

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

MAGAN WHITE,

PLAINTIFF,

vs.

CASE NO. 8:19-cv-00003-WFJ-CPT

SHERIFF DAVID GEE (Ret.),
in his individual capacity;
SHERIFF CHAD CHRONISTER,
successor Sheriff of Hillsborough County,
individually and in his official capacity;
COL. GREG BROWN (Ret.),
in his individual capacity;
COL. DONNA LUSCZYNSKI,
individually and in her official capacity;
COL. KENNETH DAVIS,
individually and in his official capacity;
MAJ. ROBERT URA,
individually and in his official capacity;
SGT. JOSEPH MAURER,
individually and in his official capacity;
DET. JENNIFER MITCHELL,
in her individual capacity;
DET. KARI MATHEWSON,
individually and in her official capacity;
TARYN ELLIOTT, HCSO Child Protection Team Investigator,
individually and in her official capacity,
all with the Sheriff's Office of Hillsborough County, Florida;
MARK OBER, former State Attorney,
in his individual capacity;
ANDREW WARREN, State Attorney,
individually and in his official capacity;
RITA PETERS, former Assistant State Attorney,
in her individual capacity; and
COURTNEY DERRY, Assistant State Attorney,
individually and in her official capacity; all four

with the Office of the State Attorney,
13th Judicial Circuit, Hillsborough County, Florida;
KENNETH C. BECK, Assistant Attorney General,
State of Florida, Office of the Attorney General,
individually and in his official capacity.

DEFENDANTS.

AMENDED COMPLAINT

Plaintiff, MAGAN White (“MAGAN”), through undersigned counsel, sues
DEFENDANTS in their respective official and/or individual capacities as set forth
supra, and alleges:

INTRODUCTION

1. This case arises out of Boswell v. Gee, case number 18-CV-1769 (M.D.
Fla. July 19, 2018),¹ in which Master Detective Charles Brian Boswell (“Det.
Boswell”) was targeted by then-Colonel Donna Luszczynski (“LUSCZYNSKI”) and
a number of other employees of the Hillsborough County Sheriff’s Office
(“HCSO”), as well as an assistant state attorney (“ASA”) within the State Attorney’s
Office of the 13th Judicial Circuit (“SAO”), after Det. Boswell refused to be a team

¹ MAGAN requests that this Court to take judicial notice of this case and the docketed items therein, and Hillsborough County Case Number 15-DP-106 and the docketed items therein, particularly the March 18, 2019, Motion to Reopen Termination of Parental Rights of Magan A. White, Mother, Based Upon Newly Discovered Evidence, Misconduct of a Party Due to Withholding of Exculpatory Brady Material, and Ineffective Assistance of Trial Counsel.

player and lie concerning an arrest in a felony murder investigation (State of Florida v. Sanez, 13-CF-16933).

2. These defendants, along with the others named in Det. Boswell's lawsuit, then acted deliberately and with malice to destroy Det. Boswell's unblemished and highly decorated nearly 25-year law enforcement career. Their destructive acts began with LUSCZYNSKI's direction to discredit and undermine Det. Boswell's investigation of the first high profile case assigned to him following the trial court's issuance of the order which suppressed Sanez's confession, which was the case of State of Florida v. Samanie, 15-CF-2011. In Samanie, Det. Boswell's thorough investigation revealed that Matthew Samanie ("Samanie"), MAGAN's then-boyfriend, had singularly been responsible for brutally beating and smothering MAGAN's five-week-old son, Aiden, to near-death.² Det. Boswell further concluded that MAGAN had timely acted to secure medical care for Aiden, and that she was not culpable *in any way* of causing harm to him.³

3. After official closure of the Samanie case because Samanie had been arrested for beating Aiden, as well as for thwarting MAGAN's efforts to seek medical care for him, LUSCZYNSKI deliberately acted to create false issues with

² Samanie is not Aiden's biological father.

³ Indeed, if Det. Boswell's investigation had revealed that MAGAN had caused harm to Aiden in any way, he would have stated so in his investigative report, and also urged the state attorney's office to charge her with a criminal act--as he did with Samanie.

the investigation in order to discredit Det. Boswell. LUSCZYNSKI first directed that the case be reopened and reassigned to another detective, to attempt to drum up false charges against MAGAN. LUSCZYNSKI's cohort, ASA Rita Peters ("ASA PETERS")⁴ then initiated, through the HCSO Child Protection Team, the filing of a *sworn* petition to terminate MAGAN's parental rights ("TPR") based upon allegations of medical neglect--the second charge originally leveled against Samanie. See In Re Aiden White, 15-DP-106. The TPR petition was *replete with fabrications and falsehoods*⁵ completely refuted by the facts gleaned during Det.

⁴ Upon information and belief, ASA PETERS's husband, who was then a deputy within the HCSO, had been transferred by LUSCZYNSKI to a less-desirable position after LUSCZYNSKI learned he had made negative comments about her. Thus, ASA PETERS was operating not only at LUSCZYNSKI's directive due to her position as a powerful and influential colonel, but also in an effort to better her husband's employment status by undermining and discrediting Det. Boswell, thus pleasing LUSCZYNSKI by assisting with her goal of destroying Det. Boswell's career. As discussed in the instant Complaint, PETERS admitted to the former, i.e., acting at LUSCZYNSKI's direction, during her sworn testimony in the first internal affairs investigation against Det. Boswell, discussed below and in detail in 18-CV-1769.

⁵ One of the "untruths" repeatedly put before the TPR court, was that Aiden had not been fed for two-and-a-half days, prior to and around the time that Samanie beat this baby. *This is simply not true.* This allegation is not supported by any medical finding or record, nor any witness. Yet, this allegation was but one "fact" relied upon by the state to seek and successfully obtain termination of MAGAN's parental rights.

If Det. Boswell had been aware that this false allegation had been continuously presented to the court to serve as a lynchpin to justify terminating MAGAN's parental rights, he would have refuted it. Yet, as explained in the instant Complaint, Det. Boswell was deliberately cut out of the TPR proceeding, after he made it known his investigation cleared MAGAN of *any* inculpatory acts, including ones supporting assertions of medical neglect. Det. Boswell did not learn that the state had accused

Boswell's investigation, as well as from all of the *medical records, other exculpatory documents, and testimony from witnesses*. Quite simply, there was no legally valid premise upon which to justify the termination of MAGAN's parental rights.⁶

4. As the false allegations by the HCSO increased against Det. Boswell, the TRP proceeding to terminate MAGAN's parental rights also churned forward. Assistant Attorney General Kenneth C. Beck ("BECK")--one of the two persons who signed the false TPR petition--met with Det. Boswell to discuss Det. Boswell's investigative conclusions just as the August 2015 TPR hearing was to begin. After Det. Boswell told BECK that MAGAN was innocent of any charges and that she had timely secured medical care for Aiden, BECK told Det. Boswell he understood, and he cancelled the TPR hearing scheduled for that day. Det. Boswell believed BECK was then going to ask the court to dismiss the TPR case against MAGAN. However, Beck did not do this.

5. Without Det. Boswell's knowledge, BECK then set the matter for a subsequent TPR hearing, and the record reflects that when the process server

MAGAN of failing to feed Aiden, and the other false allegations stated in the TRP complaint, until counsel obtained the records in the TPR case, in September 2018.

⁶ MAGAN was wholly unaware of the facts regarding the conspiratorial effort to undermine Det. Boswell's investigation and target her, until she was contacted in August 2018 due to her position as a witness in Det. Boswell's own case. Consequently, as a result of the facts as set forth in the instant Complaint, and the one filed by Det. Boswell, 18-CV-1769, MAGAN will shortly be filing a motion to reopen the termination of her parental rights, based upon newly discovered evidence in the form of Det. Boswell's lawsuit and the allegations contained therein.

attempted to serve a subpoena on Det. Boswell, on September 22, 2015, an HCSO representative *falsely told the process server that Det. Boswell no longer worked at the HCSO.*⁷ Rather than attempt to contact Det. Boswell with the telephone numbers available to him through the HCSO, or to serve Det. Boswell at his residence, BECK moved forward with the TPR proceeding, without Det. Boswell's input. BECK also failed to provide notice to MAGAN that Det. Boswell's testimony would serve as exculpatory Brady⁸ material. Ultimately, MAGAN's parental rights were terminated, based on the falsehoods and lies represented to the court, as well as the failure to provide Det. Boswell's favorable exculpatory testimony.

6. Det. Boswell only learned about the successful termination of MAGAN's parental rights after MAGAN was contacted because she was a witness in his case. Conversely, MAGAN was likewise not aware of the conspiracy to undermine Det. Boswell's investigation of the Samanie case, until she was contacted as a witness in Det. Boswell's case. Neither MAGAN nor her counsel could have been aware of the Defendants' deliberate and false targeting of MAGAN as a criminal accomplice of Samanie, because the internal affairs ("IA") investigations

⁷As explained in detail in case number 18-CV-1769, Det. Boswell remained employed with the HCSO until his forced retirement/constructive termination on January 31, 2017.

⁸Brady v. Maryland, 373 U.S. 83 (1963).

leveled against Det. Boswell, and his lawsuit against the HCSO for these and similar retaliatory actions, were either not yet public or filed with the court at that time.

7. At all times prior to the termination, these ill-motivated actors could have ended the pursuit of the TPR proceeding, but, they intentionally did not do so. It is MAGAN's contention that the termination of her parental rights was, in large part, motivated by the fact that she is an African-American woman, and this status, in the eyes of the mal-intentioned actors, meant to them that she and Aiden were merely disposable pawns to whom the actors owed no constitutional due process protections, no justice, nor even any common human respect and decency, as they engaged their efforts to destroy Det. Boswell's career. In short, MAGAN and Aiden were simply insignificant collateral damage to them.

8. Furthermore, Guardians ad Litem Dot and Ken Conklin negligently failed to properly conduct their duties as set forth in section 61.403, Florida Statutes, because they failed to undertake a thorough investigation of the facts underlying the allegations asserted in the TPR petition. Their reports to the TPR court reveal they failed to review and report to the court the content of the exculpatory medical records, as well as to interview the lead detective in the criminal investigation--Det. Boswell--and report his exculpatory findings to the TPR court. Instead, the Guardians merely parroted to the court the conclusory--and patently untrue--allegations against MAGAN as stated in the TPR petition. This dereliction of duty

and repeated false and misrepresentative assertions to the TPR court, served as a key factor in the termination of MAGAN's parental rights. Unfortunately, regarding MAGAN's ability to hold the Guardians accountable for the important role they played in facilitating the severance of her parental rights, section 39.822(1), Florida Statutes, affords them civil liability. Nonetheless, MAGAN sets forth in this Complaint the significant negligent behavior engaged in by the Guardians because their actions played a powerful role in the court's decision to terminate MAGAN's parental rights.

9. Moreover, by terminating MAGAN's parental rights, the instant DEFENDANTS extinguished MAGAN's ability to sue Brandon Regional Hospital ("BRH") after medical staff there failed to recognize that Samanie had beaten Aiden one week earlier, when MAGAN had immediately taken Aiden there for care, after she spotted a bruise on his cheek upon her return home from work. During the subsequent beating on January 31, 2015, upon Aiden's emergency transport from BRH to All Children's Hospital ("ACH"), ACH discovered that Aiden had numerous fractured ribs "in various stages of healing," thus reflecting that Samanie had been beating Aiden for some time. Thus, this critical fact should have been discovered one week earlier by BRH staff, when MAGAN took Aiden there for care due to the bruise on his cheek. This outright ineptitude and incompetency by BRH

resulted in Aiden being placed back into Samanie's care, and consequently, just one week later, Samanie beat and smothered Aiden to near-death.

10. Finally, because ASA PETERS and others named below and in 18-CV-1769 committed perjury in order to hide this and other felonious activity, ASA Courtney Derry ("DERRY") *dropped the charges against Samanie* in an effort to hide these actions and protect ASA Peters, who actively sought to undermine Det. Boswell's investigation, most notably by fabricating "facts" regarding how Det. Boswell behaved when he interviewed Samanie.

11. Today, as a direct result of being beaten by Samanie, Aiden has been diagnosed with cerebral palsy, has brain damage, is blind, cannot use his limbs properly, has extremely limited ability to interact or communicate with others, and must be fed through a feeding tube. Meanwhile, Samanie is a free man, having walked away from this vile, cruel, despicable, and viciously inflicted crime, which has rendered Aiden severely disabled, *for life*.⁹

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to 28 U.S.C. section 1331, federal question jurisdiction. Venue is proper under 28 U.S.C. section 1391(b), because the events giving rise to the claims occurred in Hillsborough County, Florida.

⁹ It should be noted that a review of social media sources reflects that Samanie became the father of a child in September 2017.

FACTS

I. Detective Boswell and the Sanez Case

13. On November 29, 2013, Erika Sanez was arrested after she admitted to her role in a robbery which resulted in one of her accomplices being shot and killed by the intended victim.

14. Prior to the arrest, Det. Boswell and Det. Charles Keene interviewed Sanez several times. During the fourth interview, in which Sanez was not free to leave, Det. Keene promised her that if she confessed, she would be free to leave. Sanez confessed. The promise that she could leave although in a custodial hold rendered the confession involuntary.

15. Det. Boswell told Det. Keene that he had concerns that the confession would be rendered involuntary, and he stated he believed Sanez should be allowed to leave, but she could be arrested later, based on other solid evidence.

16. Det. Keene, after conferring with LUSCZYNSKI, Major Robert Ura (“URA”) (Det. Boswell’s supervisor), and the ASA on call, Kristen Over, decided to assert that Sanez had been in a non-custodial hold, and therefore she could be arrested based on her confession. Det. Keene then arrested her.

17. Det. Keene falsified his supplemental investigation report to state that Sanez had been in a non-custodial hold when she confessed. Det. Boswell refused to agree with this statement.

18. After Det. Boswell refused to support Det. Keene's falsified report, the HCSO transferred him to the juvenile unit, which was considered a demotion. Soon thereafter, URA told Det. Boswell that LUSCZYNSKI was responsible for the transfer, and that she had personally chosen the juvenile unit because she wanted Det. Boswell to feel humiliated.

19. On November 6, 2014, Sanez filed a motion to suppress her statement on the grounds that she had invoked her Miranda rights prior to Det. Keene obtaining a confession from her, she had not waived those rights when the detectives continued speaking to her, and she had been coerced to confess after Det. Keene promised her that she could go home if she confessed.

20. On November 20, 2014, Circuit Judge Ward held a hearing on the motion. Earlier that morning, ASA Joel Elsea texted Det. Boswell in regard to his testimony to be given at the hearing. During a subsequent telephone conversation, Elsea told Det. Boswell that the prosecution's strategy was going to be to present evidence that Sanez had been in a non-custodial hold when she confessed. Det. Boswell told Elsea that he would not testify that the hold had been non-custodial.

21. Shortly thereafter, Det. Keene spoke to Det. Boswell on the phone and attempted to convince him that the interview had been non-custodial. Det. Boswell again stated he would not lie and testify that this hold had been non-custodial.

22. During the court hearing, Det. Boswell testified truthfully, as he had done in his deposition, i.e., that Sanez had been in a custodial hold when she confessed. At the hearing he further stated that he had reminded her she had previously been Mirandized, rather than totally re-Mirandized, during the same interview. Conversely, during the same court hearing, Det. Keene testified that the hold had been non-custodial.

23. On November 21, 2014, URA approved Det. Boswell's annual evaluation in which it was documented that his performance and integrity were above that which was required by HCSO standards.

24. On December 9, 2014, Judge Ward rendered an order granting Sanez's motion to suppress in part. In the order, Judge Ward specifically noted that Det. Boswell had testified at the hearing that Sanez had not been "given food, water, or visitation with any others during that period of time," which reflected that the hold had been custodial, as Det. Boswell concluded it had been. The order further stated that after Sanez had invoked her right to remain silent, Det. Boswell should have re-read the entire Miranda warning, rather than asking Sanez if she recalled she had previously been Mirandized.

25. On Thursday, December 18, 2014, the SAO provided a copy of Judge Ward's order to Det. Boswell and Det. Keene. Upon information and belief, Det. Keene provided a copy of the order to LUSCZYNSKI.

26. On Monday, December 22, 2014, LUSCZYNSKI initiated a supervisory inquiry of Det. Boswell because of his truthful testimony and the suppression of Saniez's statement. Det. Boswell's supervisors, POORE, Sgt. Jeffrey Schiro and Cpl. Shawn Napolitano, listened to the recording of the Saniez interview, and concluded that Det. Boswell had not mishandled the interview, but they did conclude that Det. Keene had improperly attempted to turn the hold from a custodial to non-custodial situation.

II. The Samanie Case

27. In the spring of 2014, then 26-year-old MAGAN learned that she was pregnant. Because MAGAN had left and cut off contact with her dysfunctional family when she turned 18 due to their physical and emotional abuse of her, she did not have any familial support system at the time.

28. After Aiden's biological father ceased contact with her due to her pregnancy, MAGAN began dating Samanie, whom she had met at her part-time job in a catering company.

29. On December 22, 2014, MAGAN, gave birth to a healthy son whom she named Aiden White. Samanie was present at the birth.

30. MAGAN and Samanie initially lived in MAGAN's apartment, but subsequently they moved in with Samanie's mother, in January 2014. At all times Samanie appeared supportive and loving toward MAGAN. Nothing in Samanie's

behavior or his background alerted her that he was a danger of any kind, to either herself, or especially to Aiden.

31. Besides her catering job, MAGAN worked full-time at a convenience store. Consequently, after she gave birth to Aiden, she needed assistance with childcare. Her friend, Ashauntae Davis-Singletary (“ADS”), provided some of the childcare assistance when Samanie was not babysitting Aiden.

III. The First Injury to Aiden: January 23, 2015

32. One evening when Aiden was about four-and-a-half weeks old, MAGAN returned from work and noticed what appeared to be a bruise on Aiden’s face, near his left eye. When MAGAN asked Samanie about it, he stated Aiden had “rolled off” the sofa onto a clipboard.

33. MAGAN, concerned about the bruise, immediately took Aiden to BRH for an examination. Samanie accompanied her.

34. After obtaining a history from MAGAN but mostly from Samanie, as the incident occurred while Aiden was in Samanie’s care, Dr. Sanford E. Glikin concluded there was “no suspicion of non[-]accidental etiology.”

35. Further, an examination revealed “no bruising, other than [the one spotted by MAGAN on Aiden’s cheek].”

36. The medical record reflects that Aiden was experiencing “no distress,” and his breathing was “normal.”

37. In the section entitled “ABUSE HISTORY TO INCLUDE, BUT NOT LIMITED TO:” BRH staff wrote that there was no evidence of “abuse/neglect” including “unexplained or suspicious bruises/wounds.”

38. Importantly, hospital staff noted that there was no indication that Aiden’s injury did “not match event history.”

39. BRH then cleared MAGAN and Samanie to take Aiden home, with standard instructions from the hospital on how to treat the bruise.

IV. The Second Injury to Aiden: January 30, 2015

40. On the morning of January 30, 2015, MAGAN left in pre-dawn hours to go to work at one of her two jobs.

41. When MAGAN left that morning, as she had done previously, she left Aiden in the care of Samanie. Both were sleeping when she departed.

42. When MAGAN left that morning for work, except for occasional bouts with gastrointestinal issues, Aiden was a normal, healthy, happy baby.

43. At approximately 11 a.m., ADS picked up Samanie and Aiden, and dropped Samanie off at work.

44. While babysitting Aiden, ADS noticed that he appeared to be asleep most of the time.

45. ADS attempted to wake up Aiden to feed him, but he appeared to not be very hungry.

46. At approximately 3 p.m., when MAGAN got off work, ADS, with Aiden in his car seat, drove to MAGAN's work and picked her up.

47. When MAGAN and ADS arrived back at ADS's residence, MAGAN also noticed that Aiden appeared to be unusually sleepy, and she noted as such to ADS. MAGAN roused Aiden to feed him, and he drank a small portion of his formula but, as had ADS, MAGAN noted Aiden appeared to not be hungry.

48. MAGAN and Aiden remained with ADS at ADS's residence until about 7:30 p.m., at which time ADS took MAGAN back to MAGAN's residence with Samanie, because MAGAN did not have her own vehicle and relied on ADS for some of her transportation.

49. Upon arrival at the home she shared with Samanie and his mother, MAGAN noted to Samanie that she was concerned Aiden was continuing to act sleepy. She told Samanie she wanted to take Aiden to the hospital for evaluation.

50. Samanie told MAGAN he did not believe there was any need to take Aiden to the hospital, and he assured her that Aiden's lethargy was certainly due to the medication he had given Aiden earlier that day for constipation., which was over-the-counter "gas drops" called "Remedies."

51. All throughout this day, neither ADS nor MAGAN saw any bruises on Aiden, other than the one he had incurred a week earlier, for which BRH had concluded no intentional injury had been inflicted.

52. The next morning, a Saturday, MAGAN again noted that Aiden was unusually sleepy.

53. At approximately 10 a.m., MAGAN called Aiden's pediatrician. The on-call doctor promptly called back and instructed MAGAN to take Aiden's temperature. When she did so, it registered at 94.3 degrees Fahrenheit.

54. The pediatrician's office instructed MAGAN to take Aiden to the hospital. The office did not instruct her to call an ambulance or otherwise conduct the transport under an emergency scenario.

55. MAGAN called ADS to take her and Aiden to the hospital. In the few minutes while she waited for ADS to arrive, MAGAN bathed and dressed Aiden to prepare to take him to the hospital.

56. ADS arrived with Aiden at the BRH and by 11 a.m., BRH medical staff members were examining Aiden.

57. Upon examination by hospital staff, it became clear that, although Aiden's vital signs were stable, he was in an emergency situation. A CT scan of his brain revealed bleeding. Still, according to BRH records, no bruising was visible. Aiden was transported via a medical helicopter to ACH in St. Petersburg.

58. ACH staff conducted a second CT scan which revealed swelling of and bleeding within Aiden's brain, and a possible skull fracture. A scan of his chest and abdominal areas reflected numerous broken rib fractures, and some of the fractures

were in various stages of healing, meaning that Aidan had incurred the fractures earlier than during the instant precipitating event. Another scan revealed a fracture of his right distal tibia. An examination of his eyes revealed bleeding in both retinas. Staff also determined Aidan had undergone a “hypoxic event,” which usually occurs when one is smothered or drowned.

59. However, ACH noted the lack of “bruising on the thoracic cavity[,]” and that Aidan appeared “well-nourished[.]”

60. In short, Aidan had not been sleeping, but instead, MAGAN’s instinctive maternal concern had been accurate: Aidan was acting lethargic because Samanie had deliberately beaten, shaken, and smothered him to near-death.

V. The Samanie Investigation Commences

61. HCSO Det. Kevin Cooper responded to ACH and interviewed MAGAN, Samanie, and ADS. Initially, Samanie stated he did not know what had happened, but due to the only reported traumatic event being Samanie’s claim that Aidan had rolled off the couch a week earlier while in Samanie’s care, Det. Cooper focused on Samanie as the source of the injuries.

62. Samanie next offered as another potential cause of injury the possibility that Aidan had sneezed too hard. When Det. Cooper dismissed this, Samanie suggested his dog had caused Aidan’s injuries.

VI. Det. Boswell Appointed as Lead Investigator

63. On February 2, 2015, Det. Boswell was assigned as the lead investigator in the investigation underlying Aiden's injuries.

64. The same day, Det. Boswell went to interview Samanie. His supervisor, Sgt. Schiro, sent Det. Kari MATHEWSON ("MATHEWSON") to accompany Det. Boswell for training purposes due to the fact she was having performance issues.

65. During the voluntary interview, Samanie made incriminating statements, admitting that he was alone with Aiden on both of the dates and time periods in which Aiden had been injured; that he had either slept and fallen on top of, or tripped and fallen on top of the baby while carrying him, and that he had bounced and dropped the baby on January 23rd when he incurred a bruise on his face; and further, he outrightly admitted that he encouraged MAGAN to not seek medical care for Aiden on January 30th by convincing her that medication he gave to Aiden earlier on the morning of January 30th, was responsible for Aiden's lethargy. He also ultimately admitted that he had talked MAGAN out of taking Aiden to the hospital exactly because he feared the hospital would realize Aiden had been severely injured, and that he, Samanie, would be blamed for the injuries.

66. During the interview, Samanie also reported to Det. Boswell that he had fed Aiden that Friday morning.

67. On February 3, 2015, Det. Boswell interviewed MAGAN.

68. MAGAN told Det. Boswell about taking Aiden to BRH on January 23rd, after she had arrived home from work and saw a bruise on Aiden's face.

69. MAGAN stated that she took Aiden to BRH emergency room. Per documentation, Aiden was treated by pediatrician Dr. Sanford E. Glikin, who had incorrectly concluded that a roll off of a sofa had indeed been the cause of the broken blood vessels visible in one of Aiden's eye, as well as the bruise on his face. As discussed above, Dr. Glikin specifically told MAGAN that there was no evidence Samanie had intentionally hurt Aiden.

70. MAGAN also told Det. Boswell that she had fed Aiden the morning and evening of Thursday, January 29, and that, although he had seemed "chill," he was otherwise acting normally in regard to his feeding, bowel movements, and sleep patterns, until the afternoon of January 30th.

71. As to the morning of January 30th, MAGAN told Det. Boswell that she had left before dawn to go to work, and Aiden and Samanie had both been asleep at that time.

72. MAGAN further explained that after ADS had picked her up from work at approximately 3 p.m., she had ridden with ADS, who also had Aiden with her in the car, to ADS's residence. Once at ADS's residence, MAGAN noticed that Aiden seemed particularly sleepy. As the sleepiness continued throughout the evening, MAGAN became concerned.

73. MAGAN told Det. Boswell that upon arriving back at the residence she shared with Samanie, MAGAN told Samanie that Aiden was unusually sleepy, and that she was concerned. She stated that she had told Samanie she wanted to take Aiden to the hospital, but he had reassured her there was no cause for concern, because Aiden's sleepiness was surely caused by the over-the-counter constipation and intestinal gas medication they had recently begun giving him. She stated that Samanie had basically urged her to adopt a "wait and see" position regarding Aiden's sleepiness. Samanie claimed to base this directive on conversations he had had with his mother and a cousin, both of whom had experience with children, unlike himself and MAGAN. As the only conditions manifesting themselves by that stage were sleepiness and lack of appetite, MAGAN agreed to hold off on taking Aiden to the hospital.

74. MAGAN told Det. Boswell that the next morning when Aiden still did not appear to be his usual self, MAGAN called Aiden's pediatrician, and asked for an on-call physician to call her back. The on-call doctor instructed her to take Aiden's temperature. When it registered 94.3 degrees, the doctor directed MAGAN to take Aiden to the hospital. The doctor did not instruct MAGAN to call an ambulance.

75. MAGAN stated she called ADS and requested that she immediately come to transport her and Aiden to the hospital. While she waited for ADS to arrive,

MAGAN quickly bathed Aiden and dressed him. She then transported Aiden to BRH. There, it was determined that Aiden had serious injuries, and consequently he was transported via a medical helicopter to ACH.

76. Det. Boswell also made contact with Valerie Hill (“Nurse Hill”), a registered nurse with the Pinellas County Child Protection Team (“PCCPT”), who confirmed that Aiden’s injuries had been inflicted by abusive trauma. Det. Boswell acquired a copy of Nurse Hill’s medical report which she wrote following her examination of Aiden.

VII. Mathewson Complains About Not Having a Greater Role in Samanie Interview

77. Subsequent to the Samanie interview, MATHEWSON complained to her supervisors that she had not been allowed to ask any questions of Samanie, and, basically, that this had hurt her feelings.

78. MATHEWSON stated to the supervisors that she did not believe there was enough evidence at that point to arrest Samanie for aggravated child abuse, and she falsely insinuated that Samanie did not make any incriminating statements.

79. On February 3, 2015, after Sgt. Schiro advised Det. Boswell of MATHEWSON’s comments and false inferences, Det. Boswell provided a recorded copy of the Samanie interview to Schiro, who subsequently concluded that Samanie *had, in-fact*, made inculpatory statements.

80. On February 4, 2015, unbeknownst to Det. Boswell or MATHEWSON's supervisors, MATHEWSON met with ASA PETERS. By her own subsequently made admission, MATHEWSON stated to ASA PETERS in a suggestive manner that she should "listen to all of the facts for all of the cases," thus planting a seed in ASA PETERS's mind that Det. Boswell had *not* obtained sufficient evidence to justify the issuance of a warrant for Samanie's arrest.

VIII. ASA PETERS Stalls Samanie Arrest

81. Despite the evidence that Samanie had caused Aiden's injuries, as well as Samanie's own admission that he had hurt Aiden, following MATHEWSON's conversation with ASA PETERS, ASA PETERS initially refused to seek a warrant to arrest Samanie.

82. Further, per her sworn testimony obtained during a subsequently initiated internal affairs investigation ("first IA") against Det. Boswell, ASA PETERS admitted that, pursuant to the direction of LUSCYNISKI, she (ASA PETERS) had utilized MATHEWSON's erratic behavior as a justification to begin creating fabricated evidence against MAGAN, to inculcate her in the commission of the injuries committed to Aiden.¹⁰

¹⁰ In the IA investigation Peters complained that once she delayed the warrant in the Samanie case, Det. Boswell became confrontational with her when she would not issue a warrant to arrest Samanie, because she was busy working on what she termed "The Teacher Case." [Ex. A (Transcript of ASA PETERS's IA Testimony in First IA ("Peters IA Testimony")) at p. 13.] However, Peters did not actually work on

The Teacher Case on the date she claimed to be doing so, because the reporting of the facts in The Teacher Case, did not occur until three days after Peters claimed to be working on the case. [Ex B (“Boswell Complaint”) at p. 24.] In short, Peters lied about working on The Teacher Case, and she simply delayed the issuance of the warrant for Samanie because she was attempting to undermine Det. Boswell’s investigation and request for a warrant to arrest Samanie. Peters, a seasoned state attorney who knew that the IA transcripts would become public record, then continued on to create issues with Det. Boswell’s interview of Samanie, claiming that Samanie’s statement was not as incriminating as Det. Boswell made it out to be, and stating she was “suspicious” as to why Det. Boswell had turned off the tape when conducting the interview, even though Det. Boswell explained to her that, as confirmed in the orally recorded interview, Samanie himself had requested that the tape be turned off, because he wanted to tell Det. Boswell he had smoked marijuana. [Peters IA Testimony pp. 9-10.] Peters continued on to undermine Det. Boswell’s interview of Samanie, by reporting that Det. Kari Mathewson, who was having performance problems at the time and was assigned to Det. Boswell to help and teach her how to operate more effectively, told her she was uncomfortable with the Samanie interview and that she should “pay attention” to the case. Peters stated that Det. Boswell was “just very loud” when speaking with Samanie; “that he had done his usual yelling at the suspects and being intimidating[,]” but then backed off of claiming Det. Boswell raised his voice at Samanie, to state that there was an issue when Samanie stated he did not feel comfortable sitting with a cop because of a prior event with law enforcement, and then Det. Boswell raised his voice. [*Id.* pp. 3, 11, 13, 24.]

Basically, Peters did everything she could to paint a situation in which Det. Boswell, a 25-year, highly decorated detective, suddenly began engaging in overbearing and intimidating suspect-interview tactics. Peters admitted she was taking direction “from HCSO at that point[,]” but immediately before that statement she admitted and clarified that it was Luszczynski who was directing the undermining of Det. Boswell’s interview with Samanie. [*Id.* p. 15.]

Comparatively, on November 4, 2016, Peters was deposed in the Samanie case by Samanie’s counsel, Guillermo Gomez. [Ex. C (“Peters Samanie Depo”).] Here, Peters claimed she “never had issues with [Det. Boswell,]” at any time. [*Id.* at pp. 14-15.] She then claimed Det. Boswell had raised his voice with her during a roundtable discussion to discuss getting a warrant for Samanie. [*Id.* pp. 23-25.] She represented that the statement obtained from Samanie by Det. Boswell was insufficient to justify getting a warrant, although Samanie: admitted he was home alone with Aiden both times he had been injured; claimed the January 23rd bruise was caused by a two-foot fall off of a sofa; stated Aiden had a runny nose so

according to his mother and aunt, he needed to blow into the baby's nose, which he did, and that's what caused the brain hemorrhaging; admitted he had talked the Mother out of taking Aiden to the hospital Friday evening; stated he was a "wild sleeper" and could have hurt Aiden while he, Samanie, was asleep next to Aiden and woke up on top of him; stated that that Friday morning, January 30th, he was carrying Aiden and tripped and fell on him, and "[t]hat's how he got the injuries he got[;]" admitted he knew he had injured the baby, but he did not "wanna get in trouble[;]" admitted he had lied because he "didn't wanna get in trouble[;]" admitted Det. Boswell had not "been aggressive toward [him;]" changed his story about Aiden falling off the couch, to state that Aiden had been on his lap and he had "bounced him too high[;]" claimed Aiden's bleeding on the brain and broken leg were caused by him falling on the baby; and claimed the retinal bleeding likely to cause blindness was due to him falling on top of the baby. [Ex. D ("HCSO Samanie Investigation") at pp. 9-10, 15-16, 37, 44, 52-55, 56-58, 59, 61, 62, 63, 65, 68.]

Peters continued on in the deposition to state that Det. Boswell was "upset" because she "was not going to just cater to him and sign the warrant." [Peters Samanie Depo at p. 27.] She stated she was "put off" by Det. Boswell calling her when he was with a follow-up medical doctor whom Peters requested Det. Boswell contact in order to get additional medical information prior to requesting a warrant, to allow her, Peters, to ask questions directly of the doctor. [*Id.* at pp. 31-35.] Peters claimed the doctor, a medical expert but not a lawyer, had called Samanie's interview a "non-statement" which caused a "red flag" to go "up in [her] head." [*Id.* at pp. 35-36.] She then represented that Det. Boswell only wanted to provide her with the "relevant portions" of Samanie's statement, thus reflecting that Det. Boswell was attempting to misrepresent the outcome of the statement. [*Id.* at p. 37.] Peters continued on to claim that Det. Mathewson had said that Det. Boswell had acted as "typical Boswell" when obtaining this statement, which she intended to mean that he had spoken off the record when the recorder should have been on. [*Id.* at pp. 37-41.] She then backed off of her IA testimony, stating that Det. Boswell's yelling was only something Det. Mathewson had described to her. [*Id.* at p. 43.] She further backpedaled on her IA testimony, stating that "case law supported [Det. Boswell's] technique." [*Id.* at p. 43.] She agreed with Gomez that when Samanie stated he did not earlier admit he fell on the baby because he was concerned Det. Boswell *would* act aggressively toward him, that Samanie was actually stating that Det. Boswell *was* acting aggressively toward him, although there is no indication of this in the interview whatsoever. [*Id.* at p. 58-59.] Shockingly, Peters stated that after she reviewed the statement, which is set forth in part *supra*, she "did not believe [she] had anything usable, inculpatory, enlightening, nothing." [*Id.* at pp. 59-60.]

83. On February 5, 2015, at the request of ASA PETERS, Det. Boswell met with Dr. Sally M. Smith (“Dr. Smith”) of the PCCPT to have her render a second opinion on Nurse Hill’s findings, at ASA PETERS’s request. Dr. Smith concurred with Hill’s conclusion that Aiden had been intentionally injured.

84. Dr. Smith advised that Aiden indeed had broken ribs that totaled at least 26 fractures in different stages of healing and hemorrhaging, as well as that he had suffered a “hypoxic event,” which occurs when the brain is deprived of oxygen.

She testified that she was “upset” over the interview, and stated “that kid deserved a lot more than that, he deserved a better investigation.” [*Id.* at pp. 66-67.]

Peters then stated that on February 12th, 2015, she had received a call from Luszczynski between 7:30 to 8:00 p.m., regarding Det. Boswell’s Samanie interview, and regarding “her (Peters’s) concerns” about Det. Boswell’s investigation. [*Id.* at pp. 67-69.] She admitted this conversation had played a role in the first IA investigation launched against Det. Boswell. [*Id.* at p. 69.] Gomez then read to Peters her testimony in the IA investigation regarding the statement that the Mother had supposedly failed the polygraph, but she admitted that all of the polygraph results went missing. [*Id.* at pp. 71-72.] She claimed Det. Cooper told her the Mother had failed the polygraph “on inflicting the injury to the child.” [*Id.* at p. 72.] She then stated that the medical evidence “would have given [her] the time frame necessary to place Matthew Samanie in the exclusive care and control of the child.” [*Id.* at p. 74.] She added, “I just know that the conversation that I had with Dr. Smith on February 5th laid to rest any issues I had at that time regarding Matthew Samanie being the one to have inflicted the injury medically, medically excluding everybody else because, as I said, all of those other issues weren’t smoking guns.” [*Id.* at pp. 74-75.]

Despite this testimony, on February 26, 2015, the state did not file an information charging Samanie on the second count of aggravated child abuse, and on April 24, 2017, the state nolle prossed the first count of aggravated child abuse. [Ex. D.] Thus, Samanie walked away scot free from being convicted of the offenses even though he basically confessed to beating Aiden to near-death, and he outrightly admitted to coaxing the Mother to not take Aiden to the hospital on January 30th.

Aiden had other injuries, all of which were consistent with intentionally inflicted abusive body trauma and, critically and catastrophically, head trauma. These injuries were measured to have occurred within a specific window of time during which Samanie was known to be Aiden's sole caretaker, i.e., the morning of Friday, January 30, 2015.

85. On the same day, February 5, 2015, HCSO Child Protection Team Investigator Taryn Elliott ("ELLIOTT") filed an Interim Placement Report and Shelter Affidavit ("IPRSA") which asserted, among other statements, that "CPT has also determined that the child had not eaten any food for 2 1/2 days prior to being admitted to the hospital."

86. There is *nothing* contained within any CPT report submitted to the court and docketed, which states this conclusion, including what appears to have been from the only CPT employee to have conducted a medical examination, Nurse Hill.

87. The allegation that Aiden had not been fed for 2.5 days, subsequently became a key ground in the TPR petition.

88. Notably absent from ELLIOTT's IPRSA is any mention of her having contacted the lead detective in the Samanie investigation, Det. Boswell. Had Det. Boswell been contacted, he could--and would--have refuted a number of the inaccurate allegations made in the IPRSA, including but not limited to the statement that Aiden had not been fed for 2.5 days.

IX. Guardians ad Litem Appointed

89. Following the Department of Children and Families' filing the Petition for Placement in Shelter Care, on February 5, 2015, the court granted the petition and rendered an order appointing the Thirteenth Judicial Circuit Guardian ad Litem Program to represent Aiden's interests in the proceeding. The order authorized the Circuit Director of the Program to assign one of the Program's guardians to the case.

90. The court's order also stated that the appointed guardian was granted access to "[a]ny agency, hospital, organization, school, person or office, human service and/or child-caring agency, public or private health care facility, medical professional, and/or law enforcement agency [records]."

X. ASA PETERS, Acting Pursuant to LUSCYNISKI'S Directive, Seeks to Undermine Det. Boswell's Investigation of the Samanie Case

91. On February 6, 2015, PETERS began contacting MATHEWSON to encourage her to make defamatory statements about Det. Boswell in reference to the Samanie interview.

92. On February 9, 2015, ASA PETERS stated she did not believe that Det. Boswell had obtained sufficient evidence to seek an arrest warrant for Samanie.

93. Despite the fact that MAGAN had been totally exculpated by Det. Boswell's and Det. Coopers' investigations, ASA PETERS began inquiring if MAGAN would submit to a polygraph examination.

94. On February 9, 2015, ASA Carole Hooper was present with PETERS while they both listened to the Samanie interview. ASA Hooper concluded there *was* probable cause to seek an arrest warrant.

95. Notably, it was only after ASA Hooper, who was not the lead assistant state attorney on the case, came to this conclusion that ASA PETERS finally agreed that probable cause did exist. She then approved Det. Boswell's request that an arrest warrant be issued.

XI. Samanie Arrested

96. Samanie was arrested on February 9, 2015, for one count of aggravated child abuse, due to the physical injuries he had inflicted on Aiden; and one count of aggravated child neglect. The latter count was based upon the fact that Samanie had admitted to utilizing trickery on MAGAN in order to convince her to not seek medical attention for Aiden despite the fact that he knew Aiden was injured because he feared that he would be inculpated in hurting the baby.

97. Despite Samanie's arrest, in the days following it a witness told Det. Boswell that ASA PETERS was openly soliciting complaints from her subordinates against Det. Boswell and his investigation of the Samanie case, as well as other cases he had investigated.

XII. Det. Boswell Files Samanie Report and Closes Investigation

98. On February 12, 2015, Det. Boswell submitted the result of the investigation underlying Aiden's injuries. In the report, Det. Boswell wrote several references in regard to both Samanie and MAGAN reporting that Aiden had been fed between Thursday morning and Friday morning, with attempts to feed him Friday afternoon and evening, when ADS and MAGAN reported Aiden would only eat small amounts of his formula and exhibited a decreased appetite.

99. Det. Boswell also attached the recordings of the interviews with Samanie, ADS, and MAGAN, to his investigative report. These statements were subsequently transcribed and attached to Det. Boswell's report on February 16, 2015.

100. Among other statements, the transcriptions contained several statements which confirmed that Aiden had been fed between Thursday morning and Friday evening, with his appetite decreasing more than normal on Friday afternoon and evening.

XIII. Det. Boswell's Investigative Report Contains CPT Medical Examiner Nurse Hill's Report

101. Det. Boswell's investigation also contained the February 12, 2015, medical examination report conducted by Nurse Hill. The report reflected that Nurse Hill had examined Aiden on February 1, 2015.

102. Among her medical findings, Nurse Hill wrote that MAGAN had reported on January 31, 2015, “no formula intake since yesterday” which would have been January 30, 2015, and that Aiden had a “decreased appetite.”

103. Nurse Hill’s medical findings contained **no** statement that MAGAN had not fed Aiden, either intentionally or unintentionally, for **any** time period. Instead, this medical report merely indicated that Aiden had a decreased appetite beginning Friday evening.

104. Nurse Hill’s report also stated that “[t]here was no bruising on the chest[,]” “[t]here were no visible bruises as reported on the abdomen or elsewhere [i.e., other than around the eye] on the body at the time of [the] exam[,]” and, importantly, as to the “27 rib fractures[] in different stages of healing[,] . . . [s]uch fractures . . . are obviously painful at the time they are inflicted, but ***may not be obvious to a non-offending caretaker or medical professional***, particularly after a few days.”

105. Nurse Hill’s report concluded with a finding of medical neglect *against Samanie*:

The paramour admitted that the mother wanted to take Aiden to the hospital when she came home from work because she was so concerned about his lethargy and that he wasn’t eating. However, the paramour stated he told the mother not to take him and convinced the mother that it was the gas drops that was (sic) making him sleepy. The paramour told the detective that he was afraid he would get in trouble because he was afraid the baby was injured and that is why he didn’t want the

mother to take Aiden to the hospital on Friday. The mother took the child to the ER the next morning after the paramour left the home.

106. At this juncture, with Samanie having been arrested, in compliance with normal HCSO protocol Det. Boswell closed the case that day, February 12, 2015.

XIV. Luszczynski Acts to Undermine Det. Boswell's Investigation in the Samanie Case

107. On February 13, 2015, LUSCZYNSKI called for a meeting with URA and Det. Boswell's supervisors, Sgt. Schiro and Cpl. Napolitano. To further fuel the effort to discredit and undermine Det. Boswell's investigation of the Samanie case, LUSCZYNSKI promoted ASA PETERS's and MATHEWSON's fabricated allegations of Det. Boswell's investigation of the case, which were now crafted to falsely assert that Det. Boswell had improperly gone off-tape when interviewing Samanie, and that Det. Boswell had "yelled and screamed" at Samanie to induce his confession.

108. By this juncture, Samanie, who was represented by counsel, had not yet even raised any concern regarding Det. Boswell's interview of Samanie.

109. On February 16, 2015, during a meeting with URA, URA implied to Det. Boswell that an IA investigation was forthcoming against Det. Boswell based on the allegations that Det. Boswell had improperly interviewed Samanie, and that he had acted rudely toward ASA PETERS when she delayed seeking an arrest

warrant, although the evidence clearly established that sufficient probable cause existed to arrest Samanie at the time Det. Boswell asked her to seek a warrant.

110. On February 17, 2015, at LUSCZYSKI's direction, without notice to or consultation with Det. Boswell, Det. Cooper was instructed to reopen the Samanie case and to continue the investigation against MAGAN.

111. On February 18, 2015, after having been instructed by LUSCZYNSKI to reopen the Samanie investigation, Det. Cooper wrote an affidavit for a search warrant for Samanie's cell phone. Det. Cooper also summed up the medical findings which by that point had revealed the extent of Aiden's injuries. He wrote that:

Dr. Smith also opined within a reasonable degree of medical certainty that the injury sustained by the victim on January 23, 2015[,] could not have occurred by the victim falling on the clipboard as disclosed at Brandon Regional Hospital. Notably, Dr. Smith indicated that the various rib fractures of the victim were as old as one and a [a] half weeks, and some were acute. Subsequent skeletal surveys of the victim show more than 30 rib fractures and a broken ankle.

112. Although Nurse Hill had written that these types of injuries would not have been apparent to a non-medical observer, as well as the fact that MAGAN had sought medical care as soon as she was sure there was more going on with Aiden's lethargy than had been represented to her by Samanie, the tone of the affidavit inferred that the HCSO was now targeting MAGAN as a suspect in Aiden's injuries, as the purpose of obtaining the cell phone record was to seek text messages to possibly inculcate MAGAN.

XV. Conklins Appointed as Guardians ad Litem in Aiden's Dependency Case

113. On February 18, 2015, the Guardian ad Litem Office provided notice that Dot and Ken Conklin had been appointed as Guardians Ad Litem in Aiden's dependency case.

XVI. ELLIOTT Files TPR Petition

114. On February 18, 2015, ELLIOTT wrote the Petition to Terminate Parental Rights against MAGAN and Aiden's biological father.

115. As to MAGAN, the reason given to seek terminating her parental rights was medical neglect.

116. Thus, there was no consideration whatsoever about providing any services to MAGAN and Aiden. Instead, the HCSO went straight to seeking termination of MAGAN's parental rights and putting Aiden up for adoption--*even though MAGAN had already been exculpated by Det. Boswell's investigation; the reopened investigation had not yet been completed but had only begun the day before; Nurse Hill had stated that these types of injuries would not have been readily discernible to a caretaker or even a medical expert; Dr. Glikin had assured MAGAN there was nothing suspect about the January 23rd injury; and Samanie had admitted that he had talked MAGAN out of taking Aiden to the hospital on January 30th.*

117. In the Petition ELLIOTT wrote on page four that MAGAN “had the opportunity and capability to prevent egregious conduct that threatens the life, health, safety (sic) of the child and *knowingly* failed to do so.” (Emphasis added.)

118. To support this allegation, ELLIOTT alleged that MAGAN “knew that the child was too young to roll off of a sofa himself yet, despite this knowledge, the mother continued to allow Matthew Samanie to watch her child.”

119. This statement fails to include the fact that Dr. Glikin and BRH, charged with reporting injuries believed to be intentionally inflicted or otherwise recklessly endangering a child, cleared Aiden of having suffered any injury resulting from child abuse. Moreover, Dr. Glikin assured MAGAN that the January 23rd injuries could have indeed occurred as Samanie claimed they did.

120. Moreover, this statement failed to include the facts, which were known to Det. Boswell, that MAGAN had not believed Samanie’s explanation to be implausible, because he had a habit of propping Aiden up without placing a pillow in front of him to stop him from rolling forward, off of the sofa.

121. Additionally, ELLIOTT asserted that “the mother failed to feed the child on January 29, 2015 and on January 30, 2015.” As explained in detail in this Complaint, this statement is *patently false* and refuted by Det. Boswell’s investigation, as well as by the CPT’s own investigator, Nurse Hill.

122. ELLIOTT also wrote in the Petition, that “[d]uring the time that the child was egregiously abused, the mother had custody and control of the child. Despite obvious and severe injuries to the child, the mother failed to seek timely medical treatment for the child.”

Neither of these statements is true, as

1) Aiden was not in MAGAN’s actual physical custody or control when Samanie beat him, because she was unquestionably at work at the time he was beaten as evidenced by her subsequently obtained workplace time cards;

2) as stated by Nurse Hill, the injuries inflicted by Samanie on January 30, 2015, were not “obvious” to even a medical expert; and

3) MAGAN did *not* fail to seek timely medical treatment for Aiden, either

a) when she first noticed a bruise on his cheek upon returning home from work on January 23, 2015, at which time she immediately took him to BRH; or

b) the morning of January 31, 2015, when she realized there was no way he could still be lethargic because of any medication administered to him the prior morning, at which time she immediately sought out medical assistance, and then took him to BRH.

123. Moreover, the Petition completely omitted the fact that Samanie had admitted he had talked MAGAN out of taking Aiden to the hospital by assuring her that Aiden's lethargy had been caused by medication, and in time he would be fine.

124. On page eight of the Petition, ELLIOTT wrote again that "the mother has not provided the child with necessary medical care after the child suffered *obvious* egregious injuries." (Emphasis added.) Once again, as stated by the CPT's own medical expert, Nurse Hill, such injuries would *not* have been visible, even to a medical expert.

125. ELLIOTT continued on, writing on page 9 that "[t]he child ["]may["] be bonded with the mother[,]” and that “there is a high likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties.”

126. ELLIOTT wrote this, when no effort had been made at all to determine whether Aiden was indeed bonded to MAGAN, or whether she had the ability to provide a “stable” home, including with the provision of state supportive services. Indeed, MAGAN's testimony as well as that from other witnesses, would have reflected that Aiden and MAGAN clearly were bonded.

127. In fact, in the March 6, 2015, Comprehensive Behavioral Health Assessment completed by Families First of Florida, the Assessment Specialist, Tonia L. Condor, wrote that “[r]esults of the observations would seem to indicate that

[Aiden's] mother is very attached to him and that she is very concerned for his well-being." Further, Condor stated that MAGAN "stated that she loved being a mother and she described Aiden as a 'good baby.'" And, MAGAN "indicated that her favorite thing about being a parent was being able to hold her baby and she indicated that she had really missed him since he had been in the hospital." Condor recorded that

[w]hen Aiden's mother was interviewed for the purpose of this assessment, she also spoke of Aiden in positive terms with obvious affection in her voice. She stated that she had been having trouble sleeping and that her appetite had been very poor since he had been removed from her care. She stated that she thought about him constantly and that she had been crying excessively.^[11]

128. On page 10 of the Petition, ELLIOTT stated, "The child has been in the hospital on a ventilator since being sheltered as a result of the egregious abuse that he suffered while in the mother's custody."

129. While MAGAN had *legal* custody of Aiden, these statements generate the false impression that MAGAN was involved in some capacity with beating Aiden. In the alternative, these statements, in the least, accuse MAGAN of having knowledge that Samanie had injured Aiden, yet failing to seek medical care.

¹¹ Condor's report also states that "[r]ecords indicate that Aiden did not consume any food in the 2 1/2 days prior to his admission to the hospital." Condor does not cite the specific records she relied upon to reach this conclusion, but she appears to be citing to ELLIOTT's February 5, 2015, shelter petition--which, again, is not supported by *any* docketed CPT medical records.

130. ELLIOTT concluded the Petition by stating that terminating MAGAN's parental rights was "the least restrictive means of protecting the child because: The mother has not provided the child with necessary medical care after the child suffered obvious egregious injuries."

131. Once again, this statement is false, as the injuries perpetrated upon Aiden by Samanie were *not* obvious, as stated by Nurse Hill.

132. Moreover, when MAGAN realized that Aiden's continued lethargy was not normal, despite Samanie's insistence that Aiden was not suffering from any serious malady, MAGAN *did* seek immediate medical care after she realized it was required.

133. Notably, the Petition was signed not only by ELLIOTT, but also by BECK.

XVII. HCSO Legal Expert Approves Det. Boswell's Samanie Interview

134. HCSO Legal Advisor Karen Stanley reviewed Det. Boswell's recorded interview and reported additional interactions with Samanie, and concluded that Det. Boswell had *not* engaged in any improper behavior. Notably, Stanley raised concerns about the fact that MATHEWSON had attempted to thwart the issuance of an arrest warrant for Samanie by making misleading statements to ASA PETERS regarding what had actually occurred during the Samanie interview.

135. Despite Stanley's opinion, LUSCZYNSKI ordered Det. Boswell's supervisors to listen to the entire Samanie interview, in an effort to find some action to hold against Det. Boswell. After Det. Boswell's supervisors then also concluded that he had done nothing wrong while interviewing Samanie, according to a witness, LUSCZYNSKI then openly queried what else could be found to discredit Det. Boswell.

XVIII. ASA PETERS Requests MAGAN and ADS Undergo Polygraph Examinations

136. On Saturday February 21, 2015, unbeknownst to Det. Boswell, ASA PETERS requested that MAGAN and ADS be subjected to polygraph examinations to determine if they had any involvement in inflicting Aiden's injuries or actually knew that Samanie had been beating Aiden.

137. MAGAN was unable to take the exam that day due to an illness, which could have impacted the polygraph results.

138. However, ADS took the polygraph exam and, according to Det. Jennifer Mitchell ("MITCHELL") who administered the exam, ADS passed.

XIX. ASA PETERS Files Information Against Samanie

139. On February 26, 2015, ASA PETERS filed an information charging Samanie with two counts of aggravated child abuse, rather than the charges for which he was originally arrested, one count of aggravated child abuse and one count of aggravated child *neglect*. The latter count was based upon the fact that he had

falsely assured MAGAN that there was no need to take Aiden to the hospital on the evening of January 30, 2015, thus thwarting MAGAN from obtaining immediate medical care for Aiden at that time.

XX. ASA PETERS Attempts to Inculcate MAGAN

140. The same day, February 26, 2015, MATHEWSON was sent to obtain MAGAN's time cards from her work. The cards definitively showed MAGAN had been at work during the time period in which the medical experts had determined Aiden had been beaten.

XXI. The Polygraph Exam

141. On February 27, 2015, MAGAN responded to the HCSO for the polygraph examination. The polygraph examiner, MITCHELL, told HCSO staff that MAGAN's answers regarding harming Aiden were untruthful and she had failed the exam. However, MITCHELL actually told MAGAN that two of her answers were inconclusive.

142. Subsequent to MAGAN's polygraph examination, Det. Cooper contacted BECK and told him that MAGAN had failed the polygraph examination "on the specific questions dealing with whet[h]er she hurt Aiden or not."

143. BECK advised Det. Cooper "they were already moving forward towards a TPR on MAGAN White for medical neglect."

144. Notably, the SAO never charged MAGAN with committing any criminal offense in regard to this situation, including aggravated child neglect for failure to seek medical care, as had been initially charged against Samanie.

145. ASA PETERS later stated in the first IA investigation leveled against Det. Boswell, that the so-called fact that MAGAN had failed the polygraph examination was “like an atom bomb going off,” and that she intended to consider charging MAGAN for a crime as well.

146. However, of tremendous revelation to ASA PETERS’s statement, is the fact that on February 26, 2018--the day *before* MAGAN underwent the polygraph examination--ASA PETERS filed the information against Samanie, dropping the aggravated child neglect charge for convincing MAGAN to not seek medical care for Aiden, although Samanie *admitted* he had done just this.

147. Furthermore, if ASA PETERS had filed the information against Samanie as he was originally charged--aggravated child neglect for convincing MAGAN to not seek medical care--then such would have undermined the TPR proceeding against MAGAN for medical neglect, because this would have been a formal acknowledgement that MAGAN had been thwarted from seeking medical care for Aiden.

148. Instead, now ASA PETERS, with MITCHELL’s assistance, attempted to fabricate a storyline in which MAGAN:

1) knew or should have known that the bruise on Aiden's cheek, which appeared on January 23, could not have been caused by Aiden rolling off the couch onto a clipboard, despite the fact that BRH Emergency Room Pediatrician Dr. Glikin had told MAGAN there was *no suspicion* that intentional injuries had been inflicted on Aiden; and

2) deliberately failed to timely seek medical care for Aiden, despite the facts that:

a) on January 23, when she came home from work MAGAN saw the cheek bruise and immediately took Aiden to the hospital, and

b) on January 30, Samanie had talked her out of taking Aiden to the hospital by assuring her the lethargy was caused by the medication they had been administering to Aiden; and when she realized Aiden was exhibiting other symptoms beyond the continuing lethargy, MAGAN immediately sought out medical help and transported Aiden to the hospital.

Thus, the facts, easily gleaned from the record, completely refuted the allegations against MAGAN, particularly in regard to mens rea, or even measurable neglect.

XXII. MAGAN's Polygraph Examination Results Go Missing

149. At ASA PETERS's direction, Det. Cooper requested the polygraph results. However, he was never able to obtain them because, suspiciously, the results of MAGAN's polygraph exam, the digitally recorded interview, and the written supplement to this examination, were subsequently "corrupted" and deemed "lost." Additionally, the hard copy case file also went missing, and a blank CD had been replaced for the polygraph result.

150. Thus, **no** evidence of the polygraph results remained.

151. The HCSO did *not* conduct an investigation of the missing and destroyed polygraph results.

152. Moreover, the alleged failure of the polygraph exam by MAGAN, was cited by BECK to Det. Boswell as one of the grounds upon which the state sought to sever MAGAN's parental rights.

153. Furthermore, the results of polygraph examinations are not admissible in state court unless stipulated to by the parties.

154. Nonetheless, despite the loss, destruction, and missing status of these polygraph items, as well as the fact that the record refuted the allegations of medical neglect leveled against MAGAN, the TPR proceeding to sever Aiden from MAGAN's custody, continued.

155. Moreover, the destruction of the polygraph results constituted the ruination of exculpatory Brady material in MAGAN's TPR case.

XXIII. ASA PETERS Admits She Directed Samanie Investigation Toward MAGAN, and That She Was Working with LUSCZYNSKI to Investigate Det. Boswell

156. During the March 4, 2015, first IA investigation against Det. Boswell, ASA PETERS admitted that unbeknownst to Det. Boswell or his supervisors, she was acting as an agent under the direction of the HCSO, and she had surreptitiously been in specific communication with LUSCZYNSKI to undermine Det. Boswell's investigation in the Samanie case. She further made statements indicating she had directed the investigation toward MAGAN, and facilitated her taking a polygraph examination, although Det. Boswell had exculpated her.

157. ASA PETERS also stated that she deliberately did not advise Det. Boswell's supervisors of her communication with LUSCZYNSKI in order to keep her actions surreptitious.

158. That is, ASA PETERS admitted that she had stepped out of her role as an assistant state attorney, and had acted, in cohort with LUSCZYNSKI, to seek to investigate and undercut Det. Boswell's investigation in the Samanie case.

XXIV. HCSO and PETERS Fabricate More Grounds to Proceed on IA Investigations Against Det. Boswell

159. As explained in detail in 18-CV-1769, specifically in paragraphs 80 through 102, between March and August 2015, LUSCZYNSKI, PETERS, URA and

the other Defendants sued in 18-CV-1769 continued their false allegations against and harassment of Det. Boswell, which ultimately culminated in a total of four IA investigations, all based on fabricated charges of engaging in flawed and aggressive interview techniques and/or disobeying orders which, in fact, had never been given. These false orders as testified about by URA concerned matters including improperly interviewing suspects off-tape, and failing to have a second investigator present during such interviews. As noted in paragraphs 89, 90, 93, 103, and 152 of the Complaint filed in Det. Boswell's case, case number 18-CV-1769, all of the exculpatory evidence provided by Det. Boswell was either ignored, rejected, or concealed, and never considered, by the HCSO investigators, notably MAURER, and then then HCSO appeals boards, and finally, GEE.

160. Such information constituted Brady material in MAGAN's case, because undermining Det. Boswell's investigation in the Samanie case, and his other cases, also caused false allegations to be leveled against MAGAN, resulting in the state seeking to terminate her parental rights.

161. Specifically, on July 9, 2015, Det. Boswell was afforded a hearing before the HCSO Discipline Review Board ("DBR"), which consisted of the four colonels, BROWN, BURTON, DAVIS, and LUSCZYNSKI, although LUSCZYNSKI should have recused herself because she was directly involved in the underlying proceedings which were now on appeal before the DBR. During the

DBR hearing, Det. Boswell, who forewent legal representation because he was instructed that doing so would facilitate retention of his job, was belittled and ridiculed by the colonels, who frequently cut him off in mid-sentence, and did not permit him to present any exculpatory evidence. BROWN stated he recognized that the recording of the hearing was going to be a public record, and thus would be available to defense attorneys such as those representing Samanie and Martinez, who would seek to undermine Det. Boswell's investigation in these and other cases. DAVIS stated the colonels were giving Det. Boswell "a taste of [his] own medicine," and then proceeded to treat him disrespectfully, although there was no credible, factually accurate evidence that Det. Boswell ever treated anyone, even a murder suspect, with similar disrespect.

162. Also specifically, on July 10, 2015, Det. Boswell was permitted an "appeal" before GEE. GEE also refused to consider any exculpatory evidence put forth by Det. Boswell, and told him that he had "more respect for individuals who simply took their punishment." GEE also threatened Det. Boswell that if he continued to seek to appeal his punishment, things could "get worse" for him.

XXV. Guardians ad Litem File First Report to the Court

163. On May 12, 2015, Dot and Ken Conklin filed their first Guardian ad Litem Report to the Court ("GAL Report").

164. As in Condor's Behavioral Assessment, the GAL Report parroted-- thrice and without citation to any source--“It was also determined that the infant had not been fed for two and one half (2 1/2) days prior to being taken to the hospital[;]” “[MAGAN] failed to feed the one[-]month[-]old infant for two and a half days before taking him for medical care[;]” and “[MAGAN] also did not feed the one[-]month[-]old infant for two and one half (2 1/2) days before taking him, unresponsive, for emergency care on January 31, 2015.”

165. These statements are *patently false, demonstrably unsupported by any evidence, grossly negligent, recklessly indifferent to the truth, boldly misrepresent the presence of mens rea, and impute indifference to MAGAN in regard to her treatment of and care for Aiden.*

166. The Guardians also wrote: “Although the mother had noticed bruises on [Aiden's] face and bleeding in his eyes the week before, she continued to leave the child in the care of her paramour, whom she had met only a few weeks before.”

167. This statement outrightly misrepresents the situation underlying the January 23, 2015, incident in which MAGAN noticed a bruise on Aiden's face when she returned home from work, and then immediately took Aiden to the hospital. The statement represents that MAGAN possessed an indifferent attitude toward Aiden's January 23rd injury. Incredibly, it also fails to report that BRH cleared Aiden of having suffered any intentionally inflicted child abuse.

168. This statement also misrepresents MAGAN's relationship with Samanie, in which she had known him for several months prior to moving in with him, as well as the fact that she had met him at work, as opposed to a social media dating site or some illicit engagement.

169. Both Guardians recommended that the court terminate MAGAN's parental rights.

170. The Guardians never interviewed Det. Boswell in regard to the events underlying the TPR proceeding, although he was the lead detective in the case.

XXVI. Guardians ad Litem File Second Report to the Court

171. On July 15, 2015, the Guardians filed their second report to the court.

172. In the report, the Guardians again repeated several times the false information that Aiden had not been fed for 2.5 days.

173. Besides continuing the false mantra that Aiden had not been fed, the Guardians reported to the Court that they had "seen no response from Aiden toward his mother during the nine (9) visitations the Guardian has observed."

174. This statement is an obvious attempt to belittle and discredit any bond that MAGAN and Aiden--who was by then severely brain-injured--might have, while applying a standard applicable to a non-brain-injured child who is not thwarted in his ability to interact with his mother.

175. The Guardians added to this Report a new line that “[t]he mother was aware of the baby’s injuries on 1/30/15, but did not seek medical care until 1/31/15, when the child was totally non-responsive.”

176. Once again, this statement outrightly *falsely* depicts that MAGAN had knowledge that Aiden was injured, yet deliberately and intentionally failed to seek immediate medical attention, for a nefarious reason.

XXVII. First Hearing on Termination of MAGAN’s Parental Rights

177. On August 17, 2015, Det. Boswell responded to a witness subpoena issued by BECK in reference to the termination of MAGAN’s parental rights.

178. While preparing for his testimony, Det. Boswell met with Beck and learned that the allegations underlying the TPR petition were that MAGAN had committed medical neglect by failing to timely get medical care for Aiden, and that she had failed the polygraph test.¹²

179. Based on information stated to him by BECK, Det. Boswell believed that BECK had not been informed about the fact that all of the documentation in regards to MAGAN’s polygraph exam had gone missing or been destroyed. Consequently, Det. Boswell informed BECK of this fact, and he watched BECK respond with apparent surprise.

¹² Again, the polygraph result was not admissible in civil court unless stipulated to which it had not been, plus by this time, it was “missing,” corrupted, and/or destroyed.

180. Further, Det. Boswell explained to BECK the facts underlying the case; specifically, Det. Boswell told BECK that based on his investigation, MAGAN had been exculpated from harming Aiden or acting in a medically negligent manner.

181. BECK never informed Det. Boswell that the state was proceeding to seek termination of MAGAN's rights based, in part, on the allegation that she had not fed Aiden for 2.5 days, or any time period for that matter.¹³

182. Based on the information that Det. Boswell provided to BECK, BECK responded to Det. Boswell by stating that he would strike the proceeding, and he told Det. Boswell that he was released from his subpoena to appear as a witness.

183. BECK led Det. Boswell to believe that the state would stop pursuing the TPR case against MAGAN, and that the case would be closed.

184. However, as explained below, the TPR proceeding against MAGAN continued, only--intentionally--without Det. Boswell as a witness.

¹³ Det. Boswell had no knowledge that the state had leveled allegations of failure to feed against MAGAN, until counsel obtained the case file in the instant proceeding on September 18, 2018, and asked for Det. Boswell's assistance in reviewing what had occurred. If Det. Boswell had been asked about the failure-to-feed allegation at any the time of the proceeding, he would have refuted it based on the facts in, or, importantly, *not* in, the record.

185. To Det. Boswell's knowledge, BECK never informed MAGAN or her counsel, Marissa Gonzalez, that, based on BECK's conversation with Det. Boswell, he was an exculpatory witness, thus constituting Brady material.¹⁴

XXVIII. Guardians ad Litem File Third Report to the Court

186. On September 28, 2015, the Guardians filed their third report to the Court, once again misrepresenting that MAGAN had not fed Aiden for 2.5 days, and that she knew he was injured on January 30, 2015, yet failed to seek medical care for him. They continued to recommend severing MAGAN's parental rights.

XXIX. Second Hearing on Termination of MAGAN's Parental Rights

187. On September 22, 2015, in preparation for the second TPR hearing, process server Nathaniel Powell attempted to serve a second subpoena on Det. Boswell. The record reflects that Powell went to two HCSO addresses. The first address was incorrect. The second address *was* correct. However, HCSO employee Tasha L. Brinson falsely told Mr. Powell that that Det. Boswell was no longer employed at the HCSO. In fact, Det. Boswell was indeed still employed at the HCSO, and he remained so until he was forced into retirement/constructively terminated on January 31, 2017.

¹⁴ Det. Boswell, via counsel, has twice contacted the Office of Regional Counsel to speak with Marissa Gonzalez about this matter, but was told that Ms. Gonzalez is on leave. Counsel informed the staff member of the need for expediency of a response from Ms. Gonzalez, but has received no follow-up call. Counsel has also attempted to locate Ms. Gonzalez via the help of an investigator, but has been unsuccessful.

188. Consequently, Det. Boswell was not served with the subpoena.

189. Det. Boswell had no knowledge that the TPR proceeding against MAGAN was continuing.

190. On October 15, 2015, the parties convened for a TPR hearing before the court. However, because MAGAN experienced a last-minute lack of transportation to the hearing, she did not show up at the hearing.

191. The trial court entered an oral order ruling that MAGAN's nonappearance constituted consent to surrender her parental rights.

XXX. Motion to Set Aside Surrender by Nonappearance

192. On November 2, 2015, MAGAN filed a Motion to Set Aside Surrender by Nonappearance.

193. In the motion, MAGAN argued that she had been present for "each and every hearing in this case."

194. MAGAN further asserted that she had "attended all visits with [Aiden], and, in addition, ha[d] attended most, if not all, of [Aiden's] medical and therapy appointments."

195. MAGAN explained that she had anticipated attending the TPR trial on October 15, 2015, but had at first gotten the dates mixed up, and then when she realized the trial was that date, she attempted to call several coworkers to provide transportation. Once she finally obtained transportation, the trial was over.

196. The motion then set out the three-prong test for trial courts to consider when deciding whether to set aside a surrender by nonappearance: 1) excusable neglect; 2) due diligence; and 3) a meritorious defense.

197. MAGAN explained that the policy behind the test favored parents who, as had MAGAN, were diligent in attention to their cases and their children.

198. After making argument as to the first two prongs, MAGAN argued that she had a meritorious defense because 1) the statement that Aiden had rolled off the couch, was not improbable; 2) BRH had cleared any evidence of child abuse; 3) witnesses would testify that MAGAN had been feeding Aiden; 4) the written record reflected that MAGAN had fed Aiden; 5) once she realized Aiden was in distress, *both times*, she promptly sought medical care; 6) nothing in Samanie's background indicated he would be a danger to Aiden; and 7) MAGAN should not be held to a higher standard than the medical professionals who also did not realize Samanie was hurting Aiden.

199. The court scheduled a hearing on the motion for December 8, 2015.

200. Although other witnesses were again subpoenaed to testify, Det. Boswell was not among them.

XXXI. December 2015 Hearing on Motion to Set Aside Surrender by Nonappearance

201. At this hearing, during his opening statement, BECK stated that it was the state's position that MAGAN was unable to demonstrate both excusable neglect and a meritorious defense.

202. MAGAN testified and, through tears, managed to explain that she had never missed a visit, and only perhaps one or two therapy appointments.

203. MAGAN told the court that she had had a friend from work state she would take MAGAN to the October 15th, hearing, but then the friend was not present when MAGAN woke up that morning. Then, MAGAN could not locate any other person to help transport her, nor did she have cash to take a bus. She also explained that she did not understand that she could ask one of the Guardians or her case manager for transportation. She stated she had attempted to contact one of the lawyers in the conflict office, but they did not respond to her in time.

204. As the hearing was beginning to run beyond the time scheduled with the court, the court stated the hearing would be continued, after BECK told the court he intended to call Nurse Hill, and "perhaps Detective Cooper[.]" No mention was made about calling Det. Boswell, the lead investigator in the Samanie case.

XXXII. January 2016 Hearing on Motion to Set Aside Surrender by Nonappearance

205. At this hearing, BECK resumed questioning MAGAN.

206. In regard to the January 23, 2015, incident, MAGAN testified that she had seen Aiden "[n]ot completely roll, but he would side-to-side."

207. In regard to the allegation that MAGAN had not fed Aiden for 2.5 days, MAGAN responded to BECK that the last feeding Aiden had occurred on “the day when he had his accident[,]” i.e., January 30th.

208. As to the lethargy which appeared on January 30th, MAGAN testified that Aiden was noticeably sleepy, but he had been “awake for like an hour or so, then he went back to sleep.”

209. MAGAN testified that the afternoon and evening of January 30th, she had tried to feed Aiden, but “[h]e didn’t want to eat anything” and “I had made a bottle that he didn’t really want [to eat].”

210. When BECK attempted to get MAGAN to agree that she was under the “impression that [Aiden] had not eaten for roughly eight hours or so,” MAGAN denied this, stating, “[n]o, I didn’t know he didn’t eat for eight hours.”

211. Regarding the information she had received from BRH, MAGAN testified that the BRH doctor had “checked everything” and concluded that “nothing [was] wrong with [Aiden]. So I didn’t know what happened so I was like okay.”

212. MAGAN then discussed the photograph of Aiden’s face she had taken with her cell phone camera while she was at BRH with him.

213. MAGAN explained that Samanie had told her Aiden had rolled off the couch because Samanie had put Aiden’s pillow in back of him rather than in the front.

214. MAGAN explained that she was not entirely sure of how Aiden had obtained the January 23rd injury, but BRH's clearing of any indication of suspicious causes of the injury, had played an important role in her return to Samanie's residence.

215. On cross examination MAGAN testified she knew Samanie from work, and she had never witnessed him engage in any violent, or even angry, behaviors.

216. Nurse Hill testified that she had determined that Aiden had been neglected because "he didn't eat for two days." She provided no source for this determination, and her contemporaneously recorded medical report makes no mention of this conclusion.

217. Regarding her review of the BRH records, when asked if it would "have been reasonable for [MAGAN] to presume that there was abuse when the hospital had sent her home without an abuse diagnosis[,]” Nurse Hill replied that **no**, it would **not** be reasonable for MAGAN to assume that Aiden had been abused by Samanie.

218. Nurse Hill further opined, "I find it amazing that [BRH] sent them home without abuse. I -- you know, the baby was three weeks old at the time and I have a picture of a massive bruise on the side of his face. You know, if he went to Tampa General or St. Joe's there's no way that baby would have been sent home."

219. No other witnesses testified at this hearing.

220. It is irrefutable that if BECK had informed MAGAN's counsel that Det. Boswell constituted Brady material, he would have clearly, comprehensively, and completely refuted all of the grounds argued by the state to terminate MAGAN's parental rights.

XXXIII. February 2016 Hearing With Order Denying Motion to Set Aside Surrender by Nonappearance

221. On February 3, 2016, the court held a hearing on the motion to set aside the court's order finding MAGAN had consented to surrender her parental rights to Aiden.

222. The court found that MAGAN had proven due diligence and excusable neglect, but had failed to meet the third prong, proof of a meritorious defense.

223. The court concluded MAGAN had failed to demonstrate a meritorious defense because "there was at least two days where the child was not fed[.]" Thus, this false information that MAGAN did not feed Aiden for two days, consisting of a statement from Nurse Hill at the January 2016 hearing, which was not supported by any evidence other than her statement, and which was inconsistent with her contemporaneously recorded medical findings, as well as the evidentiary record underlying the investigation, served as the lynchpin to the termination of MAGAN's parental rights.

224. The court further found that "the mother's failure to protect" played a key role in the court's decision to allow the termination of MAGAN's parental rights

to stand, even though the greater weight of the evidence demonstrated that 1) BRH had cleared any evidence of abuse, and therefore 2) MAGAN had no reasonable cause to suspect abuse, because 3) Samanie had no history of engaging in any violent or even angry acts whatsoever. Basically, the Court applied a hindsight analysis and determined MAGAN should be held accountable for not being aware of what even medical professionals with training and experience did not identify as abuse and a risk to Aiden's welfare.

225. The court also referred to the Guardians' role in the case as a significant factor in the court's decision.

226. On February 3, 2016, the trial court rendered an order formally denying the motion, after finding that while MAGAN had demonstrated due diligence and excusable neglect, she had failed to prove she had a meritorious defense. The court did not expressly state why MAGAN had failed to demonstrate a meritorious defense, but noted that the court had considered, among other factors, the age and helplessness of Aiden when he sustained the injuries, the catastrophic nature of the injuries, the "compelling testimony regarding the requirement for ongoing highly specialized medical care for the child which is the current and long-term permanency plan for the child, and evidence of the mother's neglect of the child (by the lack of feeding) for several days before the nearly fatal injuries were sustained by the child."

227. MAGAN appealed the court's order, but in 2D16-488, after MAGAN's attorney conceded that the appeal was premature, on June 13, 2016, the Second District Court of Appeal dismissed the appeal.

228. A July 22, 2015, Judicial Review Social Study Report to the court states that MAGAN "has been visiting with the child weekly[.] Parental rights have not been terminated at this time."

XXXIV. Samanie Deposition and MATHEWSON Provides Conflicting Testimony

229. On July 13, 2016, while being deposed in the Samanie case, MATHEWSON provided sworn testimony about her involvement in the first IA investigation against Det. Boswell. At this juncture MATHEWSON gave a radically different account of Det. Boswell's interview of Samanie than she had previously provided. In her new version of sworn testimony, MATHEWSON was unable to recall or articulate why she believed Det. Boswell had improperly conducted the interview.

XXXV. November 1, 2016, Order of Adjudication and Judgment of Termination of Parental Rights

230. The trial court held another evidentiary hearing and afterward, once again terminated MAGAN's parental rights.

231. In the written order, which is much lengthier and reviews some of the factual evidence in more detail as compared to the first order finding MAGAN had

surrendered custody, the court concluded “that the Department has presented clear and convincing substantial, competent evidence to terminate the Mother’s parental rights[.]” The court also “maintain[ed] its earlier determination that a meritorious defense has not been shown by the Mother to set aside the previously entered consent by non-appearance, under the relevant legal standards.”

232. Significantly, the court once again found that Aiden “did not eat for two days.”

233. Inexplicably, the court included a new finding not commensurate with the investigation, that “[m]ultiple people told the Mother that the Child was not acting right yet the Mother still waited two days before having someone evaluate the Child.”

234. The court also added the new conclusion, not supported by the investigation and the medical records as to Aiden’s actual condition and MAGAN’s, and ADS’s observations of Aiden, that “the Child was cold and unresponsive for a length of time while in the Mother’s care and the Mother still failed to seek medical attention for the child.”

235. The state proceeded with termination of MAGAN’s parental rights pursuant to section 39.806(1)(f), which allows for termination when

(f) The parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child’s sibling. Proof of

a nexus between egregious conduct to a child and the potential harm to the child's sibling is not required.

236. If Det. Boswell--the lead investigator in the case--had been called as a witness in this proceeding, he could--and would--have demonstrated by clear and convincing evidence that MAGAN did not engage in egregious conduct as asserted by the state, and she did not have the opportunity to prevent, and knowingly failed to prevent, Samanie's egregious conduct. Indeed, a pediatric medical doctor had cleared Aiden of having suffered the bruise near his eye as a result of abuse, and that same doctor outrightly assured MAGAN, who specifically asked that doctor if the injury had been caused by any abuse, that the injury was *not* the result of abuse.

237. Moreover, but for the fact that the LUSCZYNSKI and PETERS targeted Det. Boswell and his investigation of the Samanie case to undermine him in retaliation for his refusal to lie in the Sanes case (thereby committing perjury), the state would not have sought to terminate MAGAN's parental rights in the first place, but would have instead offered her a case plan and provided services, including needed day-to-day medical care for assistance with maintaining Aiden's well being.

238. Instead the state, at the behest of LUSCZYNSKI and PETERS, worked in collaboration with ELLIOTT and BECK to target MAGAN, a young African-American woman who presented to them a "disposable means" in their effort to discredit Det. Boswell, and therefore moved directly to terminate her parental rights, although the facts clearly and convincingly reflect that:

1) MAGAN did not engage in any reckless behavior by moving in with Samanie months earlier, which people, including pregnant mothers and mothers of young children, do commonly;

2) MAGAN, nor anyone, had any knowledge that Samanie would be a danger to Aiden, as he had no prior history of violence, nor had he exhibited any violent or even angry behavior in MAGAN's presence;

3) MAGAN acted immediately to obtain medical care for Aiden when she saw the bruise on his face;

4) BRH cleared Aiden of having been injured intentionally;

5) BRH concluded that Samanie's storyline as to how Aiden got his injuries appeared plausible and did not raise suspicions;

6) MAGAN was concerned when she witnessed Aiden unusually sleepy and exhibiting a decreased appetite, which any parent of a young baby knows are almost always not cause for serious concern;

7) Samanie played on the lack of serious nature of the visual symptoms to convince MAGAN to take a wait-and-see attitude, otherwise she would have taken Aiden to the hospital on Friday, January 30;

8) MAGAN immediately sought medical care once she realized Aiden had continuing symptoms;

and

9) Nurse Hill concluded the injuries were not of the sort to be visible to caretakers or even medical experts.

XXXVI. ASA PETERS Deposed as a *Defense* Witness in the Samanie Case

239. On November 4, 2016, ASA PETERS provided sworn testimony during a deposition in the Samanie case, after she had been called as a *defense* witness. ASA PETERS switched gears and stated that there had *never* been any issues with Det. Boswell's investigations, and that "case law supported his technique." She also testified that there never was an issue with Det. Boswell shouting at suspects to intimidate them, along with other admissions which starkly contrasted her previously sworn statements about Det. Boswell.

240. ASA PETERS also provided conflicting testimony in regards to MAGAN being a potential suspect. ASA PETERS admitted that she had *never reviewed the interviews Det. Boswell had conducted with MAGAN*. ASA PETERS initially denied but later admitted that she was the one who requested that MAGAN be subjected to a polygraph, and further, she admitted that she had never discussed the polygraph results with the polygrapher, MITCHELL.

241. Additionally, contrary to her IA sworn testimony in which she attempted to create a façade that MAGAN was a potential suspect, ASA PETERS admitted that based on the medical information provided to her by Dr. Smith, she knew that Samanie was the only one who could have inflicted Aiden's injuries.

242. Importantly, ASA PETERS admitted that LUSCZYNSKI was the catalyst of this entire situation beginning when she telephoned ASA PETERS to solicit assistance with undermining Det. Boswell's credibility, by targeting the first high profile case to be assigned to Det. Boswell following rendition of the court order suppressing Saney's confession, which was the investigation underlying what became State of Florida v. Samanie.

243. ASA DERRY was in attendance during ASA PETERS's deposition in the Samanie case. Importantly, ASA DERRY was aware that MAGAN's parental rights had been terminated based on the false assertions manufactured by ASA PETERS. Nonetheless, ASA DERRY failed to intervene in that regard. She also failed to report this information to MAGAN, even though it constituted exculpatory Brady material.

244. Subsequent to this deposition, witnesses reported that ASA DERRY sought advice from colleague(s) on how to handle the fact that ASA PETERS had committed perjury because she had testified radically differently in the first IA investigation of Det. Boswell than she did in the deposition.

245. During her deposition in the Samanie case, ASA PETERS made numerous derogatory statements about Det. Boswell's investigation underlying the Samanie case, which undermined Det. Boswell's credibility and professionalism. As a seasoned assistant state attorney, ASA PETERS knew that the statements she made in this deposition, would unquestionably undermine the state's ability to prosecute Samanie.

246. On the same date that ASA PETERS was deposed in the Samanie case, polygraph supervisor Losado was also deposed in regards to his knowledge about the missing polygraph results from MAGAN's examination. Losado confirmed that the polygraph, recorded interview, and the entire case file had all been surreptitiously removed, and that a blank CD had been placed into the case file. Losado further testified that no investigation had been conducted to locate the missing material. Additionally, Losado testified that a search of the computer used to conduct MAGAN's polygraph yielded negative results; i.e., the computer had been wiped clean of all evidence of the MAGAN's polygraph. ASA DERRY was present during Losado's testimony and acknowledged during the deposition that she had long been aware of the fact that MAGAN's polygraph could not be produced.

XXXVII. ASA PETERS Forced to Resign

247. On February 9, 2017, Det. Boswell spoke with ASA DERRY and learned that ASA PETERS's supervisors were still not aware that ASA PETERS had

been listed as a defense witness in the Samanie case. Det. Boswell urged ASA DERRY to make ASA PETERS's supervisors aware of ASA PETERS's status as a defense witness, due to the obvious conflict of interest. ASA DERRY then attempted to prevent ASA PETERS's supervisors from becoming aware of ASA PETERS's ongoing illegal and unethical conduct, by trying to have ASA PETERS approve a plea deal for Samanie. ASA PETERS herself, acknowledging the conflict, directed ASA DERRY to speak with Chief ASA Christopher Moody about this situation.

248. On March 2, 2017, after ASA PETERS's supervisor, Andrew Warren ("WARREN"), became aware of her status as a defense witness, as well as further misconduct, he forced her to resign.¹⁵

249. As a result, ASA DERRY was left to prosecute a case in which she had personally made a failed attempt to prevent the illegal and unethical actions of her now-former supervisor, ASA PETERS, from becoming exposed.

XXXVIII. ASA Derry Drops Charges Against Samanie, Asserts Pretextual Reasons

250. On April 24, 2017, now more than two years since Samanie was initially charged, ASA DERRY contacted Det. Boswell and advised that she had

¹⁵ WARREN never informed MAGAN's counsel of ASA PETERS' actions in undermining Det. Boswell's investigation and in targeting MAGAN to inculcate her, as well as launching the TPR proceeding on false grounds.

dropped the charges against Samanie. She cited as the reasons MAGAN's alleged failure of the (missing and destroyed) polygraph, and MATHEWSON's original testimony that the Samanie interview had been improperly conducted, thus rendering Samanie's statement inadmissible, even though MATHEWSON had recanted this allegation in her deposition in the Samanie case.

251. Incredibly, at the time ASA DERRY opted to drop the charges, Samanie's defense attorney had not yet even filed a motion to suppress Samanie's statement, a common defense tactic. Further and even more telling, ASA DERRY had not even completed a preliminary investigation of the case, including ordering the transcription of deposition testimony. This particular act was an obvious attempt to hide the perjured testimony of ASA PETERS, who once again had lied under oath regarding Det. Boswell's actions, and who also backpedaled on her earlier-made assertions about Det. Boswell's actions. This latter act, as set forth below, constituted perjury by virtue of the fact that ASA PETERS changed her earlier-made sworn testimony, while again under oath.

XXXIX. Factual Conclusions

252. Today, Aiden remains in medical foster care, is blind, has limited use of his arms and hands, cannot walk, has limited ability to interact with anyone, and requires a feeding tube. MAGAN, innocent of any child abuse or even neglect, has had her parental rights stripped away, and has not been able to even see Aiden, for

years. In the interim period, she has wrestled with the darkest depths of depression and heartache, due to her son being torn from her arms by the state, and nearly killed by a man she trusted. Samanie is a free man with a new, apparently healthy child.

COUNTS

253. Unless otherwise specified, each count is against ALL DEFENDANTS.

254. Regarding the conspiracy counts, *infra*, a single overt act in furtherance of the conspiracy can be sufficient to constitute a co-conspirator's liability for totality of the conspiracy. U.S. v. Schlei, 122 F. 3d 944, 975 (11th Cir. 1997) (stating that "[a]n overt act 'may be that of only a single one of the conspirators and need not be itself a crime'" and further, "[a]n individual conspirator need not participate in the overt act in furtherance of the conspiracy[;] [o]nce a conspiracy is established, and an individual is linked to that conspiracy, an overt act by any conspirator is sufficient." (citing U.S. v. Thomas, 8 F.3d 1552, 1560 n. 21 (11th Cir. 1993)); U.S. v. Salmonese, 352 F.3d 608, 616-17 (2d Cir. 2003) (discussing that an overt act may be committed by only one of the conspirators and yet all conspirators are guilty of the underlying act to which they conspired); U.S. v. Torres, 503 F.2d 1120, 1124 (2d Cir. 1974) ("Thus conduct consisting only of involvement in a single transaction may nevertheless be treated as rationally permitting the inference of knowledge of the broader conspiracy where the single act itself shows so much familiarity with or high-level participation in the overall conspiracy as to be in and of itself indicative

of the broader conspiracy.”); Halberstam v. Welch, 705 F.2d 472, 481 (D.C. Cir. 1983) (“As to the extent of liability, once the conspiracy has been formed, all its members are liable for injuries caused by acts pursuant to or in furtherance of the conspiracy. A conspirator need not participate actively in or benefit from the wrongful action in order to be found liable. He need not even have planned or known about the injurious action . . . so long as the purpose of the tortious action was to advance the overall object of the conspiracy.”).

255. Here, the Defendants conspired to both directly harm MAGAN by falsely inculcating her in the abuse perpetrated upon Aiden, when she was innocent, causing her to lose custody of her baby, among other injuries; and by indirectly harming her by their targeting of Det. Boswell which resulted in MAGAN being inculcated in the abuse as the Defendants sought to undermine Det. Boswell’s investigation of the Samanie case, resulting in completely innocent MAGAN losing custody of her child, while Samanie walked free of any convictions, although he beat five-week-old Aiden to near death.

256. As to any assertions of qualified immunity from the Defendants, they are not entitled to such immunity because they have committed crimes or otherwise taken actions prohibited by the law. See Malley v. Briggs, 475 U.S. 335, 341 (1986) (qualified immunity protects “all but the plainly incompetent or *those who knowingly violate the law*”); Mitchell v. Forsyth, 472 U.S. 511, 528 (1985) (officials are

immune unless “*the law clearly proscribed the actions*” they took). Further, even if qualified immunity is normally afforded to a certain class of officials, personal liability may be charged against an official where his actions do not constitute “objective legal reasonableness[,]” which is assessed in light of the legal rules that were “clearly established” at the time of the commission of the actions. Harlow v. Fitzgerald, 457 U.S. 800, 818-19 (1982).

257. The Defendants are not entitled to qualified immunity because, as set forth in this Complaint, they knowingly violated the law, and they knew that the law prohibited their actions. Moreover, they engaged in conspiracies to further their illegal activities. And, the actions they engaged in, some of which even rise to the level of criminal offenses, were clearly established at the time those actions were committed.

258. Any allegations that the Counts set forth in this Complaint, *infra*, constitute a “shotgun pleading,” indicate that Defendants are not well-versed in what constitutes a “shotgun pleading.” “A shotgun pleading is that ‘incorporate[s] every antecedent allegation by reference into each subsequent claim for relief or affirmative defense’ and, as a result, ‘it is ‘virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.’” Hickman v. Hickman, 563 Fed. Appx 742, 744 (11th Cir. 2014) (citations and quoted sources omitted). Further, “[a] ‘shotgun pleading’ is, among other things, ‘a complaint that

fails to articulate the claims with sufficient clarity to allow the defendant to frame a responsive pleading.”” Roberts v. Victoria’s Secret Stores, LLC, 2018 WL 4828448 (S.D. Fla. Sept. 7, 2018) (citations and quoted sources omitted).

259. In the instant Complaint, the Plaintiff has set forth the specific dates, names, and actions committed by the named defendant, with particular specificity and clarity. Further, the counts set forth *infra*, list each defendant charged in that requisite count, and the defendant’s actions, detailed *supra*, clearly indicate the conduct underlying the claim in which each defendant is named. Therefore, compilation of a responsive pleading may be completed by each and every defendant with ease due to the clarity and specificity of their actions set forth in this Complaint. Consequently, allegations of this Complaint constituting a “shotgun pleading” are nothing more than a desperate effort to undermine the Complaint, and waste Plaintiff’s and the Court’s time, and this Court should reject any such argument.

COUNT I

FEDERAL RICO, 18. U.S.C. § 1962(b)

GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK

260. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

261. The HCSO is an enterprise engaged in and whose activities affect interstate commerce; that is, its law enforcement activities impact public safety, and

tourism involving out-of-state visitors to the area. It also receives and utilizes supplies, and U.S. Mail shipped from out-of-state.

262. DEFENDANTS have **acquired and maintained interests in, and control of**, the enterprise through a pattern of racketeering activity. Specifically, DEFENDANTS have acquired and maintained control of the HCSO by engaging in the unlawful acts set forth above in this Complaint, i.e., obstruction of justice (id. § 1503); obstruction of criminal investigations (id. § 1510); and obstruction of state or local law enforcement (id. § 1511), through the specific overt acts set forth in this Complaint.

263. The racketeering activities listed above constitute a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5), in that DEFENDANTS engaged in more than two acts constituting racketeering, DEFENDANTS committed the acts after the date of enactment of Title 18, and DEFENDANTS committed the acts within 10 years of each other.

264. DEFENDANTS have directly and indirectly acquired and maintained interests in and control of the enterprise through the pattern of racketeering activity described above, in violation of 18 U.S.C. § 1962(b).

265. As a direct and proximate result of DEFENDANTS' racketeering activities which violate 18 U.S.C. § 1962(b), MAGAN has been injured in her property, in that she has had her child taken from her, her parental rights severed

have been severed, she has lost standing to sue BRH for failing to recognize that Samanie was beating her baby, and Samanie walked away from the crime without prosecution, after the state dropped the charges against him. MAGAN incurred these magnanimous losses as a direct result of DEFENDANTS' acquisition of control over the HCSO enterprise.

266. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS for actual damages, treble damages, costs and attorney's fees, and further relief as set forth below.

COUNT II

FEDERAL RICO, 18 U.S.C § 1962(c)

GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA, MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK

267. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

268. The HCSO is an enterprise engaged in and whose activities affect interstate commerce, that is, its law enforcement activities impact public safety, and tourism involving out-of-state visitors to the area. It also receives and utilizes supplies, and U.S. Mail shipped from out-of-state. DEFENDANTS are employed by or associated with the enterprise, the HCSO.

269. DEFENDANTS **agreed to and did conduct and participate in the conduct of** the enterprise's affairs through a pattern of racketeering activity and for the unlawful purpose of intentionally causing harm to MAGAN, by terminating her

parental rights and taking her child from her, by working together, in concert, through commission of the overt acts as cited in this Complaint.

270. Pursuant to and in furtherance of their fraudulent scheme, DEFENDANTS committed multiple related acts of perjury, obstruction, and fraud, including but not limited to obstruction of justice (id. § 1503); obstruction of criminal investigations (id. § 1510); and obstruction of state or local law enforcement (id. § 1511), through the specific overt acts set forth in this Complaint.

271. These acts constitute a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5), as explained in Count I.

272. DEFENDANTS have directly and indirectly conducted and participated in the conduct of the enterprise's affairs through the pattern of racketeering and activity described above, in violation of 18 U.S.C. § 1962(c).

273. As a direct and proximate result of the Count I DEFENDANTS' racketeering activities and violations of 18 U.S.C. § 1962(c), MAGAN has been injured in her property, in that she has had her child taken from her, her parental rights severed have been severed, she has lost standing to sue BRH for failing to recognize that Samanie was beating her baby, and Samanie walked away from the crime without prosecution, after the state dropped the charges against him. MAGAN incurred these magnanimous losses as a direct result of DEFENDANTS' acquisition of control over the HCSO enterprise.

274. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS for actual damages, treble damages, costs and attorney's fees, and further relief as set forth below.

COUNT III

FEDERAL RICO, 18 U.S.C. § 1962(d) (**CONSPIRACY**)
GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY. BECK

275. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

276. As set forth above, DEFENDANTS agreed and conspired to violate 18 U.S.C. section 1962 (b) and (c), by both acquiring and maintaining interests in the HCSO enterprise through a pattern of racketeering activities, which allowed them to continue to control the HCSO enterprise. DEFENDANTS acted in concert to work to terminate MAGAN's parental rights, and by conducting and participating in the conduct of the affairs of the HCSO enterprise through a pattern of racketeering activity, likewise designed to enable DEFENDANTS to run the enterprise in any manner they saw fit.

277. DEFENDANTS have intentionally conspired and agreed to acquire or maintain interests in the enterprise through a pattern of racketeering activity, and to conduct and participate in the conduction of the affairs of the enterprise through a pattern of racketeering activity. DEFENDANTS' predicate acts were part of a pattern of racketeering activity and they agreed to the commission of those acts to

further the schemes described above, with each of these acts set forth Complaint, by working together, in concert, through the commission of these overt acts, which constitutes a conspiracy to violate 18 U.S.C.A. § 1962(b) and (c), in violation of 18 U.S.C. § 1962(d).

278. As a direct and proximate result of DEFENDANTS' conspiracy, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962(d), MAGAN has been injured in her property, in that she has had her child taken from her, her parental rights severed have been severed, she has lost standing to sue BRH for failing to recognize that Samanie was beating her baby, and Samanie walked away from the crime without prosecution, after the state dropped the charges against him. MAGAN incurred these magnanimous losses as a direct result of DEFENDANTS' acquisition of control over the HCSO enterprise.

279. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS for actual damages, treble damages, costs and attorney's fees, and further relief as set forth below.

COUNT IV

FLORIDA CIVIL REMEDIES FOR CRIMINAL PRACTICES,
§ 772.103(2), FLA. STAT. (FLA. CIVIL RICO)
GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK

280. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

281. DEFENDANTS constitute an “enterprise” within the meaning of Section 772.102(3), Florida Statutes, in that DEFENDANTS are the Sheriff of the HCSO, are or were employed by the HCSO, or are or were employees of the SAO, during the acts which occurred as set forth in this Complaint, with a continuing existence, affiliation, and identification.

282. DEFENDANTS have carried on a “pattern of criminal activity” consisting of no less than two criminal acts within the requisite period of five years between any two such acts, linked together by common goals, means and methods, and acting for the benefit of the ongoing enterprise.

283. DEFENDANTS have **acquired and maintained interests in, and control of**, the enterprise through a pattern of racketeering activity. Specifically, DEFENDANTS have acquired and maintained control of the HCSO by engaging in criminal activities, enumerated in section 772.102, Florida Statutes, of false entry in business books (§ 817.15, Fla. Stat); perjury (§§ 837.012, 837.02, 837.021(1)-(2), 837.05, 837.06, Fla. Stat.); obstructing justice (compounding felony, § 843.14, Fla. Stat.); criminal actions under color of law or through use of simulated legal process (§§ 843.0855(3), Fla. Stat.); and tampering with or fabricating physical evidence (§§ 918.13(1)(a)-(b), Fla. Stat. The DEFENDANTS acquired and maintained the enterprise through the commission of the acts set forth in this Complaint, by working together, in concert.

284. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS for actual damages, treble damages, costs and attorney's fees, and further relief as set forth below.

COUNT V

FLORIDA CIVIL REMEDIES FOR CRIMINAL PRACTICES,
§ 772.103(3), FLA. STAT. (FLA. CIVIL RICO)
GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK

285. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

286. DEFENDANTS constitute an "enterprise" within the meaning of Section 772.102(3), Florida Statutes, in that Defendants are the Sheriff of the HCSO, or are or were employed by the HCSO, or are or were employees of the SAO who are associated with the enterprise, during the acts which occurred as set forth in this Complaint, with a continuing existence, affiliation, and identification.

287. DEFENDANTS have carried on a "pattern of criminal activity" consisting of no less than two criminal acts within the requisite period of five years between any two such acts, linked together by common goals, means and methods, and acting for the benefit of the ongoing enterprise.

288. DEFENDANTS have conducted or participated, directly or indirectly, in the enterprise through a pattern of criminal racketeering activity. Specifically, **DEFENDANTS have conducted or participated, directly or indirectly**, in the

enterprise through the pattern of criminal racketeering acts set forth above in this Complaint, but specifically by working together and engaging in the acts set forth in paragraphs 13 through 252.

289. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS for actual damages, treble damages, costs and attorney's fees, and further relief as set forth below.

COUNT VI

FLORIDA CIVIL REMEDIES FOR CRIMINAL PRACTICES,
§ 772.103(4), FLA. STAT. (FLA. CIVIL RICO **CONSPIRACY**)
GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK

290. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

291. As described more fully in this Complaint, and specifically as set forth below, ALL DEFENDANTS, either employed by or associated with the Enterprise, i.e., the HCSO, conspired by concerted action to accomplish criminal and/or unlawful purposes through criminal and unlawful means, to acquire and/or maintain, directly or indirectly, an interest in or control of the Enterprise, through a pattern of criminal activity.

292. In furtherance of the conspiracy, DEFENDANTS committed overt acts, and were otherwise willful participants in joint activity, by working together, in concert, through commission of the acts set forth in paragraphs 13 through 252.

293. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to MAGAN's rights.

294. As a proximate result of DEFENDANTS' conspiracy, MAGAN suffered financial and other damages, including severe emotional distress and anguish, as is fully explained *supra*.

295. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS as set forth below.

COUNT VII

**CONSPIRACY TO OBSTRUCT JUSTICE, §843.0855(3), FLA. STAT.
FILING TPR PETITION ASSERTING FALSE GROUNDS
(THIRD-DEGREE FELONY)**

GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK

296. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

297. As described more fully in the preceding paragraphs, DEFENDANTS, acting in concert with other known and unknown co-conspirators, conspired by concerted action to accomplish a criminal and unlawful purpose by criminal and unlawful means. Specifically, the DEFENDANTS, knowing or having reason to know that MAGAN did not have cause to know Samanie was beating her baby, and that she had fed Aiden and/or did not knowingly not feed Aiden within the 2.5 days cited in the TPR petition, based upon the medical records readily available to them, as well as Det. Boswell's investigation, yet BECK, and ELLIOTT, with the

assistance of ASA PETERS, nonetheless then filed a termination of parental petition against MAGAN, based upon demonstrably false grounds, which ultimately resulted in her parental rights being terminated, and her baby taken from her.

298. In furtherance of the conspiracy, DEFENDANTS committed overt acts and were otherwise willful participants in joint activity and worked together, in concert, through the commission of the acts set forth in paragraphs 13 through 252.

299. DEFENDANTS committed criminal and unlawful misconduct described in this Count with malice, willfulness, and reckless indifference to MAGAN's rights as a mother.

300. As a proximate result of DEFENDANTS' conspiracy, MAGAN suffered economic and other damages, including severe emotional distress and anguish, as is more fully alleged above.

301. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS as set forth below.

COUNT VIII

**CONSPIRACY TO OBSTRUCT JUSTICE, §843.0855(3), FLA. STAT.
FILING TPR PETITION ASSERTING FALSE GROUNDS
(THIRD-DEGREE FELONY)**

**GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK**

302. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

303. As described more fully in the preceding paragraphs, DEFENDANTS, acting in concert with other known and unknown co-conspirators, conspired by concerted action to accomplish a criminal and unlawful purpose by criminal and unlawful means. Specifically, the DEFENDANTS, knowing or having reason to know that MAGAN did not have cause to know Samanie was beating her baby, and that she had fed Aiden and/or did not knowingly not feed Aiden within the 2.5 days cited in the TPR petition, based upon the medical records readily available to them, as well as Det. Boswell's investigation, yet BECK, and ELLIOTT, with the assistance of ASA PETERS, nonetheless then filed a termination of parental petition against MAGAN, based upon demonstrably false grounds, which ultimately resulted in her parental rights being terminated, and her baby taken from her.

304. In furtherance of the conspiracy, DEFENDANTS committed overt acts and were otherwise willful participants in joint activity and worked together, in concert, through the commission of the acts set forth in paragraphs 13 through 252.

305. DEFENDANTS committed criminal and unlawful misconduct described in this Count with malice, willfulness, and reckless indifference to MAGAN's rights as a mother.

306. As a proximate result of DEFENDANTS' conspiracy, MAGAN suffered economic and other damages, including severe emotional distress and anguish, as is more fully alleged above.

307. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS as set forth below.

COUNT IX

**CONSPIRACY TO OBSTRUCT JUSTICE, §843.0855(3), FLA. STAT.
FAILING TO SERVE SUBPOENA ON FALSE GROUNDS
(THIRD-DEGREE FELONY)**

**GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK**

308. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

309. As described more fully in the preceding paragraphs, DEFENDANTS, acting in concert with other known and unknown co-conspirators, conspired by concerted action to accomplish a criminal and unlawful purpose by criminal and unlawful means. Specifically, the DEFENDANTS, knowing or having reason to know that Det. Boswell was still employed by the HCSO, and thus could be served with the subpoena, where he had communicated he was going to provide exculpatory evidence to MAGAN's case, in which the trial court labeled as a "close case," and then fabricated an untruthful statement that he was no longer employed at the HCSO, thus causing MAGAN to lose her parental rights, and to have her baby taken from her.

310. In furtherance of the conspiracy, DEFENDANTS committed overt acts and were otherwise willful participants in joint activity and worked together, in concert, through the commission of the acts set forth in paragraphs 13 through 252.

311. DEFENDANTS committed criminal and unlawful misconduct described in this Count with malice, willfulness, and reckless indifference to MAGAN's rights as a mother.

312. As a proximate result of DEFENDANTS' conspiracy, MAGAN suffered economic and other damages, including severe emotional distress and anguish, as is more fully alleged above.

313. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS as set forth below.

COUNT X
CONSPIRACY TO COMMIT PERJURY IN OFFICIAL PROCEEDINGS,
§837.02. FLA. STAT.
GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK

314. Paragraphs 29 through 173 above are re-alleged and incorporated herein.

315. As described more fully in the preceding paragraphs, DEFENDANTS, acting in concert with other known and unknown co-conspirators, conspired by concerted action to accomplish an unlawful purpose by unlawful means, i.e., ASA PETERS gave sworn testimony in her November 4, 2016, deposition in the Samanie case, which was diametrically opposed to her March 4, 2015, testimony during the first IA investigation of Det. Boswell, in which she stated she had directed the investigation toward MAGAN. In the November 4, 2016, deposition, she stated Dr. Smith, with whom she had spoken prior to her March 4, 2015, IA investigation--

which subsequently became public record--had provided proof of evidence to exculpate MAGAN from any intentional medical neglect. Thus, the November 4, 2016, deposition, proves that during the March 4, 2015, IA hearing, ASA PETERS knew MAGAN was innocent, yet she had falsely targeted her in order to undermine Det. Boswell's investigation.

316. In furtherance of the conspiracy, DEFENDANTS committed overt acts and were otherwise willful participants in joint activity, with each of these acts, set forth in paragraphs 13 through 252.

317. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to MAGAN's rights to be free from prosecution in a termination of parental rights proceeding, which ultimately resulted in the termination of her parental rights, and her child being taken from her.

318. As a proximate result of DEFENDANTS' conspiracy, MAGAN suffered damages, including severe emotional distress and anguish, as is more fully alleged above.

319. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS as set forth below.

COUNT XI
CONSPIRACY TO TAMPER WITH OR FABRICATE EVIDENCE,
§918.13, FLA. STAT.
(THIRD-DEGREE FELONY)
GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK

320. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

321. As described more fully in the preceding paragraphs, DEFENDANTS, acting in concert with other known and unknown co-conspirators, conspired by concerted action to accomplish an illegal and/or unlawful purpose by illegal and/or unlawful means; i.e., DEFENDANTS, with knowledge that a criminal trial(s) and/or other proceeding(s) and/or an investigation(s) by a duly constituted prosecuting authority, law enforcement agency, and/or grand jury was pending or about to be instituted, altered, destroyed, concealed, and/or removed records, documents, and/or things with the purpose to impair their verity and/or availability in proceedings and/or investigations; and/or made, presented, and/or used records, documents, and/or things, knowing them to be false, i.e., destroyed MAGAN's exculpatory polygraph records, and then proceeded to lie about the results, and proceed with a termination of parental rights proceeding against MAGAN, resulting in the termination of her parental rights, and her child being removed from her.

322. In furtherance of the conspiracy, DEFENDANTS committed overt acts and were otherwise willful participants in joint activity, with each of these acts set forth in paragraphs 13 through 252.

323. The misconduct and illegal actions described in this Count were undertaken with malice, willfulness, and reckless indifference to MAGAN's rights.

324. As a proximate result of DEFENDANTS' conspiracy, MAGAN suffered damages, including severe emotional distress and anguish, as is more fully alleged above.

325. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS as set forth below.

COUNT XII

DEPRIVATION OF CIVIL RIGHTS, 42 U.S.C. § 1983
DEPRIVATION OF PARENTAL RIGHTS PURSUANT TO THE
FIRST, FIFTH, NINTH, AND FOURTEENTH AMENDMENTS
TO THE U.S. CONSTIUTION

GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK

326. Paragraphs 29 through 173 above are re-alleged and incorporated herein.

327. As described more fully above, all of DEFENDANTS, while acting individually, jointly, and in conspiracy, as well as under color of law and within the scope of their employment, deprived MAGAN of her constitutional right to parent her child, Aiden, and to enjoy their familial bond, and companionship.

328. To wit: DEFENDANTS, most specifically ASA PETERS, BECK, and ELLIOTT, deliberately targeted MAGAN and fabricated grounds for a TPR petition against her, beginning with the fraudulent and untruthful shelter petition put before the dependency court, full of lies and misrepresentations, which ultimately resulted in the court terminating MAGAN's parental rights. Moreover, when Det. Boswell

directly told BECK that MAGAN was innocent of any wrongdoing in the matter underlying the Samanie investigation and the grounds underlying the TPR proceeding, except for the failure-to-feed charge, which was not communicated to him at the time, BECK and DEFENDANTS deliberately cut Det. Boswell out of the TPR proceeding by lying to the process server and stating he no longer worked at the HCSO, and failing to provide this exculpatory Brady evidence to MAGAN, thus cutting out the only exculpatory evidence in MAGAN's TPR proceeding. DEFENDANTS also destroyed and/or hid the exculpatory polygraph materials. Absent this and the other illegal behavior and misconduct detailed in this Complaint, the prosecution of MAGAN could not and would not have been pursued, and thus her parental rights would never have been terminated.

329. DEFENDANTS worked together to collectively deprive MAGAN her constitutional right to parent her baby.

330. As a result of these violations of her constitutional right, MAGAN experienced the termination of her parental rights.

331. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to MAGAN's constitutional rights.

332. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS as set forth below.

COUNT XIII

DEPRIVATION OF CIVIL RIGHTS, 42 U.S.C. § 1983

FAILURE TO INTERVENE

GEE, CHRONISTER, BROWN, BURTON, LUSCZYNSKI, DAVIS, URA,
MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, DERRY, BECK

333. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

334. As described more fully above, during the conduction of the corruption, illegal acts and words, and misconduct described in this Complaint, all of the HCSO DEFENDANTS, with each one a sworn law enforcement officer charged with enforcing the laws of the State of Florida, stood by without intervening to prevent the misconduct and illegal acts engaged against MAGAN, when they had the power to intervene; as did the ASA DEFENDANTS, ASA PETERS and ASA DERRY, and BECK, who are sworn to enforce, defend, and prosecute all laws. Yet, not one of these DEFENDANTS acted to stop the illegal and, in some cases, criminal acts, committed by the other DEFENDANTS. Nor did a single one report the felonious acts engaged in by ASA PETERS, MITCHELL, ELLIOTT, or BECK. After ASA DERRY reported that ASA PETERS was a defense witness in the Samanie case, WARREN subsequently became aware of additional unethical conduct committed by ASA PETERS. The additional unethical conduct mirrored behavior that ASA PETERS had previously exhibited during Det. Boswell's first IA investigation in regards to untruthfulness about text messages. Despite personal knowledge in

regards to ASA PETERS' unethical conduct, WARREN did not act to hold ASA PETERS legally accountable for the illegal perjury, by charging her with a crime. Instead of exposing her prolonged, unethical conduct, WARREN opted to block her access to the SAO by deactivating her security card to enter the office, and then forced her to resign in lieu of terminating her. Further, this behavior by ASA PETERS, constituted Brady material in the TPR proceedings against MAGAN, because the same untruthful and improper behavior ASA PETERS exhibited in the Samanie proceeding, mirrored the behavior PETERS had exhibited in the first IA investigation against Det. Boswell.

335. The DEFENDANTS thus deprived MAGAN of her rights pursuant to 42 U.S.C. section 1983 by standing by and failing to intervene.

336. As a result of DEFENDANTS' failure to intervene to prevent the violation of MAGAN's constitutional rights, MAGAN suffered pain and injury, as well as emotional distress. DEFENDANTS had a reasonable opportunity to prevent this harm, but failed to do so.

337. The misconduct described in this Count was undertaken pursuant to DEFENDANTS acting under color of state law, ordinance, regulation, custom, usage, and HCSO policy and practice, in the manner described in this Complaint and as controlled by DEFENDANTS. DEFENDANTS subjected, and caused to be

subjected, MAGAN to be deprived of his rights, privileges, and immunities secured by the Constitution and laws.

338. The misconduct and illegal behavior described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to MAGAN's constitutional rights.

339. WHEREFORE, MAGAN requests that this Court enter judgment against DEFENDANTS as set forth below.

COUNT XIV
NEGLIGENT HIRING, RETENTION, AND SUPERVISION
GEE, CHRONISTER, OBER, WARREN

340. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

341. At all times material, all of the DEFENDANTS were under the direction, supervision, and control of either GEE, CHRONISTER, OBER, or WARREN, either directly or through their agents.

342. At all times material, GEE, CHRONISTER, OBER, or WARREN, either directly or through their agents, negligently hired, retained and/or supervised the defendants employed by the HCSO, or the SAO: BROWN, BURTON, LUSCZYNSKI, DAVIS, URA, MAURER, MITCHELL, MATHEWSON, ELLIOTT, PETERS, and/or DERRY.

343. GEE, CHRONISTER, OBER, or WARREN knew or should have known that a failure to appropriately evaluate, assess, and intervene in the illegal and improper actions and misconduct that the Employees engaged against MAGAN, would result in extensive damages to MAGAN.

344. Despite this knowledge, GEE, CHRONISTER, OBER, or WARREN failed to exercise reasonable care in hiring, retaining, and/or supervising these Employees.

345. As a direct and proximate cause of the acts described above in this Complaint, MAGAN has incurred pain and suffering, physical inconvenience and discomfort, loss of time, mental anguish and resultant physical symptoms and injuries, expenses incurred due to the medical treatment because of these injuries, loss of enjoyment of life, embarrassment, humiliation, and loss of a familial relationship and companionship with her son.

346. WHEREFORE, the MAGAN requests that this Court enter judgment against GEE, CHRONISTER, OBER, or WARREN as set forth below.

COUNT XV
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
ASA PETERS, BECK, AND ELLIOTT

347. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

348. The acts and conduct of ASA PETERS, BECK, AND ELLIOTT as set forth above were extreme and outrageous. ASA PETERS, BECK, AND ELLIOTT intended to cause, or were in reckless disregard of the probability that their conduct would cause, severe emotional distress to MAGAN, as is more fully alleged above, by launching a termination of parental rights proceeding against MAGAN, and sustaining it.

349. Said actions and conduct did directly and proximately cause severe emotional distress to MAGAN, and thereby constituted intentional infliction of emotional distress.

350. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to MAGAN's parental rights.

351. As a proximate result of DEFENDANTS' wrongful acts, MAGAN suffered damages, including severe emotional distress and anguish, as is more fully alleged above.

352. WHEREFORE, MAGAN demands judgment for damages, costs and interest against ASA PETERS, BECK, AND ELLIOTT, in their official and individual capacities, and a trial by jury on all issues triable as of right by a jury.

353. WHEREFORE, MAGAN requests that this Court enter judgment against ASA PETERS, BECK, AND ELLIOTT as set forth below.

COUNT XVI
DEFAMATION

ASA PETERS, BECK, AND ELLIOTT

354. Paragraphs 13 through 252 above are re-alleged and incorporated herein.

355. ASA PETERS, BECK, AND ELLIOTT made false and defamatory statements about MAGAN, including repeated statements that MAGAN knew that Samanie was intentionally harming Aiden, yet she did nothing about it, and that she was a participant in the abuse of her own child, and did not feed him for 2.5 days. *Not a single one of the allegations made by ASA PETERS, BECK, AND ELLIOTT is true.* Such false statements injured MAGAN because they facilitated the court in terminating MAGAN's parental rights.

356. ASA PETERS, BECK, AND ELLIOTT made the false and defamatory statements about MAGAN to numerous third parties without any privilege, including in hearings before the court, members of the bar, and the public.

357. Upon information and belief, ASA PETERS, BECK, AND ELLIOTT made these false and defamatory statements with knowledge of the falsity of the statements, with reckless disregard for the truth or falsity of the statements, and/or with negligence for the truth or falsity of the statements.

358. The false and defamatory statements are actionable as a matter of law or are defamation per se. DEFENDANTS' statements that MAGAN abused her own

child, adversely affect MAGAN's apparent fitness as a decent human being in society.

359. WHEREFORE, MAGAN seeks damages arising as a result of the defamatory statements published by ASA PETERS, BECK, AND ELLIOTT, costs, and any other relief the Court deems just and proper. MAGAN reserves the right to seek leave to amend to assert a claim for punitive damages, pursuant to section 768.72, Florida Statutes.

PRAYER FOR RELIEF

WHEREFORE, MAGAN prays that this Court enter judgment against DEFENDANTS as follows:

- (a) that process issue and this Court take jurisdiction over this cause;
- (b) that this Court grant equitable relief against DEFENDANTS under the applicable counts set forth above, mandating DEFENDANTS' obedience to the laws enumerated herein and providing other equitable relief to MAGAN;
- (c) that this Court enter judgment against DEFENDANTS and for MAGAN;
- (d) that this Court award damages to MAGAN from DEFENDANTS for DEFENDANTS' violations of the laws enumerated herein;
- (e) that this Court enter judgment against DEFENDANTS and for MAGAN, permanently enjoining DEFENDANTS from future violations of the laws enumerated herein, in particular, further defamation;

- (f) that this Court enter judgment against DEFENDANTS and for MAGAN awarding costs and attorneys' fees as allowed by law;
- (g) that this Court enter judgment against DEFENDANTS and for MAGAN for actual damages, and for treble damages where allowed by law;
- (h) that this Court award MAGAN interest and punitive damages as allowed by law;
- and
- (i) that this Court grant such other and further relief as is just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial for all counts alleged above.

Dated this 14th day of March, 2019.

Respectfully,

<p>s/ <u>Marie A. Mattox</u> Marie A. Mattox Florida Bar # 0739685 Cynthia A. Myers Florida Bar #147397 Marie A. Mattox, P.A. 203 North Gadsden St. Tallahassee, Florida 32301 Telephone:(850) 383-4800 EMail:marie@mattoxlaw.com Co-Counsel for Magan White</p>	<p>s/ <u>Kennan George Dandar</u> Kennan George Dandar Florida Bar No. 0642363 Dandar & Dandar, P.A. 1211 N. Westshore Blvd. Tampa, Florida 33607-4600 Telephone: 813-289-3858 Email: kgd@dandarlaw.net Co-Counsel for Magan White</p>
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon all counsel of record by CM/ECF this 14th day of March, 2019.

/s/ Marie A. Mattox
Marie A. Mattox