RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0773-24

C.H. and S.H., a minor child,

Plaintiffs-Appellants,

v.

DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY, D.H., C.H., CH.H., CRISTINA PEREZ, ROSALBA AVILA, JENNIFER BOUDREAU, FELIPE SANCHEZ, D.W., JOSEPH J. REISENMAN, M.D., and ALLISON STRASSER WINSTON, PH.D.,

Defendants-Respondents.

Submitted January 12, 2026 – Decided March 19, 2026

Before Judges Sabatino, Walcott-Henderson and Bergman.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-1932-23.

Hegge & Confusione, LLC, attorneys for appellants (Michael Confusione, of counsel and on the brief).

Matthew J. Platkin, Attorney General, attorney for respondents Department of Children and Families, Division of Child Protection and Permanency, Cristina Perez, Rosalba Avila, Jennifer Boudreau and Felipe Sanchez (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Phoenix N. Meyers, Deputy Attorney General, on the brief).

Deininger & Associates LLP, attorneys for respondent Ch.H. (Christopher L. Deininger, on the brief).

Ruprecht Hart Ricciardulli & Sherman, LLP, attorneys for respondent Dr. Joseph J. Reisenman, M.D. (Michael R. Ricciardulli, of counsel and on the brief; Kristin J. Brummer, on the brief).

Malapero Prisco Klauber & Licata, LLP, attorneys for respondent Dr. Alison S. Winston, Ph.D. (Richard J. Teer, on the brief).

PER CURIAM

Plaintiffs C.H.[1] and her child S.H.[2] ("Sara") appeal from the dismissal of their multi-count civil complaint against defendants Department of Children and

[1] We reference C.H. as plaintiff in this opinion.

[2] We use initials and pseudonyms for the minor child and the non-government parties because the underlying proceedings involved the Department of Children and Families, Division of Child Protection and Permanency ("Division"). R. 1:38-3(d)(12).

Families, Division of Child Protection and Permanency (collectively "the Division"), Christina Perez, Rosalba Avila, Jennifer Boudreau, and Felipe Sanchez (collectively referenced as the "Division employees"), plaintiff's brother defendant Ch.H.[3] ("Charles") and defendants Dr. Joseph J. Reisenman and Dr. Alison S. Winston following a series of investigations, institution, and ultimate dismissal of legal proceedings filed by the Division against plaintiff. After our de novo review of the record and application of the relevant legal principles, we affirm for the detailed and cogent reasons set forth in the written opinion of Judge Louis S. Sceusi.

I.

This action arose from the investigation and legal proceedings instituted by the Division against plaintiff concerning the care of her daughter Sara following a series of pediatric health concerns and complicated family dynamics. In November 2021, plaintiff observed swelling in Sara's left knee, which prompted visits to the Morristown Medical Center emergency room, Holy Name Hospital, and her pediatrician, Dr. Reisenman. Despite various medical assessments, the cause of Sara's symptoms was unclear, and she continued to

[3] Ch.H. ("Charles") is plaintiff's brother.

experience physical symptoms over subsequent weeks leading to further consultations with medical specialists.

As the medical investigation proceeded, family tensions escalated, particularly between plaintiff and her own parents, defendants D.C. ("Danielle") and C.H. ("Carter"), who frequently accompanied plaintiff to the child's medical appointments. During repeated health visits, Sara eventually disclosed that defendant D.W. had kicked her in the knee, prompting plaintiff to report the incident to the police.

After Sara's evaluation at various hospitals, Dr. Reisenman reported suspected Munchausen Syndrome by Proxy[4] to the Division concerning plaintiff's care for Sara. Following the referral, the Division engaged in an investigation and ultimately instituted legal proceedings against plaintiff under N.J.S.A. 9:6-8.21 ("Title 9") and N.J.S.A. 30:4C-12 ("Title 30"), seeking care and supervision of Sara based on allegations of child abuse and neglect. In

[4] Munchausen syndrome by proxy, now commonly known as factitious disorder imposed on another, is a serious form of abuse and a mental health condition. It occurs when a caregiver—typically a parent—falsifies, exaggerates, or induces illness or injury in a person under their care, such as a child in order to gain attention, sympathy, or validation for themselves. Factitious Disorder Imposed on Another ("FDIA"), Cleveland Clinic, www.myclevelandclinic.org/health/diseases/9834-factitious-disorder-imposed-on-another-fdia#overview (last visited March 10, 2026).

connection with these proceedings, plaintiff—by court order—was evaluated by Dr. Winston, a psychologist retained by the Division. Sara was also subject to evaluations and continued monitoring.

Shortly thereafter, Dr. Reisenman submitted a letter recanting his earlier suspicions of plaintiff and attributed his initial referral to "bad information" he received concerning plaintiff. According to plaintiff, such "bad information" originated from misrepresentations by her family members, primarily plaintiff's mother, Danielle. Despite this letter, the Title 9 and Title 30 proceedings continued for several months thereafter.

After months of litigation and several trial adjournments, the Division ultimately withdrew its complaint against plaintiff, resulting in the court finding no allegations were substantiated. Although she was exonerated, plaintiff alleged significant harm had already occurred. As a result of the proceeding, she claimed that as a result of being listed in the Child Abuse Record Information Registry, her ability to work with children was temporarily restricted, she incurred in excess of $200,000 in legal costs and suffered reputational and emotional damages.

On October 31, 2023, plaintiff filed a complaint in the Law Division against defendants. The complaint included nine counts alleging malicious

prosecution, intentional infliction of emotional distress, defamation, malicious abuse of legal process, violations under the New Jersey Law Against Discrimination, negligent hiring and retention, violation of the New Jersey Civil Rights Act, failure to train and negligent infliction of emotional distress.

In December 2023 and January 2024, all defendants filed motions to dismiss plaintiffs' complaint,[5] asserting that the complaint failed to state a claim based on several legal grounds. Following oral argument held on August 5, 2024, the trial judge issued a detailed opinion granting all defendants' motions and dismissing the complaint with prejudice as to the Division, Division employees, Dr. Reisenmann, Dr. Winston and plaintiff's brother Charles.

The judge concluded that all claims against the moving defendants were legally insufficient, barred by statutory or common law immunities/privileges or failed to allege facts meeting the required legal elements. The court further found no factual or legal basis on which discovery could cure these deficiencies in the pleadings.

On appeal, plaintiff contends:

[5] Plaintiff's parents, Danielle and Carter also filed a motion to dismiss the complaint. However, the motion was deemed moot by the court pursuant to a stipulation of dismissal filed prior to the motion return date, leaving Charles as the sole remaining family member-defendant.

THE LAW DIVISION ERRED IN GRANTING THE DEFENDANTS' MOTION TO DISMISS THE PLAINTIFFS' COMPLAINT.

II.

We apply a de novo standard of review to a trial judge's order dismissing a complaint under Rule 4:6-2(e). See Stop & Shop Supermarkets Co. v. Cnty. of Bergen, 450 N.J. Super. 286, 290 (App. Div. 2017) (quoting Teamsters Loc. 97 v. State, 434 N.J. Super. 393, 413 (App. Div. 2014)). Under the rule, we owe no deference to the motion judge's conclusions. Rezem Fam. Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011). "[O]ur inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). "The complaint must be searched thoroughly 'and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.'" Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (quoting Printing Mart, 166 N.J. at 746). However, "[a] pleading should be dismissed if it states no basis for relief and discovery would not provide one." Rezem Fam. Assocs., 423 N.J. Super. at 113.

Based on our de novo review of the record, we conclude the trial judge's factual findings and legal conclusions properly applied the Rule 4:6-2(e) standard as to all counts of plaintiff's complaint and affirm the trial judge's order substantially for the reasons set forth in his written decision. R. 2:11-3(e)(1)(A). We add the following comments to amplify upon selective portions of the judge's reasoning.

We further uphold dismissal of the plaintiff's complaint, as the court correctly applied: (1) the legal immunities to the Division and Division employees; (2) the legal immunities and privileges to Drs. Reisenman and Winston; and (3) the statute of limitations and the specificity requirements to the defamation claims against Charles.

A.

We begin by discussing the immunities provided to a public entity and its employees. As a general matter, the Division "is charged with the responsibility to investigate all allegations of child abuse or neglect." S.C. v. New Jersey Dept. of Child. & Families, 242 N.J. 201, 211 (2020) (citing N.J.A.C. 3A:10-7.3(c)). Under the New Jersey Tort Claims Act ("TCA"), N.J.S.A. 59:1-1 to 12-3, "public entities [such as the Division] shall only be liable for their negligence within the limitations of this act and in accordance with the fair and uniform

principles established herein." N.J.S.A. 59:1-2. The approach of the TCA is to broadly limit public entity liability. See Jones v. Morey's Pier, Inc., 230 N.J. 142, 154 (2017). The TCA is strictly construed to effectuate that purpose. McDade v. Siazon, 208 N.J. 463, 474 (2011). Generally, courts are instructed to find immunity for public entities with liability as the exception. Lee v. Brown, 232 N.J. 114, 127 (2018). Individual public employees are liable for injuries caused by their act or omission to act to the same extent a private person would be. N.J.S.A. 59:3-1.

The TCA grants absolute immunity from liability to public entities and their employees for injuries resulting from a failure to enforce the law. Lee, 232 N.J. at 127-28. N.J.S.A. 59:3-5 provides: "A public employee is not liable for an injury caused by his adoption of or failure to adopt any law or by his failure to enforce any law." In contrast, public employees are entitled to qualified immunity when they are enforcing the law. N.J.S.A. 59:3-3 ("A public employee is not liable if he acts in good faith in the execution or enforcement of any law.").

"[T]he critical distinction between the qualified, good-faith immunity of [N.J.S.A. 59:3-3] and the absolute immunity of section [N.J.S.A. 59:3-5] is action as opposed to nonaction with respect to the enforcement of the law."

Bombace v. City of Newark, 125 N.J. 361, 368 (1991). Qualified good faith enforcement immunity "applies 'only when an act has taken place with knowledge of the facts and the law,'" whereas failure-to-enforce immunity "applies when there is no 'act.'" Ibid. (quoting Marley v. Borough of Palmyra, 193 N.J. Super. 271, 293 (Law Div. 1983)).

To pierce qualified immunity under the TCA, a plaintiff must prove more than ordinary negligence. Canico v. Hurtado, 144 N.J. 361, 365 (1996). Qualified immunity is not provided to public employees under certain circumstances as set forth at N.J.S.A. 59:3-14(a), providing public employees are subject to full liability "if it is established that [their] conduct was outside the scope of [their] employment or constituted a crime, actual fraud, actual malice[,] or willful misconduct." The willful misconduct exception is intended to target "a public employee guilty of outrageous conduct[.]" Velez v. City of Jersey City, 180 N.J. 284, 291 (2004) (quoting Margolis & Novack, Title 59: Claims Against Public Entities, cmt. on N.J.S.A. 59:3-1(c) (2004)). Thus, one "traditional formulation of willful misconduct has required 'a showing that there has been a deliberate act or omission with knowledge of a high degree of probability of harm and reckless indifference to consequences.'" Leang v. Jersey City Bd. of Educ., 198 N.J. 557, 584 (2009) (quoting Berg v. Reaction Motors

Div., Thiokol Chem. Corp., 37 N.J. 396, 414 (1962)). Neither "[c]arelessness, unreasonable conduct or even noncompliance with substantive law" are necessarily sufficient to strip an employee of immunity. Van Engelen v. O'Leary, 323 N.J. Super. 141, 154 (App. Div. 1999).

In addition, in order to impose liability of a public employee under the TCA it also "depends on whether the conduct of individuals acting on behalf of the public entity was ministerial or discretionary." Est. of Gonzalez v. City of Jersey City, 247 N.J. 551, 571 (2021) (quoting Henebema v. S. Jersey Transp. Auth., 219 N.J. 481, 490 (2014) (citing N.J.S.A. 59:2-3(d))). "When a public entity's or employee's actions are discretionary, liability is imposed only for 'palpably unreasonable conduct.'" Ibid. (quoting Henebema, 219 N.J. at 495). Liability for ministerial acts "is evaluated based on an ordinary negligence standard." Ibid. (quoting Henebema, 219 N.J. at 490).

"A 'discretionary act . . . calls for the exercise of personal deliberations and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed.'" S.P. v. Newark Police Dept., 428 N.J. Super. 210, 230 (App. Div. 2012) (omission in original) (quoting Kolitch v. Lindedahl, 100 N.J. 485, 495 (1985)).

In contrast, "a ministerial act, which is not granted immunity under the TCA, is an action 'which a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety of the act being done.'" Gonzalez, 247 N.J. at 571-72 (quoting S.P., 428 N.J. Super. at 231).

Here, the actions of the Division and Division employees, including the allegations made in the complaint against plaintiff, were subject to the bar against liability because their acts were discretionary. In addition, the Division and its employees were entitled to the qualified immunity protections of the TCA. We agree with the trial judge that the complaint's allegations against the Division and its employees involved discretionary functions of the Division and its employees because they relied upon the statements and information provided through the investigation and medical reports and made personal judgments to institute proceedings against plaintiff. We further conclude qualified immunity protections were appropriately granted by the judge to the Division and its employees. No genuine issues of material fact in the record disputed that the Division and its employees acted in good faith and duly considered the reported information they obtained from their investigation, resulting in the filing of the

complaint against plaintiff enforcing the provisions of Title 9 and Title 30 based on plaintiff's alleged abuse of Sara.

Additionally, as defendants noted, plaintiff describes the Division and its employees' conduct as negligent, not willful, in their complaint. They assert that the Division and its employees "neglected to investigate and address discoveries," and that "[t]hese biased judgments led to negligent decisions and actions instituted and perpetuating Title 9 and Title 30 actions against [plaintiff]." This argument undermines plaintiff's claims, as negligent conduct is inherently not intentional or deliberate. As mentioned above, our case law clearly rejects the notion that carelessness or unreasonable conduct is sufficient to strip public employees of immunity. Van Engelen, 323 N.J. Super. at 154. Therefore, plaintiff has not presented prima facie proofs of the elements of N.J.S.A. 59:3-14(a) to pierce the qualified immunity protections afforded to the Division and its employees under the TCA.

B.

We next address plaintiff's claims against Dr. Winston and Dr. Reisenman. We conclude, as did the trial judge, that plaintiff's claims against Dr. Winston were barred by the litigation privilege. This privilege shields "any communication (1) made in judicial or quasi-judicial proceedings; (2) by

litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." Buchanan v. Leonard, 428 N.J. Super. 277, 286 (App. Div. 2012) (citing Loigman v. Twp. Comm. of Twp. of Middletown, 185 N.J. 566, 578 (2006)). The privilege is not confined to the courtroom and "extends to all statements or communications in connection with the judicial proceeding." Ruberton v. Gabage, 280 N.J. Super. 125, 133 (App. Div. 1995) (citations omitted). The litigation privilege "may be extended to statements made in the course of judicial proceedings even if the words are written or spoken maliciously, without any justification or excuse, and from personal ill will or anger against the party defamed." DeVivo v. Ascher, 228 N.J. Super. 453, 457 (App. Div. 1988) (citation omitted).

Additionally, "[p]retrial communications by parties and witnesses are protected 'to promote the development and free exchange of information and to foster judicial and extra-judicial resolution of disputes.'" Hawkins v. Harris, 141 N.J. 207, 218 (1995) (quoting Gen. Elec. Co. v. Sargent & Lundy, 916 F.2d 1119, 1129 (6th Cir. 1990)). "The only limitation which New Jersey places upon the privilege is that the statements at issue 'have some relation to the nature of

the proceedings.'" Rabinowitz v. Wahrenberger, 406 N.J. Super. 126, 134 (App. Div. 2009) (quoting Hawkins, 141 N.J. at 215).

We conclude the allegations in the complaint and motion record do not support that Dr. Winston purposefully or maliciously provided false statements to the Division concerning plaintiff. In addition, her statements clearly related to the legal proceedings. Dr. Winston was retained by the Division to serve as an expert in the litigation, and her conclusions were manifestly founded upon her good faith professional observations based on her review of the medical and investigatory records. We therefore conclude the judge's dismissal of all claims against Dr. Winston was not error.

Turning to Dr. Reisenman, we conclude he was immune from civil liability pursuant to N.J.S.A. 9:6-8.10, which states: "[a]ny person having reasonable cause to believe that a child has been subjected to child abuse, including sexual abuse, or acts of child abuse shall report the same immediately to the Division [] by telephone or otherwise." The Act provides civil and criminal immunity to individuals who report possible abuse or neglect of children pursuant to the Act. See N.J.S.A. 9:6-8.13 (stating"[a]nyone acting pursuant to this act in the making of a report [of child abuse] under this act shall have immunity from any liability, civil or criminal, that might otherwise be

incurred or imposed."). "[T]he Legislature intended that 'reasonable cause to believe' that a child has been subjected to child abuse requires a reasonable belief based on the facts and circumstances known to the person on the scene." L.A. v. N.J. Div. of Youth & Fam. Servs., 217 N.J. 311, 327 (2014).

The record clearly indicates that Dr. Reisenman abided by his statutory duty to report suspected child abuse because an objective review of the evidence supported a reasonable belief that child abuse had occurred under these circumstances, including multiple visits by Sara to his office and other medical providers, unexplained/unclear causes for Sara's injuries and statements from Danielle concerning alleged abuse of Sara by plaintiff. Additionally, the record does not contain any evidence that Dr. Reisenman's report to the Division was made with the sole purpose of damaging plaintiff or that it was malicious. In fact, his recantation letter supports his overall objectivity, not bias or malice towards plaintiff. Therefore, we conclude the trial judge's dismissal of claims against Dr. Reisenman based on the statutory immunity provided by N.J.S.A. 9:6-8.13 was not error.

Although we certainly can appreciate plaintiff's frustration with the underlying litigation, including the substantial costs she incurred to defend the Division's legal action and the emotional toll upon her, our state's jurisprudence

has stressed the importance of the litigation privilege and the immunities provided by N.J.S.A. 9:6-8.13.

> Given the importance to our justice system of ensuring free access to the courts, promoting complete and truthful testimony, encouraging zealous advocacy, giving finality to judgments, and avoiding unending litigation, it is not surprising that . . . the litigation privilege[] has been referred to as "the backbone to an effective and smoothly operating judicial system."
>
> [Hawkings v. Harris, 141 N.J. 207, 222 (1994) (citing Silberg v. Anderson, 786 P.2d 365, 370 (1990)).]

Likewise, the Legislature recognized an overriding need to encourage the reporting of child abuse, by not only providing immunity to persons making such reports, but also by making it a disorderly persons offense to fail to report where there is "reasonable cause to believe that an act of child abuse has been committed. . . ." N.J.S.A. 9:6-8.14. We conclude the judge appropriately recognized the overall purposes of the above privileges and immunities and his dismissal of plaintiff's claims against the doctor defendants based on such was not error.

III.

We now briefly address plaintiffs' defamation claim against her brother Charles—the only remaining defendant-family member at the time of the disposition of the motion. Based on our de novo review, we concur with the

reasons expressed by the trial judge concerning this claim and conclude the defamation claims against Charles fail as being both untimely and lacking the required specificity.

Under N.J.S.A. 2A:14-3, "[e]very action at law for libel or slander shall be commenced within [one] year next after the publication of the alleged libel or slander." This reason alone was a sufficient basis for the trial judge to dismiss the defamation claims against Charles. Plaintiff's complaint was filed on October 31, 2023, well more than a year after the alleged statements were claimed to be made in February 2022 and from the filing of the Division's complaint against plaintiff on March 4, 2022.

However, even if we were to consider plaintiff's defamation claims as timely under the discovery rule, we conclude the complaint failed to attribute any defamatory statement specifically published by Charles and specify the content of the defamatory statements made by him. The complaint primarily alleged the defamatory statements were made by her mother, Danielle, whose stipulated dismissal from this case is not before us.

To plead a claim a valid claim for defamation, plaintiffs are required to specifically allege the actual statements that serve as the basis of the claim and when they were made. See Darakjian v. Hanna, 366 N.J. Super. 238, 248-49

(App. Div. 2004) ("In the case of a complaint charging defamation, plaintiff must plead facts sufficient to identify the defamatory words, their utterer and the fact of their publication. A vague conclusory allegation is not enough."); see also Russo v. Nagel, 358 N.J. Super. 254, 269 (App. Div. 2003) ("In order to properly plead a claim for [defamation] the defamatory words must be identified."). Plaintiff's complaint was insufficient under these legal standards and appropriately dismissed by the trial judge.

To the extent we have not addressed any of plaintiff's remaining arguments, we conclude those arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

M.C. Harley

Clerk of the Appellate Division

ORDER PREPARED BY THE COURT

C.H. & S.H. (a minor child), Plaintiff(s), v. DEPARTMENT OF CHILDREN AND FAMILIES; DIVISION OF CHILD PROTECTION AND PERMANENCY; DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO; STATE OF NEW JERSEY; D.H. ; Ca.H. ; Ch.H. ; CRISTINA PEREZ; ROSALBA AVILA; JENNIFER BOUDREAU; FELIPE SANCHEZ; D.W. ; JOSEPH J. RIESENMAN, M.D.; ALLISON STRASSER WINSTON, PHD; JOHN DOES 1-10 (fictitious individuals); and, ABC CORPORATIONS 1-10 (fictitious entities), Defendant(s).	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY DOCKET NO. MRS-L-1932-23 CIVIL ACTION **ORDER**

THIS MATTER, having been opened to the court by Christopher L. Deininger, Esquire, of the Law Office of Deininger & Associates, LLP, counsel for defendant, Ch.H. ; Richard J. Teer, Esquire, of the Law Office of Malapero Prisco Klauber & Licata, LLP, counsel for defendant, ALISON STRASSER WINSTON, PhD; Kristin J. Brummer, Esquire, of the Law Office of Ruprecht Hart Ricciardulli & Sherman, LLP, counsel for defendant, JOSEPH J. RIESENMAN, MD; and Stephanie Mignogna, Esquire, of the Attorney General's Office of New Jersey, counsel for defendants NEW JERSEY DEPARTMENT OF CHILD AND FAMILIES, CIRSTINA PEREZ, ROSALBA AVILA, JENNIFER BOUDREAU, and FELIPE SANCHEZ,

and the Court having considered the moving papers, Statement of Reasons, and the opposing papers, if any, and for good cause being shown;

IT IS on this 12th day of AUGUST 2024,

ORDERED that Defendants' Motions to Dismiss Count One of the Complaint for malicious prosecution for failure to state a claim are **GRANTED** with prejudice; and

ORDERED that Defendants' Motions to Dismiss Count Two of the Complaint for intentional infliction of emotional distress for failure to state a claim are **GRANTED** with prejudice; and

ORDERED that Defendants' Motions to Dismiss Count Three of the Complaint for defamation for failure to state a claim are **GRANTED** with prejudice; and

ORDERED that Defendants' Motions to Dismiss Count Four of the Complaint for abuse of legal process for failure to state a claim are **GRANTED** with prejudice; and

ORDERED that Defendants' Motions to Dismiss Count Five of the Complaint for civil rights violations under the New Jersey Law Against Discrimination for failure to state a claim are **GRANTED** with prejudice; and

ORDERED that Defendants' Motions to Dismiss Count Six of the Complaint for negligent hiring and retention for failure to state a claim are **GRANTED** with prejudice; and

ORDERED that Defendants' Motions to Dismiss Count Seven of the Complaint for violations of the New Jersey Civil Rights Act for failure to state a claim are **GRANTED** with prejudice; and

ORDERED that Defendants' Motions to Dismiss Count Eight of the Complaint for failure to train for failure to state a claim are **GRANTED** with prejudice; and

ORDERED that Defendants' Motions to Dismiss Count Nine of the Complaint for

negligent infliction of emotional distress for failure to state a claim are **GRANTED** with prejudice; and it is further

ORDERED that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to R. 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of this Order.



Hon. Louis S. Sceusi, J.S.C.
Retired T/A on Recall

[**X**] OPPOSED
[ ] UNOPPOSED
See accompanying Statement of Reasons

H. v. Department of Children and Families et al.
MRS-L-1932-23

STATEMENT OF REASONS

This matter comes before the Court on Notices of Motion to dismiss the Complaint for failure to state a claim, brought by the following parties, respectively: Ch.H. , Allison Strasser Winston, PhD, Joseph Riesenman, MD, and the Department of Child Protection and Permanency ("DCP&P") as well as DCP&P employees Christina Perez, Rosalba Avila, Jennifer Boudreau (i/p/a Jennifer Beaudreaux), and Felipe Sanchez (collectively, "Defendants")[1]. Plaintiff C.H. ("C.H. ") and her minor daughter, S.H. (collectively, "Plaintiffs") oppose the motions to dismiss, arguing that Plaintiffs have sufficiently and timely plead their respective causes of action.

RELEVANT FACTS

I. Summary

This action was initiated by way of a Complaint filed on or about October 31, 2023. Therein, Plaintiffs allege the following causes of action against Defendants: malicious prosecution, intentional infliction of emotional distress ("IIED"), defamation, abuse of legal process, civil rights violations under the New Jersey Law Against Discrimination ("LAD"), negligent hiring and retention, violations of the New Jersey Civil Rights Act ("NJCRA"), failure to train, and negligent infliction of emotional distress ("NIED"). See Compl. (Counts I-IX[2]). Generally speaking, Plaintiffs maintain that Defendants acted intentionally and with malice in instituting DCP&P child abuse and neglect proceedings, which Plaintiffs allege resulted in considerable damages. See Opp. Brief at 2. While the DCP&P proceedings were eventually terminated in C.H. 's favor, such termination came after nearly two (2) years of what C.H. characterizes as extreme emotional pain and suffering. Ibid. According to C.H. , this includes hundreds of thousands of dollars in legal fees, the loss of her business, the loss of her ability to practice as a therapist, delayed access to medical care for S.H., and extreme embarrassment, emotional distress, and mental anguish. Ibid.

[1] Defendants D.H. and Ca.H. also filed a Motion to Dismiss in this matter in lieu of filing a responsive pleading under R. 4:6-2(e). However, that motion has since been withdrawn pursuant to a Stipulation of Dismissal filed by counsel for D.H. and Ca.H. on May 20, 2024.
[2] The Complaint sets forth nine (9) separate Counts but in error repeats Count VIII twice. The repeated Count VIII will hereinafter be referred to as "Count IX."

By way of brief background, C.H. is a single mother and parent of 9-year-old S.H. See Opp. Brief SoF at 4. C.H. is also a Licensed Practicing Counselor and an Approved Clinical Supervisor. Ibid. Prior to the events which allegedly gave rise to this action, C.H. owned and operated [business name] , out of which she provided counseling to both children and adults for nearly sixteen years. Ibid. D.H. and Ca.H. are C.H. 's parents, and Ch.H. is C.H. 's brother (collectively, the "H. Defendants"). According to C.H. , the relationship between she and the H. Defendants has always been "volatile and hostile." Ibid.

II. Factual Allegations Pleaded in Complaint

For purposes of assessing the pending motions to dismiss, the Court accepts as true all of the facts pleaded in the Complaint in accordance with Rule 4:6-2(e).

On or about November 13, 2021, C.H. noticed that her daughter, S.H., had a swollen left knee. See Compl. ¶ 23. The next day, C.H. and her mother, D.H. , took S.H. to the Morristown Medical Center Emergency Room. Id. at ¶ 24. There, S.H. was evaluated, and bloodwork and an X-ray were taken. Ibid. The results of S.H.'s tests were generally normal and ruled out possibilities such as toxic synovitis. Id. at ¶ 25. S.H. was discharged that same day. Ibid.

On or about November 15, 2021, S.H. was crying and visibly in pain, and her left knee remained swollen and felt warm to the touch. Id. at ¶ 26. C.H. spoke with her parents, who then made an appointment for Plaintiffs to go to Holy Name Hospital. Id. at ¶ 27. At Holy Name, S.H. had additional bloodwork taken and an MRI of the knee. Id. at ¶ 28. An ace bandage was applied and S.H. was told she could not attend gym or indoor recess. Ibid. Holy Name also referred S.H. to orthopedic surgeon Dr. Pfister. Id. at ¶ 29.

On or about November 17, 2021, S.H. saw her pediatrician, Dr. Joseph Riesenman, MD. Id. at ¶ 30. Upon evaluation of S.H., Dr. Riesenman noted left knee swelling, lower extremity edema, prepatellar swelling, prepatellar tenderness, decreased flexion, decreased extension, and pain with extension. Id. at ¶ 31. Dr. Riesenman was concerned about S.H. having an autoimmune disease such as viral synovitis, so he referred S.H. to an orthopedist and a rheumatologist for further evaluation. Id. at ¶ 32. On November 23, 2021, S.H. met with Dr. Pfister, who advised that

S.H. would benefit from a better fitting knee brace but could not identify the source of the pain or swelling in S.H.'s knee. Id. at ¶ 34. Dr. Pfister also agreed with Dr. Riesenman and advised S.H. consult with a rheumatologist and refrain from physical activity in the meantime. Id. at ¶¶ 35-36.

On or about November 24, 2021, S.H. confided in C.H. that she had been kicked in the knee by an individual named D.W. while at C.H. 's business, [business]. Id. at ¶ 37. C.H. reported the incident to the Jefferson Police Department, who instructed C.H. report it to the DCF Institutional Abuse Investigation Unit. Id. at ¶¶ 38-39. C.H. called the DCF Institutional Abuse Investigation Unit and requested a welfare check on D.W. to ensure D.W. 's own children were not being harmed. Id. at ¶ 40. In addition, C.H. reviewed the incident footage captured at [business], which confirmed that D.W. had kicked S.H. in the left leg/knee. Id. at ¶¶ 42-43.

S.H. consulted with rheumatologist Dr. Ginger Janow, MD on November 30, 2021. Id. at ¶ 45. Upon her evaluation of S.H., Dr. Janow noted pain and swelling in the left leg, red and puffy eyes, musculoskeletal tenderness, as well as altered gait, which posed concern for S.H.'s hip. Id. at ¶¶ 45-46. Dr. Janow subsequently ordered a hip ultrasound, urine and blood testing, and an evaluation by a pediatric ophthalmologist. Id. at ¶ 46.

On or about December 6, 2021, S.H. began projectile vomiting and experienced increased pain in her leg and hip. Id. at ¶ 47. C.H. brought S.H. to Saint Clare's Emergency Room on that same date. Id. at ¶ 48. Following a strep test, bloodwork, and bilateral hip ultrasound, doctors at St. Clare's determined S.H. was positive for blood and protein in the urine as well as fluid in her left hip. Id. at ¶ 49. D.H. accompanied her daughter and granddaughter to most of the aforementioned doctor's visits. Id. at ¶ 50.

C.H. scheduled a trip to Massachusetts to have S.H. evaluated at Boston Children's Hospital. Id. at ¶ 52. On December 15, 2021, the day before C.H. and S.H. were scheduled at Boston Children's, D.H. advised C.H. that the H. Defendants had all been diagnosed with COVID-19. Id. at ¶ 53. As a result, C.H. had to cancel the appointment at Boston Children's. Ibid.

On or about December 21, 2021, S.H. experienced increased vomiting, increased pain in her hip and legs, problems walking, and confusion. Id. at ¶ 54. C.H. took S.H. back to the

Morristown Medical Center Emergency Department, where S.H. was treated with Zofran and a shot of Toradol. Id. at ¶ 55.

Throughout the weeks and months detailed above, the relationship between C.H. and the H. Defendants was continually declining. Id. at ¶ 56. C.H. and D.H. in particular frequently argued about how C.H. was raising and caring for S.H. Id. at ¶ 57. For example, D.H. made comments about how she would "have DYFS called on [C.H.]" if C.H. didn't let D.H. see S.H. or if C.H. didn't take S.H. to the doctors that D.H. encouraged. Id. at ¶ 58.

S.H. was evaluated by rheumatologist Dr. Paul on January 13, 2022, during which Dr. Paul diagnosed S.H. with Amplified Musculoskeletal Pain Syndrome ("AMPS"). Id. at ¶ 59. Dr. Paul ordered additional blood work, a hip ultrasound, and an abdominal ultrasound to check for any abnormalities including a possible stomach tumor. Ibid. On January 20, 2022, C.H. secured a second opinion from a rheumatologist at Boston Children's, Dr. Hom. Id. at ¶ 60. In contrast to Dr. Paul's diagnosis, Dr. Hom suggested that S.H.'s pain and swelling could be the result of stress and not AMPS. Id. at ¶ 61. After hearing Dr. Hom's opinion, C.H. determined that S.H. should not be around the H. Defendants, as they were a large source of stress in Plaintiffs' lives. Id. at ¶¶ 62-63. C.H. 's decision to keep the H. Defendants away from S.H. ignited an altercation with D.H. , who told C.H. she was going to call DYFS (aka DCP&P). Id. at ¶ 65.

S.H.'s pediatrician Dr. Riesenman had conversations with D.H. about S.H., wherein D.H. relayed false statements and information to Dr. Riesenman to induce Dr. Riesenman to contact DCP&P. Id. at ¶ 66. Specifically, D.H. fabricated allegations that C.H. was suffering from Munchausen by Proxy syndrome. Id. at ¶ 67. Dr. Riesenman eventually wrote to DCP&P, advising that he believed C.H. suffered from psychiatric conditions including Munchausen by Proxy. Id. at ¶ 68. Ultimately, DCP&P instituted child abuse and neglect proceedings, including Title 9 and Title 30 proceedings, against C.H. . Id. at ¶ 70. DCP&P instituted and maintained these proceedings on the basis of correspondence from Dr. Riesenman, as well as an evaluation of C.H. by Dr. Allison Strasser Winston, PhD. Id. at ¶ 71.

Dr. Riesenman later submitted a second letter to DCP&P, wherein he explicitly retracts any prior support for the allegations against C.H. and apologizes for his lapse in judgment. Id. at ¶ 77. As rationale for his recantation, Dr. Riesenman writes that he "received several pieces of bad information that [he] unfortunately made a snap decision on the basis of." Id. at ¶ 78. These

"several pieces of bad information" which Dr. Riesenman references were intentional misrepresentations made by the H. Defendants about C.H. . Id. at ¶ 79.

Despite receiving Dr. Riesenman's recantation letter, DCP&P nevertheless proceeded with the prosecution of Plaintiff. Id. at ¶¶ 84-85. As the trial date grew closer, DCP&P repeatedly postponed proceedings, continually subjecting C.H. to litigation costs that otherwise would have been devoted to S.H.'s care and wellbeing. Id. at ¶¶ 86-87. Finally, on the eve of trial, DCP&P dismissed the Title 9 proceedings against C.H. . Id. at ¶ 88. DCP&P later dismissed the Title 30 proceedings, but only after imposing upon Plaintiffs the burden of additional court appearances and tens of thousands of additional dollars in legal fees. Id. at ¶ 90.

As a result of the DCP&P proceedings, C.H. was placed on the Child Abuse Record Information ("CARI") registry, which prohibited her from working with children. Id. at ¶ 93. This was particularly detrimental to C.H. as her business, [business], involves children. Ibid. In total, C.H. spent over $200,000.00 defending her right to custody of S.H. Id. at ¶ 95. In addition to the financial costs incurred, Plaintiffs have been psychologically scarred, experiencing anxiety, stress, and depression because of the lengthy ordeal outlined above. Id. at ¶ 98.

LEGAL STANDARD

When considering a motion to dismiss under Rule 4:6-2(e) for failure to state a claim, the court's inquiry is limited to an examination of the "legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). In that regard, the court is not concerned with the plaintiff's ability to prove the allegation. Id. at 746. Instead, courts must "search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim…" Ibid. In addition, courts must accept as true the facts alleged in the complaint and construe all reasonable inferences of fact in favor of the plaintiff. Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 625-26 (1995). A court, however, need not give any deference to statements of legal conclusions. Hoffman v. Hampshire Labs, 405 N.J. Super. 105, 114 (App. Div. 2009).

In evaluating motions to dismiss, courts may consider "allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Banco Popular North America v. Gandi, 184 N.J. 161, 183 (2005). It is the existence of

the fundament of a cause of action in those documents that is pivotal; the ability of the plaintiff to prove its allegations is not at issue. Ibid.

ANALYSIS

I. Count One: Malicious Prosecution

Malicious prosecution (or malicious use of process as it is sometimes referred to when the underlying proceeding is civil rather than criminal) is not a favored cause of action because of the policy that people should not be inhibited in seeking redress in the courts. Penwag Property Co. v. Landau, 76 N.J. 595 (1978). Malicious use of process requires the plaintiff to prove the civil counterpart of each element of malicious prosecution in a criminal proceeding plus a fifth element. LoBiondo v. Schwartz, 199 N.J. 62, 90 (2009). In particular, the plaintiff must prove: (1) a civil action was instituted by the defendant against the plaintiff; (2) the action was motivated by malice; (3) there was an absence of probable cause; (4) the action was terminated favorably to the plaintiff; and (5) the plaintiff suffered a special grievance caused by the institution of the underlying civil claim. Ibid. The plaintiff's failure to prove any one element is fatal to the claim. Lind v. Schmid, 67 N.J. 255, 262 (1975).

In the context of malicious prosecution, malice means "the intentional commission of a wrongful act without just cause or excuse." Mayflower Industries v. Thor Corp., 15 N.J. Super. 139, 152 (Ch. Div. 1951). Malice may be inferred from a finding that a defendant did not have probable cause or a reasonable belief in probable cause. LoBiondo, 199 N.J. at 94. Reasonable or probable cause for the institution of a suit is the "presence of reasonable ground for belief that the cause of action exists supported by circumstances sufficient to warrant an ordinarily prudent man the belief that it exists." Mayflower, 15 N.J. Super. at 152. When the question of probable cause depends on undisputed and disputed facts, the question is one for the jury, not one of law to be decided by the court. Evans v. Jersey Central Power & Light Co., 119 N.J.L. 88, 91 (E&A 1937). Finally, special grievance consists of interference with one's liberty or property. Mayflower, 15 N.J. Super. at 151-52. Counsel fees and costs in defending the action maliciously brought may be an element of damage in a successful malicious prosecution, but do not in themselves constitute a special grievance necessary to make a prima facie case. Id. at 175-76.

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a. *H. Defendants*[3]

The H. Defendants assert that the Complaint fails to plead two of the necessary five elements for malicious prosecution. See H. Brief at 5. First, they argue that none of the H. Defendants instituted or prosecuted any suit against Plaintiff. Ibid. Second, they argue that Title 9 and Title 30 proceedings are civil proceedings, and the "special grievance" needed to support a civil malicious prosecution claim is absent. Id. at 7.

In Opposition to these arguments, Plaintiffs maintain "that the H. Defendants purposefully orchestrated actions designed to ensure the initiation of a case by the DCP&P Defendants against the Plaintiff without reasonable or probable cause." See Opp. Brief at 13.

Even accepting as true the facts alleged in the Complaint and construing all reasonable inferences of fact in favor of Plaintiffs, the Court agrees that none of the H. Defendants "instituted" any action nor played an active role in instigating or encouraging the prosecution. Simply put, the Complaint is wholly devoid of any allegations which support that the H. Defendants acted independently from DCP&P and in their own individual capacities to institute the subject DCP&P proceedings. As highlighted by Ch.H. 's Reply, the record before the Court demonstrates that DCP&P commenced a civil action against Plaintiff on or about March 4, 2022. See Ch.H. Reply Brief at 2. The fact that the H. Defendants "made material misrepresentations" to DCP&P resulting in DCP&P's institution of Title 9 and Title 30 proceedings is not tantamount to the H. Defendants instituting suit on their own accord. Nor does it equate to the H. Defendants engaging "in affirmative action, encouragement pressure, and other action so as to be a substantial factor in the institution and maintenance of the baseless DCP&P proceedings." See Opp. Brief at 11-12. Because the H. Defendants cannot be held liable for malicious prosecution without their having instituted a civil suit against Plaintiffs, which none of them had the power to do, Count I of the Complaint must be dismissed as to the H. Defendants.

[3] Defendant Ch.H. 's Motion to Dismiss explicitly adopts and incorporates the Brief which previously dismissed Defendants Ca.H. and D.H. filed in support of their Motion to Dismiss ("H. Brief"). Thus, Ch.H. 's arguments will be addressed by reference to the H. Brief.

b. *Dr. Winston*[4]

In asserting entitlement to dismissal of Count I against her, Dr. Winston invokes immunity from suit in this case on the basis of the litigation privilege and judicial immunity doctrines. See Winston Brief at 6.

1. *Litigation Privilege*

The litigation privilege "has long been embedded in New Jersey's jurisprudence." Loigman v. Twp. Comm., 185 N.J. 566, 580 (2006). The New Jersey Supreme Court has described the litigation privilege as "indispensable" and said that "[t]he public policy rationale for the litigation privilege has not changed in half a millennium." Ibid. There are four elements to the privilege. Rabinowitz v. Wahrenberger, 406 N.J. Super. 126, 134 (App. Div. 2009). That is, the privilege is applicable to "any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." Hawkins v. Harris, 141 N.J. 207, 216 (1995). The only limitation that New Jersey places upon the privilege is that the statements at issue "have some relation to the nature of the proceedings." Id. at 215 (quoting Devlin v. Greiner, 147 N.J. Super. 446, 453 (Law Div. 1977)).

The litigation privilege "has been expanded beyond strictly judicial proceedings to encompass so-called 'quasi-judicial' proceedings as well." Zagami, LLC v. Cottrell, 403 N.J. Super. 98, 105 (App. Div. 2008) (holding that statements made in connection with an application to renew a liquor license are covered by the litigation privilege). For example, it has been held applicable to statements made during settlement discussions and to statements made during the course of pretrial investigation. Dello Russo v. Nagel, 358 N.J. Super. 254, 267 (App. Div. 2003); Hawkins, 141 N.J. at 217.

Here, even accepting as true all factual allegations plead in the Complaint, *e.g.*, that Dr. Winston evaluated C.H. as part of the DCP&P proceedings, that said proceedings were heavily influenced by Dr. Winston's findings, and that Dr. Winston's evaluation was full of lies and

[4] Dr. Winston relies upon the doctrines of litigation privilege and judicial immunity in arguing that the entirety of Plaintiffs' Complaint should be dismissed against her. Although these arguments will only be addressed with respect to Count I, because they are uniformly asserted against all Counts, it should be noted that these arguments are also applicable to Counts II-IX against Dr. Winston.

misinformation,[5] the Court agrees with Dr. Winston that she is immune from suit on account of the litigation privilege. See Winston Brief at 7. First, as a threshold matter, nothing is gleaned from the factual record before the Court which suggests Dr. Winston purposefully—let alone maliciously—riddled her evaluation of C.H. with falsehoods; rather, Dr. Winston published her evaluation after personally investigating and drawing conclusions based on her professional observations. That said, it is apparent Dr. Winston was retained by DCP&P for the express purpose of evaluating C.H. 's mental health pursuant to an Order to Show Cause for Care and Supervision dated March 8, 2022. See Certification of Richard J. Teer, Esq., counsel for Dr. Winston at Ex. C. Second, Dr. Winston evidently presented C.H. with a Consent Form prior to the evaluation (which she signed and dated), which informed C.H. that the forensic evaluation was being conducted at DCP&P's request, for possible use in civil litigation, and with the goal of providing DCP&P information about C.H. 's psychological functioning. Id. at Ex. D. The Consent Form also advised C.H. that Dr. Winston's client was DCP&P, and as such, DCP&P would have complete authority over the results of the evaluation. Ibid. Based on these facts, the Court agrees that application of the litigation privilege is paramount here, considering that

> Dr. Winston was retained to provide her opinion regarding the health and wellbeing of a child vis a vis her mother's ability to care for her. These types of suits mandate that the evaluating physician be free to provide her opinion without the threat of subsequent litigation. Dr. Winston had no contractual or doctor patient relationship with [C.H.]. Her sole role in this matter was to evaluate [C.H.] and provide her observations to DCP&P and the Chancery Court.

See Winston Brief at 9. Clearly, the statements made by Dr. Winston in her evaluation of C.H. correspond directly with the DCP&P proceedings that were pending in the Chancery Division. Accordingly, the Court is satisfied that the litigation privilege precludes the imposition of liability against Dr. Winston in this matter entirely.

2. *Judicial Immunity*

"[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages. Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial." Mireles v. Waco, 502 U.S. 9,11 (1991) (citations omitted). The doctrine "is supported by a

[5] See Compl. ¶¶ 73-75.

long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability." Antoine v. Byers & Anderson, Inc., 508 U.S. 429, 435 (1993); see also K.D. v. Bozarth, 313 N.J. Super. 561, 568 (App. Div. 1998).

The common law extended absolute judicial immunity to the work of quasi-judicial figures like arbitrators. See Levine v. Wiss & Co., 97 N.J. 242, 250 (1984). "[T]he touchstone for its applicability was performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights." Antoine, 508 U.S. at 433 n.8 (quoting Burns v. Reed, 500 U.S. 478, 500 (1991)).

Importantly, immunity of judicial or quasi-judicial officers attaches only to the "judicial acts" performed within the individual's subject matter jurisdiction. Bozarth, 313 N.J. Super. at 713. The United States Supreme Court "has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity." Forrester v. White, 484 U.S. 219, 227 (1988). Nonetheless, it continues to adhere to the view that "[w]hether the act done by [a judge] was judicial or not is to be determined by its character, and not by the character of the agent." Id. at 228 (citation omitted). To determine its character, the reviewing court should scrutinize the nature of the act and the expectations of the parties, "whether it is a function normally performed by a judge … [and] whether [the parties] dealt with the judge in his judicial capacity." Stump v. Sparkman, 435 U.S. 349, 362 (1978).

Here, Dr. Winston argues that in addition to her enjoyment of the litigation privilege, she is also immune from suit by way of the doctrine of judicial immunity. See Winston Brief at 9. On this point too, the Court agrees. First, Dr. Winston's evaluation of C.H. can clearly be viewed as a "judicial act," given that it was conducted strictly in connection with ongoing DCP&P proceedings and for the Chancery Court's review. Further, C.H. was court ordered to cooperate with DCP&P and attend evaluations for the purpose of litigating the underlying judicial matter. In turn, Dr. Winston only owed a duty of care in this matter to DCP&P. Accordingly, the Court is satisfied that judicial immunity equally attaches to Dr. Winston.

In sum, because Dr. Winston is entitled to immunity on ALL claims set forth in the Complaint insofar as they arise out of Dr. Winston's evaluation of C.H. , Counts I-IX of the Complaint must be dismissed against Dr. Winston.

c. *Dr. Riesenman*[6]

In asserting entitlement to dismissal of Count I against him, Dr. Riesenman argues absolute immunity from civil liability as a matter of law. See Riesenman Brief at 4-6. Specifically, Dr. Riesenman calls the Court's attention to his statutory duty to report imposed by N.J.S.A. 9:6-8.10, which states that "[a]ny person having reasonable cause to believe that a child has been subjected to child abuse … or acts of child abuse **shall report the same immediately to the Division of Child Protection and Permanency** by telephone or otherwise." (emphasis added). To discern whether a child has been subjected to child abuse, N.J.S.A. 9:6-8.9 defines "abused child" and states as follows, in pertinent part:

> 'Abused child' means a child … whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, or such other person having his custody and control, to exercise a minimum degree of care … in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof … or by any other act of a similarly serious nature requiring the aid of the court …

N.J.S.A. 9:6-8.9(d)(2). As Dr. Riesenman highlights, in keeping "with the legislative intent to impose a universal obligation to report child abuse whenever a person forms a reasonable belief that a child has been subjected to child abuse, the legislature has granted immunity for such reporting." See Riesenman Brief at 4. Notably, this legislative grant of immunity is broad, and is captured by statute as follows, in pertinent part:

> Anyone acting pursuant to this act in the making of a report under this act shall have immunity from any liability, civil or criminal, that might otherwise by incurred or imposed. Any such person shall have the same immunity with respect to testimony given in any judicial proceeding resulting from such report.

N.J.S.A. 9:6-8.13. Further, while the reporter must have "reasonable cause" to believe that a child has been abused, "the immunity afforded by N.J.S.A. 9:6-8.13 provides an absolute privilege, whether or not the reporter acted with malice." F.A. v. W.J.F., 248 N.J. Super. 484, 490 (App. Div. 1991) (citing to Rubinstein v. Baron, 219 N.J. Super. 129, 529 (Law Div. 1987)).

[6] Dr. Riesenman relies upon the doctrine of absolute immunity from civil liability in arguing that the entirety of Plaintiffs' Complaint should be dismissed against him. Although this argument will only be addressed with respect to Count I, because it is uniformly asserted against all Counts, it should be noted that the analysis accompanying Count I is also applicable to Counts II-IX.

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Here, it is readily apparent that Dr. Riesenman is afforded absolute immunity from civil suit pursuant to N.J.S.A. 9:6-8.13. Even viewing all factual allegations in the Complaint as true and drawing all reasonable inferences in favor of Plaintiffs, the undisputed record before the Court reflects that Dr. Riesenman, S.H.'s pediatrician, personally examined S.H. and observed bruises on S.H. during the physical examination. Based upon his observations, Dr. Riesenman certainly had reasonable cause to believe that S.H. was either impaired or in imminent danger of being impaired due to C.H. 's unreasonable inflicting or allowing to be inflicted harm. More specifically, Dr. Riesenman had reasonable cause to believe that C.H. was suffering from Munchausen by Proxy syndrome, such that C.H. may very well have been seeking unnecessary medical intervention for S.H. on the basis of exaggerated or fictitious physical symptoms. In opposition, Plaintiffs counter that Dr. Riesenman's subject conduct, *i.e.*, what Plaintiffs characterize as weaponizing the DCP&P referral to intentionally cause harm, cannot be afforded immunity. See Opp. Brief at 15-16. In furtherance of this position, Plaintiffs cite to the Appellate Division in State v. Snell, which found that applying "the immunity statute in the context of domestic violence would legalize the weaponization of [DCP&P] referrals as a mechanism of harassment, which would further victimize children as being exposed to such acts of domestic violence." State v. Snell, 314 N.J. Super. 331, 335 (App. Div. 1998).

The Court finds Plaintiffs' reliance on State v. Snell misguided. Here, there are no facts before the Court which even hint at concerns of S.H. experiencing domestic violence. As a result, this is not a case where the broad grant of immunity established by N.J.S.A. 9:6-8.13 should be curtailed. Moreover, as established by the Appellate Division in F.A. v. W.J.F., whether or not Dr. Riesenman harbored ill-intent when reporting his suspicions to DCP&P is wholly irrelevant; the facts indicate that Dr. Riesenman fulfilled his statutory duty to report suspected child abuse, of which he had reasonable cause to believe was occurring. This finding alone provides sufficient grounds to dismiss the entirety of Plaintiff's Complaint against Dr. Riesenman.

Accordingly, because Dr. Riesenman is entitled to immunity on ALL claims set forth in the Complaint insofar as they arise out of Dr. Riesenman's reporting possible child abuse to DCP&P, Counts I-IX of the Complaint must be dismissed against Dr. Riesenman.

d. *DCP&P Defendants*[7]

In asserting their entitlement to dismissal of Count I against them, the DCP&P Defendants invoke a number of immunities from liability in this matter.[8]

1. *Absolute Immunity*

The Tort Claims Act ("TCA") provides immunity of governmental bodies except where there is a statutory declaration of liability. Malloy v. State, 76 N.J. 515, 519 (1978). The TCA provides that "public entities shall only be liable for their negligence within the limitations of this act and in accordance with the fair and uniform principles established herein. N.J.S.A. 59:1-2. Generally, a public entity is not liable for an injury, regardless of whether the injury arises out of an act or omission of the public entity or employee or any other person. N.J.S.A. 59:2-1. The TCA states:

> (a) A public entity **is liable** for **injury proximately caused by an act or omission of a public employee within the scope of his employment** in the same manner and to the same extent as a private individual under like circumstances.
> (b) A public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable.

N.J.S.A. 59:2-2 (emphasis added). While a public entity is exempt from liability for an injury resulting from the exercise of judgment or discretion vested in the entity, a public entity is **not** exonerated from liability for negligence arising out of acts or omissions of its employees in carrying out their ministerial, rather than discretionary, functions. N.J.S.A. 59:2-3(d).

The burden is upon the public entity to prove that a specific action was discretionary rather than ministerial (or mandatory) for purposes of the TCA. See Kolitch v. Lindedahl, 100 N.J. 485, 497 (1985). Moreover, the New Jersey Supreme Court has held that the above provisions "refer[] to actual, high-level policymaking decisions involving the balancing of competing considerations." Costa v. Josey, 83 N.J. 49, 55 (1980). The public entity must

[7] Encompasses DCP&P as well as DCP&P individual employees Cristina Perez, Rosalba Avila, Jennifer Boudreau, and Felipe Sanchez (collectively, the "State Employees").
[8] The DCP&P Defendants rely upon the doctrines of absolute immunity, quasi-judicial immunity, discretionary immunity, and qualified immunity in arguing that Counts I, II, III, IV, VI, VIII, and IX should be dismissed against them. Although these arguments are only addressed with respect to Count I, because they are asserted uniformly against the aforementioned Counts, it should be noted that the analysis accompanying Count I is also applicable to Counts II, III, IV, VI, VIII, and IX.

demonstrate that a "conscious balancing of risks and advantages occurred." Id. at 57. As opposed to a discretionary act, "[a] ministerial act is one which public officials are required to perform upon a given state of facts in a prescribed manner, in obedience to the mandate of legal authority and without regard to their own judgment or opinion concerning the propriety or impropriety of the act to be performed." Ritter v. Castellini, 173 N.J. Super. 509, 514-15 (Law Div. 1980).

The TCA, at N.J.S.A. 59:2-10, states that "[a] public entity is not liable for the acts or omissions of a public employee constituting a crime, actual fraud, actual malice, or willful misconduct." McDonough v. Jorda, 214 N.J. Super. 338, 350 (App Div. 1986) (holding when a municipal employee committed intentional torts, *respondeat superior* did not apply to the municipality under N.J.S.A. 59:2-10). Finally, within the context of enforcing laws, a public entity is not liable for failing to enforce any law. N.J.S.A. 59:2-4.

Individual public employees are liable for injuries caused by their act or omission to act to the same extent a private person would be. N.J.S.A. 59:3-1. Although this is the case, public employees—as is true also for public entities—are immune from liability for any injury resulting from their discretionary activities within the scope of their employment. N.J.S.A. 59:3-2. Specifically, such employees are liable for their ministerial actions: "[n]othing in this section shall exonerate a public employee for negligence arising out of his acts or omissions in carrying out his ministerial functions." Ibid. Such employees are also liable for actions outside the scope of their employment as well as actions that constitute a "crime, actual fraud, actual malice, or willful misconduct." N.J.S.A. 59:3-14. Willful misconduct is defined as "the knowing failure to follow specific orders, 'knowing' that there is an order and willfully failing to follow it, i.e., intentionally failing to obey the order." Fielder v. Stonack, 141 N.J. 101, 126 (1995).

Within the context of enforcing laws—as likewise holds true for public entities—public employees are exempt from liability if they act in "good faith in the execution or enforcement of any law." N.J.S.A. 59:3-3. Nonetheless, the defense of good faith in the enforcement or execution of the law is unavailable when the public employee is guilty of willful misconduct (as defined above). Fielder, 41 N.J. at 126.

2. *Quasi-Judicial Immunity*

To reiterate what was discussed above with respect to Dr. Winston's enjoyment of judicial immunity, the common law extended absolute judicial immunity to the work of quasi-judicial figures like arbitrators. See Levine v. Wiss & Co., 97 N.J. 242, 250 (1984). "[T]he touchstone for its applicability was performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights." Antoine, 508 U.S. at 433 n.8 (quoting Burns v. Reed, 500 U.S. 478, 500 (1991)).

Importantly, immunity of judicial or quasi-judicial officers attaches only to the "judicial acts" performed within the individual's subject matter jurisdiction. Bozarth, 313 N.J. Super. at 713. The United States Supreme Court "has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity." Forrester v. White, 484 U.S. 219, 227 (1988). Nonetheless, it continues to adhere to the view that "[w]hether the act done by [a judge] was judicial or not is to be determined by its character, and not by the character of the agent." Id. at 228 (citation omitted). To determine its character, the reviewing court should scrutinize the nature of the act and the expectations of the parties, "whether it is a function normally performed by a judge … [and] whether [the parties] dealt with the judge in his judicial capacity." Stump v. Sparkman, 435 U.S. 349, 362 (1978).

3. *Discretionary Immunity*

The doctrine of discretionary immunity was adopted in New Jersey as a basis for immunity from suit for the actions of government officials brought under the New Jersey Civil Rights Act, which is analogous to 42 U.S.C. § 1983. Officials may be shielded from liability for civil damages if their discretionary acts "do not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Ramos v. Flowers, 429 N.J. Super. 13, 26 (App. Div. 2012) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)).

Whether a government official is entitled to protection under the doctrine is a legal question. Rogers v. Powell, 120 F.3d 446, 454 (3d Cir. Pa. 1997). A court, using a flexible approach, applies either or both of the two-prongs: first, whether "taken in the light most favorable to the party asserting the injury, . . . the facts alleged show the officer's conduct violated a constitutional right"; and second, "whether the right was 'clearly established' at the time of defendant's alleged misconduct." Id. at 28 (citing Saucier v. Katz, 533 U.S. 194 (2001) and Pearson v. Callahan, 555 U.S. 223 (2009)).

In determining "whether a right is clearly established, the court ought not engage in "broad, abstract reasoning, but, rather, [its decision] should be based upon 'particularized' considerations in light of information the officer possessed at the time." Bernstein v. State, 411 N.J. Super. 316, 339-40 (App. Div. 2010). The contours of the right must be sufficiently clear so that a "reasonably competent officer" would have understood that he was violating a clearly established right. Ibid. If "officers of reasonable competence could disagree on this issue, immunity should be recognized." Id. An official's entitlement to qualified immunity based on probable cause or a reasonable belief that probable cause existed is a question of law that should be decided as early in the case as possible. Wildoner v. Borough of Ramsey, 162 N.J. 375, 387 (2000).

4. *Qualified Immunity*

Under the TCA, a public employee is not liable if he acts in good faith in the execution or enforcement of any law. N.J.S.A. 59:3-3. To pierce this qualified immunity, a plaintiff must prove more than ordinary negligence. Canico v. Hurtado, 144 N.J. 361, 365 (1996). However, on a motion for summary judgment, "a public employee need not establish his subjective, *i.e.*, actual, good faith if his conduct was objectively reasonable. Subjective good faith nevertheless remains available to a public employee as a second line of defense, which he may raise at trial even if he was not acting reasonably." Hayes v. Mercer, 217 N.J. Super. 614, 622-23 (App. Div. 1987). Thus, an employee must either "demonstrate 'objective reasonableness' or that he behaved with 'subjective good faith.'" Clark v. Township of Mount Laurel, 357 N.J. Super. 362, 369 (App. Div. 2003) (citing Alston v. City of Camden, 168 N.J. 170, 183 (2001)).

N.J.S.A. 59:3-14 creates an exception to immunity for willful misconduct. Fielder v. Stonack, 141 N.J. 101 (1995). Willful misconduct means "the knowing failure to follow specific orders, 'knowing' that there is an order and willfully failing to follow it, *i.e.*, intentionally failing to obey the order." Id. at 126. In the context of a pursuit, willful misconduct has two elements: (1) disobeying either a specific lawful command of a superior or a specific lawful standing order; and (2) knowing of the command or standing order, knowing that it is being violated and, intending to violate it. Ibid. "Where the command or order is not only specific but clearly has no exceptions—expressed or implied—willful misconduct is not affected by the good faith of the

public employee who believes he or she somehow had a right to knowingly and willfully disobey." Ibid.

Here, it is readily apparent that the acts undertaken by DCP&P in this matter—as outlined by Plaintiffs in their Complaint—involve the carrying out of DC&P's discretionary functions, and *not* of their ministerial functions. Accepting the allegations in the Complaint as true, DCP&P relied upon the statements and reports from Dr. Riesenman and Dr. Winston in instituting Title 9 and Title 30 proceedings against C.H. . DCP&P then spent nearly two years investigating and prosecuting these actions. Accordingly, the Court agrees with the DCP&P Defendants that both DCP&P and the State Employees are protected by Title 59 of the TCA, and as such they are afforded absolute immunity for their discretionary acts including all those alleged in the Complaint. See State Brief at 13. Simply put, the DCP&P Defendants "are being sued for doing exactly what they are tasked with." Id. at 18.

Moreover, the Court does not find that Plaintiffs have successfully pierced the State Employees' immunity by a showing of willful misconduct, as the "high degree of culpability" necessary for such a finding is nonexistent here. Id. at 36. While Plaintiffs allege that "the DCP&P Defendants acted objectively unreasonable, demonstrating willful and wanton disregard for the Plaintiff[s] and the ensuing negative effects and consequences of such irresponsibility[,]" there are no facts in the Complaint which support this conclusion. See Opp. Brief at 17. Indeed, the Court agrees that "more is required than an allegation of carelessness or poor decision making to establish malice or willful misconduct." See State Reply Brief at 5. That is, in order to overcome the State Employees' immunity, Plaintiffs would have needed to set forth specific factual allegations which demonstrate that the State Employees knowingly and intentionally violated their basic role of protecting children. To the contrary, there is nothing in Plaintiffs' Complaint which suggests the State Employees did anything other than what they were charged with, *i.e.*, "investigating and/or prosecuting allegations of child abuse and neglect under Title 9 and Tile 30." Id. at 6. Lastly, there is no indication that an opportunity for further discovery would cure the deficiencies in Plaintiffs' Complaint by way of demonstrating willful misconduct on the part of the State Employees. Indeed, Plaintiffs fail to proffer an Amended Complaint establishing additional factual grounds upon which further discovery could be conducted that might even remotely lead to evidence of willful misconduct. By Plaintiffs neglecting to propose

an Amended Complaint which might incline the imposition of discovery, the Court views the prospect of further discovery in this matter futile.

Finally, even if Plaintiffs established willful misconduct on the part of DCP&P itself, as a public entity under the TCA, DCP&P cannot be held liable for same pursuant to N.J.S.A. 59:2-10 (see above).

In sum, because the DCP&P Defendants are entitled to immunity from Counts I, II, III, IV, VI, VIII, and IX of the Complaint insofar as they arise out of the institution and maintenance of Title 9 and Title 30 proceedings, Counts I, II, III, IV, VI, VIII, and IX of the Complaint must be dismissed against the DCP&P Defendants.

II. Count Two: Intentional Infliction of Emotional Distress ("IIED")

Our Supreme Court first recognized a cause of action for IIED in Buckley v. Trenton Sav. Fund Soc., 111 N.J. 355 (1988). In order to state a claim for IIED, the plaintiff must establish that (1) the defendant acted intentionally or recklessly in deliberate disregard for the high degree of probability that emotional distress will follow; (2) the defendant's conduct was extreme and outrageous[9]; and (3) the defendant's conduct was the proximate cause of the plaintiff's emotional distress that is so severe such that no reasonable man could be expected to endure it. Buckley, 111 N.J. at 366.

Severe emotional distress as contemplated by the Supreme Court in Buckley means "any type of severe and disabling emotional or mental condition which may generally be recognized and diagnosed by professionals trained to do so…" Taylor v. Metzger, 152 N.J. at 490, 515 (1998). Plaintiffs cannot recover for "idiosyncratic emotional distress that would not be experienced by average persons." Id. at 516. The distress must be substantial to result in either physical illness or serious psychological suffering. Turner v. Wong, 363 N.J. Super. 186, 200 (App. Div. 2003). The standard is objective and the defendant's conduct must be such that an average person similarly situated to the plaintiff would suffer emotional distress or mental harm. Ibid. This objective standard ensures that defendants are not held liable when hypersensitive

[9] To be considered extreme and outrageous, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." Buckley, 111 N.J. at 366 (quoting Restatement (Second) of Torts, § 46 cmt. d).

plaintiffs suffer severe emotional trauma from conduct that would not seriously wound most people. See Buckley, 111 N.J. at 367. Mere allegations of "aggravation, embarrassment, an unspecified number of headaches, and loss of sleep" are insufficient. Turner, 363 N. J. Super. at 200. Nor is it enough for a plaintiff to allege he or she was "acutely upset" by the incident, particularly where no medical treatment was sought. Id. at 201.

a. *H. Defendants*

The H. Defendants advance that no allegation in the Complaint attributable to the conduct of Ca.H, D.H. , or Ch.H. meets the test for "outrageous conduct" in a claim for IIED. See H. Brief at 8. In Opposition to this argument, Plaintiffs counter that the H. Defendants "took calculated, intentional steps by submitting false information to DCP&P and by communicating with Dr. Riesenman to contact DCP&P to institute baseless proceedings against [C.H.]." See Opp. Brief at 14.

With respect to Ca.H. and D.H. , even accepting as true the facts alleged in the Complaint and construing all reasonable inferences of fact in favor of Plaintiffs, the fact "that Ca.H. and D.H. made statements to a doctor about possible neglect or abuse of her child, their granddaughter, that resulted in a DCP&P investigation" is not tantamount to outrageous, utterly intolerable conduct necessary for an IIED claim. See H. Brief at 8. To the contrary, Ca.H. and D.H. 's concerned comments to their granddaughter's treating doctor is completely within the bounds of what a civilized society may reflect. Notwithstanding, as aforementioned, Plaintiffs ultimately filed a Stipulation of Dismissal against Defendants Ca.H. and D.H. , so Plaintiffs' allegations against them for IIED now fail as a matter of law.

By extension, with respect to Plaintiffs' claim for IIED against Ch.H. , same also falls short under Rule 4:6-2(e). On its face, the Complaint is devoid of factual allegations which, if true, would suggest that Ch.H. is liable to Plaintiffs for IIED. Instead, all factual allegations pertaining to Plaintiffs' IIED claims stem from negative comments explicitly made by Ca.H. and D.H. . That said, there is no indication Ch.H. ever acted as an agent of Ca.H. and D.H. insofar as any statements can be attributable to Ch.H. for purposes of Ch.H. meeting the test for "outrageous conduct."

Accordingly, Count II of the Complaint is dismissed as to the H. Defendants.

III. Count Three: Defamatory Injury to Reputation and Defamation *Per Se*

Defamation is the publication of false statements that injure the reputation of another. Printing Mart-Morristown, 116 N.J. at 765. A plaintiff bringing a claim for defamation must plead facts "sufficient to identify the defamatory words, their utterer and the fact of their publication. A vague conclusory allegation is not enough." Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 101 (App. Div. 1986). In order to establish a prima facie case of defamation, a plaintiff must show the defendant "(1) made a defamatory statement of fact (2) concerning the plaintiff (3) which was false (4) which was communicated to a person or persons other than the plaintiff … [and] (5) fault." Govito v. West Jersey Health System, Inc., 332 N.J. Super. 293, 305-306 (App. Div. 2000). The plaintiff's complaint is required to allege a defamatory statement as well as facts sufficient to identify the defamer and the circumstances of the publication. Printing Mart-Morristown, 116 N.J. at 767-68. The plaintiff must plead the facts and give some detail of the cause of action and cannot file a conclusory complaint to find out if a cause of action exists through discovery. Id. at 768.

The threshold question is whether the statement at issue is reasonably susceptible of a defamatory meaning. Ward v. Zelikovsky, 136 N.J. 516, 528 (1993). In making this determination, the court considers the statement's content, verifiability, and context. Lynch v. New Jersey Educ. Ass'n, 161 N.J. 152, 167 (1999). In evaluating the content, the court considers the statement's "literal meaning", id., but must also "scrutinize the language 'according to the fair and natural meaning given it by reasonable persons of ordinary intelligence.'" Printing Mart-Morristown, 116 N.J. at 765. The "context of a statement can affect significantly its fair and natural meaning." Lynch, 161 N.J. at 168. The focus of the context inquiry is "the effect of the alleged defamatory statement on third persons, that is, whether they viewed the plaintiff in a lesser light as a result of hearing or reading the offending statement." Russo v. Nagel, 358 N.J. Super. 254, 263-64 (App. Div. 2003). Lastly, whether a statement is verifiable is determined by "whether it can be proved true or false." Id. at 167. Generally, statements of opinion "cannot be proved true or false." Id. New Jersey courts have held that words that clearly denigrate a person's reputation are defamatory on their face. Printing Mart-Morristown, 116 N.J. at 766. Specifically, "false statements designed to produce an adverse effect on one's business or trade" are actionable. Id.

Defamation *per se* arises when the plaintiff is accused of having committed a criminal offense, having a loathsome disease, engaging in conduct or having a condition or trait

incompatible with his or her business, or having engaged in serious sexual misconduct. McLaughlin v. Rosanio, Bailets & Talamo, 331 N.J. Super. 303, 314 (App. Div. 2000).

In certain situations, a statement may be protected under a qualified privilege even though it is defamatory. Govito, 332 N.J. Super at 309. The policy behind the privilege is the "legitimate and reasonable need, in particular situations, for private people to be able to freely express private concerns to a limited and correlatively concerned audience, whether or not those concerns also touch upon the public interest in the broad sense." Id. The determination of whether the privilege exists is the "circumstantial justification for the publication of the defamatory information … the appropriateness of the occasion on which the defamatory information is published, the legitimacy of the interest thereby sought to be protected or promoted, and the pertinence of the receipt of that information by the recipient." Id. at 309-10. The question of whether a defamatory statement is privileged is one for the Court, which must make an "objective determination of whether the defamatory statement was on its face an apparently reasonable response to the circumstances." Id. Once the privilege applies, the plaintiff must show that the "publisher knew the statement to be false or acted in reckless disregard of its truth or falsity." Erickson v. Marsh & McLennan Co., 117 N.J. 539, 565 (1990).

The statute of limitations governing defamation actions is as follows: "Every action at law for libel or slander shall be commenced within 1 year next after the publication of the alleged libel or slander." N.J.S.A. 2A:14-3.

a. *H. Defendants*

With respect to defamatory statements by the H. Defendants which were injurious to Plaintiffs, the H. Defendants argue that the Complaint's defamation claim fails for timeliness and lack of specificity. See H. Brief at 9. The Complaint sets forth the following factual allegations upon which Plaintiffs seemingly rest their claim for defamation against the H. Defendants. First, the H. Defendants made material misrepresentations concerning, and acted in concert to bring about and maintain, the DCP&P proceedings. See Compl. ¶¶ 21-22. Second, D.H. told Dr. Riesenman false statements and information to induce Dr. Riesenman to contact DCP&P, including the made-up allegation that C.H. had Munchausen by Proxy syndrome. Id. ¶¶ 66-67. Third, the H. Defendants—and in particular D.H. — made up the Munchausen by Proxy syndrome and fed misinformation to Dr. Riesenman to

support this fake diagnosis. Id. ¶ 69. Fourth, in a letter sent by Dr. Riesenman to DCP&P, wherein Dr. Riesenman retracts any prior support for the allegations he made against C.H. , Dr. Riesenman explicitly states that he "received several pieces of bad information that [he] unfortunately made a snap decision on the basis of." Id. ¶¶ 77-78. These "several pieces of bad information" referenced in Dr. Riesenman's correspondence to DCP&P were intentional misrepresentations about C.H. made by the H. Defendants. Id. ¶ 79.

In addition to the above factual allegations, Plaintiffs generally contend in Count III of the Complaint that Defendants made false statements regarding C.H. 's mental health, medical conditions, and other material facts. Id. ¶ 115. According to Plaintiffs, these statements were defamatory, rendered both in word and spoken format, communicated to the public via public documents, and harmful to C.H. 's personal and business reputation. Id. ¶¶ 115-120. Additionally, Plaintiffs allege that the subject slander is not privileged but instead qualifies as *per se* defamation because it accuses C.H. of having committed a criminal offense. Id. ¶ 121.

Notably, the above false statements and misrepresentations alleged in the Complaint regarding C.H. 's mental state are not in any way attributable specifically to Ch.H. . Rather, the alleged defamatory statements are tied directly to Defendants Ca.H. and D.H. . This is further confirmed by Dr. Riesenman's recantation letter, wherein Dr. Riesenman reports having incorrectly relied upon what was relayed to him by S.H.'s grandparents. Absent any factual allegations in the Complaint which even suggest Ch.H. engaged in defamation that fared injurious to Plaintiffs, Ch.H. cannot be held liable for same.

Notwithstanding, the H. Defendants argue that "although Plaintiff has not specified any statements that she alleges [the H. Defendants] made leading to a DCP&P investigation, which are alleged to have been defamatory, her Complaint confirms that any such statement was made more than 1 year ago." See H. Brief at 9. In support of this contention, the H. Defendants rely upon Plaintiffs' reference to Dr. Riesenman's July 2022 letter, wherein Dr. Riesenman states he made a report to DCP&P in February of 2022. Id. at 11. Based upon that representation, the H. Defendants set forth that any defamatory statements they allegedly made had to have been made prior to or during the month of February 2022. Ibid. Considering Plaintiffs' Complaint was filed a minimum of 20 months later on October 31, 2023, the H. Defendants argue that Plaintiffs have no actionable defamation claim against them.

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In rebuttal to the H. Defendants' statute of limitations argument, Plaintiffs counter that the Discovery Rule renders their claims timely, as Plaintiffs could not have discovered the H. Defendants' defamatory statements "until Plaintiffs received them in discovery in the DCP&P litigation which was early 2023." See Opp. Brief at 19. As Plaintiffs emphasize, under the Discovery Rule, "a cause of action will be held not to accrue until the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim." The Palisades at Fort Lee Condominium Ass'n, Inc. v. 100 Old Palisade, LLC, 230 N.J. 427, 444 (2017). That said, "a plaintiff's cause of action may accrue at different times against different defendants, depending on when the plaintiff knew or reasonably should have known he had an actionable claim against each defendant." Id. at 447. Because the Court must draw all reasonable inferences in favor of Plaintiffs, the Court is inclined to accept that the Discovery Rule applies as to the H. Defendants' defamatory statements, and thus Plaintiffs' defamation claim against them is not barred by N.J.S.A. 2A:14-3.[10]

Assuming, *arguendo*, that Plaintiffs meet the statute of limitations requirement for defamation actions, the H. Defendants argue that Plaintiffs' defamation claim against them should nonetheless be dismissed for lack of specificity. See H. Brief at 11. In support of this contention, the H. Defendants urge that the facts as pleaded render it impossible for the Court to make the necessary initial determination of whether the statements allegedly made by the H. Defendants could be considered defamatory on their face. Id. at 12. On this point, the Court agrees. Plaintiffs generally assert false statements regarding C.H. 's psychiatric condition which led to Dr. Riesenman to contact DCP&P. The actual substance of these statements is not provided with sufficient specificity for the Court to complete the threshold inquiry to which the H. Defendants are entitled. In order to pass muster, Plaintiffs' Complaint should have clearly identified the words used in addition to who exactly said them.

Accordingly, Count III of the Complaint is dismissed as the H. Defendants.

IV. Count Four: Malicious Abuse of Legal Process

[10] The H. Defendants point out in their moving brief that "the discovery rule is inapplicable to libel actions." See NuWave Inv. Corp. v. Hyman Beck & Co., Inc., 432 N.J. Super. 539, 569. However, Plaintiffs' defamation claim against the H. Defendants is limited to slander, so the Discovery Rule is fair game.

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Malicious abuse of process is the "improper, unwarranted and perverted use of process after it has been issued" while malicious prosecution (malicious use of process) is "causing process to issue maliciously and without reasonable or probable cause." Baglini v. Lauletta, 338 N.J. Super. 282, 294 (App. Div. 2001). To state a claim for malicious abuse of process, the plaintiff must show the defendant performed "further acts after issuance of process which represent the perversion or abuse of the legitimate purposes of that process." Ibid. Without some coercive or illegitimate use of the judicial process, there is no claim for its abuse. Ibid.

a. *H. Defendants*

Similar to the analysis accompanying "Count One: Malicious Prosecution" (above), Count IV of the Complaint must be dismissed as to the H. Defendants, given that none of the H. Defendants used the State's process in either the Title 9 or Title 30 proceedings alleged to have been commenced. Indeed, as the H. Defendants argue, only DCP&P controlled those actions as the institutor of those actions, and it cannot be said that any of the H. Defendants "engaged in any 'willful act' in the use of the State's proceedings against the Plaintiff after they were instituted." See H. Brief at 14. Thus, even accepting as true all facts alleged in the Complaint and construing all reasonable inferences in favor of Plaintiffs, Count IV of the Complaint must be dismissed against the H. Defendants.

V. Count Five: Civil Rights Violations Under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 *et seq.*

Under the LAD, it is unlawful for employers to discriminate in their employment practices based on any of the enumerated grounds[11]. Rios v. Meda Pharm, Inc., 247 N.J. 1, 2 (citing N.J.S.A. 10:5-12(a)). It is well settled that the LAD is intended to protect "the civil rights of individual aggrieved employees" as well as "the public's strong interest in a discrimination-free workplace." Rios, 247 N.J. at 9 (quoting Lehmann v. Toys 'R' Us, 132 N.J. 587, 600 (1993)). Accordingly, "[t]he LAD is remedial legislation that should be liberally construed to advance its purposes." Id. at 10.

[11] N.J.S.A. 10:5-12(a) delineates the following grounds as unlawful grounds for discrimination: race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, and disability.

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The LAD recognizes and declares as a civil right the opportunity for all persons "to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation … without discrimination because of race … disability … nationality, [or] sex. …" N.J.S.A. 10:5-4. In furtherance of that civil right, the LAD makes it unlawful for

> any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof. …" N.J.S.A. 10:5-12(f)(1).

In particular, to state a claim under the LAD for discrimination by a place of public accommodation, a plaintiff must establish the following: (1) that he or she is a member of a protected class; (2) that the defendant's actions were motivated by discrimination; and (3) that others not within the protected class did not suffer similar adverse actions. See Chong v. City of Hoboken, 2022 U.S. Dist. LEXIS 145238, at *8-9 (D.N.J. Aug. 15, 2022).

a. *H. Defendants*

In Count V of the Complaint, Plaintiffs allege generally that Defendants discriminated against Plaintiffs on the basis of gender, disability (C.H. is diagnosed with multiple sclerosis), and form of conception (S.H. was born via IVF with a sperm donor). See Compl. ¶ 134. More specifically, Plaintiffs allege that these discriminatory acts, which failed to grant Plaintiffs "access to the competent protection of DCP&P" are tantamount to civil rights violations under the New Jersey LAD, N.J.S.A. 10:5-12 *et seq*. Id. at ¶ 130. Simply put, there is no right to "competent protection of DCP&P" contained in the LAD. Further, Plaintiffs have failed to plead any fact "which fits within any of N.J.S.A. 10:5-12's delineated prohibitions on gender or disability discrimination." See H. Brief at 15. Accordingly, the Court is satisfied that Count V of the Complaint should be dismissed as to the H. Defendants.

b. *DCP&P Defendants*

Similarly, the DCP&P Defendants argue that Plaintiffs fail to state a cognizable claim under the LAD, as the Complaint is devoid of factual allegations which demonstrate that the DCP&P Defendants "denied Plaintiffs the opportunity to obtain any accommodations, advantages, facilities, and privileges of [DCP&P]." See State Brief at 30. As the DCP&P

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Defendants reiterate, since the Complaint does not implicate an employment matter, the LAD's applicability depends on whether DCP&P is considered a "place of public accommodation" and whether Plaintiffs are members of a protected class. Here, Plaintiffs have not offered any facts in support of either of these requisite findings. Absent the articulation of the discrimination allegedly occurring at the hands of DCP&P, the Court is unable to assess whether the DCP&P Defendants complied with N.J.S.A. 10:5-12(f)(1). See State Brief at 32. Accordingly, the Court is satisfied that Count V of the Complaint should be dismissed as to the DCP&P Defendants.

VI. Count Six: Negligent Hiring and Retention

Our Supreme Court first expressly recognized the tort of negligent hiring or retention in Di Cosala v. Kay, 91 N.J. 159 (1982). There, the Court established two fundamental requirements for the tort of negligent hiring. See Di Cosala, 91 N.J. at 173. The first involves the knowledge of the employer and foreseeability of harm to third persons. Ibid. Specifically, an employer will only be held responsible for the torts of its employees beyond the scope of the employment where it knew or had reason to know of the particular unfitness, incompetence, or dangerous attributes of the employee and could reasonably have foreseen that such qualities created a risk of harm to other persons. Ibid. The second required showing for the tort is that, through the negligence of the employer in hiring the employee, the latter's incompetence, unfitness, or dangerous characteristics proximately caused the injury. Id. at 174.

In establishing these two fundamental requirements, the Supreme Court aligned itself with the majority of jurisdictions that also recognize the tort, holding that the employee conduct which may form the basis of the cause of action need not be within the scope of employment. Ibid. The wrong redressed in particular is negligence of the employer in the hiring or retention of employees whose qualities unreasonably expose the public to a risk of harm. Ibid.

a. *H. Defendants*

In Count VI of the Complaint, Plaintiffs allege generally that Defendants are responsible for negligently hiring unidentified agents, investigators, and/or employees who Defendants knew or had reason to know of their particular unfitness, incompetence, or dangerous attributes. See Compl. ¶ 138. Here, the H. Defendants did not hire anyone to work at DCP&P, nor do any of the H. Defendants work at DCP&P or for the State of New Jersey in any capacity. See

H. Brief at 16. In the absence of an employment relationship between the H. Defendants and DCP&P, Plaintiffs cannot establish a cognizable claim for negligent hiring or retention against the H. Defendants. Indeed, Plaintiffs do not address the H. Defendants' arguments as to Count VI in their Opposition. To the contrary, Plaintiffs constrain their rebuttal on this cause of action to the DCP&P defendants alone. See Opp. Brief at 20. Accordingly, Count VI of the Complaint is dismissed as to the H. Defendants.

VII. Count Seven: Violation of New Jersey Civil Rights Act, N.J.S.A. 10:6-2 *et seq.*

Pursuant to N.J.S.A. 10:6-2(c) of the NJCRA,

> Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges, or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges, or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

In the case at bar, Plaintiffs maintain that Defendants' conduct violated Plaintiff's civil rights by way of Defendants' institution and maintenance of the DCP&P Title 9 and Title 30 actions. See Opp. Brief at 21. Plaintiff's Complaint further maintains that the intentional and malicious prosecution of C.H. deprived C.H. of due process and equal protection of the laws. Ibid.

a. *H. Defendants*

The H. Defendants argue that because none of them are state actors, *i.e.*, individuals acting "under color of law," Plaintiffs cannot sustain a cognizable claim against them (all private citizens) for NJCRA violations. See H. Brief at 18. The Court agrees that even accepting the allegations in the Complaint as true, *e.g.*, that the H. Defendants made statements about C.H. which led to a DCP&P probe, the H. Defendants "are incapable of taking 'state action' that could form a basis for a New Jersey Civil Rights claim under N.J.S.A. 10:6-2(c)." Ibid. (citing Perez v. Zagami, LLC, 218 N.J. 202, 204 (2014)). Accordingly, Count VII of the Complaint must be dismissed as to the H. Defendants.

b. *DCP&P Defendants*

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Similarly, the DCP&P Defendants argue that Plaintiffs' NJCRA/constitutional claims against them fail on their face, given "that the State and its entities and officials in their official capacities are not considered 'persons[s]' for purposes of the NJCRA and are, thus, not amenable to suit." See State Brief at 10 (citing to Brown v. State, 442 N.J. Super. 406, 425-26 (App. Div. 2015), which held that the State is not a "person" under the NJCRA). Here, the Court recognizes that Plaintiffs do not challenge the arguments made by the DCP&P Defendants concerning Plaintiffs' constitutional claims based on alleged violations of civil rights brought under the NJCRA. See State Reply Brief at 3. In neglecting to do so, Plaintiffs have apparently conceded that the DCP&P Defendants are not amenable to suit under the NJCRA. Accordingly, Count VII of the Complaint must be dismissed as to the DCP&P Defendants.

VIII. Count Eight: Failure to Train

Similar to the tort of negligent hiring or retention, to be found liable for negligent supervision or training, the plaintiff must prove that (1) an employer knew or had reason to know that the failure to supervise or train an employee in a certain way would create a risk of harm and (2) that risk of harm materializes and causes the plaintiff's damages. G.A.-H. v. K.G.G., 238 N.J. 401, 415 (2019) ("when the duty at issue relates to the risk of harm created by a third party, the plaintiff must prove that the defendant knew or had reason to know of the risk of harm in question"). Like negligent hiring or retention, negligent training is not a form of vicarious liability; instead, liability for negligent training stems from the direct fault of the employer. Ibid.

a. *H. Defendants*

Count VIII of the Complaint must be dismissed as to the H. Defendants for the same reasons provided above with respect to dismissal of Count VI against the H. Defendants.

IX. Count Nine: Intentional and Negligent Infliction of Emotional Distress ("NIED")

NIED is "negligent conduct that is the proximate cause of emotional distress in a person to whom the actor owes a legal duty to exercise reasonable care." Decker v. Princeton Packet, Inc., 116 N.J. 418, 429 (1989). To establish liability, a plaintiff must prove defendant's conduct was negligent and proximately caused plaintiff's injuries. Id. "Recovery for negligent infliction of emotional harm requires that it must be reasonably foreseeable that the tortious conduct will cause genuine and substantial emotional distress or mental harm to average persons." Id. at 430.

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The court decides whether as a matter of law such emotional distress can be found, and the jury decides whether it has in fact been proved. Id.

a. *H. Defendants*

In Count IX of the Complaint, Plaintiffs reiterate their allegations of IIED, discussed above in "Count Two: Intentional Infliction of Emotional Distress." See Compl. ¶¶ 151-52. Additionally, although Plaintiffs state that Count IX "is pled against the DCP&P, and all individual Defendants[,]" Plaintiffs assert a claim for NIED and do so strictly against DCP&P. Id. ¶ 156 ("The negligent infliction of emotional distress claim in this case focuses on proximately caused damages resulting from the breach of a duty owed by DCP&P, its agents and employees to Plaintiff"). That said, Plaintiffs have failed to state a cognizable cause of action for NIED against the H. Defendants, and accordingly, Count IX of the Complaint must be dismissed as against them.

CONCLUSION

For the foregoing reasons, the respective Motions to Dismiss for Failure to State a Claim brought on behalf of Defendants Ch.H. , Allison Strasser Winston, PhD, Joseph Riesenman, MD, and the Department of Child Protection and Permanency ("DCP&P") as well as DCP&P employees Christina Perez, Rosalba Avila, Jennifer Boudreau (i/p/a Jennifer Beaudreaux), and Felipe Sanchez are all **GRANTED** in their entireties. A Conforming Order accompanies this Statement of Reasons.

SUPREME COURT OF NEW JERSEY
C-97 September Term 2026
091953

C.H. and S.H., a minor child,
Plaintiffs-Petitioners,
v.
Department of Children and Families, Division of Child Protection and Permanency, Department of Children and Families, Morris West Lo, State of New Jersey, D.H., C.H., Cristina Perez, Rosalba Avila, Jennifer Boudreau, Felipe Sanchez, D.W.,
Defendants,
and
Ch.H., Joseph J. Reisenman, M.D., and Allison Strasser Winston, Ph.D.,
Defendants-Respondents.

O R D E R

A petition for certification of the judgment in A-000773-24 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 16th day of September, 2026.

CLERK OF THE SUPREME COURT

HAMMERMAN ROSEN LLP
Marvin J. Hammerman [NJ Attorney ID #065462014]
Louis S. Raveson [NJ Attorney ID #024821976]
585 US 46 West
Fairfield, NJ 07004
Tel. (973) 227-1415
Fax. (201) 781-5682
Attorneys for Plaintiffs

C.H. & S. H. (a minor child),

Plaintiffs,

v.

DEPARTMENT OF CHILDREN AND FAMILIES; DIVISION OF CHILD PROTECTION AND PERMANENCY; DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO; STATE OF NEW JERSEY; D.H. ; Ca.H. ; Ch.H. ; CRISTINA PEREZ; ROSALBA AVILA; JENNIFER BEAUDREAUX; FELIPE SANCHEZ; D.W. ; JOSEPH J. REISENMAN, M.D.; ALLISON STRASSER WINSTON, PHD; JOHN DOES 1-10 (Fictitious Individuals); and, ABC CORPORATIONS 1-10 (Fictitious Entities).

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CIVIL PART
MORRIS COUNTY
DOCKET NO.:

Civil Action

COMPLAINT AND JURY DEMAND; RULE 1:38 CERTIFICATION; DESIGNATION OF TRIAL COUNSEL; DEMAND FOR PRODUCTION OF STATEMENTS; DEMAND FOR INSURANCE COVERAGE INFORMATION; DEMAND FOR INTERROGATORIES

Plaintiffs C.H. and S.H. (a minor child and daughter of C.H.), by and through their undersigned attorney, and by way of Complaint against Defendants DEPARTMENT OF CHILDREN AND FAMILIES; DIVISION OF CHILD PROTECTION AND PERMANENCY; DEPARTMENT OF CHILDREN AND FAMILIES,

MORRIS WEST LO; STATE OF NEW JERSEY; D.H. ; Ca.H. ; Ch.H. ; CRISTINA PEREZ; ROSALBA AVILA; JENNIFER BEAUDREAUX; FELIPE SANCHEZ; D.W. ; JOSEPH J. REISENMAN, M.D.; ALLISON STRASSER WINSTON, PHD; JOHN DOES 1-10 (Fictitious Individuals); and, ABC CORPORATIONS 1-10 (Fictitious Entities), hereby plead as follows:

STATEMENT OF THE CASE

This case is brought by Plaintiffs C.H. and her minor daughter S.H. against DEFENDANTS for malicious prosecution, malicious abuse of process, violation of Plaintiff's civil rights, intentional infliction of emotional distress and other claims due to Defendants' intentional actions and failures in their duties owed to Plaintiffs. Such intentional actions and corresponding failures resulted in the malicious institution and prosecution of DCP&P proceedings against Plaintiff with malice and without probable cause, in addition to unnecessarily subjecting Plaintiffs to numerous court proceedings, attorney's fees, associated costs, personal injuries and mental pain and anguish. All Division of Child Protection and Permanency actions against Plaintiff were dismissed, but only after irreparable harm was caused to the Plaintiffs.

VENUE AND JURISDICTION

1. This Court has jurisdiction over these Defendants as they are entities, municipalities, and/or residents of the State of New Jersey.

2. Venue is proper in this Court pursuant to R. 4:3-2 because all the events underlying these causes of action occurred in the County of Morris.

PARTIES

3. At all times relevant hereto, Plaintiff C.H. was a resident of the

State of New Jersey, with an address of [address redacted] , New Jersey.

4. At all times relevant hereto, Plaintiff S.H. ("PLAINTIFF" or "S.H.") was a minor child and a resident of the State of New Jersey with an address of [address redacted] Township, New Jersey.

5. At all times relevant hereto, Defendant DEPARTMENT OF CHILDREN AND FAMILIES ("DCF") was a government agency and juridical entity domiciled in the State of New Jersey with an address located at P.O. Box 729, Trenton, New Jersey 08625.

6. At all times relevant hereto, Defendant DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, ("DCF LO") was a government agency and juridical entity domiciled in the State of New Jersey with an address located at 855 Route 10 East, Randolph, New Jersey.

7. At all times relevant hereto, Defendant DIVISION OF CHILD PROTECTION & PERMANENCY ("DCP&P") was a government agency and juridical entity domiciled in the State of New Jersey with an address located at 855 Route 10 East, Randolph, New Jersey.

8. At all times relevant hereto, Defendant STATE OF NEW JERSEY was a juridical entity with an address located at Hughes Justice Complex, CN 80, Trenton, NJ 08625.

9. At all times relevant hereto Defendant D.H. was a resident of the State of New Jersey, with an address of 4 Skyler Court, Oak Ridge, New Jersey 07438.

10. At all times relevant hereto Defendant Ca.H. was a resident of the State of New Jersey, with an address of 4 Skyler Court, Oak Ridge, New Jersey 07438.

11. At all times relevant hereto Defendant Ch.H. was a resident of the State of New Jersey, with an address of [address redacted] .

12. At all times relevant hereto, Defendant CRISTINA PEREZ was a resident of the

State of New Jersey and employee of Defendant DCP&P with an address of 855 Route 10 East, Randolph, New Jersey.

13. At all times relevant ROSALBA AVILA was a resident of the State of New Jersey and employee of Defendant DCP&P with an address of 855 Route 10 East, Randolph, New Jersey.

14. At all times relevant JENNIFER BEAUDREAUX was a resident of the State of New Jersey and employee of Defendant DCP&P with an address of 855 Route 10 East, Randolph, New Jersey.

15. At all times relevant FELIPE SANCHEZ was a resident of the State of New Jersey and employee of Defendant DCP&P with an address of 855 Route 10 East, Randolph, New Jersey.

16. At all times relevant hereto, Defendant JOSEPH J. RIESENMAN, M.D. was a resident of the State of New Jersey, with an address of [address redacted] , NJ 07438.

17. At all times relevant hereto, Defendant ALLISON STRASSER WINSTON, PHD was a resident of the State of New Jersey, with an address of 50 Tice Boulevard, Suite 340, Woodcliff Lake, New Jersey 07677.

18. The fictitiously named Defendants JOHN DOES 1-10 and ABC CORPORATIONS 1-10 are impleaded to represent any other individual or entity not actually named in this Complaint who is or may be liable to the Plaintiffs for any damages or causes of action that arise out of, or are related to, this action, including any other entity or individual, agent, employee or investigator affiliated with, employed by, Defendant DCP&P, including an unknown coworker who, upon information and belief, was intimately involved with or otherwise

affiliated with Defendant Ch.H. .

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

19. The above-referenced public entities, including the DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY and its agents, investigators, and/or employees including Defendants CRISTINA PEREZ, ROSALBA AVILA, JENNIFER BEAUDREAUX, FELIPE SANCHEZ and ALLISON STRASSER WINSTON, PHD, ("DCP&P DEFENDANTS") have instituted, and/or continued, proceedings under Title 9 and Title 30 against Plaintiff, C.H. , without any basis in fact or law, with malice, causing Plaintiff and her minor child S.H. to suffer severe emotional, psychological and financial damages.

20. In particular, DCP&P DEFENDANTS failed to conduct a proper and/or reasonable investigation prior to instituting such proceedings, failed to investigate and act upon discovery during those proceedings, made false reports, were motivated by a malicious intent, and thereby maliciously prosecuted C.H. for baseless charges, subjecting PLAINTIFFS to many Court appearances and regular DCP&P visits for a period of nearly two (2) years' time, causing severe emotional pain and anguish and taking an extreme financial, emotional and reputational toll on PLAINTIFFS.

21. Defendants D.H. , Ca.H. AND Ch.H. (the "H. DEFENDANTS") made material misrepresentations concerning, and acted in concert to bring about, the DCP&P proceedings.

22. The H. DEFENDANTS made material misrepresentations to, and acted in concert with, Defendant JOSEPH J. RIESENMAN, M.D. (hereinafter "DR. RIESENMAN") to

institute and maintain the DCP&P prosecution.

23. On or around November 13, 2021, C.H. noticed that her daughter, S.H., was experiencing swelling of her left knee.

24. The following day, C.H. took S.H., accompanied by D.H. , to the Morristown Medical Center Emergency Room for evaluation, bloodwork and an X-ray.

25. The results of the testing were generally normal and ruled out conditions such as toxic synovitis, and S.H. was discharged the same day.

26. The next day, on or about November 15, 2021, S.H.'s knee was still swollen and now felt warm to the touch, and S.H. was visibly in pain and crying.

27. C.H. spoke with her mother and father, Defendants D.H. and Ca.H. , who made an appointment for PLAINTIFFS to go to Holy Name Hospital.

28. Holy Name hospital performed additional bloodwork and MRI of the knee, applied an ace bandage and told S.H. that she would not be able to attend gym or indoor recess, and had referred her to an orthopedic surgeon.

29. The doctors at Holy Name hospital made an appointment for C.H. and S.H. to see orthopedic surgeon Dr. Pfister on November 23, 2021.

30. In the meantime, on or about November 17, 2021, S.H. saw her pediatrician, Defendant DR. REISENMAN.

31. Defendant DR. RIESENMAN performed an evaluation of S.H. and noted left knee swelling, lower extremity edema, prepatellar swelling, prepatellar tenderness, decreased flexion, decreased extension and pain with extension.

32. Defendant DR. REISENMAN referred S.H. to an orthopedist and a rheumatologist for further evaluation and was concerned about S.H. possibly having viral synovitis, or another autoimmune disease, especially since C.H. was diagnosed with Multiple Sclerosis since 2008 and possible polycythemia, a blood disorder.

33. DR. RIESENMAN kept S.H. out of school until Thanksgiving in order for her to see other doctors since it was unclear what was inflicting S.H. and advised S.H. that if she developed additional swelling, vomiting, fever or other symptoms to return to the emergency room immediately.

34. On November 23, 2021, S.H. was seen by Dr. Pfister who performed an evaluation and indicated that S.H. would benefit from a better fitting knee brace but did not know what was causing the pain or swelling in S.H.'s knee.

35. Dr. Pfister discussed performing drainage of the knee but believed that this was not an orthopedic issue and agreed that S.H. should see a rheumatologist.

36. Dr. Pfister advised that S.H. refrain from any physical activity until they determined what was causing the knee pain and swelling.

37. On or about November 24, 2021, S.H. told her mother, C.H. , that S.H. had been kicked in the knee by an individual, Defendant D.W. , while S.H. was at C.H. 's business, [business].

38. C.H. reported to the Jefferson Police Department that Defendant D.W. had kicked her daughter.

39. The Jefferson Police Department told C.H. to report the incident with S.H. and D.W. to the DCF Institutional Abuse Investigation Unit.

40. C.H. did call the DCF Institutional Abuse Investigation Unit and

also requested a welfare check on Defendant D.W. to ensure that D.W. was not doing the same type of harm to any of his own children.

41. A day or two later, C.H. was contacted by Defendant, CRISTINA PEREZ, who initially advised that she was in front of C.H. 's house and wanted to meet with C.H. about the incident involving her daughter, S.H. and D.W. D.W. .

42. C.H. advised Defendant CRISTINA PEREZ to meet with her at [business] to discuss the incident and to review video that C.H. had which captured the incident.

43. The video confirmed that D.W. had kicked S.H. in the left leg/knee.

44. Defendant CRISTINA PEREZ advised C.H. that she was not under any investigation but wanted to just check on S.H.

45. On November 30, 2021, S.H. saw a rheumatologist Dr. Ginger Janow (hereinafter "Dr. Janow") who evaluated S.H. and noted pain and swelling in the left leg, altered gait and expressed concern for her hip.

46. Dr. Janow also noticed red and puffy eyes and musculoskeletal tenderness and ordered urine and blood testing, ultrasound of the hip, and an evaluation by a pediatric ophthalmologist.

47. On or about December 6, 2021, S.H. developed severe projectile vomiting as well as increased leg and hip pain.

48. On the same date, C.H. brought S.H. to Saint Clare's Emergency Room for evaluation.

49. The doctors at Saint Clare's Hospital ordered a strep test, bloodwork, bilateral hip

ultrasound. S.H. was found to be positive for blood and protein in the urine and found to have fluid in her left hip. A physician's assistant advised that S.H. could have problems with her kidneys but did not recommend any treatment in that regard.

50. Defendant D.H. accompanied C.H. and S.H. to the majority of the aforementioned doctor's visits.

51. When Plaintiff C.H. , Defendant D.H. and S.H. were leaving Saint Clare's hospital after the December 6, 2021 emergency room visit, a nurse from the hospital told them to "avoid the Atlantic Health, I wouldn't bring my own kids here."

52. As a result, C.H. called Boston's Children's hospital and scheduled a trip to Massachusetts so S.H. could be seen by a doctor there on December 16, 2021.

53. The day before C.H. and S.H. were scheduled to see the doctors at Boston's Children's Hospital, C.H. was advised by her mother that the H. DEFENDANTS had all been diagnosed with COVID-19, and resultantly, C.H. had to cancel the doctor's visit at Boston's Children's Hospital.

54. On December 21, 2021, S.H. experienced increased vomiting, problems walking, increased pain in her hip and legs, and confusion.

55. C.H. took S.H. again to Morristown Medical Center for evaluation in the emergency department where she was given Zofran and a shot of Toradol for her pain and to help reduce swelling.

56. During this time, the relationship between C.H. and the H. DEFENDANTS was continuing to decline.

57. C.H. and her mother D.H. would get into verbal altercations frequently about how D.H. thought that C.H. should be

raising S.H.

58. Defendant D.H. made comments that she would "have DYFS called on her" if she didn't let D.H. see S.H. or if C.H. didn't take her to the doctors that D.H. wanted S.H. to see.

59. On January 13, 2022, S.H. saw rheumatologist Dr. Paul who reviewed S.H.'s medical records and diagnosed Amplified Musculoskeletal Pain Syndrome "AMPS", a form of muscle weakness similar to fibromyalgia, and ordered additional blood work, hip ultrasound, and an abdominal ultrasound to check for any abnormalities including a possible stomach tumor.

60. On January 20, 2022, C.H. secured a second opinion from a rheumatologist at Boston's Children's Hospital, Dr. Hom.

61. Dr. Hom suggested that S.H.'s pain and swelling could be the result of stress and disagreed that S.H. could have AMPS.

62. C.H. discussed with Dr. Hom that the H. DEFENDANTS were a large source of stress upon C.H. and S.H. and he agreed that PLAINTIFFS needed to ensure that they reduced stress.

63. As a result of prior altercations, past incidents between C.H. and her family, and after discussion with her doctors, C.H. determined that S.H. should not be around the H. DEFENDANTS.

64. This caused another altercation with Defendant D.H. where Defendant D.H. told C.H. that she was going to call DYFS, now known as"DCP&P".

65. Defendant D.H. was also a patient of Defendant DR. RIESENMANN and had regular contact with him regarding S.H.

66. Defendant DR. RIESENMAN and Defendant D.H. had discussions about C.H. and S.H., upon information and belief, D.H. told false statements and information to Defendant DR. RIESENAN to induce DR. RIESENMAN to write correspondence to DCP&P in order to initiate or substantiate abuse and neglect proceedings against C.H. .

67. Specifically, D.H. made up allegations that C.H. had Munchausen by Proxy syndrome.

68. Ultimately, DR. RIESENMAN sent correspondence to DCP&P advising that he believed C.H. had psychiatric conditions, such as Munchausen by Proxy.

69. Upon information and belief, the H. DEFENDANTS, in particular D.H. , made up this diagnosis and fed misinformation to DR. RIESENMAN to support the diagnosis and to write to DCP&P regarding same.

70. Ultimately DCP&P instituted child abuse and neglect proceedings, including Title 9 and Title 30 proceedings, against C.H. .

71. The DCP&P proceedings were instituted and/or maintained on the basis of the correspondence from Defendant DR. REISENMANN, as well as an evaluation from Defendant ALLISON STRASSER WINSTON, PHD (hereinafter "DR. WINSTON).

72. Plaintiff C.H. , driven by a mother's love and concern for her child, was simply trying to ascertain why her daughter's knee had become swollen and painful, visiting hospitals and consulting her child's Pediatrician, Defendant DR. RIESENMAN, in an effort to be the best mother she could for her daughter.

73. As part of the DCP&P proceedings, Plaintiff C.H. was evaluated by Defendant DR. WINSTON.

74. The DCP&P proceedings were heavily influenced, and relied upon, the findings of Defendant DR. WINSTON.

75. The evaluation of Defendant DR. WINSTON was full of misinformation, lies, was unsupported by the evidence and submitted with malice.

76. Upon information and belief, Defendants DR. RIESENMAN and DR. WINSTON had discussions about S.H. and C.H. .

77. Ultimately, Defendant DR. RIESENMAN, burdened by integrity, shortly thereafter, submitted another letter to the DCP&P DEFENDANTS, explicitly retracting any prior support for the allegations and apologizing for his lapse of judgement.

78. In his recantation of the original letter, DR. RIESENMAN explicitly stated that he "received several pieces of bad information that [he] unfortunately made a snap decision on the basis of."

79. Upon information and belief, the "several pieces of bad information" that Defendant DR. RIESENMAN relied and acted upon were intentional misrepresentations about C.H. made by the H. DEFENDANTS.

80. DR. RIESENMAN further explicitly wrote that C.H. "loved (and loves) [S.H.] unconditionally and has only ever had [S.H.'s] best interests at heart. She is not at fault with regards to the report to [DCP&P]."

81. Defendant DR. RIESENMAN further explicitly wrote that "I did what I did on the basis of miscommunications and misinterpretations."

82. The false or incorrect information from DR. RIESENMAN was given to him by the H. DEFENDANTS.

83. DR. RIESENMAN's July 17, 2022 correspondence to DCP&P provides as

follows:

> In February, 2022 I made a phone call to [DCP&P] to report what I believed at the time was a possible case of Munchausen by Proxy syndrome with regard to [S.H.].
>
> I made this call on the basis of what I now recognize was a series of unfortunate and unintentional misinterpretations and mischaracterizations. I was given information from others that I took as being accurate, instead of researching it myself and making sure it was accurate. I jumped to the conclusion that there was an abuse occurring. Through time, careful consideration and a series of communications with both C.H. and [S.H.] I now believe that I made an incorrect snap judgment. Nothing that was done was done in a malicious matter. Ultimately my goal was to make sure that [S.H.] was safe, but in the process, I fear I have created a worse problem, and for that I am truly sorry.
>
> I write this letter knowing that the events that were set into motion in February have taken a great toll on both [S.H.] and C.H. . I hope this letter may help to resolve the matter with [DCP&P] and that C.H. and [S.H.] be allowed to return to some semblance of normalcy.

84. Even upon receiving the recanting letter which was the basis of their initial claims and which shaped their investigation, the DCP&P DEFENDANTS seemingly dismissed any information incongruent with their agenda and continued to proceed with the allegations against C.H. .

85. Undeterred by DR. RIESENMAN's recantation, they persisted in prosecuting the

Plaintiff, a relentless pursuit that defied logic, fact and compassion.

86. As trial loomed, the DCP&P Defendants, perhaps sensing the fragility of their case, repeatedly postponed proceedings.

87. C.H. and S.H. continued to be subjected to court proceedings in defending the baseless accusations resulting in deferring hard-earned money from S.H.'s care and wellbeing.

88. After maintaining the proceedings against Plaintiff C.H. , and after adjourning the Title 9 proceedings, on the eve of trial, and after preparing the case for trial, DCP&P ultimately dismissed the Title 9 proceedings.

89. The DCP&P DEFENDANTS, however, continued to prosecute the Title 30 proceedings against Plaintiff C.H. .

90. After subjecting PLAINTIFFS to additional court appearances, multiple adjournments, forcing C.H. to incur tens of thousands of additional dollars in legal expenses, the DCP&P DEFENDANTS ultimately dismissed their Title 30 proceedings as well.

91. All DCP&P proceedings were dismissed against PLAINTIFF.

92. After nearly two years of torment, the DCP&P DEFENDANTS ultimately chose not to proceed to trial, bringing an end to a case devoid of factual or legal merit.

93. As a result of the DCP&P proceedings, C.H. was placed on the Child Abuse Record Information "CARI" registry as a child abuser and was not allowed to work with children, which was particularly detrimental to PLAINTIFF as her business [business] deals with children.

94. The toll on the Plaintiff and her daughter was immeasurable.

95. C.H. was forced to spend a staggering $200,000+ just to defend the

right to custody of her daughter.

96. It's difficult to imagine the consequences that may have resulted had Plaintiff not had the resources necessary to defend these baseless allegations.

97. C.H. is a single mother.

98. The psychological scars of anxiety, stress, and depression inflicted upon mother and child were the tragic fallout of a legal ordeal that unfolded in the shadow of recanted allegations and non-existent evidence.

99. As a result of the DCP&P proceedings PLAINTIFF was restricted from pursuing medical treatment that S.H. needed which left certain conditions undiagnosed and/or untreated, including AMPS.

100. In the pursuit of justice, the Defendants' choices were not only outrageous but also irresponsibly inflicted enduring harm on those they were meant to protect.

LEGAL CAUSES OF ACTION

COUNT I
(Malicious Prosecution)

101. PLAINTIFFS reasserts and realleges the foregoing paragraphs as if set forth fully herein.

102. DEPARTMENT OF CHILDREN AND FAMILIES; DIVISION OF CHILD PROTECTION AND PERMANENCY; DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO; STATE OF NEW JERSEY; D.H. ; Ca.H. ; Ch.H. ; CRISTINA PEREZ; ROSALBA AVILA; JENNIFER BEAUDREAUX; FELIPE SANCHEZ; D.W. ; JOSEPH J. REISENMAN, M.D.; ALLISON STRASSER WINSTON, PHD; JOHN DOES 1-10 (Fictitious Individuals); and, ABC CORPORATIONS 1-10 (Fictitious Entities), did knowingly file, prosecute, initiate,

promote and/or maintain a false Title 9 and Title 30 and or other DCP&P actions against PLAINTIFF.

103. The DCP&P prosecutions were without probable cause.

104. DEPARTMENT OF CHILDREN AND FAMILIES; DIVISION OF CHILD PROTECTION AND PERMANENCY; DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO; STATE OF NEW JERSEY; D.H. ; Ca.H. ; Ch.H. ; CRISTINA PEREZ; ROSALBA AVILA; JENNIFER BEAUDREAUX; FELIPE SANCHEZ; D.W. ; JOSEPH J. REISENMAN, M.D.; ALLISON STRASSER WINSTON, PHD; JOHN DOES 1-10 (Fictitious Individuals); and, ABC CORPORATIONS 1-10 (Fictitious Entities) (hereinafter "DEFENDANTS") intentionally made false statements, in their reports, charging documents, statements, or otherwise, about PLAINTIFFS, the nature of PLAINTIFF's conduct and the DEFENDANTS' responses to said conduct.

105. PLAINTIFF reached a favorable disposition of the matter, specifically a complete dismissal of the prosecutions as a matter of law.

106. PLAINTIFFS suffered damages proximately caused by the actions of DEFENDANTS, including, but not limited to, as set forth above.

107. The above described actions of the DEFENDANTS constitute malicious prosecution.

108. The above described actions of the DEFENDANTS violated the clearly established common law, statutory, and Constitutional rights of PLAINTIFF pursuant to both the Federal and New Jersey Constitutions.

WHEREFORE Plaintiffs C.H. and S.H. (a minor child and daughter of

C.H.) demand judgment against Defendants DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY, D.H. , Ca.H. , Ch.H. , CRISTINA PEREZ, ROSALBA AVILA, JENNIFER BEAUDREAUX, FELIPE SANCHEZ, D.W. D.W. , JOSEPH J. REISENMAN, M.D., ALLISON STRASSER WINSTON, PHD, JOHN DOES 1-10 and ABC CORPORATIONS 1-10, individually and jointly, as follows:

a. Actual damages for lost wages, tips, commissions, and other foregone income;
b. Actual damages for Plaintiff's time spent defending hereself against the baseless DCP&P charges;
c. Actual damages for Plaintiff's time spent at all court appearances;
d. Actual damages for pain and suffering including the infliction of psychological trauma and anxiety;
e. Actual damages for loss of reputation in the community;
f. Actual damages for loss of reputation and income in connection with her business;
g. Attorney's fees and costs in defending the action maliciously brought;
h. Punitive Damages;
i. Nominal Damages;
j. Injunctive relief requiring DCP&P to adequately train its agents in the law of probable cause and constitutional rights of individuals;
k. A civil penalty pursuant to N.J.S.A. 10:6-2e to be determined by the jury;
l. Reasonable attorney's fees and costs in bringing the within action; and
m. Any other relief the Court deems right and just.

COUNT II
(Emotional Distress Intentionally Inflicted)

109. PLAINTIFF reasserts and realleges the foregoing paragraphs as if set forth fully herein.

110. DEFENDANTS' conduct towards PLAINTIFF in instituting and maintaining the DCP&P actions without probable cause, and in violation of DFENDANTS' clearly established common law, statutory, and constitutional rights pursuant to the Federal and New Jersey Constitutions, was extreme and outrageous conduct meant intentionally to punish and

harm PLAINTIFF.

111. DEFENDANTS' conduct in making material misreprestiations concerning PLAINTIFFS and with the purpose of causing DEFENDANTS to institute or maintain DCP&P proceedings against PLAINTIFF was extreme and outrageous conduct meant intentionally to punish and harm PLAINTIFF.

112. DEFENDANTS' conduct was intentional and in a fashion intended to produce emotional distress, or reckless in deliberate disregard of a high degree of probability that emotional distress would result from their actions.

113. DEFENDANTS' conduct proximately caused PLAINTIFFS emotional distress so severe that no reasonable person could be expected to endure it.

WHEREFORE Plaintiffs C.H. and S.H. (a minor child and daughter of C.H.) demand judgment against Defendants DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY, D.H. , Ca.H. , Ch.H. , CRISTINA PEREZ, ROSALBA AVILA, JENNIFER BEAUDREAUX, FELIPE SANCHEZ, D.W. D.W. , JOSEPH J. REISENMAN, M.D., ALLISON STRASSER WINSTON, PHD, JOHN DOES 1-10 and ABC CORPORATIONS 1-10, individually and jointly, as follows:

a. Actual damages for lost wages, tips, commissions, and other foregone income;
b. Actual damages for Plaintiff's time spent defending hereself against the baseless DCP&P charges;
c. Actual damages for Plaintiff's time spent at all court appearances;
d. Actual damages for pain and suffering including the infliction of psychological trauma and anxiety;
e. Actual damages for loss of reputation in the community;
f. Actual damages for loss of reputation and income in connection with her business;
g. Attorney's fees and costs in defending the action maliciously brought;

h. Punitive Damages;
i. Nominal Damages;
j. Injunctive relief requiring DCP&P to adequately train its agents in the law of probable cause and constitutional rights of individuals;
k. A civil penalty pursuant to N.J.S.A. 10:6-2e to be determined by the jury;
l. Reasonable attorney's fees and costs in bringing the within action; and
m. Any other relief the Court deems right and just.

COUNT III
(Defamatory Injury to Reputation: Defamation *Per Se)*

114. PLAINTIFF reasserts and realleges the foregoing paragraphs as if set forth fully herein.

115. DEFENDANTS knowingly made false statements in their reports, with malice, relative to PLAINTIFF's DCP&P prosecutions, including false statements regarding PLAINTIFF's mental health, medical conditions, and other material facts.

116. The statements were defamatory.

117. PLAINTIFF is a private figure and DEFENDANTS were either acting negligently in failing to ascertain the truth or falsity of the statements, knew the statements were false, or acted in reckless disregard of their truth or falsity.

118. DEFENDANTS' actions were written and spoken.

119. DEFENDANTS' actions were communicated to the public, i.e. to unlimited third parties, in public documents.

120. PLAINIFF's reputation and her business reputation were harmed.

121. The slander was per se and not privileged because it contained the accusation of a crime.

122. The above described actions of the DEFENDANTS violated the clearly established common law, statutory, and Constitutional rights of PLAINTIFF pursuant to both the Federal and New Jersey Constitutions.

WHEREFORE Plaintiffs C.H. and S.H. (a minor child and daughter of C.H.) demand judgment against Defendants DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY, D.H. , Ca.H. , Ch.H. , CRISTINA PEREZ, ROSALBA AVILA, JENNIFER BEAUDREAUX, FELIPE SANCHEZ, D.W. D.W. , JOSEPH J. REISENMAN, M.D., ALLISON STRASSER WINSTON, PHD, JOHN DOES 1-10 and ABC CORPORATIONS 1-10, individually and jointly, as follows:

a. Actual damages for lost wages, tips, commissions, and other foregone income;
b. Actual damages for Plaintiff's time spent defending hereself against the baseless DCP&P charges;
c. Actual damages for Plaintiff's time spent at all court appearances;
d. Actual damages for pain and suffering including the infliction of psychological trauma and anxiety;
e. Actual damages for loss of reputation in the community;
f. Actual damages for loss of reputation and income in connection with her business;
g. Attorney's fees and costs in defending the action maliciously brought;
h. Punitive Damages;
i. Nominal Damages;
j. Injunctive relief requiring DCP&P to adequately train its agents in the law of probable cause and constitutional rights of individuals;
k. A civil penalty pursuant to N.J.S.A. 10:6-2e to be determined by the jury;
l. Reasonable attorney's fees and costs in bringing the within action; and
m. Any other relief the Court deems right and just.

COUNT IV
(Legal Process Maliciously Abused)

123. PLAINTIFF reasserts and realleges the foregoing paragraphs as if set forth fully herein.

124. DEFENDANTS' actions in initiating and continuing the DCP&P prosecutions against PLAINTIFF after issuing legal process against her demonstrated an ulterior motive other than for the one which such process was designed.

125. DEFENDANTS' actions were to coerce, punish, or oppress PLAINTIFF, and/or to protect themselves from civil suit by the PLAINTIFF, either through an intentional malicious abuse of process or the issuance of process, without reason or probable cause.

126. The above described actions of the DEFENDANTS violated the clearly established common law, statutory, and Constitutional rights of PLAINTIFF pursuant to both the Federal and New Jersey Constitutions.

127. PLAINTIFF obtained a successful dismissal on the merits of all charges against him.

128. As a direct and proximate result of DEFENDANTS' conduct, and as described more fully above, PLAINTIFF was damaged and will continue to suffer damages.

WHEREFORE Plaintiffs C.H. and S.H. (a minor child and daughter of C.H.) demand judgment against Defendants DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY, D.H. , Ca.H. , Ch.H. , CRISTINA PEREZ, ROSALBA AVILA, JENNIFER BEAUDREAUX, FELIPE SANCHEZ, D.W. D.W. , JOSEPH J. REISENMAN, M.D., ALLISON STRASSER WINSTON, PHD, JOHN DOES 1-10 and ABC CORPORATIONS 1-10, individually and jointly, as follows:

a. Actual damages for lost wages, tips, commissions, and other foregone income;
b. Actual damages for Plaintiff's time spent defending hereself against the baseless DCP&P charges;
c. Actual damages for Plaintiff's time spent at all court appearances;
d. Actual damages for pain and suffering including the infliction of psychological trauma and anxiety;
e. Actual damages for loss of reputation in the community;
f. Actual damages for loss of reputation and income in connection with her business;
g. Attorney's fees and costs in defending the action maliciously brought;

h. Punitive Damages;
i. Nominal Damages;
j. Injunctive relief requiring DCP&P to adequately train its agents in the law of probable cause and constitutional rights of individuals;
k. A civil penalty pursuant to N.J.S.A. 10:6-2e to be determined by the jury;
l. Reasonable attorney's fees and costs in bringing the within action; and
m. Any other relief the Court deems right and just.

COUNT V
(Civil Rights Violations Under The New Jersey Law Against Discrimination, N.J.S.A. 10:5-12, *et Seq.)*

129. PLAINTIFF reasserts and realleges the foregoing paragraphs as if set forth fully herein.

130. DEFENDANTS committed unlawful discrimination against PLAINTIFF by failing to grant him access to the competent protection of DCP&P which he was entitled, based upon his ethnicity and gender in violation of New Jersey's Law Against Discrimination.

131. PLAINTIFF is a woman.

132. PLAINTIFF is handicapped, diagnosed with multiple sclerosis.

133. Plaintiff gave birth to S.H. through IVF with a sperm donor.

134. DEFENDANTS discriminated against PLAINTIFF on the basis of gender, that she was handicapped, and that S.H. was born via IVF with a sperm donor.

135. The above described actions of the DEFENDANTS violated the clearly established common law, statutory, and Constitutional rights of PLAINTIFF pursuant to both the Federal and New Jersey Constitutions.

136. PLAINTIFF suffered physical pain and extreme emotional distress and other harm caused by the actions and/or inactions of all Defendants.

WHEREFORE Plaintiffs C.H. and S.H. (a minor child and daughter of C.H.) demand judgment against Defendants DEPARTMENT OF CHILDREN

AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY, D.H. , Ca.H. , Ch.H. , CRISTINA PEREZ, ROSALBA AVILA, JENNIFER BEAUDREAUX, FELIPE SANCHEZ, D.W. D.W. , JOSEPH J. REISENMAN, M.D., ALLISON STRASSER WINSTON, PHD, JOHN DOES 1-10 and ABC CORPORATIONS 1-10, individually and jointly, as follows:

a. Actual damages for lost wages, tips, commissions, and other foregone income;
b. Actual damages for Plaintiff's time spent defending hereself against the baseless DCP&P charges;
c. Actual damages for Plaintiff's time spent at all court appearances;
d. Actual damages for pain and suffering including the infliction of psychological trauma and anxiety;
e. Actual damages for loss of reputation in the community;
f. Actual damages for loss of reputation and income in connection with her business;
g. Attorney's fees and costs in defending the action maliciously brought;
h. Punitive Damages;
i. Nominal Damages;
j. Injunctive relief requiring DCP&P to adequately train its agents in the law of probable cause and constitutional rights of individuals;
k. A civil penalty pursuant to N.J.S.A. 10:6-2e to be determined by the jury;
l. Reasonable attorney's fees and costs in bringing the within action; and
m. Any other relief the Court deems right and just.

COUNT VI
(Negligent Hiring and Retention)

137. PLAINTIFF reasserts and realleges the foregoing paragraphs as if set forth fully herein.

138. On information and belief, DEFENDANTS knew or had reason to know of the particular unfitness, incompetence or dangerous attributes of its agents, investigators and/or employees involved and could reasonably have foreseen that such qualities created a risk of harm to other persons including PLAINTIFF.

139. Through the negligence of DEFENDANTS in hiring the agents, individuals,

investigators, employees and other personnel involved in the subject matter herein, the employees' incompetence, unfitness or dangerous characteristics proximately caused injuries to the PLAINTIFF as described more fully above.

WHEREFORE Plaintiffs C.H. and S.H. (a minor child and daughter of C.H.) demand judgment against Defendants DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY, D.H. , Ca.H. , Ch.H. , CRISTINA PEREZ, ROSALBA AVILA, JENNIFER BEAUDREAUX, FELIPE SANCHEZ, D.W. D.W. , JOSEPH J. REISENMAN, M.D., ALLISON STRASSER WINSTON, PHD, JOHN DOES 1-10 and ABC CORPORATIONS 1-10, individually and jointly, as follows:

a. Actual damages for lost wages, tips, commissions, and other foregone income;
b. Actual damages for Plaintiff's time spent defending hereself against the baseless DCP&P charges;
c. Actual damages for Plaintiff's time spent at all court appearances;
d. Actual damages for pain and suffering including the infliction of psychological trauma and anxiety;
e. Actual damages for loss of reputation in the community;
f. Actual damages for loss of reputation and income in connection with her business;
g. Attorney's fees and costs in defending the action maliciously brought;
h. Punitive Damages;
i. Nominal Damages;
j. Injunctive relief requiring DCP&P to adequately train its agents in the law of probable cause and constitutional rights of individuals;
k. A civil penalty pursuant to N.J.S.A. 10:6-2e to be determined by the jury;
l. Reasonable attorney's fees and costs in bringing the within action; and
m. Any other relief the Court deems right and just.

COUNT VII

(Violation of New Jersey Civil Rights Act, N.J.S.A. 10:6-2 et seq.)

140. PLAINTIFF reasserts and realleges the foregoing paragraphs as if set forth fully herein.

141. DEFENDANTS subjected, and/or caused to be subjected, PLAINTIFF to the deprivation of his substantive due process and/or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, and his substantive rights, privileges or immunities secured by the Constitution or laws of the State of New Jersey, by engaging in the conduct as alleged herein, including, without limitation, malicious prosecution malicious abuse of process of and concerning PLAINTIFFs.

142. As a direct and proximate result of the DEFENDANTS' unlawful conduct, PLAINTIFF has suffered, and will continue to suffer, serious and permanent damages, as described more fully above.

WHEREFORE Plaintiffs C.H. and S.H. (a minor child and daughter of C.H.) demand judgment against Defendants DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY, D.H. , Ca.H. , Ch.H. , CRISTINA PEREZ, ROSALBA AVILA, JENNIFER BEAUDREAUX, FELIPE SANCHEZ, D.W. D.W. , JOSEPH J. REISENMAN, M.D., ALLISON STRASSER WINSTON, PHD, JOHN DOES 1-10 and ABC CORPORATIONS 1-10, individually and jointly, as follows:

a. Actual damages for lost wages, tips, commissions, and other foregone income;
b. Actual damages for Plaintiff's time spent defending hereself against the baseless DCP&P charges;
c. Actual damages for Plaintiff's time spent at all court appearances;
d. Actual damages for pain and suffering including the infliction of psychological trauma and anxiety;
e. Actual damages for loss of reputation in the community;
f. Actual damages for loss of reputation and income in connection with her business;
g. Attorney's fees and costs in defending the action maliciously brought;
h. Punitive Damages;
i. Nominal Damages;

j. Injunctive relief requiring DCP&P to adequately train its agents in the law of probable cause and constitutional rights of individuals;
k. A civil penalty pursuant to N.J.S.A. 10:6-2e to be determined by the jury;
l. Reasonable attorney's fees and costs in bringing the within action; and
m. Any other relief the Court deems right and just.

COUNT VIII
(Failure to Train)

143. PLAINTIFF reasserts and realleges the foregoing paragraphs as if set forth fully herein.

144. On information and belief, DEFENDANTS trained the employees, invidividuals, agents, investigators and/or other personnell in the law and proper DCP&P prosecution procedures with respect to the circumstances such as occurred in the instant matter.

145. Said failure to train amounts to a deliberate indifference to the rights of persons with whom DCP&P comes in contact.

146. On information and belief, said failure to train reflects a deliberate or conscious choice made by Defendant policymakers.

147. Defendants' policy violated PLAINTIFF's Constitutional rights pursuant to the Federal and New Jersey Constitutions, and proximately caused constitutional injuries as described more fully above.

148. As described more fully above, DEFENDANTS personally violated PLAINTIFF's Constitutional rights and is personally liable for PLAINTIFF'S injuries.

WHEREFORE Plaintiffs C.H. and S.H. (a minor child and daughter of C.H.) demand judgment against Defendants DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY, D.H. , Ca.H. , Ch.H. , CRISTINA

PEREZ, ROSALBA AVILA, JENNIFER BEAUDREAUX, FELIPE SANCHEZ, D.W. D.W. , JOSEPH J. REISENMAN, M.D., ALLISON STRASSER WINSTON, PHD, JOHN DOES 1-10 and ABC CORPORATIONS 1-10, individually and jointly, as follows:

a. Actual damages for Plaintiff's time spent defending hereself against the baseless DCP&P charges;
b. Actual damages for Plaintiff's time spent at all court appearances;
c. Actual damages for pain and suffering including the infliction of psychological trauma and anxiety;
d. Actual damages for loss of reputation in the community;
e. Actual damages for loss of reputation and income in connection with her business;
f. Attorney's fees and costs in defending the action maliciously brought;
g. Punitive Damages;
h. Nominal Damages;
i. Injunctive relief requiring DCP&P to adequately train its agents in the law of probable cause and constitutional rights of individuals;
j. A civil penalty pursuant to N.J.S.A. 10:6-2e to be determined by the jury;
k. Reasonable attorney's fees and costs in bringing the within action; and
l. Any other relief the Court deems right and just.

COUNT VIII

(Intentional and Negligent Infliction of Emotional Distress)

149. PLAINTIFF reasserts and realleges the foregoing paragraphs as if set forth fully herein.

150. This count is pled against the DCP&P, and all individual Defendants.

151. As set forth more specifically above, DCP&P, and all individual Defendants' conduct was extreme and outrageous and intentionally or recklessly intended to produce emotional distress.

152. Such extreme and outrageous conduct did, in fact, cause PLAINTIFF to suffer extreme emotional distress.

153. DCP&P, its agents and assigns thereby caused plaintiff to sustain damages.

154. The aforesaid misconduct was wanton and/or reckless and/or willful and/or

outrageous and intentional and/or committed with malice aforethought and thus, said conduct justifies an award of punitive damages.

155. "Our courts have recognized two types of tortious conduct that support a claim for negligent infliction of emotional distress."[1]

156. The negligent infliction of emotional distress claim in this case focuses on proximately caused damages resulting from the breach of a duty owed by DCP&P, its agents and employees to Plaintiff.

157. The agency owed a duty of reasonable care to plaintiff.

158. The agency breached that duty of care.

159. As a proximate result of that breach, plaintiff suffered severe emotional distress.

160. The Agency's breach of the aforesaid duty of care was the proximate cause of plaintiff's injury.

161. It was reasonably foreseeable that the plaintiff would be seriously mentally distressed by their actions and breach of the aforesaid duty of care.

162. This is because the Agency could reasonably foresee that plaintiff faced fright or shock severe enough to cause substantial injury in a person normally constituted.[2]

163. The Agency hereby caused plaintiff to sustain damages.

WHEREFORE Plaintiffs C.H. and S.H. (a minor child and daughter of C.H.) demand judgment against Defendants DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF CHILD PROTECTION AND PERMANENCY, DEPARTMENT OF CHILDREN AND FAMILIES, MORRIS WEST LO, STATE OF NEW JERSEY, D.H. , Ca.H. , Ch.H. , CRISTINA

[1] *Innes v. Marzano-Lesnevich*, 435 N.J. Super. 198, 236 (App. Div. 2014).
[2] *Gupta v. Asha Enterprises, L.L.C.*, 422 N.J. Super. 136, 151 (App. Div. 2011).

PEREZ, ROSALBA AVILA, JENNIFER BEAUDREAUX, FELIPE SANCHEZ, D.W. D.W. , JOSEPH J. REISENMAN, M.D., ALLISON STRASSER WINSTON, PHD, JOHN DOES 1-10 and ABC CORPORATIONS 1-10, individually and jointly, as follows, for (1) all applicable damages – including any specific types of damages specifically pled in any of the above listed allegations or counts; (2) the remedies provided for under the common law and/or any state and/or federal statutes pled herein or applicable to this case; (3)an award of attorney's fees and costs to the extent permitted by applicable contract clause, court rule, statute or common law authority as alleged above; (4) injunctive relief; and (5) such other and further relief as the court shall deem equitable and just.

JURY DEMAND PURSUANT TO R. 4:35-1

Pursuant to R. 4:35-1, relative to all issues pled in the instant action that so triable, a trial by six (6) jurors is demanded.

NOTICE PURSUANT TO R. 1:5-1(a) AND R. 4:17-4(c)

Take notice that, pursuant to R. 1:5-1(a) and R. 4:17-4(c), each party named in the complaint that serves or receives pleadings of any nature (including discovery requests) to or from any other party to the action is requested to forward copies of same along with any documents provided in answer or response thereto to HAMMERMAN ROSEN LLP and take notice that this is a continuing demand.

NOTICE PURSUANT TO R. 1:7-1(b)

PLEASE TAKE NOTICE that to the extent applicable to this case, at the time of closing argument it may be suggest to the trier of fact with the respect to any element of damages, that unliquidated damages be calculated on a time-unit basis, without reference to a specific sum.

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to Rule 4:10-2(b), demand is made for the disclosure of whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse for payments made to satisfy the judgment. Demand is made for true copies of those insurance agreements or policies, including but not limited to any and all declaration sheets. This demand includes a request for not only primary coverage insurance policies but also any and all excess, catastrophe and umbrella insurance policies.

DEMAND PURSUANT TO R. 4:18-2

If any document or paper is referred to in your initial pleading (e.g., complaint, counterclaim, third party complaint) but is neither annexed thereto nor recited verbatim therein, within 5 days after service of this pleading on you, provide a copy of each such document or paper so referred to.

DESIGNATION OF TRIAL ATTORNEYS

In accordance with Rule 4:25-4, MARVIN HAMMERMAN and LOUIS RAVESON are hereby designated as trial counsel.

DEMAND FOR INTERROGATORIES

Demand is hereby made for answers to interrogatories as applicable and prescribed by the New Jersey Rules of Court.

HAMMERMAN ROSEN LLP
Attorneys for Plaintiffs

Dated: October 31, 2023

Marvin J. Hammerman
Marvin J. Hammerman

APPENDIX E

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. VI, cl. 2

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. amend. XIV, § 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 5106a(b)(2)(B)(vii)

> [A State plan shall contain a description of the activities the State will carry out using amounts received under the grant to achieve the objectives of this subchapter, including . . .] (vii) provisions for immunity from civil or criminal liability under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect, or who otherwise provide information or assistance, including medical evaluations or consultations, in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect;

N.J.S.A. 9:6-8.10 (in pertinent part)

> Any person having reasonable cause to believe that a child has been subjected to child abuse, including sexual abuse, or acts of child abuse shall report the same immediately to the Division of Child Protection and Permanency by telephone or otherwise. . . .

N.J.S.A. 9:6-8.13 (in pertinent part)

> Anyone acting pursuant to this act in the making of a report under this act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such person shall have the same immunity with respect to testimony given in any judicial proceeding resulting from such report.

N.J.S.A. 10:6-2(c)

> Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection.