IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

W.M., by his parents and next friends Erica M. and Mark M.; ERICA M.; and MARK M.; Plaintiffs, v. EVERT GISCOMBE, DCFS Investigator, in his individual capacity; PATRICIA MORRIS, DCFS Investigator, in her individual capacity; HAROLD DIXON, DCFS Supervisor, in his individual capacity; REGINALD KING, DCFS Administrator, in his individual capacity; and BOBBIE GREGG, Director of Illinois Department of Children and Family Services ("DCFS"), in her official capacity; Defendants.	)	Civil Action No. 15-cv-305

COMPLAINT

I. INTRODUCTORY STATEMENT

1. This civil rights complaint, filed pursuant to 42 U.S.C. § 1983, arises from the actions of employees of the Illinois Department of Children and Family Services ("DCFS") who seized four-month old W.M. and detained him from his loving and caring parents, Erica M. and Mark M., for three months without lawful consent, court order or exigent circumstances. The defendants, acting under color of state law, caused severe harm to Erica M., Mark M. and their son W.M. Plaintiffs seek compensatory and declaratory relief against the individual DCFS employees and declaratory relief only against the DCFS Director.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) over Plaintiffs' claims brought under 42 U.S.C. § 1983.

3. Venue is proper in this district under 28 U.S.C. § 1391 because:

(a) On information and belief, all of the Defendants reside in the Northern District of Illinois; and

(b) Substantially all of the events or omissions giving rise to Plaintiffs' claims occurred in the Northern District of Illinois.

III. PARTIES

4. Plaintiff W.M., born in 2013, is the first-born son of Plaintiffs Erica M. and Mark M. W.M. resides in Oak Forest, Illinois, with his parents Erica M. and Mark M. Pursuant to Fed. R. Civ. P. 17(c), he proceeds here by his parents and next friends, Erica M. and Mark M.

5. Plaintiff Erica M. is the mother of W.M. She is a high school teacher and former preschool teacher. She is married to plaintiff Mark M., the father of W.M. She resides in Oak Forest, Illinois, with her husband, Mark M., their son, W.M., and their second child, C.M., born after the events that give rise to this complaint.

6. Plaintiff Mark M. is the father of W.M. He is employed as a carpenter. He is married to plaintiff Erica M., the mother of W.M. He resides in Oak Forest, Illinois, with his wife, Erica M., their son, W.M., and their second child, C.M., born after the events that give rise to this complaint.

7. Defendant Evert Giscombe was, at the time of the incidents giving rise to this complaint, a DCFS Investigator who was assigned investigative responsibilities as to an investigation involving W.M. He is sued in his individual capacity.

8. Defendant Patricia Morris was, at the time of the incidents giving rise to this complaint, a DCFS Investigator who was assigned investigative responsibilities as to an investigation involving W.M. She is sued in her individual capacity.

9. Defendant Harold Dixon was, at the time of the incidents giving rise to this complaint, a DCFS Supervisor who had supervisory responsibility as to Defendant Morris. He was responsible for reviewing and approving the actions of Defendant Morris regarding W.M., and he reviewed and approved those actions. He is sued in his individual capacity.

10. Defendant Reginald King was, at the time of the incidents giving rise to this complaint, an Area Administrator for DCFS. As an Area Administrator, he was responsible for reviewing and approving decisions to take protective custody, and he approved the taking of protective custody of W.M. on March 6, 2014. He is sued in his individual capacity. (The defendants sued in their individual capacities are collectively referred to herein as the "DCFS Defendants.")

11. Defendant Bobbie Gregg is the Director of DCFS. On information and belief, she will not be the Director after January 19, 2015. By operation of law, her successor as Director should be made a defendant to this action. The Director is responsible for setting and maintaining the practices of DCFS and for requiring that DCFS operate under lawful practices. The Director is sued in her official capacity for purposes of declaratory relief.

12. At all times relevant to this complaint, each of the Defendants acted under color of state law.

IV. STATEMENT OF THE CASE

A. Illinois Legal Framework Governing the Involuntary Removal of Children from Their Parents

13. Pursuant to the Illinois Abused and Neglected Child Reporting Act ("ANCRA"), DCFS receives reports, via calls to the Illinois State Central Register (known as the "Child Abuse Hotline" or "Hotline"), from persons who have "reasonable cause to believe a child may be an abused child or a neglected child." 325 ILCS 5/4. ANCRA requires that DCFS promptly investigate the merits of calls it accepts, *id.* at 5/7, sometimes working jointly with law enforcement authorities if the allegations give rise to a potential criminal complaint. *Id*. at 5/7.3.

14. Under Illinois law, only police officers, doctors, and DCFS investigative employees have the legal authority to remove children from their parents against the will of the parents. 325 ILCS 5/5. This authority is limited to those circumstances when "there is not time to apply for a court order" and when leaving the child in the custody of his or her parent(s) would "endanger[] the child's health or safety." *Id.*

15. As a constitutional matter, to remove children from their parents involuntarily, a state actor must have probable cause or definite and articulable evidence giving rise to a reasonable suspicion that the children have been abused or are in imminent danger of abuse by the parents. Absent exigent circumstances, such that a child's life or limb is in immediate jeopardy, or a court order, a DCFS investigator may not take children from their parents without the voluntary consent of the parents. *Hernandez v. Foster*, 657 F.3d 463 (7th Cir. 2011).

16. DCFS policies require that the removal of a child from his parents or taking of protective custody be approved by a DCFS supervisor and a child protection manager or area administrator.

17. Under the Juvenile Court Act, a child who is removed involuntarily from his parents or taken into temporary protective custody must either be brought before a judicial officer within 48 hours, exclusive of holidays and weekends, or released back to the custody of his parents or guardians. 705 ILCS 405/2-9. If the judicial officer does not approve the continued detention of the child or if the child is not brought before a judicial officer within the 48-hour period, the child must be released. *Id.* If it becomes clear before 48 hours have elapsed that there is not probable cause to hold a child in protective custody, the child must be released as soon as practicable. *Hernandez v. Foster*, 657 F.3d 463 (7th Cir. 2011).

18. Illinois law and the Constitution do not permit DCFS employees to issue directives to families concerning their living conditions or limiting, modifying or otherwise affecting with whom a child is authorized to live or with whom a child may associate. Parents have the right to make these decisions unless the requirements set forth in paragraphs 14-17, are met. If DCFS determines that a family should live under restrictions (such as having "no unsupervised contact" with their children), DCFS must file a petition with a juvenile court seeking such restrictions.

19. The juvenile court has the authority to issue restrictions on a family's living conditions and may limit the persons with whom a child may associate pursuant to the Juvenile Court Act, as to children for whom there is probable cause to believe they are abused or neglected, 705 ILCS 405/2-10 (requiring dismissal of petitions as to which there is no probable cause), and to enter orders of protection requiring families to abide by restrictive conditions on their family life. 705 ILCS 405/2-25.

20. In the event DCFS secures the filing of a petition against a family after it takes protective custody of the child without a court order, or if it seeks to maintain temporary custody thereafter, the Juvenile Court Act requires that the court must find that there is "immediate and urgent necessity" for the safety of the child that he or she be placed outside the custody of his parents. 705 ILCS 405/2-10. DCFS is also required by federal and state law to make "reasonable efforts" to prevent the placement of children into foster care and to demonstrate those efforts to the juvenile court. 42 U.S.C. § 671(a)(15)(B)(i); 705 ILCS 405/2-10.

21. Regardless of whether DCFS takes protective custody of a child following a Hotline call, and regardless of whether it seeks or secures the filing of a juvenile court petition alleging a child is abused or neglected, it is required to complete investigations of Hotline calls. DCFS investigators must determine if the allegations under investigation are "indicated," meaning that DCFS finds credible evidence of abuse or neglect, or "unfounded," meaning that DCFS found no such credible evidence. 325 ILCS 5/7.12; *id.* at 5/3.

B. Relevant DCFS Policies, Practices, Customs and Usages

22. DCFS maintains policies, practices, customs and usages (referred to collectively herein as "practices") that operate to authorize, and in some instances to require, removal of a child from his or her parents without their consent and without a court order or exigent circumstances, and in the absence of a reasonable suspicion or probable cause that a child has been abused, and without affording the parents a timely opportunity to challenge the child's removal from the parents' care and custody before a neutral magistrate.

23. The practices applicable to this case include the "hold" practice and the "removal unless rule out" practice described in paragraphs 24-32 below. These practices were applied at

various times by the defendants sued in their individual capacities as described in paragraphs 33-75 below.

24. **The "hold" practice.** The "hold" practice, on information and belief, is not a written policy of DCFS but a widespread practice applied to children who are being evaluated or treated in hospitals and as to whom a Hotline call has been made prior to their release from such hospitals. Pursuant to the "hold" practice, DCFS investigative staff direct Illinois hospital staff (who may be either hospital social workers, doctors or other medical personnel or administrators) that the hospital staff members are required to await instructions before they allow children to leave the hospital with their parents.

25. Because DCFS is a state agency and its investigators operate under color of state law, hospital staff told of a DCFS "hold" on their discharge of a child routinely abide by the "hold" directive and refuse to allow parents to leave the hospital with their child even if the child is otherwise medically ready for discharge.

26. Under DCFS practice, "holds" have no fixed or limited duration and may last hours, days or weeks.

27. For children who are medically ready for discharge from the hospital, a DCFS "hold" operates as a directive that limits the parents' legal custodial rights as to their children. Parents have the right to place their children into medical care facilities or remove them from such facilities absent either a court order or an involuntary seizure of the child pending a court order pursuant to ANCRA, 325 ILCS 5/5, and the Juvenile Court Act, 705 ILCS 405/2-9.

28. DCFS affords no process by which parents whose children have been subject to a "hold" can challenge the legal or factual basis for the issuance of the "hold."

29. **The "removal unless rule out" practice.** DCFS' written policy entitled Taking Children into Protective Custody, promulgated in the DCFS Rule and Procedure Manual at Procedure 300.80, directs DCFS investigative staff that protective custody *must* be taken of a child who has sustained a head injury and who is the subject of a Hotline call *unless* (a) a physician who has expertise in the type of injury suffered by the child has examined the child and determined that the injury was not caused by abuse or neglect; (b) the "alleged perpetrator" lives outside the child's home and does not have access to the child; or (c) the "alleged perpetrator agrees to a safety plan that prevents him or her from having access to the child." 300.80(e)(2).

30. Pursuant to this "removal unless rule out" policy and DCFS practice generally, DCFS investigators operate on the presumption to take protective custody of any child with a head injury without a consideration of either reasonable suspicion or probable cause that the injury was caused by abuse and without consideration of the existence of exigent circumstances.

31. Physicians are generally unable to "rule out" the possibility of abuse as the cause of many injuries, even if the likelihood of abuse being the actual cause is extremely low. By requiring a conclusion that the child's head injury was not due to abuse before deviating from the presumption that protective custody should be taken, the DCFS policy at Procedure 300.80(e)(2) directs the removal of children without reasonable suspicion or probable cause whenever there is a head injury to a child who was the subject of a Hotline call.

32. Pursuant to this "removal unless rule out" policy and to DCFS practice generally applicable to investigations of a head injury, a parent's refusal to agree to a safety plan, and even a parent's hesitation about agreeing, in and of itself, serves as the basis for seizing a child who has sustained a head injury into protective custody.

C. Facts Giving Rise to Claims for Relief

33. Plaintiffs Erica M. and Mark M. are the loving parents of Plaintiff W.M., their first-born child, who was born in 2013. After W.M.'s birth, Erica M. took maternity leave from her job as a high school teacher. When she returned to work, W.M. was cared for during the school day either by a babysitter or a paternal aunt.

34. In early December 2013, W.M., then four months' old, was suffering from a persistent cough. On December 5, 2013, his mother, Erica M., took W.M. to be seen by his pediatrician. The pediatrician diagnosed W.M. with croup and administered a breathing treatment and other care. During and prior to that visit, W.M.'s pediatrician noted no signs of abuse or neglect and otherwise observed W.M. to be happy, healthy, and well developed. The pediatrician requested that W.M. return the next day, December 6, 2013, for a follow-up appointment.

35. Following the pediatrician's instructions, Erica M. brought her infant son back to the doctor's office on the morning of December 6, 2013. After arriving, Erica M. and W.M. waited in the office's waiting area where the receptionist observed Erica M. playing and interacting with W.M., who was seen laughing in response. The pediatrician also saw Erica M. and W.M. in the waiting area and remarked that W.M. appeared to be feeling much better. Shortly thereafter, a nurse escorted Erica M. and W.M. to an examination room.

36. While Erica M. began to prepare her son for the examination, W.M. lurched from Erica M.'s grasp, hit his head on the arm of the chair and then fell to the floor, suffering an accidental head injury. As Erica M. attempted to soothe her son, the pediatrician entered the examination room. When Erica M. began to explain the situation, the pediatrician placed W.M. on the table and examined him.

37. Erica M. observed her son's eyes fluttering and became concerned with his condition. The pediatrician also became concerned that W.M. was not responding properly, administered care including oxygen, and called for emergency assistance. By the time an ambulance arrived, the pediatrician observed W.M. responding properly.

38. Erica M. accompanied W.M. in the ambulance to Silver Cross Hospital in New Lenox, Illinois where W.M. was examined and a CT scan and skeletal survey were performed. Later that day, W.M. was transferred to Advocate Christ Hospital, in Oak Lawn, Illinois where he was admitted. Mark M. had not been present at the pediatrician's office, but he joined Erica M. and W.M. after learning of W.M's fall.

39. During W.M.'s medical examinations and monitoring, Erica M. told the transport team and various hospital workers about the accident, including W.M.'s fall to the floor. Erica M. was told that W.M. would likely be kept for observation overnight. Physical examinations of W.M. revealed fresh bruising and abrasions to his chin and knees, consistent with the fall, which had not been observed during his doctor's visit the previous day, December 5, 2013.

40. W.M. remained in the hospital overnight on December 6, 2013. The next day, December 7, 2013, Erica M. and Mark M. expressed interest in bringing their son home. Instead, they were informed that W.M. should remain in the hospital for additional tests.

41. Also on December 7, 2013, a medical resident at Advocate Christ Hospital made a Hotline call to DCFS concerning W.M.'s injuries. Defendant Giscombe was assigned as the initial DCFS investigator.

42. Defendant Giscombe met with Plaintiffs Erica M. and Mark M. at Advocate Christ Hospital on the evening of December 7, 2013 and notified them of a pending DCFS investigation. In interviewing Mark M., Defendant Giscombe learned that Mark M. had not attended the doctor's visit on December 6 and, therefore, had not been present for W.M.'s fall. Defendant Giscombe informed Mark M. that his son would be held at the hospital until he was medically ready for discharge. Erica M. told Defendant Giscombe the story of W.M.'s fall in the pediatrician's office. Defendant Giscombe also observed W.M., who was in his father's arms. W.M. was alert and had a small abrasion/red mark on his chin.

43. On or about the morning of December 8, 2013, DCFS placed a "hold" on W.M. preventing his discharge from the hospital without DCFS approval. On information and belief, Defendant Giscombe initially ordered the "hold."

44. Defendant Morris replaced Defendant Giscombe as the DCFS investigator responsible for the W.M. investigation on or about December 8, 2013. Defendant Morris and her supervisor, Defendant Dixon, continued the "hold" on W.M.

45. W.M. was in stable condition and medically ready for discharge at least as early December 9, 2013. However, W.M. remained at Advocate Hospital on a DCFS "hold" until December 11, 2013.

46. By directing that W.M. had to be held at the hospital after he was medically ready for discharge and after Erica M. and Mark M. wished to return him to their care, Defendants Giscombe, Morris and/or Dixon, effectuated an involuntary seizure of the child from the parents' care and custody and into the State's protective custody. Because the parents were not free to leave the hospital with their child, the DCFS "hold" impaired their custodial rights as parents of W.M.

47. Neither Defendant Giscombe, Defendant Morris nor Defendant Dixon afforded Erica M. or Mark M. any process by which they could challenge the "hold" decision.

48. On December 10, 2013, Defendant Morris and, on information and belief, Defendant Dixon determined that they needed to impose a "safety plan" requiring that all visits between W.M. and his parents, Erica M. and Mark M., had to be supervised while W.M. was in the hospital. Defendant Morris informed Erica M. of the need for the safety plan. Given no option, Erica M. acquiesced to the requirement of supervised contact for she and Mark M. while the baby was in the hospital. The baby's paternal aunts were identified as the family members who would supervise contact with the baby.

49. On December 11, 2013, Defendant Morris spoke with Erica M. and advised her that a "safety plan" was in effect. Under the terms of the safety plan imposed by Defendant Morris, neither Erica M. nor Mark M. were permitted to have any unsupervised contact with W.M., they could not take him home and they could not have any overnight visitation during the investigation.

50. Defendant Morris communicated to Erica M. and Mark M. that either W.M. could leave the hospital in the custody of his paternal aunts pursuant to the "safety plan" or he would

have to remain in the hospital until he could be placed in the custody of strangers through foster care. Defendant Morris did not give Erica M. or Mark M. the option of leaving the hospital with W.M. and returning home with him. Given these limited placement options that did not include retaining custody and control of their infant son W.M., on December 11, 2013, Erica M. and Mark M. signed the "safety plan" form, and DCFS cleared W.M.'s discharge from the hospital.

51. The "safety plan" that mandated that W.M. had to remain in the physical care of his paternal aunts and neither Mark M. nor Erica M. could have unsupervised contact with him was reviewed and approved by Defendant Dixon.

52. For nearly three months, Defendants Morris and Dixon maintained the "safety plan" that restricted Erica M. and Mark M.'s contact with their infant son W.M. Abiding by the directive of the "safety plan," neither Erica M. nor Mark M. had any unsupervised contact with W.M. or spent the night with him for the next three months. Instead, W.M. remained in the home of his paternal aunts.

53. Anxious for their son to return home, from the time the DCFS investigation began on December 7, 2013 until its conclusion in April 2014, Erica M. and Mark M. repeatedly asked Defendant Morris about the status of the investigation and when it would be concluded. Defendant Morris routinely told them that the investigation was "pending."

54. Although the "safety plan" was ostensibly intended to protect W.M. while DCFS Defendant Morris continued her investigation, in fact, little investigation was done. No investigation was done between December 11, 2013, when W.M. left the hospital, and at least January 8, 2014.

55. Under DCFS protocols, any out-of-home placement of children away from their parents, such as Defendant Morris effectuated through the "safety plan," is required to be reassessed weekly and may be modified or ended at any time. Contrary to these protocols, Defendant Morris rebuffed all of Erica M.'s and Mark M.'s requests for reassessment or return of W.M. to their care. For example, on January 8, 2014, Erica M. asked that the "safety plan" be amended to include the babysitter as a caregiver, but Defendant Morris refused to allow this change.

56. On January 8, 2014, over a month after the incident, the Oak Forest police Department told DCFS that they were closing their investigation. The case was transferred to the Tinley Park police because the doctor's office where the incident occurred was located there. On January 13, 2014, Defendant Morris learned that the Tinley Park police were satisfied with the Oak Forest investigation and would not take any further action on the case.

57. On January 13, 2014, Defendant Morris interviewed W.M.'s babysitter, who reported that W.M. was a "very strong and wiggly" baby, that his parents appeared to adore him, and that she never had any concerns about abuse or neglect.

58. On or about January 14, 2014, DCFS contacted the Multidisciplinary Pediatric Education and Evaluation Consortium ("MPEEC"), a medical assessment unit which operates on a subcontract with DCFS, seeking a "second opinion" on the cause of W.M.'s injury. (The MPEEC opinion was referred to as the "second opinion," although no "first" opinion supporting a reasonable suspicion of abuse or neglect existed.)

59. DCFS, through Defendants Morris and Dixon and pursuant to the policies and practices maintained by the Director as described in paragraphs 29-32 and policies governing

safety plans set forth in DCFS Procedures 300 Appendix G, continued to impose the "safety plan" despite Erica M. and Mark M.'s repeated requests to end it and even though there was no reasonable basis to suspect abuse or neglect had occurred or was reasonably likely to occur if W.M. was returned to their care. For example, on February 4, 2014—nearly two months after the December 6, 2013 accident and implementation of the initial "safety plan" on December 11, 2013—Erica M. spoke with DCFS Defendant Morris about the safety plan. Erica M. expressed that she was upset about the safety plan, explaining that the restrictions of the safety plan had made her unable to breastfeed her infant son W.M., compromising his health. Defendant Morris simply offered Erica M. "counseling services" and told her that the safety plan "needs to remain in place." Defendant Morris told Erica M. that her cooperation was needed to prevent W.M. from being taken into protective custody (and thereby be placed with strangers into foster care). Based on this representation, Erica M. acquiesced in the continuation of the "safety plan." Defendant Morris also told Mark M. on this date that the "safety plan" "needs to continue."

60. Two days later, on February 6, 2014, Defendant Morris spoke with the MPEEC doctor who was asked to render a "second opinion." The doctor told her that there was not enough information for her to tell the mechanism of W.M.'s injury and that she could not say it was abuse. The doctor stated her preliminary finding was "indeterminate" – i.e., that she could not determine the cause of his injury.

61. Despite this, the DCFS defendants did not conclude their investigation or end the safety plan. Instead, when Erica M. again contacted DCFS on February 19, 2014, Defendant Morris told her that "the case is still pending." Defendant Morris told Mark M. the same thing on February 20, 2014.

62. On February 24, 2014, Defendant Morris made a well-being check on W.M. Mark M. was present at the paternal aunts' home during the well-being check. He asked for a detailed explanation as to the time it had taken to complete the investigation. Defendant Morris explained that she was still in the process of obtaining medical information.

63. On March 3, 2014, at 11:00 a.m., Erica M. again called Defendant Morris inquiring as to the status of the investigation. Defendant Morris informed her that the investigation was still pending.

64. Later that same day, Defendant Morris asked for the MPEEC doctor's final report on the case, noting that the doctor had given a verbal finding of "indeterminate" a few weeks earlier. Defendant Morris indicated that she needed the written opinion for "court" the next day. The MPEEC administrator responded that the doctor had not realized a written opinion was required as it would conclude with an "indeterminate" disposition but that the doctor could complete it by the end of the week.

65. On March 4, 2014, the State filed a Petition for Adjudication of Wardship in *In the Interest of W.M.* in the Circuit Court of Cook County, Child Protection Division, asking the court to adjudicate W.M. a ward of the court. At this time, W.M. was still residing with his paternal aunts under the "safety plan" directive imposed by Defendant Morris and approved by Defendant Dixon that restricted Erica M. and Mark M.'s contact with their son. A temporary custody hearing was scheduled for March 20, 2014.

66. On March 6, 2014, at 12:58 p.m., Defendant Morris and Defendant Dixon spoke by conference call with Mark M. They asked for his verbal agreement to extend the safety plan. Mark M. declined to agree until he had consulted his attorney. Defendant Morris could not reach

Erica M. Without waiting for a return call from either Erica M. or Mark M., at 1:40 p.m., Defendant King directed that Defendant Morris should take protective custody of W.M. Defendant Morris took protective custody of W.M. at 1:43 p.m.

67. On March 6, 2014, DCFS did not have definite and articulable evidence giving rise to a reasonable suspicion of past or imminent danger of abuse to W.M. Further, there were no exigent circumstances justifying the taking of W.M. into protective custody without a court order.

68. The taking of protective custody by DCFS triggered the requirement, under Illinois law, that a temporary custody hearing (also referred to as a "shelter care hearing") had to be held within 48 hours, exclusive of Saturdays, Sundays and holidays. 705 ILCS 405/2-9. The temporary custody hearing was scheduled for March 11, 2014.

69. On or about March 10, 2014, DCFS Defendant Morris received a written evaluation from the MPEEC doctor. This written evaluation confirmed what the doctor had told Defendant Morris orally on February 6, 2014. In the written evaluation, the doctor stated that she was unable to render an opinion as to whether W.M.'s injuries were non-accidental or not. The doctor made a finding of "indeterminate."

70. On March 11, 2014, Judge Robert Balanoff of the Circuit Court of Cook County, Child Protection Division held a temporary custody hearing in *In the Interest of W.M.* At the conclusion of the hearing, Judge Balanoff concluded that probable cause did not exist that W.M. had been abused or neglected, that immediate and urgent necessity did not exist to support removal of the minor from the home, and that reasonable efforts had been made and had eliminated the immediate and urgent necessity to remove the minor from the home. Judge

Balanoff not only denied the Motion for Temporary Custody, he dismissed the Petition for Wardship and sent W.M. home with Mark M. and Erica M.

71. Notwithstanding the court's findings, Defendant Morris did not formally terminate the "safety plan" until March 14, 2014. At the same time, Defendant Morris informed Mark M. that DCFS had determined that the allegations against him were "unfounded."

72. On or about April 2, 2014, DCFS determined that the allegations against Erica M. were "unfounded."

73. DCFS has had no subsequent contact with W.M., Erica M., Mark M. or their second child.

74. Throughout the duration of the investigation, no doctor ever stated to DCFS that it was reasonably likely W.M.'s injuries were caused by abuse or neglect.

75. The actions of the DCFS Defendants in removing W.M. from his parents' care and custody, in forcing Plaintiffs to agree to the infringement of their privacy and rights of familial association in order to have any contact with their son, and in seizing W.M. into the state's protective custody have caused irreparable severe and long-lasting injury to the family. Erica M. and Mark M. were emotionally scarred and traumatized. W.M. spent almost half of the first seven months of his life away from the Plaintiffs' family home. Because of her separation from her son, Erica M. was unable to continue breastfeeding him. In addition, while the investigation was pending, Erica M. suffered anxiety about the potential impact of DCFS' actions on her career.

V. CLAIMS FOR RELIEF

A. COUNT I: W.M.'S CLAIM UNDER 42 U.S.C. § 1983 FOR UNREASONABLE SEIZURE UNDER THE FOURTH AMENDMENT

76. For paragraph 76, plaintiff W.M. repeats and realleges paragraphs 1 through 75 as if fully set forth herein.

77. Defendants Giscombe, Morris and Dixon, acting individually and in concert with one another, violated the rights of W.M. under the Fourth Amendment to the United States Constitution (as applied to the States under the Fourteenth Amendment to the United States Constitution), by seizing or directing his seizure from his parents without definite and articulable evidence giving rise to a reasonable suspicion that he had been abused or neglected by his parents or without probable cause, and without exigent circumstances being present to justify such action absent a court order when they ordered Advocate Christ Hospital to "hold" W.M. and to not release him to his parents after it was no longer medically necessary for him to remain at the hospital.

78. Defendants Morris, Dixon and King, acting individually and in concert with one another, violated the rights of W.M. under the Fourth Amendment to the United States Constitution (as applied to the States under the Fourteenth Amendment to the United States Constitution), by seizing or directing his seizure from his parents without definite and articulable evidence giving rise to a reasonable suspicion that he had been abused or neglected by his parents or without probable cause, and without exigent circumstances being present to justify such action absent a court order when they took temporary protective custody of W.M. on March 6, 2014.

79. The actions and conduct of Defendants Giscombe, Morris, Dixon and King described in this Count I caused injury to W.M.

B. COUNT II: PLAINTIFFS ERICA M. AND MARK M.'S 42 U.S.C. § 1983 CLAIM FOR VIOLATION OF SUBSTANTIVE DUE PROCESS RIGHTS TO FAMILIAL ASSOCIATION

80. For paragraph 80, plaintiffs Erica M. and Mark M. repeat and reallege paragraphs 1 through 75 as if fully set forth herein.

81. Defendants Giscombe, Morris and Dixon, acting individually and in concert with one another, violated the rights of Erica M. and Mark M. to substantive due process under the Fourteenth Amendment to the United States Constitution, by seizing or directing the seizure of W.M. from his parents without definite and articulable evidence giving rise to a reasonable suspicion that he had been abused or neglected by his parents or without probable cause, and without exigent circumstances being present to justify such action absent a court order when they ordered Advocate Christ Hospital to "hold" W.M. and not to release him to his parents after it was no longer medically necessary for him to remain at the hospital.

82. Defendants Morris, Dixon and King, acting individually and in concert with one another, violated the rights of Erica M. and Mark M. to substantive due process under the Fourteenth Amendment to the United States Constitution, by seizing or directing the seizure of W.M. from his parents without definite and articulable evidence giving rise to a reasonable suspicion that he had been abused or neglected by his parents or without probable cause, and without exigent circumstances being present to justify such action absent a court order when they took temporary protective custody of W.M. on March 6, 2014.

83. The actions and conduct of Defendants Giscombe, Morris, Dixon and King described in this Count II caused injury to Erica M. and Mark M.

C. COUNT III: PLAINTIFFS W.M., ERICA M. AND MARK M.'S 42 U.S.C. § 1983 CLAIM FOR VIOLATION OF SUBSTANTIVE DUE PROCESS RIGHTS TO FAMILIAL ASSOCIATION ARISING FROM THE SAFETY PLAN

84. For paragraph 84, plaintiffs W.M., Erica M. and Mark M. repeat and reallege paragraphs 1 through 75 as if fully set forth herein.

85. Defendants Morris and Dixon, acting individually and in concert with one another, violated the constitutional rights of the plaintiffs to familial association, familial autonomy, familial integrity and family privacy by restricting Plaintiff Erica M.'s and Mark M.'s parental rights to custody, control and contact with W.M. and by falsely representing the facts and legal basis upon which these restrictions were imposed. In particular, these Defendants (a) obtained the consent of Erica M. and Mark M. to the original safety plan through duress, by telling them that if they did not agree to the safety plan W.M. could not leave the hospital or would be placed in the custody of strangers; (b) obtained consent of Erica M. and Mark M. to the continuation of the safety plan through duress by telling them that the safety plan needed to remain in place to prevent W.M. from being taken into protective custody and placed with strangers; and (c) imposing a safety plan that restricted Mark M.'s parental rights even though they had no definite and articulable evidence giving rise to a reasonable suspicion that he had abused W.M.

86. The actions and conduct of Defendants Morris and Dixon described in this Count III caused injury to each of the plaintiffs.

D. COUNT IV: PLAINTIFFS W.M., ERICA M. AND MARK M.'S 42 U.S.C. § 1983 CLAIMS FOR VIOLATION OF PROCEDURAL DUE PROCESS RIGHTS

87. For paragraph 87, plaintiffs W.M., Erica M. and Mark M. repeat and reallege paragraphs 1 through 75 as if fully set forth herein.

88. Defendants Giscombe, Morris, and Dixon, acting individually and in concert with one another violated the rights of W.M., Erica M. and Mark M. to procedural due process under the Fourteenth Amendment to the United States Constitution, by seizing or directing the seizure of W.M. from his parents without exigent circumstances being present to justify such action absent a court order when they ordered Advocate Christ Hospital to "hold" W.M. and not to release him to his parents after it was no longer medically necessary for him to remain at the hospital.

89. Defendants Morris, Dixon and King, acting individually and in concert with one another violated the rights of W.M., Erica M. and Mark M. to procedural due process under the Fourteenth Amendment to the United States Constitution, by seizing or directing the seizure of W.M. from his parents without exigent circumstances being present to justify such action absent a court order when they took temporary protective custody of W.M. on March 6, 2014.

90. Defendants Morris and Dixon, acting individually and in concert with one another, violated the constitutional rights of the plaintiffs to procedural due process under the Fourteenth Amendment to the United State Constitution by restricting Plaintiff Erica M.'s and Mark M.'s parental rights to custody, control and contact with W.M. and by falsely representing the facts and legal basis upon which these restrictions were imposed. In particular, Defendants (a) obtained the consent of Erica M. and Mark M. to the original safety plan through duress, by

telling them that if they did not agree to the safety plan W.M. could not leave the hospital or would be placed in the custody of strangers; (b) obtained the consent of Erica M. and Mark M. to the continuation of the safety plan through duress by telling them that the safety plan needed to remain in place to prevent W.M. from being taken into protective custody and placed with strangers; and (c) imposing and continuing a safety plan that restricted Mark M.'s parental rights even though they had no definite and articulable evidence giving rise to a reasonable suspicion that he had abused W.M.

91. The actions and conduct of Defendants Giscombe, Morris, Dixon and King described in this Count IV caused injury to each of the plaintiffs.

E. COUNT V: PLAINTIFFS W.M., ERICA AND MARK M.' S 42 U.S.C § 1983 CLAIMS FOR DECLARATORY RELIEF

92. For paragraph 92, plaintiffs W.M., Erica M. and Mark M. repeat and reallege paragraphs 1 through 75 as if fully set forth therein.

93. The defendant in this Count V is the DCFS Director.

94. The "hold practice," described in paragraphs 24-28, *supra*, violates the Fourth Amendment rights of the minor children who are held in the hospital longer than is medically necessary.

95. The "hold practice," described in paragraphs 24-28, *supra*, violates the substantive due process rights of the parents of the minor children who are held in the hospital longer than is medically necessary.

96. The "hold practice," described in paragraphs 24-28, *supra*, violates the procedural due process rights of the minor children and the parents of the minor children who are held in the hospital longer than is medically necessary.

97. The "removal unless rule out" practice, described in paragraphs 29-32, *supra,* violates the Fourth Amendment rights of the minor children who are separated from their parents without definite and articulate evidence giving rise to a reasonable suspicion of past or imminent danger of abuse.

98. The "removal unless rule out" practice, described in paragraphs 29-32, *supra,* violates the substantive due process rights of the parents who are separated from their minor children without definite and articulate evidence giving rise to a reasonable suspicion of past or imminent danger of abuse.

99. The "removal unless rule out" practice, described in paragraphs 29-32, *supra,* violates the procedural due process rights of the parents who are separated from their minor children without definite and articulate evidence giving rise to a reasonable suspicion of past or imminent danger of abuse or without exigent circumstances being present to justify such action absent a court order.

100. The policy and practice of requiring and maintain safety plans incident to the "hold" and the "removal unless rule out" policies violates the substantive due process and procedural due process rights of the parents who are separated from their minor children without definite and articulable evidence giving rise to a reasonable suspicion of past or imminent abuse.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs W.M., Erica M. and Mark M. respectfully request that this court enter the following judgments and awards on behalf of plaintiffs:

(a) Compensatory damages, exclusive of costs and interest, against each of the individual defendants who have been named in their individual capacities herein to which Plaintiffs are found to be entitled as set forth above;

(b) A declaratory judgment that the "hold" practice and the "removal unless rule out" practice are unconstitutional;

(c) An award of interest, costs, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 1920, and 29 U.S.C. § 794a; and

(d) Such other relief as this Court deems just and equitable.

Dated: January 13, 2015

W.M., by his parents and next friends, Erica M. and Mark M., ERICA M. and MARK M.

By: /s/ Julie A. Bauer
One of their attorneys

Julie A. Bauer
Joanna C. Wade
Reid F. Smith
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Tel: (312) 558-5600
jbauer@winston.com
jwade@winston.com
rfsmith@winston.com

Diane L. Redleaf
Melissa L. Staas
Family Defense Center
70 East Lake Street, Suite 1100
Chicago, IL 60601
Tel: (312) 251-9800
dianeredleaf@gmail.com

Attorneys for Plaintiffs