actions.

Mpoyo v. *Litton Electro-Optical Sys.,* 430 F.3d 985, 987 (9th Cir. 2005). Courts do not apply these factors "mechanistically." *Id.* "'Whether two events are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could conveniently be tried together.'" *Id.* (quoting *W. Sys., Inc.* v. *Ulloa,* 958 F.2d 864, 871 (9th Cir. 1992)).

By Plaintiff's own admission, there is an identity of claims between this case and her previous two cases. According to Plaintiff, "the first case involved the September 3, 2008 malicious report of abuse to CPS by various medical defendants and CPS's investigation into those allegations." (Pl.'s Resp. at 2.) "The second case was based on the November 24, 2009 malicious report to CPS by Dr. Elton and Banner Desert and CPS's investigation into that report which resulted in the vacating of the Juvenile Court order reuniting CR with Plaintiff." *(Id.)* Plaintiff alleges that after that report to CPS proved false "CPS then changed its tactic and manipulated CR to bring false allegations of physical and sexual abuse against Plaintiff as a basis for seeking termination of Plaintiff's parental rights in CR and criminal prosecution of Plaintiff." *(Id.)* That

change in strategy is the basis for Plaintiff's third case. *(See id.)*

Although in the narrowest sense Plaintiff's claims have different factual predicates, they all can be said to arise out of "the same transactional nucleus of facts" i.e., an initial CPS investigation that has spawned additional allegations and further investigation. The fact that more than one event happened during that process does not mean that Plaintiff had reason to file more than one lawsuit. In addition, Defendants' rights, as established in the first two cases, could be impaired by this case if the Court were to rule differently and Defendants have an interest in not being perpetually dragged into court to answer for claims arising out of the same process. Most importantly, all three of these cases involve an alleged infringement of the same right: Plaintiff's right to parent her child. The Court finds that there is an identity of claims between Plaintiff's three cases, but particularly between the final two considering that Plaintiff alleges that the third case was brought to address actions that CPS took in the second case.[2]

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[2] The Court rejects Plaintiff's argument that Judge Martone "held that [the three cases were not the same cause of actions and that they involved distinguishable claims based on a separate factual basis than case one." *(Id.* at 1 (citing Case No. CV 10-1632-PHX-FJM, Doc. 255 at 22-26).) In the Order to which Plaintiff refers, Judge Martone did not even address the third case and denied Benner's request to combine the first and second case because the first case was close to resolution and had already lingered for more than two years. *(See* Case No. CV 10-1632-PHX-FJM, Doc. 255 at 3.) Judge Martone's ultimate finding was that "transfer would not be economical," not that transfer was

B. Previous Judgment on the Merits

An "involuntary dismissal generally acts as a judgment on the merits for the purposes of res judicata." *Owens,* 244 F.3d at 714 (quotation omitted). It does not matter "whether the dismissal result[ed] from procedural error or from the court's considered examination of the plaintiff's substantive claims," or whether the previous court's decision was correct. *In re Sehimmels,* 127 F.3d 875, 884 (9th Cir. 1997). Both of Plaintiff's previous cases were adjudicated on the merits. In the first case, the Court entered summary judgment in favor of Defendants and refused to allow Plaintiff to amend her complaint. *(See* Case No. CV 10-1632-PHX-FJM, Doc. 103, Jan 17, 2012 Order (denying leave to amend); Doc. 200, July 31, 2012 Order (granting summary judgment); Doc. 335, Feb. 12, 2013 Order (granting summary judgment).) The Court dismissed Plaintiff's second case because all of her claims were barred by the applicable statute of limitations. (Case No. CV 12-905-PHX-ROS, Doc. 39, Sept. 24, 2013 Order at 4-8.)[3]

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unavailable. *(See id.)* Most importantly, a finding that the first two cases should not be consolidated has no controlling effect on whether the third case is barred based on the claims raised in one (or both) of the previous cases.

[3] It is of no moment that after the Court entered the Order dismissing her claims Plaintiff opted not to file an amended complaint and instead requested a voluntary dismissal. *(See id.,* Doc. 47, Pl.'s Request for Dismissal Without Prejudice.) The Court had already dismissed Plaintiff's claims on the merits. Plaintiff cannot escape the res judicata effect of that decision by trying to dismiss her case voluntarily after the fact.

C. Privity Between the Parties

The Ninth Circuit Court of Appeals has held that "[e]ven when the parties are not identical, privity may exist if there is substantial identity between parties, that is, when there is sufficient commonality of interest." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'! Planning Agency,* 322 F.3d 1064, 1081 (9th Cir. 2003) (internal quotation marks omitted). "[P)rivity is a flexible concept dependent on the particular relationship between the parties in each individual set of cases[.]" *Id.* at 1081-82.

> Federal courts have deemed several relationships "sufficiently close" to justify a finding of "privity" and, therefore, preclusion under the doctrine of *res judicata:* "First, a non-party who has succeeded to a party's interest in property is bound by any prior judgment against the party. Second, a nonparty who controlled the original suit will be bound by the resulting Judgment. Third, federal courts will bind a non-party whose interests were represented adequately by a party in the original suit." In addition, "privity" has been found where there IS a 'substantial identity" between the party and nonparty, where the nonparty "had a significant interest and participated in the prior action," and where the interests of the nonparty and party are "so closely aligned as to be virtually representative." Finally, a relationship of privity can be said to exist

> when there is an "express or implied legal relationship by which parties to the first suit are accountable to non-parties who file a subsequent suit with identical issues."

Id. at 1082 (quoting *Schimmels,* 127 F.3d at 881).

Although Plaintiff sued different people and entities in each of her lawsuits, all Defendants are in privity. All of them played some role in the process that led to the removal proceedings that form the basis of all three cases and Defendants interacted with each other throughout that process. Defendants therefore had a sufficiently interrelated relationship to satisfy the broad definition of "privity" offered in *Tahoe. See id.*

III. CONCLUSION

The Court finds that this case is barred by the doctrine of res judicata. There is an identity of claims between this case and the previous two, the previous two cases were adjudicated on their merits, and there is an identity of parties. Accordingly, Plaintiff should have raised her claims in one of her previous actions instead of filing a separate action.

IT IS ORDERED denying Plaintiff's Motion to Strike Response Filed by Defendants Dignity Health and Coffman Regarding Order to Show Cause [sic] (Doc. 43).

IT IS FURTHER ORDERED denying Plaintiffs Motion to Strike Defendants Katrina

Buwalda, James Boller (Named in this Action as "Spouse Buwalda"), and Buwalda Psychological Services, PLLC's Joinder in the Response by Defendants Dignity Health and Coffman Regarding Order to Show Cause (Doc. 144).

IT IS FURTHER ORDERED denying Plaintiff's Motion to Strike Defendant Greco's Joinder in the Response by Defendants Dignity Health and Coffman Regarding Order to Show Cause (Doc. 145).

IT IS FURTHER ORDERED dismissing this action.

IT IS FURTHER ORDERED directing the Clerk to enter judgment in favor of Defendants.

Dated this 17th day of December, 2013.

/s/ Susan R. Bolton
United States District Court Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-13-00332

Leanna Smith,
Plaintiff ,
v.
State of Arizona, et al.,
Defendants.

ORDER

Filed February 7, 2014

At issue is Plaintiff's Rule 59 Motion for New Trial and Rule 60(b) Motion for Relief from Judgment ("Pl.'s Mot.") (Doc. 156).

I. BACKGROUND

The Court dismissed this case on December 17, 2013 as barred by the doctrine of res judicata after ordering briefing from the parties on the issue. (*See* Docs. 152, Dec. 17, 2013 Order; 138, Pl.'s Resp. to Order to Show Cause; 140, Resp. by Defs. Dignity Health & Coffman Regarding Order to Show Cause; 141-42 (joinders by various Defendants to Doc. 140).) The Clerk entered judgment in favor of Defendants the same day. (Doc. 153, J. in a Civil Case.) Plaintiff now moves for reconsideration of the Court's Order,

arguing that the Court's decision was wrong and that it did not make certain necessary findings. (Pl.'s Mot. at 1-2, 2.)[1]

II. LEGAL STANDARDS AND ANALYSIS

Plaintiff mentions Federal Rules of Civil Procedure 59 and 60(b) in the first sentence of her Motion, but never specifies which provision of those Rules she is arguing under, nor does she offer a legal standard for the consideration of motions made under those Rules. (*See generally* Pl.'s Mot.) Based on the arguments she raises, the Court interprets Plaintiff's Motion as one for reconsideration under Local Rule of Civil Procedure 7.2(g). However, in resolving this Motion, the Court has also considered the standards for granting motions under Rules 59(e) and 60(b) summarized below.

Federal Rule of Civil Procedure 59(e) allows parties to file a motion to alter or amend a judgment within twenty-eight days of the entry of the

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[1] Plaintiff also suggests that the Court erred by raising res judicata, arguing that Defendants did not raise the issue in their Answers. (*Id.* at 9-10.) Although Defendants dispute that allegation, the Court need not determine whether they preserved their right to assert res judicata as a defense because the Court had the right to (and did) raise the issue on its own. *See Arizona v. California*, 530 U.S. 392, 412 (2000) ("[I]f a court is on notice that it has previously decided the issue presented, the court may dismiss the action *sua sponte*, even though the defense has not been raised."); *Headwaters Inc. v. U.S. ForestServ.*, 399 F.3d 1047, 1055 n.6 (9th Cir. 2005) (collecting cases where the Ninth Circuit upheld district court decisions raising res judicata on their own so long as the parties were allowed to brief the issue).

judgment.[2] There are four grounds upon which a Rule 59(e) motion may be granted:

> (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law.

Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011). Amending a judgment is an "extraordinary remedy which should be used sparingly." *Id.*

Federal Rule of Civil Procedure 60(b) grants courts the power to set aside final judgments for six reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;

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[2] The other subsections of Rule 59 concern new trials and are inapplicable here because there was no trial.

> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Finally, Local Rule 7.2(g) states that the Court will deny motions for reconsideration absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to it attention earlier with reasonable diligence. . . . No motion for reconsideration of an Order may repeat any oral or written argument made by the movant in support of or in opposition to the motion that resulted in the Order.

The thrust of Plaintiff's argument is that the Court incorrectly determined that her three cases involved the same nucleus of operative facts. (*See* Pl.'s Mot. at 1-2.) She presents the same arguments she raised in response to the Court's Order to Show Cause on the issue of res judicata. The Court does not believe that its decision was incorrect and sees no reason to repeat its reasoning here. The Court understood Plaintiff's allegations when it issued the Order dismissing this case and Plaintiff has offered no new evidence to change that understanding. If Plaintiff disagrees with the Court's decision, the proper avenue for challenging it is by an appeal to the Ninth Circuit. Plaintiff also asks that the Court amend its previous Order to include a finding considering whether Defendants, only some of which were named in Plaintiff's previous two cases, were in

privity with the defendants in her earlier cases, arguing that the Court made no such finding. (Pl.'s Mot. at 12-13.) However, the Court did make a privity finding in its previous Order. (*See* Doc. 152 at 5 ("[A]ll Defendants are in privity. All of them played some role in the process that led to the removal proceedings that form the basis of all three cases and Defendants interacted with each other throughout that process.").) The Court adds to that finding that the privity prong of the res judicata test is meant to protect the party against whom a res judicata finding is made, not the party who avoids repetitive litigation thanks to the doctrtine. *See Martinez v. Texaco Trading &Transp., Inc.*, 353 F.3d 758, 762 (9th Cir. 2003) ("Res judicata applies if: . . . (3) the party *against whom the plea is raised* was a party or was in privity with a party to the prior adjudication." (emphasis added)). Because Plaintiff was a party to all three cases, the privity prong is clearly satisfied in this case.[3]

III. CONCLUSION

The Court denies Plaintiff's Motion because she has not provided any reason under Federal Rules of Civil Procedure 59 and 60 or Local Rule of Civil Procedure 7.2(g) for the Court to vacate or otherwise change its previous Order dismissing her case.

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[3] The Court also already made a finding that there was a previous judgment on the merits, contrary to Plaintiff's argument. (*See* Pl.'s Mot. at 10; Doc. 152 at 4.)

IT IS ORDERED denying Plaintiff's Rule 59 Motion for New Trial and Rule 60(b) Motion for Relief from Judgment (Doc. 156).

Dated this 7th day of February, 2014.

/s/ Susan R. Bolton
United States District Court Judge

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 14-15390

LEANNA SMITH, an individual and as the mother of CR, a minor,
Plaintiff – Appellant,
v.
STATE OF ARIZONA, ET AL.,
Defendants – Appellees

No. 14-15473

LEANNA SMITH, an individual and as the mother of CR, a minor,
Plaintiff – Appellee,
v.
KATHRYN COFFMAN, M.D., et al.,
Defendants – Appellees

ORDER

Filed September 4, 2015

Before: SCHROEDER and N.R. SMITH, Circuit Judges and GLEASON,* District Judge.

The panel has voted to deny the petition for panel rehearing. Judge N.R. Smith has voted to deny the petition for panel rehearing en banc, and Judge Schroeder and Judge Gleason have so recommended.

The full court was advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing en banc are DENIED.

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 13-15413

LEANNA SMITH, an individual and as the mother of CR, a minor,
Plaintiff – Appellant,
v.
BANNER HEALTH SYSTEMS, a foreign nonprofit corporation, DBA Banner Desert Medical Center, et al.,
Defendants – Appellees

No. 13-16422

LEANNA SMITH, an individual and as the mother of CR, a minor,
Plaintiff – Appellant,
KEITH MARION KNOWLTON and KEITH M. KNOWLTON, LLC.,
Appellants
v.
BANNER HEALTH SYSTEMS, a foreign nonprofit corporation, DBA Banner Desert Medical Center, et al.,
Defendants – Appellees

Appeal from the United States District of Arizona

MEMORANDUM

Filed June 17, 2015

Before: SCHROEDER and N.R. SMITH, Circuit Judges and GLEASON:' District Judge.

Smith appeals from the district court's order granting summary judgment in favor of defendants Banner Health Systems and its employee Dr. Scott Elton (collectively "Banner"), and the order granting summary judgment in favor of the State of Arizona, the Arizona Department of Economic Security, Arizona Child Protective Services, and state employees Bonnie Brown, Tammy Hamilton-MacAlpine, and Laura Pederson. Consolidated with these appeals is an appeal of the district court's order awarding fees to Banner Health under 42 U.S.C. § 1988 and imposing sanctions against Smith and her counsel pursuant to Federal Rule of Civil Procedure 37 and 28 U.S.C. § 1927. We have jurisdiction under 28 U.S.C. § 1291 and we affirm in part, vacate in part, and remand.

1. Smith challenges the grant of summary judgment to Banner, asserting that the district court violated Federal Rule of Civil Procedure 56(f) by failing to provide her with notice and an opportunity to respond prior to granting summary judgment on grounds not raised by Banner. Smith brought two claims against
Banner.

The first claim, brought under state law, alleged that Banner had intentionally interfered

with Smith's custody of CR (Smith's daughter). We review grants of summary judgment de novo. *Thomas* v. *Cnty. of Riverside, 763* F.3d 1167, 1168 (9th Cir. 2014). On summary judgment, Banner asserted it was immune from liability on the state law claim pursuant to Arizona's mandatory reporting statute. *See* Ariz. Rev. Stat. § 13-3620(1). Banner also asserted that Smith was collaterally estopped from arguing that Banner acted with malice toward Smith (which would defeat its statutory immunity on this claim) because the Maricopa County Juvenile Court had found that Smith abused CR. The district court did not rely on collateral estoppel in granting summary judgment to Banner on this claim. Instead, it found that Smith had not adequately demonstrated malice on the part of Banner to overcome the statutory immunity.

But because Banner's collateral estoppel argument challenged the adequacy of Smith's showing of malice, Smith had notice that the sufficiency of that showing was at issue on summary judgment. Therefore, the district court did not violate Rule 56(f) when it granted summary judgment to Banner on the state law claim on that basis. We further agree with the district court that Smith did not meet her burden of demonstrating malice necessary to overcome Banner's statutory immunity and accordingly affirm the district court's grant of summary judgment to Banner as to Smith's state-law claim.

2. Smith's second claim against Banner was brought under 42 U.S.C. § 1983 and alleged the

abridgment of Smith's constitutional right to custody of CR. On this claim, the district court applied collateral estoppel and concluded that the juvenile court had established Smith's abuse of CR, that the finding should be accorded collateral estoppel effect, and that consequently Smith could not show that her constitutional right to custody of CR had been violated when Banner allegedly interfered with her rights. Because Banner raised the collateral estoppel issue on summary judgment, the district court did not violate Rule 56(f) when it
granted summary judgment on that ground.

3. Smith challenges the district court's application of collateral estoppel to the findings of the juvenile court on summary judgment. The district court granted summary judgment after concluding, based on the juvenile court's findings as to Smith's treatment of CR, that the state had a compelling interest in CR's welfare that permitted it to lawfully interfere with Smith's custody of CR. Consequently, the district court concluded that Smith had failed to establish that her constitutional right to custody of CR was violated by Banner.

"In determining the preclusive effect of a state-court judgment, [the district court] must 'refer to the preclusion law of the State in which judgment was rendered.'" *Diruzza* v. *Cnty. a/Tehama,* 323 F.3d 1147, 1152 (9th Cir. 2003) (quoting *Man-ese* v. *Am. Acad. a/Orthopaedic Surgeons,* 470 U.S. 373, 380 (1985)). Under Arizona law:

> Collateral estoppel, or issue preclusion, binds a party to a decision on an issue litigated in a previous lawsuit if the following factors are satisfied: (1) the issue was actually litigated in the previous proceeding, (2) the parties had a full and fair opportunity and motive to litigate the issue, (3) a valid and final decision on the merits was entered, (4) resolution of the issue was essential to the decision, and (5) there is common identity of the parties.

Campbell v. *SZL Props., Ltd.,* 62 P.3d 966, 968 (Ariz. Ct. App. 2003).[1] A final judgment is "any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect." *Elia* v. *Pifer,* 977 P.2d 796,803 (Ariz. Ct. App. 1998) (quoting Restatement (Second) of Judgments § 13 (1982)).

Smith argues that the juvenile court orders are not sufficiently final to warrant giving them collateral estoppel effect. However, Smith concedes in her briefing that three of the juvenile court orders were sufficiently final to be accorded collateral estoppel effect, including an order dated May 19, 2010. In that order, the juvenile court made factual findings as to the connection between Smith's continued custody of CR and CR's prior life-threatening medical events. It further noted that Smith "presented no expert testimony to rebut Dr. Bursch's testimony or to support her position that

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[1] Here, where collateral estoppel is applied defensively, the "common identity" element is not required. *Id.*

she does not pose a threat to [CR]." Under the particular factual circumstances presented, the district court did not err by applying collateral estoppel to these findings. We find unpersuasive Smith's alternative arguments that it is unjust to apply collateral estoppel to juvenile court proceedings and that the dismissal of CR's termination proceedings should preclude collateral estoppel. Accordingly, we affirm the district court's grant of summary judgment to Banner.

4. Smith asserts that the district court erred in granting summary judgment to the State of Arizona and its departments because she seeks to hold them liable in respondeat superior for the actions of various state employees. But a respondeat superior theory of liability does not overcome the State of Arizona's Eleventh Amendment immunity from suit for damages in federal court. *See Hans* v. *Louisiana,* 134 U.S. 1, 15 (1890); *Belanger* v. *Madera Unified Sch. Dist.,* 963 F.2d 248, 250 (9th Cir. 1992) ("(I]t is clear that the Eleventh Amendment prohibits actions for damages against state agencies when Congress has failed to express a contrary intent."). Accordingly, the grant of summary judgment as to those parties is affirmed.

5. Smith challenges the grant of summary judgment to Bonnie Brown and Tammy Hamilton-MacAlpine, employees of Arizona Child Protective Services. Smith alleges that Brown and Hamilton-MacAlpine received exculpatory facts as to Smith's treatment of CR from a Tempe Police detective but failed to provide that information to the juvenile

court during CR's dependency proceedings. But Smith's evidence establishes only that Hamilton-MacAlpine was aware that no criminal charges would be filed against Smith, and does not establish any knowledge by Brown of the Tempe Police investigation's findings. Accordingly, we agree with the district court's conclusion that Smith has not demonstrated a genuine dispute of material fact as to whether "either Brown or MacAlpine had the knowledge and opportunity to correct allegedly false statements contained in the dependency petition." Therefore, we affirm the grant of summary judgment as to these parties.

6. Smith challenges the grant of summary judgment to CPS investigator Laura Pederson on immunity grounds. The district court held that Pederson was entitled to quasi-prosecutorial immunity for decisions related to the institution of dependency proceedings for CR. We have held that social workers are absolutely immune from § 1983 claims related to the decision to institute dependency proceedings, but have also held that social workers "are not entitled to absolute immunity from claims that they fabricated evidence during an investigation or made false statements in a dependency petition affidavit that they signed under penalty of perjury." *Beltran* v. *Santa Clara Cnty.,* 514 F.3d 906,908 (9th Cir. 2008) (en banc). Smith asserts that a series of factual statements in CR's dependency petition were false and were derived directly from Pederson's investigative reports. Smith asserts that as a result, Pederson is not entitled to immunity from claims stemming from the decision to

institute dependency proceedings. But CPS's certification of facts to the juvenile court under penalty of perjury was made by Pederson's supervisor, not Pederson. And there is no suggestion in the record before us that CPS's factual statements reflect anything other than its good-faith understanding of the facts at the time the petition was filed. Accordingly, we hold that Pederson is entitled to quasi-prosecutorial immunity as to claims arising from the decision to institute dependency proceedings for CR.

The district court further held that Pederson was entitled to qualified immunity as to her investigatory conduct on CR's case. A state official is entitled to immunity from suits brought pursuant to § 1983 unless (1) "the facts, when taken in the light most favorable to Plaintiffl], show that Defendant('s] conduct violated a constitutional right," and (2) "the constitutional right at issue is 'clearly established." *Torres* v. *City of Los Angeles,* 548 F.3d 1197, 1210 (9th Cir. 2008) (citation omitted). The heart of Smith's challenge here rests on Smith's assertions that after CR was initially taken into the State's custody, Pederson failed to follow up on information provided by Smith or otherwise look for exculpatory evidence that would favor returning CR to Smith's custody and that triable issues of fact exist as to whether continued investigation would have required CR's return.

Smith misapprehends the qualified immunity inquiry. To circumvent qualified immunity, Smith must show that a reasonable CPS worker would

have understood that her alleged failure to further investigate CR's case violated Smith's clearly *established federal* rights. *Saucier* v. *Katz,* 533 U.S. 194,202 (2001), *overruled on other grounds by Pearson* v. *Callahan,* 555 U.S. 223 (2009). Smith points to no such federal right-in fact, authority supports the opposite position. *See Tsao* v. *Garment Co.* v. *EEOC,* 434 U.S. 412, 422 (1978). The district court awarded fees to defray the expenses that Banner incurred litigating Smith's post-summary judgment motions. Smith's motions included a motion for reconsideration that also sought relief under Federal Rules of Civil Procedure 59 and 60 rules which were inapposite but necessitated a response from Banner. Smith also sought to conduct additional discovery from Banner in support of her motion for reconsideration and other relief. These motions were unreasonable. Accordingly, we affirm the district court's award of fees related to these motions under 42 U.S.C. § 1988.

8. Smith and her counsel challenge the imposition of $33,588 in Rule 37 sanctions against them jointly and severally. We review the awarding of fees pursuant to Rule 37 for abuse of discretion. *Sigliano* v. *Mendoza,* 642 F.2d 309, 310 (9th Cir. 1981). The district court did not abuse its discretion by concluding that Smith and her counsel violated its scheduling and discovery orders by failing to diligently attempt to obtain records from the juvenile court and failing to properly comply with Rule 26 disclosure requirements. Such conduct is sanctionable under Rule 37. And we hold the district court's limited findings in support of its sanction

were not error where Rule 37 and the law of this circuit do *Desert Palace, Inc.,* 698 F.3d 1128, 1147 (9th Cir. 2012) ("While an officer may not ignore exculpatory evidence that would negate a finding of probable cause, [o]nce probable cause is established, an officer is under no duty to investigate further or to look for additional evidence which may exculpate the accused. "') (quoting *Broam* v. *Bogan,* 320 F.3d 1023, 1032 (9th Cir. 2003) (alteration in original)). And to the extent Smith challenges the propriety of the district court, rather than a jury, evaluating whether Pederson reasonably believed that probable cause existed that CR was in danger, that was not error. *See Act Up!/Portland* v. *Bagley,* 988 F.2d 868, 873 (9th Cir. 1993) (when applying qualified immunity analysis on summary judgment, the "determination of whether the facts alleged could support a reasonable bel ief in the existence of probable cause ... [is] a question of law to be determined by the court"). Accordingly, we affirm the district court's grant of summary judgment to Pederson.

7. Smith challenges the district court's award of $50,402.50 in attorney's fees to Banner as a prevailing party pursuant to 42 U.S.C. § 1988. We review decisions determining the legal right to attorney's fees under 42 U.S.c. § 1988 de novo. *Chaudhry* v. *City o/L.A.,* 751 F.3d 1096, 1110 (9th Cir. 2014). Fees may be awarded to a defendant if a plaintiff continued to litigate a § 1983 claim after it became clear the claim was frivolous, unreasonable, or groundless. *Christiansburg* not require more.

Accordingly, we affirm the district court's imposition of Rule 37 sanctions against Smith and her counsel.

9. Smith's counsel challenges the imposition of 28 U.S.C. § 1927 sanctions against him in part due to the failure of the district court to grant his request for oral argument prior to entering its order. Sanctions imposed pursuant to 28 U.S.C. § 1927 are "reviewable for abuse of discretion." *United States* v. *Assoc.Convalescent Enters., Inc.,* 766 F.2d 1342, 1345 (9th Cir. 1985) (internal citation omitted). Notice and an opportunity to be heard should be provided before sanctions are imposed under § 1927. *See T W. Elec. Serv., Inc.* v. *Pac. Elec. Contractors Ass 'n,* 809 F.2d 626, 638 (9th Cir. 1987). Granting a request for oral argument ensures "that: (1) the attorneys will have an opportunity to prepare a defense and to explain their questionable conduct at a hearing; (2) the judge will have time to consider the severity and propriety of the proposed sanction in light of the attorneys' explanation for their conduct; and (3) the facts supporting the sanction will appear in the record, facilitating appellate review." *Miranda* v. S. *Pac. Trans. Co.,* 710 F.2d 516, 522-23 (9th Cir. 1984); *see also Malhiot* v. S. *Cat. Retail Clerks Union,* 735 F.2d 1133, 1138-39 (9th Cir. 1984) Boochever, J., dissenting. Counsel's request for oral argument was made in conformance with the District of Arizona local rules by including the phrase "oral argument requested" in the caption of his response brief. *See* Ariz. LRCiv. 7.2(f). In light of the significant sanction imposed, the different judges that presided in this matter, and the particulars of this action and related actions known

to the district court, we hold that the district court abused its discretion when it failed to grant the request for oral argument prior to imposing 28 D.S.C. § 1927 sanctions. Accordingly, we vacate the sanctions imposed upon Smith's counsel pursuant to that statute and remand to the district court for oral argument.[2]

AFFIRMED IN PART, VACATED IN PART, and REMANDED.

Each party shall bear its own costs.

[2] We therefore need not reach counsel's challenge to the district court's factual findings in support of the sanctions.

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
No. 10-CV-01632
Leanna Smith, an individual
Plaintiff,
v.
Barrow Neurological Institute of St. Joseph's Hospital and Medical Center, et al.,
Defendants.

ORDER

Filed January 17, 2012.

Plaintiff has filed a motion to amend her complaint. Doc. 82. The motion has spawned much dispute among the parties, including two motions to strike. Docs. 88, 98. Having considered the many briefs filed in connection with the motion to amend and the motions to strike, as well as the lengthy history of this litigation, the Court will deny the motion to amend, deny the motions to strike, and establish a schedule for the completion of this case.[1]

This case has been pending in this Court since early August of 2010 (Doc. 1), and was first filed in state court on March 22, 2010 (Doc. 1 at 2). Plaintiff has filed three different complaints - her initial

[1] The various requests for oral argument are denied because the issues have been thoroughly briefed and argument will not aid the Court's decision. Fed. R. Civ. P. 78(b).

complaint in state court (Doc. 1-2 at 7), an amended complaint in state court (Doc. 1-5 at 2), and a second amended complaint in this Court (Doc. 32). These complaints, which name defendants including hospitals, state agencies, and numerous doctors, focus primarily on the defendants' allegedly wrongful conduct in causing Plaintiff to lose custody of her minor child, CR.

Progress in this case has been slow. Part of the delay has been caused by an ongoing state court proceeding to sever Plaintiffs relationship with CR and the desire of the parties to see the state case concluded before this case proceeds. Part of the delay has resulted from the confidentiality of state records relating to CR and the parties' less than speedy efforts to obtain permission from the juvenile court to use the records in this case. The Court has held three case management conferences, each time urging the parties to move the case forward and ordering Plaintiff to take steps to secure information needed for discovery to proceed.
12 See Docs. 57, 70, 85. Among other things, the Court has expressly advised the parties that this case will be resolved within three years of its removal to this Court - an effort to abide by the requirements of Rule 1 of the Federal Rules of Civil Procedure, the three-year objective of the federal courts' CJRA system, and, with some leeway given the complexity of this lawsuit, the ABA's two-year goal for completing civil cases. Doc. 85 at 2.

Plaintiff, unfortunately, has not been as responsive as the Court would hope. Plaintiff did not

file the second amended complaint on the schedule required by the Court, resulting in additional and unnecessary litigation. *See* Docs. 30-44. Plaintiff has not acted as promptly as the Court required to obtain records from the juvenile court. And Plaintiff disregarded the Court's directive that Plaintiffs counsel confer with defense counsel *before* filing the proposed third amended complaint in an effort to clarify and simplify the proposed additions to this case. *See* Doc. 85. This not only resulted in a lost opportunity to simplify the proposed amendment, but also spawned much unnecessary litigation. *See* Docs. 85, 88, 91- 93, 97, 98, 101, 102.

Plaintiff s proposed third amended complaint is expansive. It contains 449 paragraphs and eight separate counts, as opposed to 246 paragraphs and three separate counts in the second amended complaint. *Compare* Docs. 32 and 86. More importantly, it proposes to add entirely new claims about the removal of another of Plaintiffs minor children (JS); add 2 new defendants, including numerous doctors and other health care professionals, companies, UCLA, the California Board of Regents, and foster parents for Plaintiffs children; and add claims for Racketeering and other wrongs that range far beyond the issues that have been the focus of this case from the beginning. *See* Doc. 86. Some of the new parties could have been added to earlier complaints, such as some of the doctors whose actions were involved in events giving rise to this case and who were even mentioned in earlier versions of Plaintiffs complaint. Other Defendants are named as part of an entirely new

lawsuit that Plaintiff seeks to graft onto this case - claims arising from the removal of JS from Plaintiff s custody.

This case has been pending for 22 months. Plaintiff and her counsel have had three opportunities to plead her claims. Now is not the time to more than double the size of the case, adding claims and many defendants related to a minor child whose removal has never been part of this litigation and adding expansive new legal theories and claims. What is more, this case has been delayed considerably by the complications of obtaining confidential state documents related to the removal of CR; adding the removal of JS to this case would only compound these confidentiality problems and introduce an entirely new set of sensitive state records and an entirely new source of protracted delay.

Granting Plaintiffs proposed amendment would, in effect, require this litigation to start over. New defendants would need to be served. Motions to dismiss would surely be filed, by new defendants in the case and existing defendants against whom new claims are asserted, replicating two rounds of such motions already completed. *See* Docs. 30, 58.

Courts may deny a motion to amend when it involves undue delay and prejudice to opposing parties. *Farnan* v. *Davis,* 371 U.S. 178, 182 (1962). Seeking to double the size and complexity of this case some 22 months into the litigation constitutes undue delay. To the extent Plaintiff believes that

some of the claims have been discovered only recently, such as the claims related to the removal of JS, she can assert those claims in new litigation.

Moreover, the existing defendants, after litigating this case for some time and testing the various complaints through motions to dismiss - a process that has resulted in simplifying and clarifying of the claims in this case - would be prejudiced by being required to start over and to do so along side 24 new defendants.

Rule 1 calls for the just, speedy, and inexpensive determination of this case. That goal cannot be achieved by permitting Plaintiff to file the expansive third amended complaint.

The Court will deny the motion and establish a schedule that will result in resolution of claims asserted in the second amended complaint within three years of the removal of this action to federal court.

IT IS ORDERED:

1. Plaintiffs motion to amend (Doc. 82) is denied.
2. The pending motions to strike (Docs. 88, 98) are denied.
3. The Court will establish a litigation schedule by separate order.

DATED this 17th day of January, 2012.

/s/ David G. Campbell
United States District Court Judge

APPENDIX H

NOTICE OF CLAIM LETTER

February 9, 2012

Office of the Arizona Attorney General
1275 W. Washington
Phoenix, Arizona 85007

Director of DES/CPS
Clarence Carter
1717 W. Jefferson St.
PO 6123 Suite 010A
Phoenix, Arizona 85005

Laura Pederson ("Pederson")
Child Help Children Center of Arizona
2346 North Central Ave
Phoenix, AZ 85004

Tammy Hamilton-MacAlpine ("MacAlpine")
Buwalda Psychological Services
2039 South Mill Ave Ste B
Tempe, Az 85282

Bonnie Brown ("Brown")
4635 S. Central Ave
Phoenix, Arizona 85040

David Fink ("Fink")
5002 South Mill Avenue
Suite #2
Tempe, Arizona 85282

Laura Gonzales-Southwest Network ("Gonzales")
ATTN: STEVE STRIEDEL
2700 North Central Ave #1050
Phoenix, Az 85004-1148

Dr Katrina Buwalda ("Buwalda")
Buwalda Psychological Services
2039 South Mill Ave Ste B
Tempe, Az 85282

Amanda Torres ("Torres")
480-771-5180
AZ DES/CPS
5038 South Price Road
Tempe, AZ 85282

Kristi and Brent Mueller
("Foster Mother and Foster Father")
10397 West Foothills Drive
Peoria, Arizona 85383

Marina Greco ("Greco")
The Resolution Group
460 North Mesa Drive Ste # 201
Mesa, Az 85201

Childhelp Children Center of Arizona ("Childhelp")
2346 North Central Ave
Phoenix, Az 85004

Brenda Bursch ("Bursch")
David Geffen School of Medicine
UCLA Neuropsychiatric Institute and Hospital
Division Of Child And Adolescent Psychiatry
760 Westwood Plaza
UCLA NPI 48-253C
Los Angeles, CA 90024-1459

David Geffen School of Medicine at UCLA ("UCLA")
Office of the Dean- Eugene Washington- Room 12-138CHS, Mail Box 172216
10833 Le Conte Ave
Los Angeles, CA 90095

AZ Department of Economic Security
ATTN: Alice McLain, Contract Administrator
Financial and Business Operations Administration
1789 West Jefferson, Third Floor SE-940A
Phoenix, AZ 85007

Patricia A Kapur, MD
757 Westwood Plaza
Room 2231L
Los Angeles, CA 90095

Kathryn Coffman ("Coffman")
Childhelp
2346 North Central Avenue
Phoenix, Arizona 85004

Re: My Client: Leanna Smith, mother of CR and JS; and Darrell Smith, father of JS

Date of Loss: August 15, 2011
(Discovery of misconduct)

Claim: **Racketeering (A.R.S. §§13-2301, 2310, 2311 and 13-2314 – 18 U.S.C. § 1962) and related State tort and Federal Civil Rights claims**

Dear State of Arizona, Director Clarence Carter, Laura Pederson, Tammy Hamilton-MacAlpine, Bonnie Brown, David Fink, Laura Gonzales, Dr Katrina Buwalda, Buwalda Psychological Services, Kristi and Brent Mueller, Marina Greco, Childhelp Children Center of Arizona, Kathryn Coffman, Brenda Bursch and UCLA:

I represent Leanna Smith, the mother of CR, who is now an adult, but at all relevant times was a minor, the mother of JS, a minor and Darrell Smith the father of JS, regarding their claims against the above for Racketeering pursuant to A.R.S. §§13-2301, 2310, 2311 and 13-2314, and 18 U.S.C. § 1962 and related State tort and Federal civil rights claims for conspiring to and manipulating, coaching and brainwashing CR and JS while in CPS care, custody and control. These claims are based upon the following.

FACTS

CR was taken into custody by Arizona Child Protective Services ("CPS") on September 3, 2008 at the requests of Dr. White, Dr. Rekate and Dr. Alfano at St. Josephs Hospital and Dr. Elton, Dr Albuquerque and Dr. Oppenheim at Banner Desert

Hospital, based on allegations of suspected Munchausen Syndrome by Proxy (Factitious Disorder by Proxy)(referred to collectively as "MSBP"). The hospitals and CPS consulted Dr. Coffman, who was supervised by Dr. White to pursue MSBP against Leanna. These allegations drove the case although the Juvenile Court never found that Leanna had done anything medically to CR or that she had MSBP. The Juvenile Court ultimately denied DES's petition to terminate Leanna interest in CR and dismissed the dependency petition.

Before DES sought termination, the Juvenile Court had approved reunification of CR with Leanna. The day before Leanna was being reunified with CR; Dr. Elton accused Leanna of putting air in CR's shunt causing it to fail. As a result, DES used the allegations of MSBP to terminate visitation between Leanna and CR. CPS then pursued termination of Leanna's parental rights. Dr. Elton recanted his position, however, CPS decided to go forward with termination even though no evidence could ever be rationally presented (anything other than raw speculation) that Leanna did anything to cause the shunt to fail.

Prior to this stage in the events, Leanna served a Notice of Claim on DES and its CPS employees Tammy Hamilton-MacAlpine (case worker), Bonnie Brown (CPS Supervisor) and Laura Pederson (CPS Investigator) that she would be filing a complaint against them and the doctors and hospitals to pursue the wrongful taking of CR. This notice of claim was served on or about September 19,

2009. Leanna filed a complaint on March 22, 2010, which was removed to the United States District Court of Arizona, Case No. 10-cv-01632-DGC and which is currently pending.

Brown, MacAlpine, Pederson, Fink, Torres, Greco, Buwalda, Foster Mother and Foster Father, Gonzales, Coffman and Brenda Bursch referred to collectively as "Racketeers") actively, knowingly, intentionally and with malice conspired together and agreed to work together to falsely assert MSBP against Leanna and to brainwash and manipulate CR to get her to agree with them that Leanna had caused her medical injury because of MSBP and later that her mother had physically and sexually abused her and JS. The purpose was to manipulate CR as much as possible to assure success by DES in the Juvenile Court litigation and to terminate Leanna's parental rights in CR and JS. This was also done to limit or eliminate Leanna's claims against the Racketeers and the medical Defendants in the Civil Rights case for wrongfully taking CR from Plaintiffs custody and control.

After Dr. Elton recanted, DES retained Dr. Brenda Bursch to provide expert testimony that Leanna was mentally ill, had MSBP and therefore was dangerous to CR and JS. The Racketeers thereafter meet and conspired to use Dr. Bursch's report to change CR's mind about what had happened to her medically and to get her to believe her medical condition was caused by her mother's MSBP.

The Racketeers started by prohibiting Leanna from bringing JS (CR's Sister), Cordell (CR's Brother) and Darrell (whom she thought of as "Dad") to supervised visits with CR and prohibited Leanna from praying with and discussing religion with CR. They, through the Foster Family, then exposed CR to movies, music, dress, makeup and profanity that they knew would not be approved by Leanna and that would be enticing to a teenager. As a result of these efforts, CR began to disagree with her mother's values, began to swear and became angry because she could not see JS, Darrell and Cordell at visits with Leanna. She blamed her mother for this and was never informed by CPS and the Racketeers that they had prohibited them from visiting.

The Racketeers' then influenced CR to believe that her mother was lying to her about Leanna's and Darrell's religious beliefs. They influenced CR into believing Smith and Darrell were really Muslims, rather than Christians and that Darrell had other wives. They also influence CR into believing that Leanna's litigation in the District Court against the doctors and hospitals would result in her not being able to become a nurse and that if she went home to her mother she would just do what her mother wanted and could not act independently of her. As a result of this manipulation, CR told Smith that she did not want to come home but wanted to continue to have a relationship with her mother and family. All this while DES was intending to pursue termination rather than reunification.

At the very point where CR indicated she wanted to remain in foster care until 18, but still have a relationship with Leanna and her family, and at the moment CR become angry with her mother and felt her mother was lying to her about why Darrell was not at visits and that her mother was lying to her about her religious beliefs, the Racketeer's had CR read the book "Sickened" and read Dr. Bursch's Report accusing Leanna of having mental illnesses and alleging that Leanna caused CR's medical problems as a child because of her MSBP.

"Sickened" is the story of a girl who lost her childhood because her mother had poisoned her as a result of having MSBP. Upon finishing reading the book "Sickened," with Greco, her therapist and Foster Mother, CR related to the child in the book and from that point on believed that Leanna had drugged her causing the unexplained comas she had as a child. After reading "Sickened" and Bursch's report, CR thereafter believed her mother is mentally ill, has MSBP, was trying to hurt her and deprived her of her childhood. Before the matter was ever heard by the Juvenile Court, the Racketeers had effectively destroyed the relationship CR had with Leanna to the point where CR does not want to have anything to do with her mother.

The Racketeers did not wait to litigate the MSBP issues before the Juvenile Court but did so in CR's mind long before the matter came to trial. The Racketeers used Bursch's report and testimony to take JS into CPS custody, even though no medical

problems ever existed with JS. The Racketeers manipulated CR to bring allegations of physical abuse against Leanna to justify retention of custody of JS and placing JS in the same foster home as CR. Thereafter, they continued to manipulate CR to obtain false allegations of physical abuse against Darrell and physical abuse and sexual abuse allegations against Leanna.

The Racketeers knew that CR had become "enmeshed" with Foster Mother and used this relationship to manipulate CR and to obtain false allegations of abuse by having Foster Mother and Father attend counseling sessions with Greco and CR and Greco and the Foster Mother reading and interpreting Bursch's report with her as well as reading with her and interpreting the book "Sickened."

The existence and nature of the scheme to defraud is shown by the following. On 2/19/2010, Greco at the direction of and with the consent of Brown and MacAlpine, had a conversation with Brenda Bursch regarding therapy for CR. This was done before Bursch had prepared her report or interviewed CR or Leanna. In that conversation, Bursch offered Greco various interventions Greco could use with CR as victim on MSBP and suggested Greco integrate old medical records into CR's treatment to help her "re-think past events" and to entertain a different view of her medical treatment than she then had which they believed came from her mother.

On 4/23/10, Dr. Bursch interviewed CR. At the conclusion of the interview, Dr. Bursch recommended CR read the book "Sickened, The True Story of a Lost Childhood" by Julie Gregory. Upon information and belief, Dr. Bursch had an off the record conversation with CR about her mother causing her unexplained coma's and causing her medical conditions she had in the past and recommended she read this book.

On 4/28/2010 Marina Greco, Katrina Buwalda, Bonnie Brown, Tammy Hamilton-MacAlpine and the Foster Mother discussed by e-mail whether they should stop what they were doing in therapy with CR. They were proud of CR that she no longer trusted or believed her mother and were concerned about whether they should continue further. It was agreed they should continue to answer CR's questions she was having about her mother. Greco informed the above that after her visit with CR where she expressed her anger with her mother that she was lying to her, that she had purchased the book "Sickened" that was recommended by Dr. Bursch for CR to read and would give it to her to read. She then gave the book to CR to read.

Bursch's report was completed by May 9, 2010. Upon information and belief, at about this same time, CR was provided Bursch's Report regarding Leanna by MacAlpine and CR read this report and the medical timeline contained therein with the Foster Mother and Greco.

On 5/13/2010, CR and Foster Mother completed the recommended reading of the book "Sickened." CR identified herself with the child character in the book and at this point, believed that her mother drugged her to cause her comas. CR expressed concern about JS remaining in the home and it was at this point she stated she had memories of physical abuse of JS.

The above actions constitute a scheme or artifice to defraud Leanna and Darrell of custody of CR and/or JS and to damage or eliminate Leanna's claims against the Civil Rights case Defendants by manipulating CR into believing her mother had MSBP, her mother tried to kill her, that CR needed to protect JS and take JS out of her mother's home and to make false allegations of abuse (including sexual abuse) to assure termination of Leanna and Darrell's parental rights in CR and JS.

Leanna parental interest in CR and JS constitutes a property interest that Defendants knowingly and intentionally schemed to deprive Leanna and Darrell of by having CR not want to have anything to do with them and manufacturing false allegations of physical and sexual abuse to present to the Juvenile Court and to have Leanna and Darrell prosecuted criminally. The acts set forth above constitute a pattern of racketeering activity that took place from January of 2010 and is ongoing to the present.

Greco was placed on 90 days probation with Child Help, starting 3/1/2010, following a Complaint made to the Arizona Board of Behavioral Health Examiners regarding Greco telling a young girl she was counseling that it would be in her best interest if Greco adapted her. Greco quit Child Help and CR and JS were then assigned to Southwest Network Counselor Laura Gonzales who continued to manipulate CR and JS in accordance with the scheme set out by the Racketeers.

The Racketeers presented and used the false allegations of abuse before the Juvenile Court to seek termination of Plaintiffs parental interest in CR and JS. The Court denied DES's petition to terminate Leanna's parental rights in CR and dismissed the dependency petition filed by CPS. However, the Juvenile Court terminated Leanna and Darrell's parental rights in JS based on the false allegations of abuse involving JS and that matter is up on appeal. The ruling by the Juvenile Court was based upon fraudulent information intentionally provided to the Court by the Racketeers. Leanna was subject to multiple criminal investigations as each new allegation of abuse comes from CR. The Racketeers aggressively sought criminal prosecution of Leanna and Darrell based on the false allegations of abuse. No criminal prosecution took place and all cases have been closed by the police.

The Racketeers drove a wedge between Leanna and Darrell and CR. CR feels her mother is mentally ill, caused her medical condition she experienced as a child, has MSBP and has indicated

she does not want to have anything to do with her Mother. Even though the Court ruled in Leanna's favor, Leanna does not know where her daughter is and is not able to contact her to reestablish their relationship.

Further, the Racketeers collectively constituted an enterprise, as defined in 18 USC s 1961 (4) to wit, an association which has been engaged in and the activities of which affect interstate commerce. Based on the above, the Racketeers have witnessed tampered and retaliated against a witness and exploited them under 18 USC 1962(c). The tampered and exploited witnesses were CR and JS.

UCLA entered into a contract with the State of Arizona, DES to provide services regarding MSBP. Pursuant to this Contract, Bursch was to provide the services. Bursch and UCLA contractually agreed to abide by all laws in the State of Arizona and agreed to indemnify DES for any injuries or damages resulting from Bursch's conduct.

DEMAND

To resolve this matter pursuant to A.R.S.12-821.01, Leanna requests payment of **SEVENTY FIVE MILLION DOLLARS** and Leanna is entitled to treble damages on this number and attorney's fees and costs. Darrell, request the payment of **THIRTY-FIVE MILLION DOLLARS** trebled and his attorney's fees and costs. Further that Racketeers be terminated and that the State of Arizona, DES

and CPS having no dealings (employment or contractually) with these individuals and entities.

Your prompt attention to this matter is needed.

Very truly yours,
/s/ Keith Knowlton

APPENDIX I

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

No. CV2012-095208

Leanna Smith, an individual
Plaintiff,
v.
State of Arizona, et al.,
Defendants.

AMENDED COMPLAINT

(42 U.S.C. § 1983, Interference with Parental Custody, Intentional Infliction of Emotional Distress, Constructive Fraud, Defamation, Fraud, Retaliation, and Civil Conspiracy)

Filed January 15, 2013

Plaintiff, Leanna Smith, as and for her complaint against Defendants alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff Leanna Smith ("Smith") at all times mentioned herein resided in Maricopa County, Arizona.

2. At all times relevant to this Complaint, CR was a minor child of Leanna Smith and is a fictitious name to protect her identity.

3. Defendant State of Arizona is a body politic of the United States of America. The State of Arizona caused events to occur that are the subject of this complaint through Child Protective Services ("CPS"), which is part of the Division of Children, Youth and Families ("DCYF") within the Arizona State Department of Economic Security ("DES"). DES is a non-jural entity of the State of Arizona.

4. Defendant Kathryn Coffman ("Coffman") is licensed to practice medicine in the State of Arizona and at all times relevant to the complaint was employed at the Child Abuse Assessment Center at St. Josephs Hospital and Medical Center, owned and operated by Catholic Healthcare West, an Arizona Corporation, dba Dignity Health (hereafter referred to as "Dignity Health"). Coffman caused events to occur in Maricopa County Arizona out of which this complaint arose.

5. Defendants Laura Pederson ("Pederson") ,CPS investigator, Tammy Hamilton-MacAlpine ("MacAlpine"), CPS Case Worker, Bonnie Brown ("Brown"), CPS Supervisor, David Fink ("Fink"), CPS Supervisor over Amanda Torres and Amanda Torres ("Torres"), a CPS Investigator, are all employees of the State of Arizona (through DES) and in the course and scope of their employment caused events to occur in Maricopa County, Arizona out of which this complaint arose ("CPS Defendants").

6. At all timed relevant to this Amended Complaint, Defendants Kristi ("Foster Mother") and Brent Mueller ("Foster Father") was the foster parents of CR pursuant to their contract with the State of Arizona through DES. The Foster Parents caused events to occur in the State of Arizona out of which this Complaint arose.

7. Defendant Marina Greco ("Greco") is a licensed therapist who was employed by Defendant Childhelp Children Center of Arizona ("Childhelp"). Greco and Childhelp caused events to occur in Maricopa County Arizona out of which this complaint arose. At all relevant times, Greco, through Childhelp, contracted with DES to be a therapist and counselor for CR.

8. Defendant Katrina Buwalda ("Buwalda") is a licensed psychologist in the State of Arizona and the owner and operator of Buwalda Psychological Services PLLC. At all times relevant to this Complaint Buwalda acted as a counselor for CR.

9. Defendant Dr. Brenda Bursch ("Bursch") is a licensed psychologist in the State of California (not Arizona) and is employed by Defendant University of California, Los Angeles and the Board of Regents for the University of California, David Griffen School of Medicine at UCLA ("UCLA"). UCLA has contracted with the State of Arizona to provide services to DES and CPS, through Bursch.

10. Defendant UCLA, in its contract with the State of Arizona, agreed to indemnify the State of Arizona for any wrongful conduct of Brenda Bursch and that the Contract would be governed by

the laws of the State of Arizona. Upon information and belief, Dr. Bursch directed the therapy and counseling provided to CR, consulted with the Arizona Attorney General's Office regarding litigation before the Arizona Juvenile Court and prepared a mental health evaluation and report regarding Smith.

11. Each and every individual Defendant is being sued for their conduct and not because of the position they hold. At all times mentioned herein, each individual Defendant was acting within the course and scope of said agency and employment and caused events to occur in Arizona out of which this Complaint arose.

12. Upon information and belief the above individual defendants are married and the names of their husbands and/or wives are unknown and therefore listed as Spouse. Upon information and belief the alleged acts of the above individual Defendants were done for the benefit of the marital community and therefore Plaintiff will amend the Complaint to include the names of any of the spouses prior to trial of this matter. This allegation only applies to pendent state tort claims and not to claims raised under 42 U.S.C. § 1983.

13. Proper notice of claim has been given pursuant to all relevant statutory provisions applicable in Arizona.

14. Defendants State of Arizona, DES, CPS, Childhelp Children Center of Arizona, UCLA and Buwalda Psychological Service PLLC and Dignity Health are responsible for the acts and/or omissions of their agents and/or employees under

doctrines of respondeat superior, agency, and joint venture.

15. A JURY TRIAL IS REQUESTED.

SUMMARY

16. It is well established, that a parents right to raise a child is a fundamental right (one of the basic civil rights of man) protected under the Fourteenth Amendment of the United States Constitution. The Fourteenth Amendment Protects a mother from unwarranted usurpation, disregard or disrespect.

17. It is well established that a state must use extreme care when making decisions which could threaten familial integrity.

18. Parents have a constitutional protected interest in the control and raising of their children without state interference.

19. The right of a family to remain together without the coercive interference of the awesome power of the state is the most essential and basic aspect of familial privacy.

20. It cannot be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody and control of their children. The Due Process Clause does not permit a state or its actors to infringe on the fundamental right of a parent to make child rearing decisions simply because a state judge believe a better decision could be made.

21. Plaintiff believed and CR believed that doctors had been negligent in providing her medical

care and treatment. CR believed that she was taken by CPS to cover up the doctors' negligence.

22. CR had suffered some medically unexplained coma's in her medical care and treatment. From the moment CPS took custody of CR they pushed the idea, which is purely speculative and without factual basis, that her mother caused the Coma's. CR did not believe this argument until reunification was terminated and DES pursued permanent termination of Smiths parental rights. CR, as the direct result of Defendants action, now believes that Smith caused her coma's and thereby threatened her life, Smith not the doctors or any physical problems she had caused her medical conditions, that her mother is mental ill and that her mother lied to her and deceived her, destroying the mother daughter relationship between CR and Smith so that she would not want to go home and would wrongfully accuse her mother of physical and later sexual abuse.

23. In the end, after a trial before the Superior Court Judge, the petition for termination regarding CR was denied the dependency petition regarding CR dismissed. However, as a result of Defendants actions CR, as an adult (over 18) no longer wants to have any relationship with her mother and family.

FACTUAL ALLEGATIONS

24. Plaintiff incorporates all the above paragraphs as though fully set forth herein.

REUNIFICATION AND AIR IN THE SHUNT ALLEGATION

25. CR was placed in Arizona CPS custody on 9/3/08 from Banner Desert Medical Center.

26. CR stated in an E-mail to her brother Cordell dated September 3, 2008 that she was going into CPS custody and would be at a foster home. She stated CPS was told "that her mom was doing this" and there was no medical reason for her coma's she had two years ago and that "mom cause it." CPS started immediately telling CR that her mother caused her coma's even though they occurred in a Pediatric Intensive Care Unit in the hospital setting while CR was undergoing medical procedures.

27. On September 5, 2008 CR stated in the CPS Rapid Response Referral Form that the coma's were caused by doctors giving and providing her medication that she was allergic to.

28. CR was assessed by Vincent Kinsey, LPC for CPS on 9/6/2008, and that report stated CR reported no physical, sexual or emotion abuse past or present.

29. On 10/25/08 Laura Pederson made Smith sign a piece of paper stating the "Visitation Guidelines." Laura told Smith that she could not discuss CR's medical condition with her daughter during the 1 hour supervised visits.

30. On October 29, 2008, Dr. Kathryn Coffman accused Smith of having Munchausen Syndrome by Proxy and stated that individuals like Smith "have serial victims."

31. Dr. Coffman's boss was Dr Bruce White from St Joseph's Hospital who made the initial complaint to CPS Hotline on 8/27/2008. St Joseph's Hospital had a Contract with ChildHelp Children's Center of Arizona.

32. At all relevant times there was a "Memorandum of Understanding between Childhelp Children's Center of Arizona and Phoenix Police Department, Arizona Department of Economic Security-Child Protective Services, Maricopa County Attorney's Office and St. Joseph's Hospital to work together on cases of Child Abuse.

33. At all relevant times there was a direct contract between St. Joseph's Hospital with the State of Arizona to provide medical record review and forensic evaluations of children for CPS. These services at all relevant times were provided by Dr. Coffman who held herself out as a pediatric child abuse expert.

34. On 11/3/08 CPS Case manager Tammy Hamilton-MacAlpine called Marina Greco, Therapist at Child Help requesting she complete an intake of CR. On 11/7/08 CM Tammy Hamilton- MacAlpine went to Child Help to complete CR's intake with Marina Greco. Marina reported she was not able to provide supervised visits due to a conflict of interest in providing services to CR. It was agreed that Greco would provide family therapy sessions after she had time (approximately 6 weeks) to establish rapport and TRUST with CR. Then, she will make decisions as to when to bring Smith into sessions.

35. Smith was never brought into sessions with Marina Greco and CR.

36. On January 9, 2009, Dr. Coffman completed her medical record review and provided a letter ("Report") to Detective Page.

37. According to the "Memorandum of Understanding," St Joseph's Hospital and Medical Center Child Abuse Assessment Center ("CCCA") shall: "provide an UNBIASED FORENSIC INTERVIEW of children presenting to the CCCA with allegations of child abuse as appropriate, in partnership with CCCA forensic interviewers. The St Joseph's medical team of the Child Abuse Assessment Center will provide an UNBIASED FORENSIC MEDICAL EXAM on any child presenting to the CCCA with allegations of child abuse."

38. Dr. Coffman was obviously not unbiased because she was employed by the Hospital and supervised by the doctor at St. Joseph's Hospital that made the initial report of abuse to CPS regarding Plaintiff.

39. In her report Dr Coffman concluded that there is a dynamic existing between CR and her mother that results in CR's becoming so symptomatic that "clearly she is much better off, and much safer, out of her mother's care."

40. On 1/27/09 Smith was contacted by Dr. Connie Pyburn-Reunification Psychologist regarding supervised visits.

41. In July of 2009, CR was placed in a new foster home with Defendant Foster Mother and Foster Father.

42. On 7/17/09, the first unsupervised visit with CR and Smith took place for 2 hours.

43. On 7/29/09, CM Tammy Hamilton-MacAlpine had a phone discussion with Dr. Pyburn regarding family progress and further unsupervised visits. Dr. Pyburn is in agreement with allowing unsupervised visits on week-ends.

44. On 7/30/09 it was approved for CR to begin overnight visits. Dr Connie Pyburn made the recommendation for unsupervised visiting time because CR was less enmeshed with Smith and as a teenager, showed irritation with her mom sometimes.

45. On September 19, 2009, Plaintiff sent a Notice of Claim to the CPS Defendants and Foster Parents regarding the allegations that they wrongfully took CR and had caused CR injury when she had meningitis in their care.

46. On November 23, 2009, an Order was entered by the Juvenile Court for a Change of Physical Custody returning CR to Smith and her family. The Court signed the order approving reunification and return of CR to Smith's custody and control.

47. CR was scheduled to spend the Thanksgiving four-day holiday weekend at home with her family. CR was excited about this.

48. CR was taken to Smith's home for her Tuesday unsupervised visit and Smith would pick CR up after school on Wednesday for the Thanksgiving holiday.

49. On 11/24/09 CR came to visit Smith at 4:00p.m. for her scheduled unsupervised visit at home. At this visit, CR told her mother that she had a severe headache and that she hit her shunt on a hook at school and that the shunt was lose. The reunification team arrived at 4:32pm. Jewish Family Services sent Venus from the reunification team. CR informed "Venus" of her situation and Smith called the Foster Mother and informed her as well. Smith requested CR be taken to Dr. Elton because she did not want to have a shunt problem over the Thanksgiving Holiday weekend.

50. The Foster Mother took CR to the emergency room to have the shunt checked. Smith met the Foster Mother at Banner ER at 8:12 p.m. on 11/24/09. A CT scan was performed which showed there was a few bubbles of air in the shunt reservoir of the shunt and one small bubble of air in the ventricle.

51. Upon information and belief, the Foster Mother reported that Dr. Elton was angry and acted angry.

52. On 11/25/2009, Dr. Elton stated that the only way air could get into the shunt, especially in the ventricle, would be to mechanically inject the shunt with air. He also saw two suspicious red areas over the reservoir that he could not positively identify as needle mark. Dr. Elton stated that the air in the shunt could not have come from simply striking the shunt since there were no CT scans showing any air in the system in the prior months. Dr. Elton confronted CR regarding her story when he talked to her at the hospital.

53. Dr. Elton felt the shunt was still working but wanted CR to come back in one week to check the shunt.

54. Dr. Elton requested the matter be investigated and referred the matter to social services to make the report.

55. On 11/25/09, Dr Scott Elton conducted a physical examination. He states: "I used loupes and inspected the scar. There are 2 small areas over the dome that are slightly erythematous and punctuate, but no lacerations or contusions are present." "Her shunt has air in the valve, but more importantly there is intraventricular air. This can only be introduced mechanically. It raises concern over the injection into the shunt." "It raises concern over injection into the shunt. CPS should be notified and this event investigated."

56. On 11/25/09 at 10:34 (MT), Banner made a hotline child abuse report to CPS. The report was that CR was with Smith and was returned to Foster Mother with a severe headache. Foster Mother took CR to the emergency room. "Per neurosurgeon's note: pt has a "functional VP Shunt, Air in the ventricle/inside shunt. The only way to get intrashunt air, especially into the ventricle is to inject the shunt. There are 2 suspicious areas over the shunt reservoir although I cannot definitively identify them as needle marks. This could not occur from simply striking the hook over the shunt, especially since there has been no intraventricular or inshunt air going back many months."

57. On the same date, the Foster Mother reported to Allen Kasuma, CPS Assistant Program

Manager that Dr. Elton, using a magnifying glass, saw "there were 'two holes' where someone could have injected air into the shunt."

58. There was no danger to CR from the air in the shunt. The only danger would occur if the air caused the shunt to fail and stop draining fluid from the brain. This did not happen.

59. The air in the shunt disappeared and was not seen when subsequent test were performed.

60. When Dr. Pyburn first evaluated CR and Smith, she found that they were to closely enmeshed (CR's thoughts were those of her mother's) and directed that therapy be designed to disassociate CR and Smith to what was a in Dr. Pyburn's consideration a more normal relationship between a teenager and her mother.

61. Dr. Pyburn found that by 11/25/09, this situation had been remedied and recommended reunification between CR and Smith. Disassociation had taken place such that CR thought for herself separately from her mother and could understand and participate independently in medical treatment. Dr. Pyburn document that there was no longer any concern for the safety of CR in Smiths home regarding medical care and treatment.

62. Dr. Pyburn told Smith that CPS, Dr. Pyburn, Smith and Dr Scott Elton were to meet on 12/4/2009 to discuss "Reunification to get everyone on the same page."

63. The CPS Defendants, authorized by Bonnie Brown, CPS Unit Supervisor, terminated all unsupervised contact between CR and Smith and

stopped the reunification pending an investigation into Dr. Elton's air in the shunt allegation.

64. The report by Dr. Elton and his personal statements made in face to face meetings with the CPS Defendants ended Smiths reunification. CPS from this point on believed that Smith had in fact done something to injure her daughter medically and therefore she had Munchausen Syndrome by Proxy.

65. At this point the CPS Defendants and the Foster Mother had no doubt in their minds that Smith gave CR something to cause her comas when she was younger and put air in CR's shunt.

66. The matter was referred to Detective Page at the Tempe Police Department to investigate the air in the shunt allegation.

67. On 11/25/09 at 1:10 p.m., Tammy Hamilton-MacAlpine called Smith at Banner and notified her that CPS is suspending unsupervised visits until further notice. She stated that this is due to Dr. Elton's concern that the "Pin Point Punctures" in the shunt do not match up with the report of hitting her head related to Dr. Elton by CR.

68. On 11/25/09 at 2:30 p.m., Bonnie Brown CPS Supervisor to Tammy Hamilton-MacAlpine called Attorney General Sean Campbell and reported CPS had stopped unsupervised contact and requested that Change of Physical Custody be rescinded.

69. On 11/25/09, Amira Elahmadiyyah (social worker at Banner) spoke by phone to CPS Supervisor Bonnie Brown and CPS Investigator

Tammy Hamilton-MacAlpine. In her report she stated: "Per CPS, report received and will be investigated as a new report. Per CPS, pt is to be discharged to current Foster Mother. Mother is not to be with pt unsupervised and unsupervised visits are canceled until further notice. CPS requesting that mother leave prior to pt's discharge and be escorted by security. CPS to follow for new investigation. PD will be contacted by CPS. Forensics will be consulted by CPS."

70. On 12/2/09 Bonnie Brown CPS Supervisor to Tammy Hamilton MacAlpine, CR, CPS Investigator Amanda Torrez and Foster Parents meet at Dr. Scott Elton's office. Dr Elton advised that CR would need to be admitted to the ER because the Shunt was Failing. He stated that he is considering sending the Shunt to be examined to see what caused the failure.

71. On 12/2/09 Tammy Hamilton-MacAlpine called Greco and provided an update of the CPS investigation and stated it was alleged there were "pinpoint punctures in the tubing of the shunt."

72. As of 12/2/09, therapist Marina Greco was going to close CR's case because she was doing well and therefore Greco did not request any further services. Tammy MacAlpine asked that Greco's Session with CR be extended for additional six or more sessions to help CR work through "this current situation."

73. CR at no time stated that Smith did anything to her shunt. However, on or about May 25, 2011, CR change her story about how the shunt

was damaged and how air got in the shunt. CR informed her Foster Mother, who informed the CPS case manger, that CR stated "she had caused her shunt to fail both times." "She caused her shunt to fail by beating her shunt every night with a game boy. She caused it to fail when she received the meningitis and she caused it to fail in November."

74. On 12/2/09, a CT Scan was performed that showed that the air was gone but indicated the shunt was failing. The Ventricle had become enlarged.

75. On 12/3/09 Surgery was performed and the shunt replaced. Dr. Elton stated that it had nothing to do with the air in the shunt and the ventricle tubing had become clogged. However, Dr. Elton had the shunt that was removed taken by the hospital for an examination. He informed Smith, CPS and Detective Page that he would have the Ventricular Peritoneal Shunt sent to Forensics to be examined.

76. On 12/4/09 Smith received a call from CPS investigator Amanda Torres Supervisor David Fink stating that they had suspended all supervised visitation and Smith's contact with CR. CPS Supervisor David Fink stated they had a Team Decision Meeting and have decided that because of police involvement all contact will be stopped. David Fink states that a Psychologist from Tempe will be consulted to figure out what visitation will look like.

77. On 12/16/09 at approx 0850 hours Detective Page from the Tempe Police Department met with Dr. Scott Elton and his Attorney Brett Johnson. Detective Page said to Dr. Elton "I told him

that I was told that he found some pinholes in the shunt and he said that wasn't accurate but he did notice two small red marks over the shunt and he doesn't know what that means." " I asked him is Smith suing the hospital and he said he hasn't heard that. He said that he had heard she is CPS, the federal government and the state for $4,000,000 but they haven't heard anything about him or the hospital being sued. His attorney then stated that they hadn't been served with anything." Dr. Elton then informed Officer Page that he was not concerned about the air in the shunt but could not explain how the air got into the ventricle. He stated the shunt was sent for an examination. Detective Page requested the information obtained by that examination.

78. Dr. Elton stated he has no opinion about how air got into the shunt.

79. On 12/21/09, Detective Page told Amanda Torres at CPS "I do not have a crime that can be established at this time and that I am waiting for the results of the shunt examination." Amanda Torres responded that CPS would continue the investigation from there. Upon information and belief, Torres was the CPS investigator tasked with investigation of the air in the shunt incident.

80. On 1/5/2010 Smith and CR meet at Dr. Katrina Buwalda (Psychologist) in Tempe for Supervised Visitation. Smith has had no contact with CR since 12/3/2009. Smith and CR meet with Psychologist Dr Elizabeth Conklin at Dr Buwalda's office.

81. On 1/12/2010 Smith and CR meet at Dr. Katrina Buwalda's office for Supervised Visitation in Tempe. Smith brought JS, her younger daughter. Smith and CR meet with Psychologist Dr. Elizabeth Conklin at Dr Buwalda's office.

82. On 1/13/2010 Detective Page documented that she was informed by counsel for Dr. Elton, Attorney Brett Johnson_that there wasn't going to be any additional testing done on the Shunt. Detective Page was informed "there is a liability issue being the shunt technically belongs to the patient in addition to the eight thousand dollars to have the exam done." Smith had authorized the testing and upon information and belief, CPS had authorized it as well.

83. Detective Page was further informed "that the examiner told them that the shunt would most likely be damaged from the examination of it and therefore we won't be able to do the examination." Page was informed the shunts Chain of Custody had been maintained and the shunt was at Banner. On 1/19/10, Detective Page picked up the shunt, put it into evidence. At that time she closed the case "as no crime can be established."

INTENTIONAL BREAKDOWN OF THE RELATIONSHIP BETWEEN CR AND SMITH BY DEFENDANTS AND THEREAFTER ACTIVELY ACTING TO CHANGE CR'S VIEWS ABOUT THE CAUSE OF HER MEDICAL CONDITIONS

84. On 12/16/09, CR expressed to Greco that "the shunt became damaged when she hit her head. CR believes there is a "conspiracy" against

Mom…." CR stated "she does not want to continue with counseling."

85. On 1/6/10, CR reported to Greco that she was happy to have contact with Mom. CR asked Greco for assistance in writing a letter to her birth father who was in prison.

86. On 1/12/10 Smith brought JS to the supervised visit.

87. On 1/19/2010, Smith and CR meet at Dr. Katrina Buwalda's office for Supervised Visitation. Ms. Smith brought JS. The therapist explained that just before the session that Dr. Buwalda had directed that Smith should no longer bring JS to the sessions in order for Smith and CR to focus on one another. Smith expressed frustration at this new requirement and stated that she had not had any problems before by bringing JS. She also stated she didn't see that keeping CR from her family was a good idea.

88. On 1/26/2010, Smith and CR meet at Dr. Katrina Buwalda's office for Supervised visitation. The therapist called Smith the day before and told her not to bring JS. CR was extremely upset that JS was not there.

89. The recommendation that the visit only include CR and Smith came from a discussion that Dr. Buwalda had with the case manager Tammy Hamilton-MacAlpine and the Supervising Case Manager Bonnie Brown. Smith requested this in writing. Smith received a letter signed by Dr. Katrina Buwalda stating: "On 1/19/2010, a psychological consultation took place with the CM (Tammy Hamilton-MacAlpine), and the CM

Supervisor (Bonnie Brown), and this psychologist. Visitation between Smith and her daughter CR was discussed. It was reported that visits had been appropriate up to that point. It was determined that visitation would be more productive if they occurred between Smith and CR only. This would preclude additional family members from attending the visit."

90. It was also discussed and the letter directed that "during the visits religion and any statements with religious connotation would be prohibited."

91. CR and Smith had been ending every supervised visit together with holding hands and praying since 9/3/2008. This had never been an issue before. Smith was prohibited from praying with her daughter or she would lose any visitation with CR.

92. The CPS Defendants understood that visits between CR and Darrell, CR's brother Cordell and sister JS were important to CR and that there not being at visits would impact CR.

93. The letter states that the family could not come to visits because the visits would "be more productive if they occurred between "CR and Smith only.

94. Upon information and belief, the CPS Defendants and the Foster Parents never informed CR that CPS had ordered Darrell, Cordell and JS not to be at supervised visits.

95. On 2/8/2010 Arizona Attorney General Bruce Macarthur left a message for Tammy Hamilton-MacAlpine, in light of the recent events,

how the decision was made to determining if CR should be reunified with mother. It was reported to him that the decision to reunify was based on the advice from Dr. Pyburn that it was safe to return CR to the home and that there are case notes in CHILDS to support this decision.

96. After Detective Page closed the file, upon information and belief, CPS did not conduct any further investigation.

97. Upon information and belief, it was the CPS Defendants and the Foster Mother and Father's position and belief that Smith put air into CR's Shunt.

98. CPS did not go back to reunification. CPS retained Dr. Bursch to direct therapy for CR and to interview and write a report indicating Smith was mentally ill and had fictitious disorder by proxy.

99. Dr. Bursch has acted as an MSBP expert for DES and upon information and belief, got involved in this case no later than January of 2010.

100. The treatment plan between Tammy MacAlpine (CPS) and Greco did not involve in any way reunification with and setting appropriate boundaries between Smith and CR. The stated goals were to create a trusting relationship between Greco and CR where CR would spontaneously share thoughts and feelings during sessions, CR would "learn feeling identification and express her feelings using assertiveness, CR would learn to identify cognitive distortions and learn how to correct distorted thinking and CR would learn the difference between healthy and unhealthy boundaries.

101. On 2/3/10 Greco assisted CR in writing a letter to her birth father who is in prison. CR experienced anxiety as she began to write the letter. Greco encouraged her to be "more open-minded in gathering her own information" related to extended family (bio-father and Grandmother) "as she makes decisions regarding relationships."

102. In the letter written to Sam, CR's biological father she stated "As I am writing this I am realizing that I do not really want to write you, because of everything you have done. Even though I do not have a lot of memories I do have some. And the ones that I have make me very upset. Like having to take the time out of my day to wait for you, because you said you wanted to see me and my brother. But you never came." CR did not promise a relationship with Sam but wanted questions answered as to why he was contacting her and why he was in prison.

103. On 2/12/2010 Tammy Hamilton MacAlpine authorized Greco and Child Help to discuss therapy and treatment plan of CR with Dr. Brenda Bursch.

104. On 2/12/2010 Tammy Hamilton-MacAlpine authorized Greco and Child Help to discuss CR therapy and treatment plan with Dr. Katrina Buwalda and Dr. Brenda Bursch.

105. On 2/17/2010, Greco recorded that in her session with CR, she shared text messages she received from Friends, that CR was happy and "there appears to be a comfort level within therapeutic relationship."

106. Greco stated CR was having internal stress and fears related to upcoming trial and testimony. Greco offered to go to Court with CR to support her.

107. On 2/18/2010 Greco learned that CR wanted to talk to her and called CR. In this conversation, CR confided a secret to Greco. CR informed Greco that in school she would say she was "sick to get out of class" and to go to the nurse. Greco asked her if this could have caused her medical conditions and CR stated she did not think so. Greco asked CR to share this information with the case manager and Smith. This information was not shared with Smith and upon information and belief, this information was not shared with the CPS case manager.

108. At this time Greco documented that she had finally established a therapeutic relationship with CR.

109. On 2/19/2010, Greco had a telephone conversation with Dr. Bursch, at the direction of and with the consent of the CPS Defendants, especially Brown and MacAlpine, regarding therapy for CR. Greco reports the following from that conversation: "**Responded to questions asked, related to current treatment progress. Offered me ideas of interventions she used in the past with similar cases. Suggested integration of old medical records into treatment, which may allow clt to re-think past events, entertaining an alternate story. By report, this may be helpful, as clt has more availability for abstract thinking aeb /sic/ her current age and developmental stage. Some records will be**

forwarded to me following her review and consultation."

110. On 2/25/2010 Greco informed Tammy Hamilton-MacAlpine of this conversation and strategy.

111. On 2/25/10, the Foster Parents began attending therapy sessions with CR and Greco. CR received a gift from Sam which upset her. She stated she could not trust Sam's love for her. CR managed her emotional intensity by walking with the Foster Father. CR then shared her conflict regarding her biological father because she has a step dad (Darrell).

112. Upon information and belief, based on the discussion to provide an alternative story and to change how CR thinks about past medical events, Greco, Bursch, the Foster Parents and the CPS Defendants agreed to work together to change CR's view of her mother and to establish in CR's mind that Smith had caused CR's medical conditions and not the medical doctors.

113. Greco reported that CR "receives support from foster parents and appears to have bonded well."

114. On 3/3/10, Greco reported that the visit could not take place because Foster Mother required hospitalization.

115. Upon information and belief, at this time CR is confiding and sharing her thoughts and feelings with her Foster Parents.

116. Upon information and belief, Foster Mother and father have law enforcement backgrounds.

117. On 3/8/2010, Dr. Coffman prepared an Addendum to her letter to Detective Page. She was asked by the Attorney General's Office to review the case and make a recommendation. She reviewed the CPS and police records and spoke by telephone with Dr. Elton and with Tammy MacAlpine.

118. As reported Dr. Elton did not explain to Dr Coffman that he had told Tempe Police Detective Renee Page on 12/16/2009 that he was "not concerned about the air in the shunt but could not explain how it got into the ventricles."

119. CPS had a duty to have an independent forensic medical review of the Shunt Allegations not someone like Dr Coffman who had a definite conflict of interest in this case.

120. Dr. Coffman stated she was told by Dr. Elton there were limited ways air can be introduced into a shunt. One is during shunt placement and another is when the shunt valve is not working. The third is instillation of air into the shunt. Elton told her that he did not feel the first two applied and that direct injection of air into the shunt remained a possibility. He stated CR's story did not explain it as well (hitting her head on a hook at school).

121. Dr. Coffman stated: "Although it is not possible to say with certainty that air was injected into the shunt and, if so, by whom, given the history of [CR]'s medical course when she was in the care and custody of her mother, I would be very

concerned about the possibility that this is inflicted injury."

122. Dr. Coffman stated she was "very concerned about safety if [CR was] returned to her Mother's care" and she also recommended a full medical and psychological evaluation of JS.

123. Dr. Coffman also was not an unbiased evaluator because of her prior recommendations to Detective Page and her statements that she felt Smith was a serial MSBP abuser.

124. On 3/8/2010, Dr. Pyburn was confronted regarding why she agreed to reunification. She was reportedly provided medical reports from 2003 and challenged with the argument that those records showed MSBP. Pyburn stated in her letter "No child can protect themselves from medical abuse, regardless of their individual strength. Nor should any child have to. If the medical allegations are even partially true, then [CR is no exception and would be unable to protect herself from harm." She further stated that CR and mother had made significant gains differentiating themselves and reducing enmeshment. Dr. Pyburn stated she did not know the truth and that out of an abundance of caution she should err to protect the child and recommended continued out of home placement with supervised visits until CR turned 18.

125. Upon information and belief, Dr. Pyburn was confronted by Dr. Bursch with Dr. Elton's report and a medical record summary prepared by Dr. Bursch and pushed to change her position on reunification. Dr. Pyburn was forced to change her opinion without being informed that Dr.

Elton was not stating an opinion that Plaintiff put air in the shunt and that it was raw speculation to argue that Smith did anything to put air in the shunt or caused any of CR's prior medical conditions.

126. Dr. Newberger, a pediatric child abuse expert has opined that Dr. Coffman fell below the standard of care in taking the position that CR could not be returned to Mother because of any prior medical history and the air in the shunt incident.

127. Dr. Newberger further opined that it was raw speculation to assert mother caused the air in the shunt and that, to a reasonable degree of medical probability, the medical records indicate there are reasonable medical explanations as to how the air got into the shunt that does not involve a person injecting air directly into the shunt and that it was not reasonable to make such an allegation based on the medical records and medical history.

128. On 3/8/10 CR had a supervised visit with Smith. The Foster Mother reported to Tammy MacAlpine that CR has been "off" the past couple of times she has been scheduled to go see her mother. The Foster Mother was in the hospital and reported that CR called her after the visit and "reported she was mad at her mom because of a discussion about step-dad (Darrel Smith)." CR explained "she asked her mother why the step-father has not come to visit her or been there to support her during this with CPS" and Smith only said they had their reasons for his not participating and she would be told those reasons when she returned home. Greco 000144.

129. Upon information and belief, the CPS Defendants, including Greco, Buwalda and the

Foster Mother and Father knew that Darrell was precluded from being at the visits and did not inform CR of this.

130. Upon information and belief, the CPS Defendants, Greco and the Foster Parents discussed the failure of Darrell to visit with CR and led her to believe that Darrell, who she considered to be her father, must not care about her since he was not at the visits. Defendants knew that this was an important relationship with CR.

131. On 3/17/2010, Greco reports that CR "shared she and Mom have been getting into arguments more than ever over the past month. By report, these include issues related to wearing shorts and using a cuss word. Clt shares she get upset when M says, 'that's not what I taught you.' Clt shared she just has a different view from M. By report, mom believes she is disrespecting her body by wearing shorts, and she believes she is not disrespecting her body."

132. The foster family allowed CR to watch movies, listen to music, wear clothing and use cuss words that Smith disapproved of and, upon information and belief, the CPS Defendants and the Foster Parents knew that this would cause confrontation between CR and Smith.

133. Upon information and belief, CPS Defendants and Foster Parents goal was to cause confrontation between CR and Smith and to change the way CR saw and felt about her mother.

134. On 3/22/ 2010, the complaint against the DES Defendants that was the subject of the 9/19/2009 Notice of Claim filed with the State of

Arizona and the DES Defendants, was filed in the Maricopa County Superior Court. This complaint is a matter of public record.

135. On 3/29/10, CR discussed missing JS and requested from Tammy MacAlpine that she be able to call JS and Cordell (Brother) on the telephone. Tammy responded she would make the request to "the professionals involved with the case."

136. After attending a Court hearing with Greco, CR came back from the court hearing with the Foster Mother and Tammy MacAlpine. CR stated to them she wants to pursue nursing and enter the medical field once she has completed high school. CR discussed missing JS, gathering items for JS's birthday and wanting contact with JS and Cordell. CR did not discuss mother or Darrell.

137. On 3/31/10, Greco recorded the following regarding what happened at Juvenile Court. Greco reported that CR had feelings about Smith tape recording conversations and a comment Smith made on the stand regarding current Foster Mom's actions related to CR's last hospitalization. Greco stated CR appears to be actively listening, and observing ways her birth mom perceives the world. CR is beginning to integrate her knowledge of cognitive distortions."

138. Upon information and belief, the CPS Defendants and the Foster Parents discussed with CR that her Mother's continued litigation with the hospitals and doctors would impact her ability to become a nurse. Upon information and belief, they were attempting to influence her so that she would put pressure on Smith to stop the litigation.

139. On 4/1/10, CR had a supervised visit with Smith, Cordell and JS for JS's Birthday. Prior to this visit, Buwalda indicated JS and Cordell could come to visits. However, Buwalda did not allow Darrell to come.

140. On 4/2/10, CR was scheduled to meet with Dr. Bursch on 4/23/10 from 2-4 pm.

141. On 4/5/10, CR had a supervised visit with Smith. At this visit, CR read a letter to her mother stating she did not want to come. "CR explained she did not like the frequent discussions about her medical issues that were common when she had previously resided with Ms. Smith. CR stated she did not like Ms. Smith's frequent use of the term "medically disabled child" (when was that term used) and she did not want to be labeled as such because she thought this would hurt her chances of becoming a nurse someday. CR stated that she didn't want Smith to continue with the lawsuits she had filed.

142. CR asked is Darrell going to come and see her, when Leanna paused, she took that as a no. At the end of the visit [CR] told Leanna she loved her.

143. In this letter, CR stated she does not want to talk about the medical stuff anymore and that at one time she was medically disabled but not anymore. She stated she wanted to get out of the past and that Smith was lingering in the past and that it would affect her long term goals. She stated that another major reason is her need to please Smith and that she is trying to think of herself and what was best for her. She stated that "I feel like if I

do go home I will miss up my plan I have for my life. I feel like if I do go home I will want to please you like I have alwayed /sic/wanted to do. But I shouldn't think about you and not myself. It will affect me and my goals I want to accomplish in life and I need to think about myself and what is best for me."

144. In conclusion, she stated "so I strongly believe that I should stay with [Foster Mother] until I am 18 and do the independent living program. And I would still like to see you and my family and stay in contact.

145. At this stage, Defendants had been able to influence CR to believe that it was in her best interest not to go back home. **However, she wrote she still loved her mother and wanted to have a relationship with her.**

146. On 4/6/10, CR discussed the visit with her Foster Mother. Foster Mother reported to Tammy MacAlpine that CR felt it was in her best interest not to come home, that Mother does not listen to her. She has goals and that being with Mom is holding her back. Mom not willing to change. When CR got home she wanted to call her attorney; reported she felt she had a huge weight lifted off of her.

147. On 4/7/10 CR told Tammy MacAlpine that she did not feel it is in her best interest to go back to living with her mother and already discussed this with attorney Lincoln Green.

148. On 4/12/10, CR had a supervised visit with Smith. In the report of this visit it was reported CR got mad at Smith when she stated CR's eye

shadow made her look mature. CR retorted that Smith's eye shadow made her look "old." CR asked for her brother's phone number and Smith stated she could not give it to her. CR responded "[f]ine, if you don't want to give it to me, then don't." CR asked if Leanna looked like her mother and Leanna responded all daughters grow up to look a little bit like their mothers. CR immediately stated "Gosh, I hope I never look like you." CR went on to say that Ms. Smith's clothes, hair, shoes, and make-up were "horrible" and that she feels bad for her little sister because Ms. Smith dresses her and "probably makes her look totally stupid."" Smith laughed and smiled and CR asked Smith to stop smiling because her smile "is creepy." CR made the comment that we as people are destroying the world. Then CR asked if Smith Recycles. Smith said she does not as much as she should. CR rolled her eyes and pointed out how Smith is a big part of the planet's problem and told her many reasons she needs to start recycling. CR appeared very agitated and frustrated with Smith and took opportunities to put Smith down or make derogatory comments about her.

149. On 4/19/10, during the next supervised visit, while discussing CR's school, CR used cuss words. Smith told her not to cuss around her and CR responded with sarcasm. While playing card games, CR played her IPOD music so it was audible to both mother and supervisor. CR played songs with cuss words or other material found inappropriate by her mother.

150. On 4/23/10, Tammy had a conversation with the Foster Mother. The "Foster Mother reported that CR stated mother and step dad are

Muslim. They do not eat pork. Mother is very adamant that CR not tell CPS that they are Muslim. "[CR] reported that she had a Koran at the last placement, but the FM took it away."

151. Smith is Protestant and Darrell Baptist. They have always been Christian.

152. Upon information and belief, Foster Mother and/or Foster Father discussed with CR criticisms of Smith and Darrell religious beliefs, whether they were really Christian or rather Muslims and about them having a child together but not getting married or living together.

153. On 4/23/10, Dr. Bursch interviewed CR. Dr. Bursch stated CR has short term memory deficits which she attributes to her medical events. CR denied having been seriously depressed. Reported concern over her memory loss and has to write things down to remember them. Denied being a worrier. Denies all symptoms of post traumatic stress disorder. She endorsed that it was initially traumatic and confusing for her to be removed from her mother. "However, she denied any trauma symptoms related to that event and she reported that she now understands why she was removed." [CR] has good relations with siblings. Thought she had a good relationship with Step Father and thought he considered her his daughter and consequently does not understand why he will not participate in the visitations with her." She cannot imagine what is preventing him.

154. At the conclusion of Dr. Bursch's interview with CR, Dr. Bursch recommended CR read the book "Sickened," The True Story of a Lost

Childhood" by Julie Gregory. This book is about a young girl who lost her childhood as a result of her mother drugging her so that she would be sick. Upon information and belief, Dr. Bursch had an off the record conversation with CR about her mother causing her coma's and causing her medical conditions she had in the past.

155. On 4/26/10, CR had a supervised visit with Smith. Dr. Buwalda reported the following. CR refused to hug mom at start of visit. CR asked why Smith did not marry Darrell. Smith said they are going to but CR "got sick." CR asked if Darrell has a separate family and Smith said no. CR asked why they are not living together. Smith stated it is not right to live together prior to marriage. CR asked her why she changed her name to Smith. CR asked if Darrell believed in having multiple wives. Smith said he does not. CR argued this point stating the background check would not show this. CR asked what religion her mother is and if her religion endorses multiple wives. Smith said Christian. CR continued to ask why Smith and her boyfriend do not live together and asked of their arrangement "does that work for [JS]?" Smith stated they will get married.

156. CR asked Smith why she lied to her about her religion. CR stated she was not raised Christian. Smith stated it is obvious somebody put something into you. CR stated, "you may have started with Christian, but that's not what it was when you met Darrell. It changes." CR accused Smith of lying about her religion. They had an argument about whether Smith knows her daughter. CR said she did not. CR stated "I am so mad at you

right now. Quit staring at me." Smith stated "You're not going to always agree with your mother. You're being lied to." CR responded "by you." Smith stated "just remember everything that I taught you." CR responded, "Because it's the truth." CR asked again what religion Leanna was and told her she was lying to her." CR then spoke briefly in Arabic and said she was praying. CR became angry and stated she never did "anything" while living with her mother and she was "always sick." She insisted her mother is lying to her about religion and said she reviewed the Koran while living with her mother. [CR] began cussing at her mother. Smith became angry and demanded respect. CR stated she is "now allowed" to cuss, but "grew up in a house full of cussing."

157. On 4/28/2010 Marina Greco, Katrina Buwalda, Bonnie Brown, Tammy Hamilton-MacAlpine and the Foster Mother **discussed by e-mail whether they should stop what they were doing in therapy with CR.** They were proud of CR that she no longer trusted or believed her mother and were concerned about whether they should continue further. It was agreed they should to answer CR's questions she was having about her mother. Greco informed the above that after her visit with CR where she expressed her anger with her mother that she was lying to her. Greco informed them that she had purchased the book "Sickened" that was recommended by Dr. Bursch for CR to read.

158. At the 4/28/10 therapy session with Greco, CR and Foster Mother were present. CR expressed she was angry with her mother because she was not answering her questions and was lying

to her. CR stated that Smith believes everybody is out to get her. Greco discussed with CR symptoms of paranoia and psychosis. CR shared a concern about JS being in the home with Smith and not wanting her to experience what she had. Greco 000134.

159. Upon information and belief, on receiving the book from Greco, the Foster Mother read the book "Sickened" with CR.

160. On 5/13/2010, CR and Foster Mother completed the recommended reading of the book "Sickened." CR reported to Greco that she identified herself with the child character in the book and at this point, believed that her mother drugged her to cause her coma's. CR expressed concern about JS remaining in the home and stated she had memories of physical abuse of JS (spanking with a belt and incense burner causing welts).

161. Further, upon information and belief, at about this same time, CR was provided Bursch's Report regarding Smith by Tammy and that CR was reading this report and the medical timeline contained therein with the Foster Mother.

162. Upon information and belief, as a result of reading the book "Sickened", CR believes her mother gave her drugs to cause her Coma's when she was younger. CR believes her mother took her childhood from her and that she cannot get it back and that JS is also at risk. See Greco 000117.

163. There has never been any medical issue at all regarding JS and/or Cordell.

164. Dr. Bursch's Report on her evaluation of Smith was dated May 9, 2010. In this report she stated the following:

> "[CR] experienced a number of episodes of unexplained coma that were thought likely to have been drug induced. Because it appears from the records that Ms. Roberson was with [CR] within about an hour of the onset of these episodes, her involvement is triggering these episodes cannot be ruled out. Likewise, [CR] was discovered (shortly after a visit with Ms. Roberson) to have air in her shunt, a suspicious finding given that this is not a usual shunt malfunction and because the reported mechanism of injury does not explain the medical findings.
>
> * * *
>
> Because [CR] experience several life-threatening events in proximity to time she spent alone with her mother, it is not unreasonable to fear for her life if [CR] is left unsupervised with her mother.

Bursch concluded that unless Smith admitted wrongdoing and engaged in meaningful treatment, likely to require both psychotropic medication and psychotherapy, CR should be kept from Mother. However, she made her recommendation even though she stated in her report that her diagnosis of Plaintiff's mental illnesses was provisional. This means she could not make a diagnosis based on the information provided and required further evaluation before she could make a diagnosis. No

diagnosis of Plaintiff having mental illness has ever been made or found to exist by the Juvenile Court.

165. Upon information and belief, Foster Mother had developed the same "enmeshed" relationship with CR that Smith had. Upon information and belief, because of the "enmeshed" relationship between CR and the Foster Mother, CR is stating things told her by the Foster Mother as true without acting independent of the Foster Mother.

166. Upon information and belief, Foster Mother used her relationship with CR to manipulate her feelings and ultimately bring false physical and sexual abuse allegations against Mother.

167. Tempe Police Detective Lisa Ball, #11852, on June 28, 2010 interviewed CR and set forth that interview and her findings in her Narrative Supplemental Police Report. This interview was witnessed by Torres. At the conclusion of the interview of [CR], Detective Ball wrote:

> "I discussed the case with Ms. Torres and **we agreed** that the incident
>
> [CR] disclosed seemed necessary/reasonable and without sexual intent. **We also agreed that what [CR] disclosed seeing LEANNA do to [JS]'s vagina was necessary/reasonable for hygiene purpose and without sexual intent.** We discussed the physical discipline that[CR] said CORDELL endured in the past and the fact that CORDELL is now an adult, has not made any reports himself and continues to live in the home. **Based on the information provided, no crime could be established. Ms.**

> **Torres told me that [JS] has been interviewed by Wendy Dutton at Child Help two different times and has not made any disclosures of abuse. [JS]** and [CR] are currently placed out of the home. [JR] **has recently started counseling but has not made any disclosures of abuse.** Ms. Torres agreed to call the Tempe Police Department if she makes disclosures in the future."

168. The findings regarding the physical and sexual abuse allegations made by CR was that the alleged conduct was necessary and reasonable for hygiene purpose and without sexual intent. Torres, in preparing her case note regarding this interview, upon information and belief, knowingly failed to report the above statements and findings to CPS.

169. In August of 2012, the Foster Mother reported to Police that CR had allegations of sexual abuse that was sexually motivated. This report was made to the Tempe Police Department just before trial of the termination provisions and Plaintiff was contacted by the Tempe Police Department regarding investigation of the allegations during trial. These new allegations were not made to Detective Ball when she interviewed CR and the Tempe Police Department has closed its investigation.

170. Upon information and belief, the actions of refusing to go back to reunification when Dr. Elton after he stated he could not say how the air got into the shunt and refused to have the shunt examined, bringing in Bursch and thereafter using therapy brainwashing, manipulating and coaching of

CR was done because Smith was pursuing the Medical and CPS Defendants pursuant to the Notice of Claim and filed a Complaint in the Maricopa County Superior Court.

171. DES and its entity CPS sought dependency and termination of Smith's parental rights and custody. The matter came to trial before the Juvenile Court and the Juvenile Court on January 24, 2012 denied the petition to terminate Smith's parental rights in CR and the Juvenile Court dismissed the dependency action.

COUNT ONE

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

172. Plaintiff incorporates herein by this reference all the preceding numbered paragraphs as though fully set forth herein.

173. Defendants acts and conduct as set forth above is extreme and outrageous, including but not limited to using their position of power over CR and her trust in them to modify her understanding of the causes of her prior medical conditions, providing false information to or providing truthful information in a false light or providing a false innuendo to CR so that she would believe her Mother had caused her prior medical conditions to harm her, manipulating CR so that she would become angry with and no longer believe what her Mother told her and manipulating CR into bringing false allegations of physical and sexual abuse against her Mother so that Defendants could pursue termination of Mother's parental interest in CR and to obtain a criminal investigation and/or prosecution of M

other as the termination proceeding was being litigated in Juvenile Court.

174. Defendants actions were intentional done or at a minimum recklessly done to injure the parent child relationship between Mother and CR and to drive a permanent wedge between Mother and CR so that she would not want to live with Mother, especially if Mother was successful in maintaining her parental rights of CR in the Juvenile Court matter.

175. Defendants manipulated CR to believe the allegations of Munchausen Syndrome by Proxy against Mother before those issues were litigated in the Juvenile Court.

176. Defendants, in their positions of power and authority over CR as Foster Parents, Case Workers, CPS Investigators, counselors and therapists, had an affirmative duty not to do sever and outrageous damage to the relationship between and/or to drive a wedge between Mother and CR.

177. Defendants actions caused severe emotional distress to Plaintiff and have permanently destroyed the close relationship Plaintiff had with CR as her mother.

178. The CPS Defendants, Coffman, Greco, Buwalda, the Foster Mother and Father and Bursch ("Individual Defendants") acted jointly and in concert and conspired and agreed together to cause Plaintiff severe emotional distress by manipulating CR to hate her mother and bring false allegations of physical and sexual abuse against her. The State of Arizona, UCLA, Dignity Health, Childhelp and Buwalda Psychological Services are respondeat

superior liable for that acts of the Individual Defendants.

179. Plaintiff has suffered damages in an amount to be proven at trial.

180. Plaintiff is entitled to punitive damages.

COUNT TWO

CONSTRUCTIVE FRAUD/BREACH OF FIDUCIARY DUTIES/GROSS NEGLIGENCE

181. Plaintiff incorporates herein by this reference all the preceding numbered paragraphs as though fully set forth herein.

182. The Individual Defendants, as foster parents, case workers, supervisors, investigators, therapists and psychologist all appointed by the State of Arizona to provide assistance to and monitor CR and all were in positions of power and authority over CR and Plaintiff as provided by State Law. Defendants owed a legal and equitable (constitutional) duty to Plaintiff to preserve the parent child relationship between CR and Plaintiff while in CPS care and custody if that relationship was not terminated by the Court. Further, Defendants duty included not litigating the termination issues in CR's mind before the issues were heard and ruled upon by the Court and not to drive a permanent wedge between CR and her Mother prior to termination.

183. The Individual Defendants breached this duty by, including but not limited to intentionally providing CR with false information and/or innuendo creating a false impression

regarding CR's medical history through reading Bursch's report and medical summary with CR, reading with CR the book "Sickened" to falsely infer that Mother provided CR drugs that caused her prior coma's and inferring through Bursch's report that Mother had mental illnesses and that it was not safe for CR to be with Mother.

184. As a direct result of Defendants breach of duty, CR, without any medical evidence to support such a contention, believes her mother tried to kill her by causing her comas when she was young and does not want to have any further contact of any kind with her mother. Further, Defendants manipulated CR to bring false allegations of physical and sexual abuse against Mother.

185. Plaintiff suffered severe emotion distress as a result of Defendants Actions and other damages in an amount to be proven at trial.

186. The Individual Defendants acted jointly and in concert and conspired and agreed together to cause Plaintiff severe emotional distress by manipulating CR to hate her mother and bring false allegations of physical and sexual abuse against her. The State of Arizona, UCLA, Dignity Health, Childhelp and Buwalda Psychological Services are respondeat superior liable for that acts of the Individual Defendants.

187. Plaintiff is entitled to punitive damages.

COUNT THREE

WRONGFUL PROSECTION OR MALICIOUS PROSECUTION

188. Plaintiff incorporates herein by this reference all the preceding numbered paragraphs as though fully set forth herein.

189. The Individual Defendants, and each of them, instituted, acted as the complaining witnesses and prosecuted termination of parental rights charges against Plaintiff that terminated in Plaintiff's favor on January 24, 2012.

190. The Termination Proceedings were commenced against Plaintiff without probable cause.

191. Upon information and belief, Defendants instigated the termination petition knowing the falsity of the allegations against Plaintiff.

192. Upon information and belief, Plaintiff was prosecuted to harass, humiliate and intimidate Plaintiff.

193. Upon information and belief, each of the Defendants conspired together and aided and abetted each other to prosecute Plaintiff without probable cause.

194. As a result of Defendants actions alleged above, Plaintiff suffered damages, including but not limited to attorneys fees and costs incurred in defending the charges and mental and emotional distress, all in an amount to be determined at trial.

195. The Individual Defendants acted jointly and in concert and conspired and agreed together to cause Plaintiff severe emotional distress by manipulating CR to hate her mother and bring false allegations of physical and sexual abuse against her. The State of Arizona, UCLA, Dignity Health,

Childhelp and Buwalda Psychological Services are respondeat superior liable for that acts of the Individual Defendants.

196. Plaintiff is entitled to punitive damages.

COUNT FOUR

NEGLIGENT HIRING, RETENTION OR SUPERVISION

197. Plaintiff incorporates herein by this reference all the preceding numbered paragraphs as though fully set forth herein.

198. The State of Arizona conducts its supervision of children taken into custody by the State through its employees at DES and/or CPS. The State of Arizona, through DES and/or CPS was negligent in the supervision of the tortuous and unconstitutional actions of the remaining Defendants as set forth in this complaint, which were all either employees of the State of Arizona or providing contract services under the supervision of DES and/or CPS.

199. Further, the State of Arizona was negligent in permitting or failing to prevent the tortuous and unconstitutional acts set forth in this Complaint by the other Defendants.

200. The State of Arizona has caused damage to Plaintiff in an amount to be proven at trial.

201. UCLA, Dignity Health, Childhelp and Buwalda Psychological Services ("Employers") were negligent in the supervision of the tortuous and unconstitutional activities of its employees as set

forth in this complaint, who acted under contract with the State of Arizona. These Employers were negligent in permitting or failing to prevent the tortuous and unconstitutional acts set forth in this Complaint by the Individual Defendant employees.

202. Plaintiff is entitled to punitive damages against the Employers.

COUNT FIVE

INTENTIONAL INTERFERRENCE WITH PARENTAL CUSTODY OF A CHILD

203. Plaintiff incorporates herein by this reference all the preceding numbered paragraphs as though fully set forth herein.

204. The Individual Defendants and each of them conspired and agreed together to deprive Plaintiff of her custody and control of CR. The Individual Defendants agreed to and did provide false information to CPS to be provided to the Court to justify CPS terminating reunification and seeking termination of Plaintiff's parental rights of CR. The Individual Defendants intentionally interfered with and provided false and misleading information to the Court to terminate reunification of parental custody of CR and thereafter pursue termination of Plaintiff's parental rights to CR.

205. The Individual Defendants and each of them acted with malice. Defendants did so knowing

206. As a result of defendants actions alleged above, Plaintiff suffered damages including but not limited to alienation of affection, loss of companionship and custody of her daughter and

endured mental and emotional distress, all in an amount to be determined at trial.

207. The Individual Defendants' actions proximately caused Plaintiff emotional distress, permanently damaged Plaintiff's relationship with CR and injured Plaintiff in an amount to be proven at trial.

208. The Individual Defendants acted jointly and in concert and conspired and agreed together to cause Plaintiff severe emotional distress by manipulating CR to hate her mother and bring false allegations of physical and sexual abuse against her. The State of Arizona, UCLA, Dignity Health, Childhelp and Buwalda Psychological Services are respondeat superior liable for that acts of the Individual Defendants.

209. Plaintiff is entitled to Punitive Damages unless precluded by State Law.

COUNT SIX
DEFAMATION

210. Plaintiff incorporates herein by this reference all proceedings paragraphs of the Complaint.

211. The Individual Defendants, with the consent and approval of each other, provided false statements and written communications, as set forth above in the Factual Statement of the Complaint, to CR of and concerning Plaintiff. These statements were in essence that Mother misinformed CR regarding the causes of her medical conditions and that Mother caused her medical problems. These statements were not only designed to bring Plaintiff into disrepute, contempt or ridicule by her daughter

CR and to impeach Plaintiffs honesty, integrity, virtue and/or reputation, these statements and written communications were specifically designed to cause CR to falsely believe her mother drugged her to cause her coma's, taking CR's childhood from her and to immediately stop and have no further relationship of any kind with her Mother.

212. The above statements and communications were false or knowingly misleading to cause CR to make a false and inaccurate conclusion.

213. The Individual Defendants made sure, using their position of power over Plaintiff to stop any visitation, to make sure that Mother could not and did not talk to CR to refute any statements or communications made to CR about her Mother by the Individual Defendants that they were using to manipulate and interfere with the parent child relationship. They did this by not allowing Darrell and JS to come to visitation or to allow Mother to discuss religion (say prays with her daughter) or to discuss the medical history or outstanding litigation.

214. The Individual Defendants caused Plaintiff damage in an amount to be proven at trial

215. The Individual Defendants acted jointly and in concert and conspired and agreed together to cause Plaintiff severe emotional distress by manipulating CR to hate her mother and bring false allegations of physical and sexual abuse against her. The State of Arizona, UCLA, Dignity Health, Childhelp and Buwalda Psychological Services are respondeat superior liable for that acts of the Individual Defendants.

216. Plaintiff is entitled to punitive damages unless precluded by State law.

COUNT SEVEN
CIVIL CONSPIRACY AND FRAUD

217. Plaintiff incorporates herein by this reference all proceedings paragraphs of the Complaint.

218. Defendants State of Arizona (through DES and CPS), Brown, MacAlpine, Pederson, Fink, Torres, Greco, Childhelp Children Center of Arizona, Buwalda, Buwalda Psychological Services PLLC, Foster Mother, Foster Father, Dr. Coffman, Brenda Bursch and UCLA ("Civil Conspiracy Defendants") conspired together and agreed to work together to commit the above tortuous acts and to commit fraud to terminate Plaintiff's parental rights in CR, including but not limited to bringing false allegations of medical child abuse and to brainwash and manipulate CR into believing her mother drugged her to cause her comas and to bring allegations of physical and sexual abuse.

219. The purpose was to manipulate CR as much as possible to assure success by CPS in the Juvenile Court litigation, to terminate Plaintiffs parental rights in CR and to injure Plaintiff's ability to bring litigation against the CPS Defendants and the State of Arizona.

220. The Civil Conspiracy Defendants and each and every one of them agreed and/or combined to engage in a civil conspiracy to commit the unlawful, unconstitutional and tortuous acts described in this complaint.

221. The Civil Conspiracy Defendants, and each and every one of them, combined to engage in a civil conspiracy against and/or injury to Plaintiff as described in this Complaint.

222. The Civil Conspiracy Defendants, and each and every one of them, combined to engage in a civil conspiracy that was furthered by overt acts.

223. The Civil Conspiracy Defendants, each and every one of them, understood, accepted, and/or explicitly and/or implicitly agreed to the general objectives of their scheme to inflict the wrongs against and/or injury to Plaintiff as described in this Complaint.

224. The Civil Conspiracy Defendants, each and every one of them, combined to engage in a scheme that was intended to violate the rights of Plaintiff.

225. The Civil Conspiracy Defendants, through Bursch and Greco, met and agreed to use Bursch's Report and medical record summary and the book "Sickened" to get CR not to believe her mother, to believe her mother caused her prior medical conditions, her mother tried to kill her by drugging her to cause her comas, that her Mother was mentally ill and that her Mother was a danger to her.

226. Defendants' started to drive a wedge between Mother and CR by first prohibited Smith from bringing JS, Cordell and Darrell to supervised visits with CR and prohibited her from praying with and discussing religion with CR. These Defendants then exposed CR to movies, music, dress, makeup and profanity that they knew would not be approved

by Smith but that would be enticing to a teenager. As a result of these efforts, CR became angry because she could not see JS, Darrell and Cordell at visits and mother was lying to her about religion. They influenced CR into believing Smith and Darrell were really Muslims and that Darrell had other wives.

227. They also influence CR into believing that mothers litigation with the medical defendants would result in her not being able to become a nurse and that if she went home to her mother she would just do what her mother wanted and could not act independently of her. As a result of this manipulation, CR told Smith that she did not want to come home but wanted to continue to have a relationship with her mother.

228. At this stage, where CR indicated she wanted to remain in foster care until 18 and she had become angry with her mother and felt her mother was lying to her, (all at the coaching of the Civil Conspiracy Defendants), particularly Greco in therapy and the Foster Mother and Father at home, had CR read the book "Sickened" and read Dr. Bursch's Report regarding Smith. Upon finishing reading Sickened, CR related to the child in the book and believed that Smith drugged her to cause her comas. After reading the report, CR believes her mother is mentally ill, has MSBP and deprived her of her childhood.

229. The Civil Conspiracy Defendants did not wait to litigate the MSBP issues before the Juvenile Court but did so in CR's mind.

230. The Civil Conspiracy Defendants then manipulated CR to bring allegations of physical and sexual abuse against Smith.

231. The Civil Conspiracy Defendants knew that CR had become "enmeshed" with Foster Mother and used this relationship to manipulate CR and to obtain false allegations of physical and sexual abuse.

232. The above actions constitutes a scheme or artifice to defraud Plaintiff of custody of CR to damage or eliminate Plaintiffs claims against Defendants set forth in this litigation by manipulating CR into believing her mother tried to kill her, that she needed to protect JS and to make false allegations of abuse to assure termination of Plaintiffs parental rights in CR and JS.

233. Upon information and belief, Plaintiff's parental interest in CR and JS constitutes a property interest that Defendants knowingly and intentionally schemed to deprive Plaintiffs of by manufacturing false allegations of physical and sexual abuse.

234. The acts set forth in this Complaint, constitute pattern of activity to provide false information to the Juvenile Court regarding medical child abuse and physical and sexual abuse.

235. Defendants presented and used the false allegations of abuse before the Juvenile Court to seek termination of Plaintiff's parental interest in CR. The Juvenile Court denied the Petition for Termination and dismissed the Petition for Dependency. Plaintiff has been subject to multiple criminal investigations as each new allegation of abuse comes from CR. The Civil Conspiracy

Defendants have aggressively sought criminal prosecution of Plaintiff based on the allegations of abuse.

236. As a result of the Civil Conspiracy Defendants acts, Smith was not reunified with CR, false allegations of abuse and mental illness were presented to law enforcement and the Juvenile Court and Plaintiff had to defend herself to stop the termination of her parental rights in CR.

237. Further, Plaintiff has been seriously emotionally impacted by the allegations of abuse coming from CR as a result of the brainwashing, manipulation and coaching of the Civil Conspiracy Defendants.

238. Plaintiff was forced to hire experts to defend themselves herself in the Juvenile Court and Plaintiff incurred expenses in retaining and having experts appear for trial before the Juvenile Court.

239. Defendants intentionally deceived CR, a minor child, to her prejudice. They represented to CR that she could trust them and that they would provide her truthful information and provide her with safety and protection. This representation was materially false because Defendants had conspired to provide her with false information or false innuendo to get her to not believe her Mother and to believe her Mother caused her comas and thereby attempted to kill her. Defendants knew the representation to CR was false and CR was ignorant of the falsity and relied on the truth of the information provided to her and as a consequence believed that information permanently damaging her relationship with her Mother.

240. Further, Defendants represented to Mother that they were providing therapy to CR that would be consistent with reunification and would not provide false and misleading information to CR or attempt to manipulate her. This representation was materially false and Mother had no option because of State law but to rely on the honesty and integrity of the CPS Defendants not to take unjustified and unlawful actions to manipulate CR to assist DES in litigation with Plaintiff. As a consequence of the false representations, Defendants manipulated and mislead CR into believing Mother medically, physically and sexually abused her and without any evidence whatsoever, tried to kill her by drugging her causing her comas.

241. Plaintiff is entitled to punitive damages unless precluded by State law.

COUNT EIGHT

(42 U.S.C. § 1983 RETALIATION AND INTERFERRENCE WITH PARENTAL RIGHTS)

162. The allegations set forth above are fully incorporated herein by this reference.

163. In committing the above referenced actions and/or omissions, Defendants, other than the State of Arizona, and each of them, acted under color of state law, and engaged in conduct that was the proximate cause of a violation of Plaintiff's rights under the First, Fourth and Fourteenth Amendments to the Constitution of the United States of America, including but not limited to the right to seek redress of grievances from the government without retaliation, retaliating against

Plaintiffs for asserting their constitutional right to seek redress of grievances from government and for exercising their First amendment right to defend themselves from the false allegations raised by Defendants and interference with the custody of a mother with her child, CR, AND interference with the religious upbringing and practices of CR, which are fundamental rights, thereby violating Plaintiff's civil rights under 42 U.S.C. § 1983.

164. This allegation involves the acts of those Defendants who stopped reunification of CR with Smith because of the air bubbles in the shunt, who thereafter used their position of power over CR to manipulated her into hating her mother and brainwash her into believing that her mother caused her comas (or other medical conditions) by drugging her, who thereafter manipulated CR and coached her to make false allegations of physical and sexual abuse against Plaintiff all to seek termination of Plaintiffs parental rights and custody and control over CR to stop her from pursuing civil litigation against the State of Arizona and the CPS Defendants.

165. Defendants Brown, MacAlpine, Pederson, Torres, Fink, Greco, ChildHelp Children Center of Arizona, Dr. Coffman, Dr. Buwalda, Buwalda Psychological Services PLLC, Brenda Bursch and UCLA, (hereafter referred to in this allegations as "Retaliation Defendants"), and each of them conspired to and agreed together to deprive Smith of reunification with CR and Smith of her relationship with and custody and control of CR. Defendants agreed to and did provide false information to the Juvenile Court to justify CPS's

not reunifying CR with Smith. Defendants intentionally interfered with and provided false and misleading information to the Court to take custody of CR away from Smith and to seek termination.

166. Upon information and belief, the Retaliation Defendants did so intentionally and with malice because Plaintiff continued to threaten litigation against the medical doctors who filed the original complaint with CPS, filed a Notice of Claim on the State of Arizona, DES and upon Defendants Brown, MacAlpine and Pederson, and later, filed a Complaint in the United States District Court of Arizona.

167. Defendants' actions were deliberately indifferent to Plaintiffs constitutional rights as parents. Further Defendants actions were retaliatory against Plaintiff because of her Notice of Claim and Complaint regarding the taking of CR.

168. The right of privacy is recognized in both the United States and Arizona Constitution. Plaintiffs' right to privacy was violated when, Bursch's Report was provided to CR, the Foster Parents, Greco and to Samual Roberson, CR's biological father.

169. Upon information and belief, this Report was provided to CR, Greco and the Foster Parents by MacAlpine.

170. Upon information and belief, the Report was provided to CR as part of the conspiracy to brainwash CR against her mother.

171. Defendant MacAlpine, Bursch and UCLA are individual and/or jointly liable to

Plaintiffs for the tortuous disclosure of private information. The turnover of the Report to CR caused her to hate her mother and conclude that her mother was mentally ill and has damaged CR and Smiths relationship.

172. The acts set forth in this Complaint by all Defendants, individually or together, were extreme and outrageous, designed to cause emotional distress and did cause emotional distress to Plaintiffs. Further, the above acts of Defendants and the disclosure of Bursch's Report was intentionally done to indoctrinate CR into Defendants view of the medical records and to drive a permanent wedge between CR and Plaintiffs.

173. Pursuant to 42 U.S.C. § 1983, Defendants are liable to Plaintiffs for the above described violations of Plaintiffs Constitutional rights. Plaintiffs are entitled to all rights, remedies, in law or in equity, available to them under 42 U.S.C. § 1983. Plaintiffs have suffered the loss of custody and time with CR, suffered humiliation and degradation because of Defendants' Unconstitutional acts.

174. Plaintiffs are entitled to recover their reasonable costs and attorney's fees under 42 U.S.C. § 1983.

175. Plaintiffs are entitled to punitive damages.

WHEREFORE, Plaintiff prays that judgment be entered in her favor and against Defendants and each of them as follows:

1. For compensatory and consequential damages;

2. For attorneys' fees incurred in this matter;

3. For punitive damages; and

4. To grant such other and further relief as the Court feels is just under the circumstances.

DATED this 15th day of January, 2013.

KEITH M. KNOWLTON, L.L.C.

/s/ Keith Knowlton
By: _____
Keith M. Knowlton
Attorney for Plaintiff

VERIFICATION

STATE OF ARIZONA)
) ss.
County of Maricopa)

The undersigned Leanna Smith, being first each duly sworn upon her oath, deposes and says:

I am the Plaintiff in the above captioned action; I have read the foregoing Amended Complaint and know the contents thereof, and the same are true of my own personal knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

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

Executed this 15th day of January, 2013.

/s/ Leanna Smith

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
No. 10-CV-01632
Leanna Smith, an individual
Plaintiff,
v.
Barrow Neurological Institute of St. Joseph's Hospital and Medical Center, et al.,
Defendants.
SECOND AMENDED COMPLAINT

(42 U.S.C. § 1983 and State Torts of Negligence and Interference with Parental Custody)

Plaintiff, Leanna Smith, individually and as the mother of CR, a minor, as and for their complaint against Defendants alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. All of the acts, occurrences and events which comprise the subject matter of Plaintiff's Complaint took place in Maricopa County, Arizona, and the Plaintiff was damaged in an amount sufficient to invoke the jurisdiction of this Court.

2. Plaintiff Leanna Smith ("Smith") at all times mentioned herein resided in Maricopa County, Arizona.

3. CR is a minor child of Leanna Smith and is a fictitious name to protect her identity.

4. Defendant **Catholic Healthcare West ("CHW")** is an Arizona Corporation owns and operates **Barrow Neurological Institute of St. Joseph's Hospital and Medical Center in Phoenix, Arizona ("Barrows"). St. Joseph's Hospital and Medical Center ("SJMC")** is also owned and operated by **CHW.**

5. Defendant **Banner Health System ("BHS")** is a foreign non-profit corporation doing business in Maricopa County, Arizona and doing business in Maricopa County, Arizona as **Banner Desert Medical Center ("BDMC").**

6. Defendant **State of Arizona** is a body politic of the United States of America. Defendant **Child Protective Services** (CPS) is a part of Division of Children, Youth and Families (DCYF) within the **Arizona State Department of Economic Security ("DES"). DES** is a body politic of the State of Arizona.

7. Defendant **Charles Alfano ("Alfano")** is licensed to practice medicine in the State of Arizona and is employed as a Vice President of **SJMC**. **Alfano** caused events to occur in Maricopa County Arizona out of which this complaint arose.

8. Defendant **Harold Rekate ("Rekate")** is licensed to practice medicine in the State of Arizona and is employed as Neurosurgeon by **Barrow. Rekate** caused events to occur in Maricopa County Arizona out of which this complaint arose.

9. Defendant **Scott Elton ("Elton")** is licensed to practice medicine in the State of Arizona and is employed as a Neurosurgeon by **BDMC**. **Elton**

caused events to occur in Maricopa County Arizona out of which this complaint arose.

10. Defendants **Laura Pederson, Tammy Hamilton-MacAlpine. Bonnie Brown and Marysol Ruiz** are all employees of **DES** and in the course and scope of their employment caused events to occur in Maricopa County, Arizona out of which this complaint arose.

11. Each and every individual Defendant is being sued for their conduct and not because of the position they hold. At all times mentioned herein, each individual Defendant was acting within the course and scope of said agency and employment.

12. Upon information and belief the above individual defendants are married and the names of their husbands and/or wives are unknown and therefore listed as Spouse. Upon information and belief the alleged acts of the above individual Defendants were done for the benefit of the marital community and therefore Plaintiff will amend the Complaint to include the names of any of the spouses prior to trial of this matter.

13. Proper notice of claim has been given pursuant to all relevant statutory provisions.

14. The other fictitiously named Defendants are persons and/or corporations or partnerships that may have caused the incident herein sued on, but whose true names are unknown at this time. Plaintiff will seek leave of the Court to substitute the true names of said parties prior to the entry of Judgment herein.

15. Defendants **State of Arizona, DES, CPS, BHC, BDMC, SJMC, Barrows, CHW, CITY OF PHOENIX and COUNTY OF MARICOPA** are responsible for the acts and/or omissions of their agents and/or employees under doctrines of respondeat superior, agency, and joint venture.

16. **A JURY TRIAL IS REQUESTED.**

FACTUAL ALLEGATIONS

17. Plaintiff incorporates all the above paragraphs as though fully set forth herein.

18. From 10/5/06 to 10/30/06 CR was in the Phoenix Children's Hospital for high blood pressure. The hospital and doctors were unable to determine the cause of the high blood pressure and discharged her to go home.

19. On 11/2/06 her blood pressure again was high. The family physician, Dr. Stewart Van Hoosear directed Smith to take CR to the nearest hospital because of his concern she would have a stroke from the high blood pressure. Smith took CR to the emergency room at BDMC, the nearest hospital.

20. CR's blood pressure was B/P 151/118 and eventually came down with medication but she continued to vomit up nasogastic tube feedings.

21. Dr. Gary Silber at Phoenix Children's Hospital was consulted with Dr. Geetha Rao and Dr. Silber stated that in his opinion the problem was psychological and that CR just needed to calm down. CR was provided intravenously Loratab 500/7.2mg to relax her but she immediately went into anaphylactic shock from the medication.

22. CR was immediately transferred to the pediatric ICU in the care of Dr. Imad Haddard.

23. CR was having problems breathing and her heart rate was 150. Smith is a Respiratory Therapist and was concerned that unless she was intubated, which would ease her breathing, CR could have a stroke. Dr. Haddard refused to intubate CR and had an argument with Smith over the need to intubate CR.

24. CR was placed in the ICU at around 12:15 p.m. By 5:45 p.m., upon information and belief, because of the stress on her body from the Cheyne Stokes breathing and high blood pressure and heart rate, CR had a stroke in the PICU. It was witnessed by all those present in the PICU, including Smith.

25. CR went into a coma.

26. At about 6:15 p.m., Dr. Haddard intubated CR while she was in the coma.

27. At about 9:21 p.m., Dr. Jay Cook, a Neurologist, ordered that the medical staff avoid any further "Central Nervous System Strokes."

28. Dr. Haddard took the position that CR did not have a stroke and that there was nothing medically wrong with CR, her coma and medical condition was self inflicted and psychological.

29. On 11/7/06, CR had a spinal lumbar tap done and this showed increased pressure in her spinal column. She was then diagnosed with Pseudo-Tumor Cerebri (in layman's terms normal MRI –CT Scans with increased intracranial pressures.)

30. The Spinal Fluid was sent to the laboratory for testing and came back with a Red Blood Cell Count of 153rbc –Normal RBC Count in Central Spinal Fluid is (0-5)

31. Again the doctor on the case stated that everything was coming back as "Normal"

32. On or around 11/14/06 CR came out of her first coma but her face was hung down and she walked with a shuffle. She did not know family names or DOB. Dr. Jay Cook, a Neurologist diagnosed CR with Amnesia.

33. On 11/22/06 CR had an External Lumbar Drain placed and BDMC began to drain Central Spinal Fluid. CR initially woke up but was complaining of the "worse headache of her life " and the doctors found CR unconscious in the PICU and sent intubated her with a breathing tube and took her to the MRI?MRA scan where she went into "Cardiac Arrest and Respiratory Arrest" She went back into a coma on 11/22/06.

34. On 11/26/06, CR was transferred to Barrows and went under the care of Dr. Harold Rekate, a neurosurgeon.

35. An MRI/MRA was performed on 11/27/06.

36. 12/15/06 Smith was called to Barrow in the middle of the night because CR Intracranial Pressures had Exceed to 90 for Greater than 5 minutes.

37. Again the doctor stated everything was normal and all MRI/CT scans were coming back "Normal"

38. On 12/19/06 Smith asked to speak with Barrow CEO Linda Hunt.

> she sent Dr. Bruce White. Smith explains that CR Intracranial Pressures went greater than 90 for 5 minutes yet the Doctors on the case are stating that everything is coming back "Normal." Dr. Bruce White told Smith that she could transfer her daughter to UCLA. Smith said to Dr. Bruce White that CR is in a COMA right now. Dr. Bruce White said then CR will need to stay here.

39. On 12/21/06 CR woke up from the second Coma and CR was transferred to Neuro Rehab at Barrows shortly after.

40. On 1/11/07, CR goes into respiratory arrest after an EDG was performed by Dr. Michael Finch at Barrows. CR was placed back into the Pediatric ICU.

41. On 1/24/07, Dr. Rekate puts in a Ventricular Access Device (a reservoir giving access to Central Spinal Fluid) in anticipation for possible Lumbar Peritoneal Shunt. The Lumbar Peritoneal Shunt was never done. Ventricular Access Device was left in place.

42. CR was conscious and undergoing Speech Therapy, Physical Therapy and seeing all the doctors set forth below at paragraph 78.

43. CR was discharged on 2/27/07 and was undergoing Rehabilitation.

44. On 6/20/07, Dr. Kevin Chapman ordered an MRI of CR's brain, with or without contrast. Smith obtained a copy by Disk of the MRI

film itself. She could see from her medical training damage to the brain caused by the stroke. However, Dr. John Karis of Barrows in his report from viewing the film stated her brain was normal.

45. On 8/14/07 CR was evaluated by Barrow Outpatient Therapy for Speech Therapy.

46. On 8/16/07 CR went to see her PCP Dr, Mario Islas at Happy Kids Pediatrics.

47. 8/22/07 CR went to see Dr. Lourdas Guerrero-Tiro (Pediatric Cardiologist)

48. 8/23/07 CR went to Sunset Physical Therapy- Glenn Brooks did an evaluation for Physical Therapy

49. 8/28/07 CR went to Physical Therapy at Sunset Physical Therapy.

50. 8/28/07 CR went to see Dr. Mario Islas (pcp) at Happy Kids Pediatrics.

51. 8/30/07 CR went to Physical Therapy at Sunset Physical Therapy.

52. 8/30/07 CR has a Pulmonary Function Test done.

53. 9/4/07 CR went to Physical Therapy at Sunset Physical Therapy.

54. 9/6/07 CR went to Physical Therapy at Sunset Physical Therapy.

55. 9/6/07 CR went to see Dr. Elle Firzli (Nephrologist)

56. 9/10/07 CR went to see Dr. Maria Martinez (Pediatric Pulmonolist)

57. 9/11/07 CR went to Physical Therapy at Sunset Physical Therapy.

58. 9/11/07 CR went to see Dr. Christina Kwasnica (Pediatric and Traumatic Brain Rehabilitation Specialists)

59. 9/11/07 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy.

60. 9/13/07 CR went to Physical Therapy at Sunset Physical Therapy

61. 9/18/07 CR went to Physical Therapy at Sunset Physical Therapy

62. 9/20/07 CR went to Physical Therapy at Sunset Physical Therapy

63. 9/20/07 CR went to Speech Therapy with Nicole Thomson at Barrow Outaptient Therapy.

64. 9/25/07 CR went to have a Echocardiogram done. Ordered by Dr. Lourdas Guerrero-Tiro (Pediatric Cardiologist)

65. 9/25/07 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy.

66. 10/2/07 CR went to Physical Therapy at Sunset Physical Therapy

67. 10/4/07 CR went to Physical Therapy at Sunset Physical Therapy

68. 10/4/07 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy.

69. 10/9/07 CR went to Physical Therapy at Sunset Physical Therapy

70. 10/10/07 CR was admitted to the hospital for Headache with Shunt Difficulties and Upper Respiratory Infection.

71. On 10/10/07 CR was transferred to the Pediatric Intensive Care Unit at Barrows because of increased work of breathing with oxygen saturations in the 50's.

72. On 10/12/07 Smith discussed with each Doctor treating CR what could be done for CR. She was continually going into respiratory arrest and had went into cardiac arrest and was on a BIPAP breathing machine at night with settings of IPAP +17/EPAP +10 and has had life threatening neurological events in the past. Each doctor stated they did not know what was wrong with her, it was a medical mystery. After discussing the situation with Dr. Robert Rosenberg, the medical director of the Pediatric Intensive Care Unit at Barrows, it was agreed that for this one hospitalization, if she went into respiratory or cardiac arrest that no effort would be made to resuscitate her. Dr. Rosenberg agreed and entered in her chart a DNR order.

73. On or about 10/25/07 CR was discharged.

74. 11/5/07 CR went to see Dr. Michael Finch (Pediatric Gastroenterologist)

75. 11/7/07 CR went to see Dr. Maria Martinez (Pediatric Pulmonologist) Hospital follow-up appt.

76. 11/9/07 CR went to see Dr. Kevin Chapman (Pediatric Neurologist)

77. 11/9/07 CR went to Physical Therapy at Sunset Physical Therapy

78. 11/12/07 CR went to Physical Therapy at Sunset Physical Therapy

79. 11/14/07 CR went to see Dr. Mario Islas (PCP) Hospital Follow-up appt.

80. 11/19/07 CR went to Physical Therapy at Sunset Physical Therapy

81. 11/27/07 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

82. 11/28/07 CR went to Physical Therapy at Sunset Physical Therapy

83. 11/30/07 CR went to Physical Therapy at Sunset Physical Therapy

84. 12/3/07 CR went to Dr. Mario Islas (PCP) Happy Kids Pediatrics

85. 12/3/07 CR went to Physical Therapy at Sunset Physical Therapy.

86. 12/4/07 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

87. 12/5/07 CR went to see Dr. Michael Finch (Pediatric Gastroenterologist)

88. 12/6/07 CR went to see Dr. Kevin Chapman (Pediatric Neurologist)

89. 12/6/07 CR went to Physical Therapy at Sunset Physical Therapy

90. 12/10/07 CR went to Physical Therapy at Sunset Physical Therapy

91. 12/11/07 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

92. 12/11/07 CR had a EEG done at Barrow Outpatient- ordered by Dr. Kevin Chapman

93. 12/13/07 CR went to Physical Therapy at Sunset Physical Therapy

94. 12/14/07 CR went to see Dr. Thomas Wolfe (Neuro-Ophthalmology)

95. 12/18/07 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

96. 12/18/07 CR went to Dr. Thomas Wolfe (Neuro-Ophthalomology)

97. 12/19/07 CR is sick- Physical Therapy was cancelled.

98. 12/20/07 CR went to see Dr. Mario Islas (PCP) – she is sick

99. 12/21/07 CR is sick –Physical Therapy was cancelled.

100. 12/27/07 CR went to see Dr. Elle Firzli (Pediatric Nephrologist)

101. 12/28/07 CR goes to have a Venous Doppler Study at Banner Desert Medical Center

102. 12/28/07 CR went to see Dr. Mario Islas (PCP)

103. 1/3/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

104. 1/8/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

105. 1/9/08 CR went to see Dr. Maria Martinez (Pediatric Pulmonologist)

106. 1/10/08 CR went to Physical Therapy at Sunset Physical Therapy

107. 1/14/09 CR went to see Dr. Michael Finch (Pediatric Gastroenterologist)

108. 1/15/08 CR went to Physical Therapy at Sunset Physical Therapy

109. 1/16/08 CR went to see Dr. Lourdas Guerrero-Tiro (Pediatric Cardiologist)

110. 1/17/08 CR went to Barrow ER

111. 1/22/08 CR went to Physical Therapy at Sunset Physical Therapy

112. 1/24/08 CR went to Barrow Outpatient for CT Scan with and without Contrast of Abdomen

113. 1/29/08 CR went to see Dr. Felipe Torre (PCP) covering for Dr. Mario Islas- Happy Kids Pediatrics

114. 1/31/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

115. 2/4/08 CR went to Barrow ER

116. 2/6/08 CR went to Barrow ER

117. 2/7/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

118. 2/8/08 CR went to see Dr. Jesse Cohen (Pediatric Hematologist)

119. 2/13/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

120. 2/14/08 CR went to see Dr. Maria Martinez (Pediatric Pulmonologist)

121. 2/15/08 CR went to see Dr. Christina Kwasnica (Pediatric and Traumatic Brain Rehabilitation Specialist)

122. 2/18/08 CR went to have a Pulmonary Function Test at Barrow Outpatient.

123. 2/19/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

124. 2/19/08 CR went to see Dr. Jerald Underdahl (Pediatric Ophthalomologist)

125. 2/20/08 CR went to see Dr. Mario Islas (PCP) at Happy Kids Pediatrics

126. 2/21/08 CR went to see Dr Harold Rekate (Pediatric Neurosurgeon)

127. 2/25/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

128. 2/27/08 CR went to see Dr. Michael Finch (Pediatric Gastroenterologist)

129. 2/28/08 CR went to see Dr. Salaheddine Tomeh (Vascular Surgeon)

130. 2/29/08 CR went to see Dr. Mario Islas (PCP) at Happy Kids Pediatrics

131. 3/4/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

132. 3/6/08 CR went to Physical Therapy at Sunset Physical Therapy

133. 3/10/08 CR went to Physical Therapy at Sunset Physical Therapy

134. 3/11/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

135. 3/12/08 CR went to see Dr Harold Rekate (Pediatric Neurosurgeon)

136. 3/12/08 CR went to see Dr. Mario Islas (PCP) at Happy Kids Pediatrics

137. 3/13/08 CR went to see Dr. Maria Martinez (Pediatric Pulmonologist)

138. 3/18/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

139. 3/18/08 CR went to see Dr. Elle Firzli (Pediatric Nephrology)

140. 3/19/08 Cr went to see Dr. Jerald Underdahl (Pediatric Ophthalmologist)

141. 3/20/08 CR went to see Dr Kevin Chapman (Pediatric Neurologist)

142. 3/26/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

143. 3/26/08 CR went to see Dr. Salaheddine Tomeh (Vascular Surgeon)

144. 3/31/08 CR went to see Dr. Michael Finch (Pediatric Gastroenterologist)

145. 4/4/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

146. 4/7/08 CR went to see Dr. Harold Rekate (Pediatric Neurosurgeon)

147. 4/8/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

148. 4/10/08 CR went to see Dr. Maria Martinez (Pediatric Pulmonologist)

149. 4/14/08 CR to Dr. Gerald Underdahl's (Pediatric Ophthalmologist) office for a Visual Field Exam

150. 4/15/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

151. 4/22/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

152. 4/28/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

153. 4/30/08 CR went to see Dr. Michael Finch (Pediatric Gastroenterologist)

154. 5/1/08 CR went to Physical Therapy at Sunset Physical Therapy

155. 5/1/08 CR went to see Dr Mario Islas at Happy Kids Pediatrics

156. 5/6/08 CR went to Physical Therapy at Sunset Physical Therapy

157. 5/7/08 CR went to see Dr. Maria Martinez (Pediatric Pulmonologist)

158. 5/7/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

159. 5/8/08 CR went to Physical Therapy at Sunset Physical Therapy

160. 5/12/08 CR went to Physical Therapy at Sunset Physical Therapy

161. 5/16/08 CR went to see Dr. Mario Islas at Happy Kids Pediatrics

162. 5/20/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

163. 5/21/08 CR went to Physical Therapy at Sunset Physical Therapy

164. 5/22/08 CR went to see Dr. Harold Rekate (Pediatric Neurosurgeon)

165. On 5/22/08 Dr. Rekate indicated he would not perform any surgical intervention for CR.

166. 5/27/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

167. 5/28/08 CR went to Physical Therapy at Sunset Physical Therapy

168. 5/30/08 CR went to Physical Therapy at Sunset Physical Therapy

169. 6/2/08 CR went to Physical Therapy at Sunset Physical Therapy

170. 6/3/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

171. 6/3/08 CR went to see Dr. Maria Martinez (Pediatric Pulmonologist)

172. 6/5/08 CR went to see Dr. Shawn Gale (Neuro-Psychologist) for Neuropsychology Testing

173. 6/6/08 CR went to Physical Therapy at Sunset Physical Therapy

174. 6/9/08 CR went to see Dr. Kevin Chapman (Pediatric Neurologist)

175. 6/10/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

176. 6/11/08 CR went to see Dr. Harold Rekate (Pediatric Neurosurgeon)

177. On 6/11/08 Dr. Rekate decided to put in a Lumbar-Peritoneal Shunt.

178. 6/11/08, 6/13/08 and 6/16/08 Physical Therapy was cancelled by Sunset Physical Therapy

179. 6/17/08 CR went to Speech Therapy with Nicole Thomson at Barrow Outpatient Therapy

180. 6/18/08 CR went to Physical Therapy at Sunset Physical Therapy

181. 6/18/08 CR went to see Dr. Mario Islas at Happy Kids Pediatrics

182. 6/18/08 CR went to see Dr. Maria Martines (Pediatric Pulmonologist)

183. 6/20/08 CR back-up rate on BIPAP breathing Machine is increased to 10 Breaths per minute.

184. 6/25/08 CR went to Physical Therapy at Sunset Physical Therapy

185. On 7/9/08 CR is admitted to have a Lumbar- Peritoneal Shunt place in her back at Barrows.

186. On or about 7/14/08, Smith meets with Dr. Charles Alfano, a Vice President of SJMC and Barrows and Jacqueline Aragon, the Director of the Quality, Risk and Regulatory Division at SJMC. In this meeting Smith brought her copy of the 6/20/07 MRI and showed them the MRI and Smith requested to know what they knew about CR's medical condition. Smith informed them that she believed CR has a stroke as a result of medical negligence at Barrows and that the stroke was being covered up. Smith requested they come clean and provide medical care for CR.

187. Dr. Alfano ordered an additional MRI-Diffusion-Weight with Stroke Protocol, CT angiogram of the head and EEG.

188. On 7/23/08 CR was diagnosed with a Transverse Sinus Occlusion.

189. On 7/23/08 Dr. Rekate discharged CR from the hospital.

190. On 7/25/08 CR went to Scottsdale Osborn hospital ER because of continued headaches and Scottsdale Osborn sent her back to Barrows.

191. On 7/28/08 Dr. Rekate discharged her again and Dr. Bruce White sent her home by ambulance. Dr. Rekate in writing stated he would no longer work on the case and resigned as the Neurosurgeon.

192. Smith went to ACCCHS and was working with Dr. Mario Islas (pcp) asking for a new neurosurgeon because CR was having problems with the lumbar-peritoneal shunt. No Neurosurgeon was provided.

193. By 8/14/08 CR's brain was herniating.

194. On 8/18/08 Dr. Rekate agreed to come back on the case and remove and replace the shunt. On 8/20/08 Dr. Rekate takes the Lumbar-Peritoneal Shunt out and started doing intracranial pressure monitoring.

195. On 8/22/08 Dr. Charles Alfano and Dr. Harold Rekate came together to CR's room. Smith left and went to another room with Dr. Alfano while Dr. Rekate stays in CR's room. Smith had requested to talk to Linda Hunt, the CEO of Barrows and asked Dr. Alfano where she was. He stated that she sent him. Smith stated she was upset because the hospital sent CR home by ambulance on 7/28/08 with no Neurosurgeon assigned to the case with a lumbar-peritoneal shunt in place and CR brain herniated. Smith was angry because Barrows abandoned care for CR, an AHCCCS patient and did not provide her with a necessary neurosurgeon. Dr. Alfano took this personally and told Smith that this was not about

CR, but personal between them. He then told Smith, she "would not like what we are going to do to you next." Alfano then walked out.

196. Upon information and belief, on 8/22/08 Dr. Alfano or somebody at his direction, contacted CPS and submitted a complaint requesting them to investigate Smith.

197. After the meeting with Dr. Alfano, Smith went in and met with Dr. Rekate. They had a discussion about CR's pressure in her brain increasing (Dr. Rekate denied that) and Dr. Rekate said he wanted to remove the intracranial pressure monitor. Smith asked him why he wanted to remove the monitor when her pressure was increasing. He immediately raised in hand in the air and said you are impossible to work with. Smith said why am I impossible to work with, I just wanted you to answer my question and Dr. Rekate said I cannot work with you anymore and he went out and signed off on the case a second time.

198. Dr. Rekate later stated to CPS that Smith refused to let him remove the Intracranial Pressure monitor which exposed CR to infection. This was not true at all.

199. On 8/22/08 Dr. Bruce White made a report to AZ CPS stating" Mom is making poor decisions about CR medical treatment" DR. Bruce White states "Mother disagreed with how the doctors should treat CR, so on 8/22/08, she took CR out of St. Joseph's Hospital and had her admitted to Banner Desert Medical Center." This is not true at all. After Dr. Harold Rekate signed off on the case a second time as the Neurosurgeon, CR was transferred from

Barrow/St. Joseph's Hospital by ambulance to Banner Desert Medical Center where Dr. Scott Elton assumed care as CR new Pediatric Neurosurgeon.

200. The monitor was removed and CR was transferred to BDMC on 8/22/08.

201. On 8/22/08 at BDMC Dr. Scott Elton came in and said CR's respiratory arrest was the result of Chari Malformation or Brain Stem Compression.

202. At this point Smith feels the doctors are explaining what is going on and CR has a new Neurosurgeon looking at the matter fresh.

203. On 8/25/08 Dr. Elton came in and stated CR's condition was not medically based but was all psychological.

204. CR had a Ventricular Peritoneal Shunt implanted in her brain on 9/2/08. Dr. Elton inserted the shunt because of increased pressure in CR's brain that was discovered by intracranial pressure monitoring.

205. On 9/3/08 Four treating Physicians including Dr. Scott Elton at BDMC signed a piece of paper stating that "returning home to mother's care will impede CR recovery and be further Psychologically and Medically Harmful to CR"

206. CR was placed in Arizona CPS custody on 9/3/08 from BDMC.

207. On or about 10/3/08, Smith had a one (1) hour supervised visit with her daughter with CPS Investigator Laura Pederson. CR stated that when she goes to the school nurse, the nurse gets upset and tells CR not to bother her and to go back to

class. Laura asked if CR was getting Tylenol when she goes to the nurse and CR stated that she is but that it wears off.

208. Laura Pederson then asked Smith for a SVN (small volume nebulizer) for CR to take her breathing treatments for her asthma. Breathing treatments were ordered as needed by the Doctor in her discharge summary from BDMC on 9/4/08. Smith explain to Laura that CPS can order a new breathing machine because she does not want to get in trouble for giving CR anything since they are trying to say Smith has "Munchausen by Proxy." Laura stated she would talk to the insurance company.

209. CR was never given a SVN machine to treat her asthma in Arizona CPS custody even though it was ordered in the discharge summary from BDMC on 9/4/08 when CR was in CPS custody and control.

210. On 10/18/08 during Smith's one (1) hour supervised visitation with CPS Investigator Laura Pederson, CR was crying to Smith as Laura spoke with the Com-Trans driver. CR told Smith that her head was hurting. She stated that she was having headaches again and that Marysol Ruiz, her foster mother would not take her to the doctor. CR told Smith that she has not seen any of her doctors that she was seeing before being taken into CPS custody.

211. Laura walked up to them and asked "Why are you crying?" CR said because her head is hurting. Laura said we could go inside and have CR lay down during the 1 hour supervised visitation.

Laura stated that CR was not on any medication except prescription Tylenol.

212. CR and Smith asked Laura why CR has not seen the Gastroenterologist, Pulmonologist, and Neurologist she was seeing before being taken into CPS custody. Laura stated because she does not have any orders for CR to see them.

213. On 10/25/08 during the 1 hour supervised visitation, Laura requested and made Smith sign a piece of paper stating the "Visitation Guidelines." Laura states that CR was very upset after the last visitation with Smith on 10/18/08. Laura stated that the foster mother Marysol Ruiz has never seen CR like that. Smith explains to Laura the reason CR was upset is because she was in pain and her head hurts and no one will take her to see the doctor. Laura told Smith that there will be no more discussion with CR at the 1 hour supervised visitation about her medical condition or the 1 hour supervised visitation will be stopped immediately.

214. On 12/20/08, CR came to the 1 hour supervised visitation with CPS caseworker Tammy Hamilton-MacAlpine crying and stated that her head hurts. her neck is stiff and her spine hurts. CR stated when she goes over speed bumps that her head hurts even more. CR states that she woke up in the middle of the night vomiting. CR was crying and Tammy Hamilton-MacAlpine states that she will take CR to Urgent Care or have Marysol Ruiz, the foster mother take CR to Urgent Care. Smith and CR had only a 1/2 hour visit and Tammy stated

she would have CPS contact Smith with CR's condition.

215. On 12/23/08, Smith received a voicemail from Tammy Hamilton-MacAlpine stating that CR did not need to go to Urgent Care; that her headache went away with some Tylenol. She completely ignored the other symptoms CR complained about with the headache.

216. On 3/23/09, at 2:30 pm, Smith received a call from Tammy Hamilton-MacAlpine where she stated that everything is fine with CR. Tammy told Smith that there was nothing wrong with the shunt.

217. CR stated she went to the bathroom at school on 3/23/09 and then returned to class and asked the teacher to go to the bathroom again. CR was at Luke Elementary School and was taken to the nurse's office. CR was taken to Dr. Elton's office and he adjusted CR's V-P Shunt and took CT Scans.

218. On 3/24/09, CR was admitted to Banner Desert Medical Center for an infected ventricular peritoneal shunt. On 3/25/09 CR had surgery to remove the ventricular peritoneal shunt because it was infected and an external ventricular shunt was put in its place. Cultures come back that CR had Enterobacter Cloacae Bacterial Meningitis. CR's short term memory loss and long term memory loss are worse since the bacterial meningitis.

219. On July 14, 2009, CR was taken to Happy Kids Pediatrics to see her Primary Care Physician with Tammy Hamilton-Mac Alpine CPS caseworker and Smith present. The doctor ordered Speech Therapy, Occupational Therapy and Physical Therapy evaluations for CR. The CPS caseworker

Tammy Hamilton-MacAlpine told Dr. Pyburn that she feels CR does not need these evaluations and that again Smith is trying to get CR medical treatments that are not necessary.

220. Speech therapy was ordered in the Discharge Summary from BDMC on 4/29/09. The foster mother at the time Marysol Ruiz was hand delivered a prescription for Speech Therapy that she was supposed to take to CR's Primary Care Physician within 10 days of discharge. Marysol never took CR to the Doctor. CR was not started on Speech Therapy until December 7, 2009.

221. Dr. Pyburn stated that CPS does not feel CR needs Physical Therapy, Occupational Therapy and Speech Therapy evaluations. Tammy Hamilton-MacAlpine is not a physician and has no authority to decide what therapy CR needs. Smith explained to Dr. Pyburn that Tammy is trying to say that Smith is the one asking for therapies that have been ordered when Tammy Hamilton-MacAlpine was sitting there when the doctor ordered them. Smith explained to Dr. Pyburn that Tammy Hamilton-MacAlpine and CPS are the ones in medical negligence and Dr. Pyburn stated "your right."

222. When CR was taken into CPS custody on 9/3/08, she was seeing the following doctors:

Dr. Maria Marteniz (Pulmonologist)
Dr. Elle Firzli (Nephrology)
Dr. Michael Finch (Gastroenterology)
Dr. Jerald Underdahl (Ophthalmologist)

Dr. Thomas Wolfe (Neuro-Ophthalmologist)
Dr. Lourdas Guerrero-Tiro (Cardiologist)
Dr. Christina Kwasnica (Pediatric &Traumatic Brain Rehabilitation)
Dr. Jesse D. Cohen (Pediatric Hematology)
Dr. Salaheddine Tomeh (Vascular Surgeon)
Dr. Kevin Chapman (Neurologist)
Dr. Mario Islas (Primary Care Physician)
Dr. Scott Elton (Neurosurgeon)
Sunset Physical Therapy- Glenn Brooks 480-755-1505-[CR] was in physical therapy once a week to work on strengthening upper and lower quadrant (body) weakness.
Speech Therapy- Nicole Thomson 602-406-3230- CR was in speech therapy once a week to work on short term memory loss, long term memory loss and higher executive skills.

This list was given to CPS investigator Laura Pederson on 10/25/08.

223. CR was taken off of all medication prescribed for her while at BDMC except Provigil 200mg p.o. daily, Prevacid 30mg p.o. b.i.d., Xopenex 1.25mg by nebulizer every 4 hours p.r.n wheezing, Tylenol 650mg every 4 hours p.r.n. pain, Motrin 600mg p.o. every 6 hours p.r.n., nystatin cream applied to affected area q.i.d. times 7 days, bacitracin to be applied to the incision area and

methodone 10mg p.o. b.i.d. will be weaned to 10% every other day. CR had only 3 pills of Methodone and Tylenol for her headaches. CR was not taken to any of the above doctors for appointments that were scheduled for her prior to CPS taking over Custody.

224. On CR's Discharge Summary on 9/3/08, it states CR is on Prevacid 30 mg bid, Provigil 200 mg daily, Xopenex 1.25mg by Nebulizer every 4 hours p.r.n. wheezing---the breathing treatments were never given to CR because CPS investigator Laura Pederson on 10/18/08 asked Smith for a nebulizer and CR is not receiving Prevacid, Provigil or Breathing Treatments, only Tylenol and Motrin.

225. CR was supposed to follow up with Dr. Elton (Neurosurgeon) in 2 weeks but CR states she never saw Dr. Elton for 2 months. After discharge on 4/29/09 CR was to resume Speech Therapy and the foster mother was given a prescription for Speech Therapy. CPS did not get CR into Speech Therapy until 12/7/09. CR states the foster mother maybe took CR to the see Dr. Gear once. CR was complaining of headaches and CPS would not allow Smith to talk to her about her medical condition and the CPS -foster mother would not take CR to the doctor for her headache.

226. CR was coming to the 1 hour supervised visitations with her jacket on stating that she is always cold. CR had to have a fever that was not treated in order to have the bacterial meningitis as bad as she did. When a child has a V-P Shunt the first time they spike a fever you are suppose to call the Neurosurgeon so he can decide what to do. A child with a V-P Shunt will not get bacterial

meningitis without having a fever that was not treated with antibiotics.

227. On 12/20/08 CR came to the 1 hour supervised visitation complaining of neck pain, headache, that she woke up in the middle of the night and vomited, pressure in her head and a stiff neck. All signs of meningitis (signs of meningitis include fever and chills, stiff neck, headache, vomiting). If bacterial meningitis is not treated it can lead to permanent brain damage. There is a greater risk for meningitis in people with shunts to treat hydrocephalus.

COUNT ONE

GROSS NEGLIGENCE / INTENTIONAL INTERFERRENCE WITH CUSTODY OF A CHILD

228. The allegations set forth above are fully incorporated herein by this reference

229. Defendants and each of them conspired and agreed together to deprive Plaintiff of her custody and control of CR. Defendants agreed to and did provide false information to CPS to be provided to the Court to justify CPS taking custody of CR. Defendants intentionally interfered with and provided false and misleading information to the Court to take custody away from Smith and to cover up negligent medical care by the Medical Defendants to CR.

230. Defendants and each of them acted with malice in making the report to Child Protective Services.

231. As a result of defendants actions alleged above, Plaintiff suffered damages including

but not limited to alienation of affection, loss of companionship and custody of her daughter and endured mental and emotional distress, all in an amount to be determined at trial.

232. Defendants' actions have proximately caused Plaintiff damages.

COUNT TWO

VIOLATION OF CIVIL RIGHTS

233. The allegations set forth above are fully incorporated herein by this reference.

234. In committing the above referenced actions and/or omissions, Defendants, and each of them, acted under color of state law, and engaged in conduct that was the proximate cause of a violation of Plaintiff's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States of America, including but not limited to interference with the custody of a mother with his child, CR, which is a fundamental right, thereby violating Plaintiff's civil rights under 42 U.S.C. § 1983.

235. Upon information and belief, there was an agreement between the parties to violate Plaintiff's constitutional rights and to have CPS take CR away from Plaintiff by making false allegations against Plaintiff.

236. Defendants' actions were deliberately indifferent to Plaintiff's constitutional rights of Plaintiff. Further Defendants actions were retaliatory against Plaintiff because of her complaints of medical malpractice made to Barrows. Defendants and each of them retaliated against

Smith to deprive her of custody and control of CR in retaliation for her exercise of her first amendment rights under the United States Constitution.

237. As a result of the Defendant' actions alleged above, and in violation of Plaintiff's rights under Federal and State law, Plaintiff suffered damages, endured pain and suffering, mental and emotional distress, and was caused to incur medical expenses, all in an amount to be determined at trial.

238. Plaintiff is entitled to bring this cause of action against the Defendants pursuant to 42 U.S.C. § 1983.

239. Plaintiff is entitled to recover her attorneys' fees incurred in this matter pursuant to 42 U.S.C. § 1988(b).

240. Plaintiff is entitled to Punitive Damages.

COUNT THREE

NEGLIGENCE / GROSS FAILURE TO PROVIDE MEDICAL CARE AND TREATMENT

241. The allegations set forth above are fully incorporated herein by this reference.

242. Defendants CPS, DES and/or the State of Arizona, through its agents and/or employees, and Defendants Hamilton-Mac Alpine, Brown, Pederson and Ruiz referred to hereafter as "State of Arizona Defendants"), intentionally, willfully and/or maliciously, grossly negligently and/ or negligently: (1) failed to provide CR with appropriate medical

care and treatment and (2) failed to have in place policies, procedures and/or staff whereby CR, as a person in foster care, could receive prompt, accurate and professional evaluation of medical conditions and quick, prompt and professional medical care and treatment.

243. State of Arizona Defendants owed CR a duty to provide her with competent medical care and treatment. Defendants breached this duty and failed to provide obvious and necessary medical care resulting in CR suffering from bacterial meningitis.

244. As a direct and proximate result of the actions and or omissions of the State of Arizona Defendants, through its agents and/or employees, Plaintiff CR has sustained serious permanent injuries, incurred medical expenses and will be forced in the future to expend additional sums for medical treatment and rehabilitation and extraordinary mental duress as a result of the actions of Defendants.

245. The acts of Defendants were done intentionally and have caused Plaintiff sever emotional distress.

246. Defendant State of Arizona's agents and/or employees actions have proximately caused Plaintiff damages as specified above in an amount to be proven at trial.

WHEREFORE, Plaintiff prays that judgment be entered in her favor and against Defendants and each of them as follows:

1. For compensatory and consequential damages;

2. For attorneys' fees incurred in this matter;
3. For punitive damages; and
4. To grant such other and further relief as the Court feels is just under the circumstances.

DATED this 23rd day of December 2010.

KEITH M. KNOWLTON, L.L.C.
/s/ Keith Knowlton
By:_____
Keith M. Knowlton
Attorney for Plaintiff

APPENDIX K

AZCAC Contact Note –R 2/19/2010

DATA

"Received a phone call from Dr.? from UCLA. A written ROI had been received to engage in consultation. Responded to questions asked, related to current treatment progress. Offered me ideas of interventions she used in the past with similar cases. Suggested integration of old medical records into treatment, which may allow clt to re-think past events, entertaining an alternate story. By report, this may be helpful, as clt has more availability for abstract thinking aeb /sic/ her current age and developmental stage. Some records will be forwarded to me following her review and consultation."

Signature Date: March 1, 2010.

Signature: /s/ Marina Greco.

APPENDIX L

REDACTED

From: [Foster Mother]
Sent Tuesday April 27, 2010 10:19 am.
To: MacAalpine, Tammy, L

"Hi Tammy,
[CR"] has been very anxious before her Monday visits with mom. Yesterday, she came home from the visit very upset. We talked with her for awhile. She ended up wetting the bed last night. I just thought I should let you know."

From: [MacAlpine]
To: [Buwalda]; [Gerco]
CC: [Brown]
Subject: FW: [CR]

"I received this email from [CR]'s foster mother. I had asked her on 04/07 about her visits with mother and if she preferred to continue them, and at that time, she said yes. It seems they are becoming intense and causing her some distress. I appreciate any input in addressing this. I will ask her again her preference. Tammy"

From: [Buwalda]
Sent: Tuesday, April 27, 2010 5:52 pm
To: [MacAlpine, Greco]
CC: [Brown]
Subject: RE: [CR]

"Oh no! They are tough visits. She becomes very angry with her mother in them. She accuses her mother of lying to her. What do e want to do? Should we consult with Dr. Bursch?

From: [Brown]
Sent: Wednesday, April 28, 2010 8:34 am
To [Buwalda, MacAlpine, Greco]
Subject: RE: [CR]

"The concerns that I have is that [CR] is opening up to exploring/evaluating the ideology she has been raised in, and even though it is traumatic now, if we stop the contact, how would she continue getting answers to the questions she has? I believe that the support that Dr. Buwalda, Ms. Greco, the foster family, and Tammy have provided has given her the safety and security to question her mother. I amso amazed at her progress!! I would defer to whatever is therapeutically recommended."

Subject: RE: [CR]
Date: Wed, 28 Apr. 2010 11:52:40-0700
From: [Greco]
To: [Brown, Buwalda, MacAalpine]

"Exactly! She is doing her work! This is the reason I would like to evaluate her during session today. I will provide a recommendation, thereafter."

From [Buwalda]
Sent: Wednesday, April 28, 2010 1:39 pm
To: [Greco, Brown MacAlpine]
Subject: RE: [CR]

"I'm am proud of her too, the painful piece though is her mother will not give her any answers, accuses her of being incorrect, and of being feed "lies" by all of us. So [CR] is trying to grow and explore with her mother, but her mother is shutting her out. Her mom made some comment about me in the visit and [CR] jumped to my defense, which obviously wasn't needed. I worry her emotions are going to become more unsettled if Mom continues to deny her the truth.

From: [Greco]
Sent: Wednesday, april 28, 2010 2:21 pm
To : [Buwalda; Brown; MacAlpine]

I just completed a a 1.5 hour session w/[CR], accompanied by her foster mom. [CR] spoke of her experience with her mom in much the same way as described below. [CR] is beginning to have insights. She shares concern related to her younger sister, not wanting her to experience what she has. We discussed ways to experience her feelings with developing skills to modulate. I introduced the concept fo EMDR, completing an assessment around her current problem as stated: "Mom is lying to me". She was unable to identify both positive and negative cognitions about herself, image and emotions. We also touched on the grief process and normalized feelings of self-blame, guilt, etc. She and FM were taught to use strategies to manage her feelings of fear, anxiety, anger and sadness. I encouraged her to continue to have visits and work through the process. She is well resourced and I don't want to stop her now. She has my sell number,

and has used it in the past to call me when she wants to check something out. She is also supported and trusts both foster parents. I say we monitor the process and let it continue.

Thanks to all, for keeping me informed. It allows me to do the best work. This kid is incredible!

P.S. I ordered the book recommended by Dr. Birch, as reported by [CR]. We agreed to read and discuss it like a book review. It should arrive on Friday or Monday.

APPENDIX M

Superior Court of Arizona
Maricopa County
Case No: JD[redacted]

In the matter of:

[CR]

RULING UNDER ADVISEMENT

Filed January 24, 2012:

The Court has considered the evidence and arguments presented at trial between 8/18/2011 and 9/14/2011, and the briefing submitted after trial, including written closing arguments from the parties, the last of which was received on 11/28/2011.

[Body of Order redacted pursuant to A.R.S. § 8-807 because it is under seal]

The Court never heard directly from [CR] who was not called as a witness.

IT IS ORDERED denying the ADES's First Amended Petition to Terminate Parental Rights as to the child [CR].

IT IS HERE ORDERED dismissing the dependency action filed in this matter regarding the child [CR]….[Redacted pursuant to A.R.S. § 8-807 because it is under seal].

Date: 1/24/2012

/s/ Honorable Margaret R. Mahoney

APPENDIX N

AFFIDAVIT OF OFFICER R. PAGE #11705
Pursuant to 28 U.S.C. § 1746

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, Officer Renee Page #11705, having first been duly sworn, hereby declare under penalty of perjury that each of the following statements is true or, as to those statements made upon information and belief, they are true to the best of my knowledge and belief;

1. I am a police officer with the Tempe Police Department.

2. On August 28, 2008, I was contacted by Sgt. Brudnock to go to Banner Desert Hospital to investigate a possible Munchausen Syndrome by Proxy case involving Leanna Smith and her daughter [CR] Roberson.

3. Attached hereto as Exhibits 1 through 8 are true and correct copies of my investigation reports that I filed in the case.

4. Attached hereto as Exhibit 9 is a true and correct copy of the report prepared by Dr.

Coffman (spelled Koffman in my report) that Dr. Coffman prepared at my requests and which she provided to me.

5. I interviewed the social worker Amira El-Ahmadiyyah (Exhibit "1" pgs. 1-2), Dr. Maria Alberquerque, the PICU Physician (Exhibit "1" pgs. 8-10), Dr. Oppenheim, the Psychiatrist (Exhibit "1" pgs. 3-8 and 10), Dr. Elton the Neurosurgeon (Exhibit "1" pgs. 14-15) and Dr. Cook (Exhibit "1" pgs. 10-12) from Banner Desert Hospital.

6. I interviewed Dr. White, the Chief Pediatric Officer for St. Joseph's Hospital (Exhibit "2" pgs 11-14). Dr. White said he was a lawyer as well as a pharmacist (Id, at pg. 13, bottom second paragraph).

7. Dr. Rekate refused to be interviewed because Dr. White had told him not to talk to me. (Exhibit "2" pg. 14, third paragraph).

8. I also interviewed, Dr. Mancuso (Exhibit "2" pgs. 10-11), Dr. Van Hoosier (Exhibit "2" pgs. 6-7), Dr. Islas (Exhibit "2" pgs. 7-10 and pg. 15) and later interviewed [CR] Roberson (Exhibit "7" pgs. 1-3) and her brother Samuel Roberson (Exhibit "2" pgs.1-6).

9. On September 15, 2008, I contacted Dr. Coffman at Child Help to see if she could

review [CR] medical records. She stated she was already involved in the case and that I could drop the medical records off for her review when I received them all.

10. We usually use Dr. Coffman at Child Help to review medical records which is why I called her.

11. On October 21, 2008, I was told by Dr. Coffman that there would be a meeting on October 29, 2008 at St. Joseph's Hospital. On October 29, 2008, I attended a staffing meeting with Dr. Coffman, Dr. Erskin, an intensivist at St. Joseph's Hospital, Dr. Rekate, Dr. White, Dr. Pero, a doctor at St. Joseph's Hospital, Laura Peterson of CPS and Stephanie Willison of the Maricopa County Attorney's Office. (Exhibit "4" pg. 2, bottom paragraph). At this stage we were waiting for the medical records from PCH and Dr. Coffman's report regarding her medical record review.

12. Laura Peterson was the investigator for CPS. I provided her with the information I obtained on a regular basis so that she knew what I knew. Further, she attended the staffing meeting on October 29, 2012.

13. On January 27, 2009 I received Dr. Coffman's report which is attached hereto as Exhibit "9."

14. After a review of the findings, I spoke with County Attorney Stephanie Willison and Dr. Coffman. Based on the information available at the time, there "was no charges that could be filed in the case." This finding was provided not only to Dr. Coffman but to Laura Peterson of CPS.

15. The issues raised by those at Banner Desert Hospital was that there was no medical explanation for the current symptoms experienced by [CR] at Banner Desert or just prior to that, St. Joseph's Hospital and there was no medical explanation for [CR] prior medical history or respiratory arrest. When [CR] was diagnosed with pseudo-tumer cerebri and a shunt put in to relieve pressure on [CR]'s brain, that explained the current symptoms that [CR] was experiencing but, as was asserted by those at Banner Desert Hospital, it did not explain the prior medical history or respiratory arrests. Exhibit "1" at p. 12, fifth paragraph down and p. 14, fourth paragraph down. However, there was no evidence provided that Leanna Smith caused or was otherwise responsible for that prior medical history or respiratory arrest from which she could then be charged with abuse or neglect.

16. Dr. Cook informed me that he was involved with [CR] at Banner Desert Hospital the

first time she had trouble with breathing. He stated he watched her arrest once. He said it seemed to be real and she needed to be intubated at that time. He said they stumbled on elevated ESF pressures by accident that caused them to look at pseudo-tumer. He further indicated that at that time, in 2007, he and they questioned whether this was a Munchausen's case for the first time, "but there was no evidence for it."

17. On August 26, 2008 I spoke with Laura Peterson of CPS. At that time she told me she would not allow [CR] to return to her mother when she was released from the hospital.

18. At that same time, she further explained she had talked to Dr. White at St. Joseph's Hospital on August 27, 2008 he "explained to her that the only treatment that Leanna would allow on [CR] is if it included heavy narcotic drugs. She said that Dr. White told her that Leanna would refuse any other treatments for her and that she had also asked about Hospice for [CR]." Exhibit "1" at p. 12, second paragraph down.

19. On September 11, 2008 I talked to Dr. White. In that meeting he stated that Leanna had refused to allow a needle to be

taken out of [CR]'s head that had been in her head for 24 hours and needed to be removed so that [CR] was not exposed to infection. He further stated that Leanna refused the assistance of a pain control nurse at St. Joseph's Hospital to take her off narcotics. I asked him where she is getting narcotics from and he said that she has several sources but he doesn't know where she is getting them filled or who is prescribing them. He further said that someone prescribed methadone for her and he doesn't know where that came from. He said that he doesn't treat [CR]. Exhibit "2" at pp. 12-13.

20. Dr. White stated that Leanna "has been threatening a lawsuit and she wants a movie made of all this." Exhibit "2" at p. 14, first paragraph)

21. On September 18, 2008, I confirmed with Dr. Islas that "he prescribed her methadone and he said that he did for pain management. He said that he started her off with Oxycotton but he wanted her to get steady with the medications so he switched her to methadone and started to wean her off Oxycotton He said that after she got off of that he was going to start to wean her off of the methadone also." I asked him how long this will take and he said a month. Exhibit "2" at p. 15, fourth paragraph down).

22. Further affiant sayeth not at this time.

I, Officer Renee Page #11705 declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 29th day of October, 2012,

/s/ Officer Renee Page #11705

APPENDIX O

Superior Court of Arizona
Maricopa County
Case No: JD[redacted]

In the matter of:

[CR]

Reporter's Transcript of Proceedings
August 30, 2011
Examination Index
Dr. Brenda Bursch

Q. You have got a yellow page note. And it says – is that a 12?
A. Yes
Q. February 12, 2000 /sic 2010/, conference call regarding [CR]?
A. Correct
Q. With Bonnie Brown, Tammy MacAlpine, Bruce MacArthur, and Colleen Patrebus.
A. That's what it says.