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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JANE DOE, (a pseudonym),
BABY DOE (a pseudonym),
through her mother Jane Doe

Plaintiffs,

v.

DIVISION OF YOUTH AND FAMILY
SERVICES, ANDREA YOUNG, in her
individual and official capacity, CATHEE
CHICHESTER, in her individual and official
capacity, PEGGY MCHALE, in her individual
and official capacity, KEITH WEINBERG, in
his individual and official capacity, MARY
ANN ST. JOHN, in her individual and official
capacity, CAPITAL HEALTH SYSTEM, INC.,
EVELYN POTAKO, JOANNE DIX, BETTY
BENNETT, MARIETTA CAHILL, PAUL
LOEB, M.D. AND STEPHEN MOFFITT, M.D.

individually, jointly, severally, and in the
alternative,

Defendants.

CIVIL ACTION

DOCKET NO. 00-CV-3205 (GEB)

AMENDED COMPLAINT

I. INTRODUCTION

1. This is an action by Jane Doe and Baby Doe, through her mother Jane Doe, seeking redress of the unlawful disclosure of confidential medical information, discrimination on the basis of infection with the human immunodeficiency virus ("HIV"), and state and federal constitutional violations based upon Jane Doe's infection with HIV. Plaintiffs reside in the Township of Lawrence, County of Mercer, State of New Jersey. Defendants Division of Youth and Family Services, Andrea Young, Cathee Chichester, Peggy McHale, Keith Weinberg, and Mary Ann St. John have their principal place of business at 50 East State Street, P.O. Box 717, City of Trenton, County of Mercer, State of New Jersey. Defendants Capital Health System, Inc., Evelyn Potako, Betty Bennett, Marietta Cahill, Dr. P. Loeb, Dr. Moffitt have their principal place of business at 446 Bellevue Avenue, P.O. Box 1658, City of Trenton, County of Mercer, State of New Jersey. This action is brought under 42 U.S.C. § 1983 ("Section 1983"), the United States Constitution, the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794, the New Jersey Constitution, the New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. 10:5-1 et seq., the New Jersey AIDS Assistance Act ("NJAAA"), N.J.S.A. 26:5C-1 et seq., and common law. Plaintiffs seek declaratory relief and compensatory and punitive damages.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs' claims arise under the Constitution and laws of the United States. This Court has supplemental jurisdiction over Plaintiffs' claims arising under state law

pursuant to 28 U.S.C. § 1367. Venue in this district is appropriate under 28 U.S.C. § 1391(b) because all of the Defendants reside in the district and all of the events or omissions giving rise to Plaintiffs' claims occurred within the district.

III. PARTIES

3. Plaintiff Jane Doe (a pseudonym) is the mother of infant Plaintiff Baby Doe (a pseudonym). Plaintiff Jane Doe lives in the Township of Lawrence, County of Mercer, State of New Jersey.

4. Plaintiff Baby Doe, a minor child, was born on October 2, 1998. Plaintiff Baby Doe lives in the Township of Lawrence, County of Mercer, State of New Jersey.

5. Since the birth of the child, Plaintiff Jane Doe and Plaintiff Baby Doe (collectively "Plaintiffs") have lived together without interruption, except for the events which are the subject of this action.

6. Defendant Division of Youth and Family Services ("DYFS") is a division within the New Jersey Department of Human Services. Defendant DYFS provides care, custody, guardianship, maintenance and protection of children within the care of the State as authorized by N.J.S.A. 30:4C-2. Defendant DYFS, as a division of state government, is an instrumentality of the State of New Jersey.

7. Defendant DYFS' central regional office is located at 50 East State Street, P.O. Box 717, City of Trenton, County of Mercer, State of New Jersey.

8. Upon information and belief, Defendant Andrea Young ("Young") was, at all times material, the case manager and a Family Service Specialist employed by Defendant DYFS. Defendant Young is sued in her individual and official capacities.

9. Upon information and belief, Defendant Cathee Chichester ("Chichester") was, at all times material, a supervisor employed by Defendant DYFS. Defendant Chichester is sued in her individual and official capacities.

10. Upon information and belief, Defendant Peggy McHale ("McHale") was, at all times material, the district office manager employed by Defendant DYFS. Defendant McHale is sued in her individual and official capacities.

11. Upon information and belief, Defendant Keith Weinberg ("Weinberg") was, at all times material, a caseworker employed by Defendant DYFS. Defendant Weinberg is sued in his individual and official capacities.

12. Upon information and belief, Defendant Mary Ann St. John ("St. John") was, at all times material, a caseworker employed by Defendant DYFS. Defendant St. John is sued in her individual and official capacities.

13. Defendant Capital Health System, Inc./ Mercer Hospital ("Capital Health") is a non-profit corporation established pursuant to the laws of the State of New Jersey. Defendant Capital Health's corporate main address is 750 Brunswick Avenue, Trenton, New Jersey 08638. Defendant Capital Health operates a hospital facility located at 446 Bellevue Avenue, P.O. Box 1658, City of Trenton, State of New Jersey.

14. Upon information and belief, Defendant Evelyn Potako ("Potako") was, at all times material, a nurse employed by Defendant Capital Health.

15. Upon information and belief, Defendant Joanne Dix ("Dix") was, at all times material, a social worker employed by Defendant Capital Health.

16. Upon information and belief, Defendant Betty Bennett ("Bennett") was,

at all times material, employed by Defendant Capital Health.

17. Upon information and belief, Defendant Marietta Cahill ("Cahill") was, at all times material, a nurse/midwife employed by Defendant Capital Health.

18. Upon information and belief, Defendant Dr. Paul N. Loeb ("Loeb") was, at all times material, a physician employed by Defendant Capital Health.

19. Upon information and belief, Defendant Dr. Stephen T. Moffitt ("Moffitt") was, at all times material, a physician employed by Defendant Capital Health.

IV. FACTUAL ALLEGATIONS

20. Plaintiff Jane Doe began prenatal treatment with the Health Start Prenatal Program at Capital Health System, Inc. on or about February 1998.

21. On or about February 9, 1998, Plaintiff Jane Doe signed a written consent to be tested for infection with HIV.

22. On or about February 9, 1998, Plaintiff Jane Doe provided written consent for random urine drug screens during her receipt of services from the Health Start Prenatal Program.

23. Plaintiff Jane Doe's urine drug screens were consistently clean from drugs during her prenatal care.

24. Subsequent to February 9, 1998, Plaintiff Jane Doe decided she no longer wanted to be tested for HIV infection so she withdrew her consent to be tested for HIV infection and refused the testing procedure.

25. Capital Health staff did not make a written notation that Plaintiff Jane Doe had withdrawn her consent on the original earlier signed consent form.

26. Periodically, from the date Plaintiff Jane Doe withdrew her consent to be

tested for HIV infection to on or about June 28, 1998, Plaintiff Jane Doe was contacted via telephone by hospital staff who urged her to consent again to testing to determine HIV infection.

27. Capital Health staff's telephone calls to Plaintiff Jane Doe's residence from the time she withdrew her consent to on or about June 28, 1999 did not include in-person HIV pre-test counseling.

28. During each telephone call, Plaintiff Jane Doe refused to consent to HIV testing.

29. On July 1, 1998, Plaintiff Jane Doe went to the prenatal clinic because she was experiencing severe cramping.

30. At that time, Plaintiff Jane Doe was advised to go to the lab for stool and blood testing to determine the cause of the cramping.

31. Plaintiff Jane Doe went to the lab, as instructed, and her blood was drawn and collected.

32. Moments later, Plaintiff Jane Doe was advised that she needed to go to Quest Labs for testing because her insurance carrier would not cover the testing at the hospital's pathology department. Plaintiff Jane Doe was presented with a referral to Quest Labs for HIV testing.

33. Plaintiff Jane Doe did not go to Quest Labs for HIV testing as she had not consented to HIV testing.

34. No HIV pretest counseling was provided to Plaintiff Jane Doe when she was presented with the referral to Quest Labs for HIV testing.

35. On or about July 1998, despite the canceled test order, Defendant Betty

Bennett caused Plaintiff Jane Doe's blood to be tested for HIV without written consent or authorization.

36. On or about July 1998, Plaintiff Jane Doe was advised that the HIV test result was positive.

37. On or about July 1998, believing that there was a mistake, Plaintiff Jane Doe requested to have another HIV test performed.

38. Plaintiff Jane Doe was refused another test by Defendant Marietta Cahill.

39. Plaintiff Jane Doe was prescribed AZT by Defendant Marietta Cahill to take during her pregnancy.

40. The AZT recommended protocol for HIV positive mothers include 1 AZT pill 5 times a day during pregnancy beginning in the 14th week, during labor and delivery, and to the newborn right after birth for 6 weeks.

41. Plaintiff Jane Doe began taking the prescribed AZT but discontinued the medication after experiencing side effects from the medicine.

42. Between on or about July 1998 and October 1, 1998, Defendant DYFS was contacted by Defendant Capital Health and advised that Plaintiff Jane Doe tested positive for HIV during her pregnancy.

43. Between on or about July 1998 and October 1, 1998, Defendant DYFS advised staff of Defendant Capital Health to refer the case to Defendant DYFS after the baby is born. Defendant DYFS explained to Defendant Capital Health staff that the situation was not ripe prenatally.

44. On or about October 1, 1998, Plaintiff Jane Doe began experiencing labor pains and she proceeded to Defendant Capital Health.

45. Plaintiff Jane Doe was not admitted at that time and was asked to return home.

46. While at home, Plaintiff Jane Doe took Tylenol with codeine to manage the labor pains.

47. Later the same day of on or about October 1, 1998, Plaintiff Jane Doe continued experiencing labor pains and she again proceeded to Defendant Capital Health.

48. Defendant Loeb came into the room with Plaintiff Jane Doe and other family members and openly discussed Plaintiff Jane Doe's HIV status and the administering of AZT.

49. Plaintiff Jane Doe advised Defendant Loeb that she would refuse AZT during delivery. Defendant Loeb stated that he would not deliver Plaintiff Jane Doe's baby.

50. Plaintiff Jane Doe was again sent home from Defendant Capital Health.

51. Before Plaintiff Jane Doe exited the hospital, her water broke. At that time, Plaintiff was admitted to the hospital.

52. During labor and delivery, Plaintiff Jane Doe repeatedly asked for medication to assist with the pain.

53. Plaintiff Jane Doe was refused pain medication unless she agreed to take it intravenously. Plaintiff Jane Doe was not offered an epidural or any other non-intravenous pain medication.

54. Plaintiff Jane Doe only refused intravenous pain medication.

55. AZT must be administered intravenously to pregnant women during labor

and delivery.

56. On October 2, 1998, Plaintiff Jane Doe gave birth to her daughter, infant Plaintiff Baby Doe, at Defendant Capital Health.

57. On or about October 2, 1998, Defendant Moffitt and other hospital staff openly discussed Plaintiff Jane Doe's HIV status and how the Baby Doe needed AZT. This discussion took place in the presence of other family members.

58. Plaintiff Jane Doe had not yet informed some other family members regarding her suspected HIV positive status.

59. Plaintiff Jane Doe refused the recommended AZT medical protocol for her daughter Baby Doe.

60. Defendant Potako contacted Defendant DYFS and disclosed Plaintiff Jane Doe's HIV infection without written authorization to do so.

61. Defendant Dix contacted Defendant DYFS and disclosed Plaintiff Jane Doe's HIV infection without written authorization to do so.

62. Defendant Potako also advised Defendant DYFS that Plaintiff Jane Doe refused to consent to AZT medical treatment for infant Plaintiff Baby Doe.

63. At all times material, Defendant Potako acted in the course of her employment, and upon information and belief, her actions were pursuant to policies of Defendant Capital Health.

64. After consultation with Defendant DYFS, Defendant Capital Health placed minor Plaintiff Baby Doe in protective custody on October 2, 1998.

65. Defendant Weinberg served Plaintiff Jane Doe with a "hospital hold" document which Plaintiff Jane Doe refused to sign.

66. Subsequent to the hospital hold document, Defendant DYFS obtained a court order which granted emergent medical guardianship of Plaintiff Baby Doe to Defendant Capital Health.

67. Plaintiff Jane Doe signed herself out of the hospital on or about October 2, 1998.

68. Plaintiff Jane Doe was not permitted to leave the hospital with her newborn baby.

69. Hospital security and Trenton Police Department officers prevented Plaintiff Jane Doe from leaving the hospital with her baby. The officers wore gloves.

70. Plaintiff Baby Doe remained in Defendant Capital Health's physical custody where she was subjected to numerous medical and laboratory tests as well as the AZT medical protocol.

71. Plaintiff Jane Doe was only permitted limited visitation with Baby Doe.

72. Plaintiff Jane Doe did not consent to the numerous medical and laboratory tests performed by Defendant Capital Health and the AZT protocol administered by Defendant Capital Health for Baby Doe.

73. On or about October 7, 1998, Defendant Capital Health informed Defendant DYFS that infant Plaintiff Baby Doe's meconium screen was positive for opiates. A confirmatory test was ordered by the hospital.

74. Based upon the preliminary screening, Defendant DYFS accused Plaintiff Jane Doe of abusing illicit drugs during her pregnancy.

75. Defendant DYFS refused to wait for routine confirmatory testing before

making an accusation regarding Plaintiff Jane Doe's alleged illicit drug use.

76. Plaintiff Jane Doe denied using illicit drugs during her pregnancy and reminded Defendant DYFS that all of her random prenatal urine screens for drugs were clean.

77. On or about October 8, 1998, a laboratory report indicated that Plaintiff Baby Doe's HIV test was positive.

78. On or about October 1998, Plaintiff Baby Doe was discharged from Defendant Capital Health and placed in the temporary care and custody of her uncle and aunt.

79. Plaintiff Jane Doe consented to another urine screen on or about October 12, 1998. The results of Plaintiff Jane Doe's urine screen were negative.

80. Defendant DYFS disregarded the results of Plaintiff Jane Doe's October 1998 urine screen.

81. On or about October 16, 1998, Plaintiff Baby Doe was returned to the care and custody of her mother Plaintiff Jane Doe with mandatory supervision by Defendant DYFS, including in-home visits.

82. Plaintiff Jane Doe was directed by Defendant DYFS to continue administering the AZT medication to Plaintiff Baby Doe.

83. On October 26, 1998 Defendant Young noted that Plaintiff Jane Doe was still not taking her medication.

84. From on or about October 26, 1998 through February 1999, Plaintiff Jane Doe was subjected to numerous home visits by DYFS, and court appearances for the allegations of abuse and neglect.

85. From October 26, 1998 through February 1999, Plaintiff Jane Doe lived with daily anxiety and fear that her child would be once again removed from her care and custody.

86. On or about February 22, 1999, Plaintiff Jane Doe advised Defendant Andrea Young that she had stopped giving Plaintiff Baby Doe her medication since it was making her very ill.

87. Subsequently, DYFS filed a motion for temporary custody and accused Plaintiff Jane Doe of child abuse and neglect.

88. On or about February 24, 1999, the Honorable Gerald J. Council, J.S.C. (Mercer County) ordered that Plaintiff Baby Doe submit to medical treatment at the Robert Wood Johnson Hospital (RWJH) in New Brunswick.

89. A diagnostic HIV DNA PCR test was performed on Plaintiff Baby Doe on March 18, 1999 which was negative.

90. Based upon the test results, it was determined by Paulette Forbes, Nurse Practitioner with RWJH, that medical treatment and follow-up were not required for Plaintiff Baby Doe for HIV infection.

91. Plaintiff Jane Doe was advised that there was no need to bring Plaintiff Baby Doe to the previously scheduled April 16, 1999 medical appointment at RWJH.

92. On or about April 21, 1999, Defendant Andrea Young filed or caused to be filed an unsupported false affidavit stating that Plaintiff Jane Doe was drug involved at the time of Plaintiff Baby Doe's birth.

93. The unsupported false affidavit recommended that Plaintiff Jane Doe submit to a drug assessment and urine screen and that the minor child remain under

the care and supervision of Defendant DYFS.

94. On or about July 1999 Plaintiff Jane Doe submitted to Defendant DYFS a copy of a pharmaceutical prescription for Tylenol with codeine.

95. Despite the knowledge that Tylenol with codeine is an opiates by-product, Defendant DYFS refused to consider Plaintiff Jane Doe's pharmaceutical prescription documentation.

96. During a fact finding hearing on August 4, 1999, Plaintiff Jane Doe presented a copy of the confirmatory test result to the October 1998 meconium screen. The confirmatory test result was negative.

97. Based upon the negative confirmatory test result, Defendant DYFS' complaint against Plaintiff Jane Doe was dismissed by the Honorable Laurence Lerner, J.S.C.

V. CLAIMS FOR RELIEF

COUNT I

AMERICANS WITH DISABILITIES ACT

98. Plaintiffs incorporate by reference paragraphs 1 through 97 as if fully set forth herein.

99. Pursuant to the Americans with Disabilities Act (ADA), it is unlawful for a place of public accommodation to deny an individual the benefits of services or programs on the basis of a disability.

100. Defendant Capital Health is a place of public accommodation under the ADA

101. Plaintiff Jane Doe is a person with a disability under the ADA.

102. Plaintiff Jane Doe has a record of disability under the ADA.

103. Plaintiff Jane Doe was regarded as a person with a disability under the ADA.

104. Upon information and belief, Defendant Capital Health has a policy of reporting to Defendant DYFS mothers with HIV who refused to give consent for their newborns to be given HIV medication.

105. Upon information and belief, Defendant Capital Health and Defendant Potako do not report to Defendant DYFS mothers without physical or mental impairments who refused to give consent for medical treatment for their newborns.

106. Defendant Capital Health and Defendant Potako reported Plaintiff Jane Doe based on her HIV status.

107. Defendants Capital Health and its agents failed to provide confirmatory meconium test results to DYFS, which established the original screen was a false positive.

108. Defendant Loeb refused to provide Plaintiff Jane Doe with an epidural shot or other non-intravenous method of pain management. This refusal to provide pain medication was based on Plaintiff Jane Doe's HIV status.

109. Defendant Capital Health limited Plaintiff Jane Doe's visitation time with newborn Baby Doe based on Plaintiff Jane Doe's HIV status.

110. Defendants Capital Health and its agents tested Jane Doe for HIV without her consent.

111. Defendants Capital Health and its agents repeatedly called Jane Doe at her home to persuade her to consent to an HIV test after she had withdrawn her

consent.

112. Defendants Capital Health and its agents disclosed Jane Doe's HIV positive status to hospital security officers.

113. Defendants Capital Health and its agents disclosed Jane Doe's HIV positive status to City of Trenton police officers who responded to the scene.

114. Defendants Capital Health and its agents denied Jane Doe crisis intervention and social support services based on Jane Doe's HIV status.

115. Such actions were discriminatory and in violation of the Americans with Disabilities Act.

116. As a result of Defendant Capital Health, Defendant Loeb and Defendant Potako's actions, Plaintiff Jane Doe suffered the loss of the custody and services of her child and experienced extreme humiliation, pain and suffering, terror, mental anguish, and depression.

117. As a result of Defendants actions, Plaintiff Baby Doe suffered the loss of liberty, care and guidance of her mother.

COUNT II

NEW JERSEY LAW AGAINST DISCRIMINATION

118. Plaintiffs incorporate by reference paragraphs 1 through 117 as if fully set forth herein.

119. Pursuant to the New Jersey Law Against Discrimination (LAD), it is unlawful for a place of public accommodation to deny an individual the benefits of services or programs on the basis of a handicap.

120. Defendant Capital Health is a place of public accommodation under the

LAD.

121. Plaintiff Jane Doe is a handicapped person under the LAD.

122. Plaintiff Jane Doe has a record of handicap under the LAD.

123. Plaintiff Jane Doe was regarded as a person with a handicap under the LAD.

124. Upon information and belief, Defendant Capital Health has a policy of reporting to Defendant DYFS mothers with HIV who refused to give consent for their newborns to be given HIV medication.

125. Upon information and belief, Defendant Capital Health and Defendant Potako do not report to Defendant DYFS mothers without handicaps who refused to give consent for medical treatment for their newborns.

126. Defendant Capital Health and Defendant Potako reported Plaintiff Jane Doe to Defendant DYFS based solely on her HIV status.

127. Defendants Capital Health and its agents failed to provide confirmatory meconium test results to DYFS, which established the original screen was a false positive.

128. Defendant Loeb refused to provide Plaintiff Jane Doe with an epidural shot or other non-intravenous method of pain management. This refusal to provide pain medication was based on Plaintiff Jane Doe's HIV status.

129. Defendant Capital Health limited Plaintiff Jane Doe's visitation time with newborn Baby Doe based on Plaintiff Jane Doe's HIV status.

130. Defendants Capital Health and its agents tested Jane Doe for HIV without her consent.

131. Defendants Capital Health and its agents repeatedly called Jane Doe at her home to persuade her to consent to an HIV test after she had withdrawn her consent.

132. Defendants Capital Health and its agents disclosed Jane Doe's HIV positive status to hospital security officers.

133. Defendants Capital Health and its agents disclosed Jane Doe's HIV positive status to City of Trenton police officers who responded to the scene.

134. Defendants Capital Health and its agents denied Jane Doe crisis intervention and social support services based on Jane Doe's HIV status.

135. Such actions were discriminatory and in violation of the New Jersey Law Against Discrimination.

136. As a result of Defendant Capital Health and Defendant Potako's actions, Plaintiff Jane Doe suffered the loss of custody and services of her child and experienced extreme humiliation, pain and suffering, terror, mental anguish, and depression.

137. As a result of Defendant Capital Health's actions, Plaintiff Baby Doe suffered the loss of liberty, care and guidance of her mother.

COUNT III
NEW JERSEY AIDS ASSISTANCE ACT

138. Plaintiffs incorporate by reference paragraphs 1 through 137 as if fully set forth herein.

139. Pursuant to the New Jersey AIDS Assistance Act, all records and information concerning the HIV status of an individual must be maintained in a

confidential manner.

140. Pursuant to the New Jersey AIDS Assistance Act, HIV testing shall only be performed after informed written consent has been obtained.

141. Defendant Bennett and Defendant Capital Health, without written consent or authorization, caused Plaintiff Jane Doe's blood to be tested for HIV.

142. The unauthorized HIV test was in violation of the New Jersey AIDS Assistance Act.

143. Upon information and belief, Defendant Capital Health has a policy of reporting to Defendant DYFS mothers with HIV who refused to give consent for their newborns to be given HIV medication.

144. Acting according to such policy and without Plaintiff Jane Doe's knowledge or consent, Defendant Capital Health reported to Defendant DYFS that Plaintiff Jane Doe had refused AZT treatment prenatally.

145. Acting according to such policy and without Plaintiff Jane Doe's knowledge or consent, Defendant Capital Health and Defendant Potako reported to Defendant DYFS that minor Plaintiff Baby Doe had been exposed to HIV prenatally and during labor which, in turn, expressly states that Plaintiff Jane Doe is HIV positive.

146. Acting pursuant to said policy, Defendant Capital Health, Defendant Dix and Defendant Potako breached Plaintiff Jane Doe's confidentiality in violation of New Jersey's AIDS Assistance Act.

147. Defendant Loeb and Defendant Moffitt disclosed Plaintiff Jane Doe's HIV status to others in violation of the New Jersey AIDS Assistance Act.

148. As a result of Defendant Capital Health's, Defendant Potako's, Defendant Dix's, Defendant Bennett's, Defendant Loeb's, and Defendant Moffitt's actions, Plaintiff Jane Doe's confidentiality was breached and she experienced extreme humiliation, pain and suffering, terror, mental anguish, and depression.

149. As a result of Defendant Capital Health's, Defendant Potako's, Defendant Bennett's, Defendant Loeb's, and Defendant Moffitt's actions, Plaintiff Baby Doe suffered the loss of liberty, of the care and guidance of her mother.

COUNT IV
TORTIOUS INTERFERENCE WITH PARENTAL RIGHTS

150. Plaintiffs incorporate by reference paragraphs 1 through 149 as if fully set forth herein.

151. Upon information and belief, Defendant Capital Health has a policy of interfering with the custodial relationship between an HIV exposed mother and her child by reporting to Defendant DYFS mothers with HIV who do not give consent for their newborns to be tested for HIV or treated with HIV medication.

152. Acting pursuant to said policy, Defendants Potako, Defendant Dix and Capital Health reported plaintiff to Defendant DYFS which constituted an unlawful interference with Plaintiff Jane Doe's custodial relationship with her child and her rights to make decisions concerning the health and welfare of her minor child.

153. Defendants actions constitute tortious interference with parental and custodial rights. The Defendants intentionally, recklessly and/or negligently caused unjustifiable interference with the parent-child custodial relationship between Plaintiff Jane Doe and Plaintiff Baby Doe.

154. As a result of Defendant Capital Health's, Defendant Dix's, and Defendant Potako's actions, Plaintiff Jane Doe was deprived of her child and her right to make medical decisions and choices for her child.

155. As a result of Defendant Capital Health's, Defendant Dix's, and Defendant Potako's actions, Plaintiff Jane Doe suffered the loss of custody and services of her child and experienced humiliation, pain and suffering, terror, mental anguish, and depression.

156. As a result of Defendant Capital Health's actions, infant Plaintiff Baby Doe suffered the loss of liberty, care and guidance of her mother.

COUNT V
PRIVACY AND FAMILIAL RELATIONSHIPS

157. Plaintiffs incorporate by reference paragraphs 1 through 156 as if fully set forth herein.

158. Defendant DYFS, as an instrumentality of the State of New Jersey, is a governmental actor.

159. Upon information and belief, Defendant DYFS has a policy of removing or attempting to remove HIV exposed children from their mothers who are HIV positive when the mothers refuse to consent to HIV medical treatment.

160. Plaintiff Jane Doe's right to make parental decisions concerning the health and welfare of her minor child is a fundamental right protected by the Due Process Clause of the Fourteenth Amendment.

161. Acting according to her liberty interest, Plaintiff Jane Doe refused to give consent to HIV medical treatment for her child.

162. Upon information and belief, Defendant DYFS has a policy of mandating HIV medical treatment which is only a recommended protocol for HIV exposed newborns despite parental refusal and in the absence of a medical necessity.

163. Acting pursuant to said policy, and without due process of law, Defendant DYFS removed minor Plaintiff Baby Doe from her mother and mandated HIV medical treatment which constituted an unlawful interference with Plaintiff Jane Doe's rights in violation of the Fourteenth Amendment to the United States Constitution.

164. Defendant DYFS's policy and actions do not fulfill a compelling state interest, nor is it narrowly tailored to achieve a government interest.

165. Defendant's actions were in violation of clearly established constitutional protections of which Defendant knew, or with reasonable foresight, should have known.

166. As a result of Defendant DYFS's actions, Plaintiff Jane Doe suffered the loss of custody and services of her child and experienced humiliation, pain and suffering, terror, mental anguish, and depression.

167. As a result of Defendant DYFS's actions, infant Plaintiff Baby Doe suffered the loss of liberty, care and guidance of her mother.

COUNT VI
THE REHABILITATION ACT OF 1973

168. Plaintiffs incorporate by reference paragraphs 1 through 167 as if fully set forth herein.

169. Pursuant to the Rehabilitation Act of 1973 (Section 504), it is unlawful

for a recipient of federal financial assistance to deny an individual the benefits of services or programs on the basis of disability.

170. Upon information and belief, Defendant DYFS is a program or activity which receives federal financial assistance as contemplated by Section 504.

171. Plaintiff Jane Doe is an individual with a disability as contemplated by Section 504.

172. Plaintiff Jane Doe has a record of disability pursuant to Section 504.

173. Plaintiff Jane Doe was regarded as an individual with a disability pursuant to Section 504.

174. Upon information and belief, Defendant DYFS has a policy of removing HIV exposed newborns from their parents based solely on maternal HIV status and without investigating allegations of abuse and neglect.

175. Upon information and belief, Defendant Young, acting pursuant to said policy and due to Plaintiff's HIV positive status, filed a false affidavit with the court alleging that Plaintiff Jane Doe was drug involved during her pregnancy.

176. Upon information and belief, it is customary for Defendant DYFS to receive confirmatory test results before proceeding with an abuse and neglect complaint against a mother based on a preliminary meconium screening.

177. Upon information and belief, Defendant Young, acting pursuant to said policy and due to Plaintiff Jane Doe's HIV positive status, refused to ascertain the results of Plaintiff Jane Doe's confirmatory test before proceeding with an abuse and neglect complaint against Plaintiff Jane Doe

178. Upon information and belief, Defendant DYFS and Defendant Young

presumed Plaintiff to be drug involved based solely on her HIV positive status.

179. Defendant DYFS's and Defendant Young's actions were discriminatory and in violation of Section 504.

180. As a result of Defendant DYFS's and Defendant Young's actions, Plaintiff Jane Doe was subjected to discrimination and suffered the loss of custody and services of her child and experienced extreme humiliation, pain and suffering, terror, mental anguish, and depression.

181. As a result of Defendant DYFS's actions, Plaintiff Baby Doe suffered the loss of liberty, care and guidance of her mother.

COUNT VII
AMERICANS WITH DISABILITIES ACT

182. Plaintiffs incorporate by reference paragraphs 1 through 181 as if fully set forth herein.

183. Pursuant to the Americans with Disabilities Act (ADA), it is unlawful for state and local government to deny an individual the benefits of services or programs on the basis of a disability.

184. Defendant DYFS, as an instrumentality of the State of New Jersey, is subject to the provisions of the ADA

185. Plaintiff Jane Doe is a person with a disability under the ADA.

186. Plaintiff Jane Doe has a record of disability under the ADA.

187. Plaintiff Jane Doe was regarded as a person with a disability under the ADA.

188. Upon information and belief, Defendant DYFS has a policy of removing

HIV exposed newborns from their parents based on maternal HIV status and without investigating allegations of abuse and neglect.

189. Upon information and belief, Defendant Young, acting pursuant to said policy and due to Plaintiff's HIV positive status, filed a false affidavit with the court alleging that Plaintiff Jane Doe was drug involved during her pregnancy.

190. Upon information and belief, it is customary for Defendant DYFS to receive confirmatory test results before proceeding with an abuse and neglect complaint against a mother based on a preliminary meconium screening.

191. Upon information and belief, Defendant Young, acting pursuant to said policy and due to Plaintiff Jane Doe's HIV positive status, refused to ascertain the results of the Plaintiff Jane Doe's confirmatory test before proceeding with an abuse and neglect complaint against Plaintiff Jane Doe.

192. Upon information and belief, Defendant DYFS and Defendant Young presumed Plaintiff to be drug involved based solely on her HIV positive status.

193. Defendant DYFS's and Defendant Young's actions were discriminatory and in violation of the Americans with Disabilities Act.

194. As a result of Defendant DYFS's and Defendant Young's actions, Plaintiff Jane Doe suffered the loss of custody and services of her child and experienced extreme humiliation, pain and suffering, terror, mental anguish, and depression.

195. As a result of Defendant DYFS's actions, Plaintiff Baby Doe suffered the loss of liberty, care and guidance of her mother.

COUNT VIII

NEW JERSEY LAW AGAINST DISCRIMINATION

196. Plaintiffs incorporate by reference paragraphs 1 through 195 as if fully set forth herein.

197. Pursuant to the New Jersey Law Against Discrimination (LAD), it is unlawful to deny an individual the benefits of services or programs on the basis of a handicap.

198. Defendant DYFS is subject to the anti-discrimination provisions of the LAD.

199. Plaintiff Jane Doe is a handicapped person under the LAD.

200. Plaintiff Jane Doe has a record of handicap under the LAD.

201. Plaintiff Jane Doe was regarded as a person with a handicap under the LAD.

202. Upon information and belief, Defendant DYFS has a policy of removing HIV exposed newborns from their parents based solely on maternal HIV status and without investigating allegations of abuse and neglect.

203. Upon information and belief, Defendant Young, acting pursuant to said policy and due to Plaintiff's HIV positive status, filed a false affidavit with the court alleging that Plaintiff Jane Doe was drug involved during her pregnancy.

204. Upon information and belief, it is customary for Defendant DYFS to receive confirmatory test results before proceeding with an abuse and neglect complaint against a mother based on a preliminary meconium screening.

205. Upon information and belief, Defendant Young, acting pursuant to said policy and due to Plaintiff Jane Doe's HIV positive status, refused to ascertain the

results of the Plaintiff Jane Doe's confirmatory test before proceeding with an abuse and neglect complaint against Plaintiff Jane Doe.

206. Upon information and belief, Defendant DYFS and Defendant Young presumed Plaintiff to be drug involved based on her HIV positive status.

207. Defendant DYFS's and Defendant Young's actions were discriminatory and in violation of the New Jersey Law Against Discrimination.

208. As a result of Defendant DYFS's and Defendant Young's actions, Plaintiff Jane Doe suffered the loss of the custody and services of her child and experienced extreme humiliation, pain and suffering, terror, mental anguish, and depression.

209. As a result of Defendant DYFS's and Defendant Young's actions, Plaintiff Baby Doe suffered the loss of liberty, care and guidance of her mother.

COUNT IX

FAILURE TO INVESTIGATE

210. Plaintiffs incorporate by reference paragraphs 1 through 209 as if fully set forth herein.

211. Plaintiffs have fulfilled the requirements of the New Jersey Tort Claims Act.

212. Defendant DYFS is bound by a statutory requirement that charges of abuse and neglect be properly investigated by the state prior to the state taking action under N.J.S.A. 9:6-8.21.

213. Plaintiff Jane Doe and Plaintiff Baby Doe are the intended beneficiaries of a properly conducted investigation of child abuse and neglect by Defendant DYFS

and as contemplated by state statute.

214. Defendant DYFS and Defendant Young failed to investigate the allegations of abuse and neglect as required by statute.

215. Defendant DYFS and Defendant Young failed to ascertain the results of Plaintiff Jane Doe's confirmatory test prior to filing a false affidavit with the court alleging that Plaintiff Jane Doe was drug involved during pregnancy.

216. Defendant DYFS and Defendant Young failed to ascertain the results of Plaintiff Jane Doe's confirmatory test prior to attempting to remove minor Plaintiff Baby Doe from her mother's care and custody.

217. Defendant DYFS and Defendant Young failed to investigate the potential efficacy of the recommended medical protocol for HIV exposed newborns before mandating this treatment on minor Plaintiff Baby Doe.

218. As a result of Defendant DYFS's and Defendant Young's actions and omissions, Plaintiff Jane Doe and Plaintiff Baby Doe have been permanently injured.

219. As a result of Defendant DYFS's and Defendant Young's actions and omissions, Plaintiff Jane Doe suffered the loss of custody and services of her child and experienced extreme humiliation, pain and suffering, terror, mental anguish, and depression.

220. As a result of Defendant DYFS's actions and omissions, Plaintiff Baby Doe suffered the loss of liberty, care and guidance of her mother.

COUNT X
NEGLIGENCE

221. Plaintiffs incorporate by reference paragraphs 1 through 220 as if fully

set forth herein.

222. Plaintiffs have fulfilled the requirements of the New Jersey Tort Claims Act.

223. Defendant DYFS is bound by a statutory requirement that charges of abuse and neglect be properly investigated by the state prior to the state taking action under N.J.S.A. 9:6-8.21.

224. Plaintiff Jane Doe and Plaintiff Baby Doe are the intended beneficiaries of a properly conducted investigation of child abuse and neglect by Defendant DYFS and contemplated by statute.

225. Defendant DYFS and Defendant Young had a duty of care to Plaintiff Jane Doe and minor Plaintiff Baby Doe to conduct a proper investigation.

226. Defendant DYFS had a further duty to insure that investigations of child abuse and neglect allegations were conducted by skilled, trained and experienced professionals who had no bias against those whom they were investigating.

227. Defendant DYFS and Defendant Young negligently investigated the allegations of abuse and neglect against Plaintiff Jane Doe.

228. Defendant DYFS and Defendant Young negligently failed to ascertain the results of Plaintiff Jane Doe's confirmatory test prior to filing a false affidavit with the court alleging drug involvement during pregnancy.

229. Defendant DYFS and Defendant Young negligently failed to ascertain the results of Plaintiff Jane Doe's confirmatory test prior to attempting to remove minor Plaintiff Baby Doe from her mother's care and custody.

230. Defendant DYFS and Defendant Young negligently failed to investigate

the potential efficacy of the recommended medical protocol for HIV exposed newborns before mandating this treatment on minor Plaintiff Baby Doe

231. As a result of Defendant DYFS's and Defendant Young's actions Plaintiff Jane Doe and Plaintiff Baby Doe have been permanently injured.

232. As a result of Defendant DYFS's and Defendant Young's actions Plaintiff Jane Doe suffered the loss of custody and services of her child and experienced extreme humiliation, pain and suffering, terror, mental anguish, and depression.

233. As a result of Defendant DYFS's actions Plaintiff Baby Doe suffered the loss of liberty, care and guidance of her mother.

COUNT XI
PRIVACY- NJ CONSTITUTION

234. Plaintiffs incorporate by reference paragraphs 1 through 233 as if fully set forth herein.

235. Defendant DYFS, as an instrumentality of the State of New Jersey, is a governmental actor.

236. Upon information and belief, Defendant DYFS has a policy of removing HIV exposed children from their mothers who are HIV positive when the mothers refuse to consent to HIV medical treatment.

237. Plaintiff Jane Doe's right to make parental decisions concerning the health and welfare of her minor child is a fundamental right protected by Article 1, Paragraph 1 of the New Jersey Constitution.

238. Acting according to her liberty interest, Plaintiff Jane Doe refused to give consent to HIV medical treatment for her child.

239. Upon information and belief, Defendant DYFS has a policy of mandating HIV medical treatment to HIV exposed newborns despite parental refusal and in the absence of a medical necessity.

240. Acting pursuant to said policy, and without due process of law, Defendant DYFS removed minor Plaintiff Baby Doe from her mother and mandated HIV medical treatment which constituted an unlawful interference with Plaintiff Jane Doe's rights in violation of Article 1, Paragraph 1 of the New Jersey Constitution.

241. Defendant DYFS's policy and actions do not fulfill a compelling state interest, nor is it narrowly tailored to achieve a government interest.

242. Defendant's actions were in violation of clearly established constitutional protections of which Defendant knew, or with reasonable foresight, should have known.

243. As a result of Defendant DYFS's actions, Plaintiff Jane Doe suffered the loss of custody and services of her child and experienced humiliation, pain and suffering, terror, mental anguish, and depression.

244. As a result of Defendant DYFS's actions, infant Plaintiff Baby Doe

suffered the loss of liberty, care and guidance of her mother.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs and against Defendants:

- A. Declaring that Defendants have violated Plaintiffs' rights under the United States Constitution, the Americans with Disabilities Act, the Rehabilitation Act, the New Jersey Constitution, the New Jersey Law Against Discrimination, the New Jersey AIDS Assistance Act;
- B. Awarding Plaintiffs compensatory and punitive damages apportioned jointly and severally among the Defendants;
- C. Awarding Plaintiffs her attorneys' fees and costs; and
- D. Granting such other relief as the Court may deem appropriate.

December 31, 2002

Respectfully submitted,

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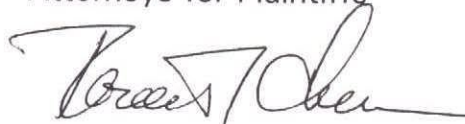
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JURY DEMAND

Plaintiffs hereby demand a trial by jury for all issues so triable.

December 31, 2002

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