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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

12-CV-1897

Civil Case No.: _____

B. Gary T

As a co-plaintiff,
and as a Parent and Next Friend for,

Anya E

As co-plaintiff,
A Minor,

Plaintiffs,

Civil Complaint

-vs-

Jury Trial Demand

Valerie Lyn Wacks, Esq.,
Lawrence Shelton, Esq.,
Amy Greene,
Kelly Whittaker,
Elisabeth Krisjanis, Esq.,
Jillian Jackson, Esq.,
Barbara Sorkin,
Denise Woltman,
Charlene Boswell,
Mary Ellen Schneider,
Joseph Bennett,
Other Unknown Named Persons,
Ulster County Municipality via its agencies
Ulster County Child Protective Services &
Ulster County Mental Health Dept.

All within their personal and official capacities,

Defendants.

JURISDICTION

I. This is an action prosecuted pursuant to Title 42 USC §1983, §1985(3), which establish causes of action and provides that, §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.”

and that, §1985(3),

“If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; [. . .] in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.”

- II. Plaintiff Anya E. also asserts violation pursuant to 42 USC §1983, as a suspect class particularly liable to violation of their constitutional rights, due to her age and as a person covered under the Americans with Disability Act, as per 42 U.S.C. § 12132, et seq.
- III. The Court has jurisdiction over this action pursuant to 28 USC §1331, §1343(3, 4), §2201, §1367, and other ancillary jurisdiction.
- IV. Venue is appropriate in this judicial district under 28 USC §1391(b), as the events that gave rise to the cause of action(s) occurred in this federal district.
- V. 42 USC § 2000d also provides for prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin, disability or other discriminatory purpose.
- VI. 42 USC §12101, et. seq.; Section 504 of the Rehabilitation Act of 1973, as amended; 29 USC §794, and the New York State Human Rights Law (“NYHRL”), N.Y. Exec. L. § 290, et seq.

VII. 42 U.S.C. §§ 12201–12213 provides that no person shall be subject to retaliation for raising or invoking the rights preserved by this legislation, nor shall any third party be subject to retaliation for raising, prosecuting or invoking the law for another person, and that,

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

PARTIES

Plaintiffs:

1. **B. Gary T** (hereinafter **Ben Gary**)

A United States Citizen, and resident of New York State

2. Anya E (hereinafter **Anya E**)
[Minor Child]

A United States Citizen, and resident of New York State

Defendants:

3. Valerie Lyn Wacks, Esq., Attorney for Anya E
74 Mill Road
Olivebridge, NY 12461
4. Lawrence Shelton, Esq., Attorney for Suzanne M. Cayley
261 Fair Street
Kingston, NY 12401
5. Amy Greene, Ulster County Child Protective Services Supervisor/Caseworker
Ulster County Dept. of Social Services
1091 Development Court
Kingston, NY 12401
6. Kelly Whittaker, Ulster County Child Protective Services Caseworker,
Ulster County Dept. of Social Services
1091 Development Court
Kingston, NY 12401

7. Elisabeth Krisjanis, Esq. Ulster County, DSS Counsel
Ulster County Dept. of Social Services
1091 Development Court
Kingston, NY 12401
8. Jillian Jackson, Esq, Ulster County, DSS Counsel
Ulster County Dept. of Social Services
1091 Development Court
Kingston, NY 12401
9. Barbara Sorkin, Ulster Co. Deputy Commissioner
Ulster County Dept. of Social Services
1091 Development Court
Kingston, NY 12401
10. Denise Woltman, Ulster County Child Protective Services Caseworker
Ulster County Dept. of Social Services
1091 Development Court
Kingston, NY 12401
11. Charlene Boswell, Ulster County Child Protective Services Supervisor
Ulster County Dept. of Social Services
1091 Development Court
Kingston, NY 12401
12. Mary Ellen Schneider, Ulster County Mental Health Department Social Worker
239 Golden Hill Lane
Kingston, NY 12401
- 12(a) Joseph Bennett, Ulster County Mental Health Department Social Worker/Supervisor
239 Golden Hill Lane
Kingston, NY 12401
13. Ulster County Municipality
c/o Beatrice Havranek, Esq.,
County Attorney
244 Fair Street, 5th Floor
Kingston, NY 12401

Statement of Facts

Background Information

14. From the time of Anya E's birth, to which Ben Gary was present for and assisted in, to the age of 7, both Plaintiffs lived with each other daily and enjoyed the unfettered company and association of father and child; they enjoyed and celebrated holidays and birthdays together.
15. They regularly went on father and daughter outings, swimming, movies, museums, outdoor fairs and events, scenic train rides, Hudson River boat rides, restaurants, vacations, hikes and walks, camping trips, fishing and other activities.
16. Anya E was also made a part of her father's extended family, uncles, aunts and cousins, and would attend birthday parties, holiday gatherings, and other extended family events.
17. Ben Gary and Anya E furthermore would partake in daily familial life, her father would care for her, feed her, read fairy tales to her nightly before bed. They would prepare dinner together, watch TV together, take care of Anya's terrarium pets, play videogames together, assemble toys and models together, tended a vegetable garden together, and other at-home activities.
18. Ben Gary also provided for her intellectual growth, teaching her about philosophy, religion, discussions about nature and people. Ben Gary also taught and tutored her to the game of chess, which she learned by him at age 5, and began to show a continuing enthusiasm and innate proficiency for, and planned for young chess player tournaments.

19. Anya E also presented an increasing vocabulary that far exceeded children of her age; at the age of 7, Ben Gary administered to Anya E a children's IQ test to which she measured at 140.
20. Ben Gary began inquiring and the process as to sponsor her admission to BrightKids SIG in Mensa, of which he is a member.
21. Both plaintiffs, father and child, adored, cherished and treasured each other. They shared their lives together, loved each other, and had a strong emotional bond to be with one another. Neither plaintiff wanted to be separated from each other.
22. Such association and parent child relationship is both a legal and natural right.

Facts Pertinent to Department of Social Services (DSS) Defendants

23. On or about May of 2011, Suzanne M. Cayley, mother of Plaintiff Anya E, took Anya E to the Ulster County Mental Health Department (UCMH), an agency of the Ulster County Department of Social Services, located at 239 Golden Hill Lane, Kingston, NY 12401.
24. The UCMH receives federal financial assistance.
25. Complaining to UCMH workers that her daughter Anya E was having temper tantrums at home and in school, and that she could not handle Anya E's temperament without assistance, Cayley sought and obtained a psychiatric drug prescription for Anya E, a substance known as Geodon, manufactured by Pfizer Pharmaceuticals.
26. This drug is not FDA approved for use in children, and is specifically warned as such on the manufacturers label insert. It additionally is known to have serious side-effects

on the heart, causes obesity, and can lead to permanent tardive dyskinesia, a condition of tics and involuntary movements.

27. Anya E's social worker at UCMH was and is as of the filing of this complaint Mary Ellen Schneider, LMSW.
28. Joseph Bennett, LCSW was the supervisor of Mary Ellen Schneider, who was aware of, oversaw and was complicit in these actions.
29. The drug was prescribed to Anya E as an off-label use by a Dr. Howard Gottlieb, a psychiatrist at the UCMH, on or about June 17, 2011, but upon first dosing, Anya E had a bad reaction¹ and Cayley had to call the emergency room hotline, and it was discontinued.
30. However, on July 21st, 2011, Dr. Gottlieb restarted the medication and doubled the dosage.
31. Neither Cayley, Schneider, Bennett or Gottlieb ever consulted, advised or even contacted Ben Gary, the father of Anya E, to either notify or inform him of the treatment or to seek any input from him as to the psychotropic drugs his daughter was being treated with, although they had a duty to do so, and in violation of administrative procedural rules. Nor did they advise Anya E as to the name or possible side-effects of the drug.
32. Furthermore, Anya E was instructed by Cayley not to tell her father of the medicating regimen.

¹Specifically, as per filed medical reports, Anya E came home the day after dosing her with Geodon, fell down on the couch and her limbs started to flail, her eyes were vacant and she started scratching at herself while hissing, her legs rolling on the couch and not talking. This continued for an hour and a half, when she stopped and asked for a drink of water. The event was medically determined to have been a seizure caused by the psychiatric medication.

33. Ben Gary was made completely ignorant of any of these developments or activities.
34. On July 27, 2011 Ben Gary served Cayley via her counsel Defendant Lawrence Shelton, a discovery request demanding production of all medical records, diagnostics, treatments, medications, or other health care being administered to Anya E.
35. On August 22, 2011, Lawrence Shelton advised by faxed letter, that he had collected all the requested medical, diagnostic, and treatment documents requested, specifically 144 pages, for which he required the sum of \$108.00 for production and release of copies. This package was paid for and received by Ben Gary.
36. After review of the documents, on September 6, 2011, Ben Gary again contacted Defendant Shelton by faxed letter, requesting any other documents or reports relating to Anya E's medical treatments, if any.
37. Shelton contacted Ben Gary back and affirmatively asserted that there were no further medical records for Anya E that were not included in the original 144 page document package.
38. There was no mention in these pages of any medical diagnosis, treatments or medications prescribed or administered by Dr. Gottlieb to Anya E.
39. On or about August 21, 2011, Anya E informed her father Ben Gary that she was being given a pill every morning by her mother, but that she did not know what it was, and that she was not supposed to tell her father that she was being given it.
40. Furthermore, Anya E complained to her father Ben Gary that she could not sleep, was having nightmares, could not breathe properly, could no longer engage in exercise, could not concentrate on anything, told him that nothing felt real anymore, and was

feeling miserable and in distress. Ben Gary also noticed his daughter going into fugue-like states of staring at nothing with no response, and later not remembering doing so.

41. Ben Gary furthermore noticed a new insatiable hunger, and an unexplained rapid and excessive weight gain on his daughter Anya E, averaging 1 pound per week starting from July 2011. (By October 10, she weighed 105lbs, and as of the filing date of this complaint, her medical reports indicate she weighs 125lbs, a BMI of 30.1, which considered morbidly obese. A healthy BMI for a girl this age is between is about 16 ± 2.5 and weight should be about $60\text{lbs} \pm 17\text{lbs}$. Such weight gain puts a child at risk for Type II diabetes, and heart disease complications.)
42. Ben Gary also noticed that his daughter no longer enjoying playing chess, and could not maintain any of the concentration on the game that she had had before. Ben Gary also noted that Anya E could no longer go on the walks and hikes that they had engaged in before, as Anya E became too winded and did not enjoy the nature walks any longer. This loss of stamina further affected her ability to play on swings and climb playground structures.
43. On September 25, 2011, Anya E and Ben Gary were dancing in his apartment to music, when Anya E told her father that her heart was beating too fast and that she was scared.
44. Ben Gary told her to sit down and relax, assessed her condition and symptoms as to whether there was a need to bring her to the hospital. As she calmed down, he asked her how she felt and whether she wanted to go to a hospital. He observed her carefully, and concluded that she was just exerting herself during the dancing and that she had

fixated on herself. Anya E asked for a soft drink and some chips, and Ben Gary decided that no medical intervention was necessary.

45. However, Anya E's behavior and enervation concerned him, and he asked her what the name of the pill her mother was giving her was, what was it supposed to be for, and what did it look like. Anya E did not know the name of the pill, but described it as best as she could.
46. Ben Gary researched on the Internet for possible drugs that matched the description of the pill and the side effects Anya E had relayed to him, but was unable to determine what it was. Anya E asked him what it was and if it could hurt her, but Ben Gary was unable to tell her what it was. He told her he did not know what it was but would try to find out.
47. Later that day both Ben Gary and Anya E went to a local event, the Garlic Festival, and Ben Gary carefully observed her for any ill effects throughout that day, but did not observe any further adverse symptoms from the incident earlier that day.
48. Following this incident, Anya E conveyed to her mother that since she did not know what the pill she was being given was, she did not want to take it. She conveyed that she was afraid that the pill would hurt her heart, and refused to take it. Her mother forced her to take it nonetheless by physically fighting with her and pinning her to ground, forcibly putting the pill into her mouth, and demanding that she swallow it.
49. Anya E furthermore refused to see Dr. Gottlieb and conveyed that her mother and Gottlieb were trying to poison her. Further forcible administrations of the pill were effected upon Anya E.

50. None of these following incidents were relayed to Ben Gary, nor was he notified or advised of the forced medicating of his daughter, nor was an effort made to seek his input and ministrations as the treatment or condition of his daughter.
51. On or about September 15, 2011, Anya E was left alone in the apartment she was staying in with her mother Suzanne Cayley, while Cayley went out for some unknown purpose.
52. At that time Anya E exited the apartment to investigate something in the hall, and found that she was locked out of the apartment. Shocked and worried, she wandered outside into the apartment complex parking lot unaccompanied looking for her mother.
53. She then discovered that she was further locked out of the apartment building, and started to cry, shouting for her mother and going further onto the parking lot and adjacent highway.
54. At some point, a neighbor found her and consoled her, and brought her back to the apartment door entrance, where they waited for the return of her mother, who eventually returned and let Anya E back into the apartment.
55. On September 18, 2011 Ben Gary learned of this event, and confirmed it with the aforementioned neighbor.
56. On September 21, 2011 Ben Gary called the New York State Central Register (SCR) Child Abuse and Maltreatment Hotline to report this incident. Previously and subsequently, Ben Gary had been explicitly instructed by Ulster County Child Protective Services (CPS) worker Kelly Whittaker that he had a legal duty and responsibility to report any such events, and that CPS could hold him neglectful for failing to do so.

57. CPS workers on the case, Amy Greene and Kelly Whittaker subsequently determined that Cayley was not neglectful for leaving Anya E alone without a key, and in an apartment that locked itself upon exiting. Neither did they find Caley neglectful for putting Anya E into a situation where she was wandering the parking lot alone, locked out, and trying to find her mother.²
58. However on September 28, 2011, in what Plaintiff alleges to be a retaliatory action for his reporting the above incident, Defendant Kelly Whittaker called Ben Gary to inform him of charges of neglect that had been reported to CPS against himself.
59. On or about October 5, 2011, Plaintiff Ben Gary was directed to come into the offices of the Ulster County, NY, Child Protective Services offices, Kingston, NY, by Defendant Kelly Whittaker, ostensibly to be interviewed for fact finding purposes, in regard to the NYS Central Register call made in regard to his daughter Anya E.
60. Ulster County Child Protective Services receives federal financial assistance.
61. At this meeting, present were Defendants Kelly Whittaker and Amy Greene and Plaintiff Ben Gary.
62. At this summoned meeting, Plaintiff was interrogated by the Defendants, and was told, under threat of prosecution in Family Court, of filing ex parte and/or preemptive restraining orders to prevent him from being in any contact with his daughter, consequent imprisonment, and of reporting these activities to the Family Court and charging him under law with accusations of prohibited, neglectful/abusive behavior,

²Furthermore, in another incident occurring December 16, 2011, in the Kingston Macy's Department store, Suzanne Cayley again lost Anya E, and had to call mall security, and after an extensive search did recover her. Amy Greene and Kelly Whittaker were also made aware of this incident, but similarly refused to make any indication of maltreatment against Ms Cayley.

and other threats, to cease and desist the interactions and parenting style and parenting decisions they had disapproved of.

63. Specifically, the Defendants directed and extorted Ben Gary, to cease and desist, under law enforcement threats of the above mentioned legal sanctions and penalties, and other official action limiting his association with his daughter, the following federally privileged activities:

- a. Not feed his daughter sugar-free sodas, or sodas of any kind.
- b. Not feed his daughter Chicken McNuggets from McDonalds
- c. To not bring his daughter to McDonalds
- d. Not feed his daughter coffee, caffeine-free or otherwise
- e. Not permit his daughter to drink so-called “energy drinks”
- f. Prohibit him to investigate or discuss with his daughter the unknown drugs, pills, or other psychotropic substances that his daughter had been given by other persons without his knowledge; not to investigate their adverse side-effects, or to try and determine what they were, in cooperation with his daughter.
- g. Asserted to him that he has no right to determine what drugs his daughter was being given, and to pursue such information would result in charges against him.
- h. Relinquish his responsibility to protect his child from being given unknown drugs.
- i. Directed him to ignore possible medical contraindications, allergies, incompatible foods, or developing side-effects that could put his daughter in danger. That instead of effecting actions to be aware of and to prevent these risks, the Defendants directed Ben Gary to bring his daughter to the hospital only after these

adverse effects had already developed and were acute, and his daughter was already in medical danger.

- j. Prohibit him to seek medical records on his daughter's treatment.
- k. To accept medical diagnosis' without question, or reasoned critical input, involvement and feedback.
- l. That he is prohibited from measuring or monitoring his daughter's height, or weight; asserted to him that he should be unconcerned with his daughter's weight and should ignore it.
- m. That he should not discuss his daughter's weight with her in anyway; that he is prohibited from discussing, planning with her or encouraging her to healthier exercise and eating habits.
- n. Not to question his daughter as to how she is doing in school.
- o. Not to discuss any topics with his daughter, or ask any questions about anything to do with his daughter's life during the time when she is not with him (which at that time was 6 ½ days of the week not with her father).
- p. Informed Ben Gary that he is not entitled by law to know what drugs are being fed to his child.
- q. Informed Ben Gary that his daughter could be being given birth control pills, and he had no right to that knowledge or involvement or objection either.
- r. Counseled Ben Gary on the law, and procedure and legal standards of the circumstance, his available legal options, and his constraints based upon their interpretation of the law.

- s. Demanded that Ben Gary not discuss any questions his daughter may have about their visits, living arrangements or court proceedings concerning her future with him.
64. Later, in concert with Defendants Elisabeth Krisjanis, Esq and Jillian Jackson, Esq., and Barbara Sorkin, all these defendants did in fact obtain a restraining order taking Anya E away from her father and prohibiting any further contact between Ben Gary and his daughter, premised upon these allegations and ad hoc prohibitions, causing great emotional distress and grief, and separation anxiety between father and daughter.
65. Additionally, these defendants further petitioned the court to find Ben Gary guilty of neglect and/or abuse of his child for these committing these allegations and acts.
66. All these defendants were aware that Ben Gary was in the middle of a custody proceeding for his daughter Anya E, and were motivated in part to disrupt and discredit Ben Gary's perception of parental fitness to any legal proceeding, to the parties and to the public, and in support and favor the mother of Anya E, for any proceedings.
67. The Defendants in fact persecuted, and then prosecuted, Ben Gary for affirmatively protecting his daughter from unknown substances being given to her and that were perceptibly harming her; acts that had he not attempted to discover what the substance was, would be considered neglectful.
68. Furthermore Defendants' actions were motivated in part due to the personal and institutional gender discriminatory belief that a child should be given custody to and raised by its mother, and were motivated to initiate a neglect proceeding against Ben Gary in furtherance of that discriminatory goal.

69. Upon information and belief, the captioned Defendants, as a pattern and practice, disproportionately charge more men with neglect and abuse charges, than women, and with discriminatory premise and/or purpose.
70. Starting on or about October 11, 2011, and resultant from these filings, petitions and restraining orders based upon these allegations, both Anya E and Ben Gary's contact, association and child-parental familial interaction with each other was truncated almost entirely and they were only allowed to see each other for 1 hour a week, in a room, with a government employee observing them, under threat of imprisonment and criminal charges if contact was made in any other way.
71. Based upon these allegations and actions by the Defendants, Plaintiff Anya E was denied unfettered contact with her natural biological father, only allowed to see him while in the presence of another adult, observed him searched by a police officer every time she did see him, and was told by the CPS employees that said employees was there to keep her safe from her father. Furthermore Plaintiff Anya E was instructed not speak to her father about unapproved topics, or he would get into trouble and be sent to jail, causing her grief and anxiety, and the continuing fear that if she said the wrong thing she would be causing her father to go to jail.
72. Additionally, the terms and conditions of these visits, as to behavior between the parties, or conversations that were prohibited, were never conveyed to either Plaintiff, and left intentionally indeterminate and ad hoc, despite repeated verbal and written requests from Ben Gary to Ulster County Child Protective Services; verbal requests were submitted throughout that time and when no responses were forthcoming, written

letter requests were sent via certified mail by Ben Gary to UC Child Protective Services, Defendant Denise Woltman on April 2, 2012 and May 2, 2012.

73. Plaintiffs thus were placed into further distress and be threatened as to some unknown, un-noticcd, arbitrary or capricious prohibition of unspecified, unarticulated conduct or conversation that could end their visit, cease visits altogether, cause criminal charges to be filed, and/or be reported as a violation of court orders and rules to the family court.
74. Between approximately December 16, 2011 and January 10, 2012, the Defendants and their agency recommended and permitted the Plaintiffs to visit with each other at the local McDonald's Restaurant for one hour, instead of the CPS offices rooms. This was stated to be a favorable status for visits. and was to lead to further lifting of restrictions as to visits.
75. On January 16, 2012, Defendant Denise Woltman unilaterally changed without notice to, or confirmation from Ben Gary, the scheduled appointment date for the next visit. The original date scheduled was for January 18, 2012, and Woltman changed the date to January 17, 2012.
76. Anya E was brought to the McDonald's Restaurant on January 17, 2012, and was told she would be seeing her father; Anya E waited in anticipation to be with her father for the 1 hour permitted per week.
77. However, when her father, Ben Gary, did not appear, because as aforementioned he was never notified as to the change in appointment date by Woltman, Anya E became very distraught, weeping and crying loudly, fearing her father had forgotten about her, and suffered from emotional distress and grief.

78. Defendant Woltman believed that this behavior was unacceptable, declared that Anya E was uncontrollable, and directed and effected that Anya E be brought to the emergency room at Kingston Hospital by ambulance to be treated for said behavior.
79. After this incident, Woltman and other CPS defendants attributed and laid responsibility for this incident upon Anya E, and citing her disability as a reason, punished her for her expression of grief and distress for having being denied a visit with her father. The punishment effected was to no longer permit the Plaintiffs from having the more permissive and open visits in the restaurant or outside generally, and to force them to only have visits in the constrained, highly controlled and less favorable conditions of the CPS offices, due to discriminatory treatment, and in violation of freedom of expression.
80. Between December 20, 2011 and January 25, 2012, Ben Gary had retained Dr. Kathleen Caproni, of Sun Creek Center, Stone Ridge, NY, for evaluation, co-parent and child-parent counseling with Anya E.
81. On or about January 27, Joseph Bennett in concert with Mary Ellen Schneider of UCMH called Dr. Kathleen Caproni, and demanded that she cease all further therapy and counseling, initially citing as sole reason the inability of UCMH to bill Anya E's health insurance while Caproni was counseling her, but days later asserting a new reason that they would forbid "parallel therapy" to occur. Caproni, due to the repeated pressure from Bennet, Schneider and other UCMH Department personnel, withdrew from any further co-counseling of Anya E and Ben Gary, citing a concern to not have institutional friction or interference with other patients with the UCMH Department.

82. On February 15, 2012, Defendant Denise Woltman in the CPS waiting room, directed Ben Gary, under explicit threat of complete denial of visits with his daughter, to not photograph or videograph his daughter during their time together, as they had always done so in their association together.
83. On June 14, 2012, Defendant Denise Woltman called Ben Gary by telephone, and accused him of engaging in prohibited conversations with his daughter Anya E, to wit:
- a. Conversations about their ongoing co-counseling therapy sessions with Mary- Ellen Schneider occurring at the Ulster County Mental Health Department.
 - b. Plans for future visits, the places they would go and the things they would do, and how they will spend their time together when re-united.
 - c. The questions Anya E had asked her father Ben Gary as to when they would be able to get back together as they had before they were forced to be separated by the Defendants.
 - d. Where the Plaintiffs father and daughter could spend time together when re-united again.
 - e. What efforts Ben Gary was doing to try to get them re-united again.
84. Woltman demanded that any speech, association or conversations between the Plaintiffs that touched upon these topics or areas of conversation to cease and desist, and any such conversation would be dealt with swiftly and harshly. Additionally, Woltman asserted that she would not advise, inform or specify Ben Gary as to any other unspecified topics he was prohibited from discussing with his daughter, informing him that if he did so though, he would face further sanction; Woltman and

Defendant Charlene Boswell further followed up these prohibited speech and association notices by certified letter.

85. On June 21, 2012, Defendant Woltman contacted Ben Gary by telephone, and again accused him of prohibited speech, association, parenting, and conversation with his daughter, this time increasing the arbitrary prohibitions and constraints upon their association, to wit:
- a. He could not convey to her the rules or constraints that the agency had required upon their speech and association, or any communications the Defendants had made to him.
 - b. He could not discuss with her any past experiences they had together, nor were they to discuss any possible future plans together with each other.
 - c. Prohibited any conversation dealing with topics other than “the here and now”.
 - d. He was prohibited from discussing with her or to teach her any of their religious convictions, ideas or practices that they had shared together. Furthermore the Defendants were aware that Anya E was being regularly brought to Catholic church and being taught Bible studies by her mother and yet made no prohibitions against those acts.
 - e. Anya E was advised and threatened by the Defendant(s) and others that Ben Gary would go to jail if she talked to him in any unapproved way, and she conveyed this fact to Ben Gary on June 20, 2012, causing her great emotional distress and consternation.
86. Ben Gary was thus again extortionately threatened by Defendants, that if he did not abide by their constraints to his association, speech, religious teachings convictions

and interactivity, and parenting with his child to these arbitrary demands, Defendants Woltman and Boswell would put an end to their permitted visits, interactions, and father-child parenting associations altogether.

87. Woltman and Boswell also followed up this phone call with a confirming letter by certified mail.
88. On June 29, 2012, at a NY OCFS fair hearing administrative trial, before Hon. Patricia Patwell, ALJ, the CPS case-worker defendants, Kelly Whittaker, Amy Greene, and others, did, under oath submit as evidence in the official administrative charging documents and investigative reports, dated between September 2011 and November 2011:
 - a. Written false statements that Plaintiff had a history of prior Domestic Violence;
 - b. Written false statements asserting Anya E as being highly autistic;
89. Neither of these alleged statements of fact are true, and the Defendants knew or should have known were not true.
90. The purpose of filing these false statements of fact, was to improperly bias the evidence on record, and to skew the administrative judge's findings in light of those false facts, and to obtain an administrative affirmation their original improper charges and indications of maltreatment against Ben Gary³.
91. From June 8, 2012 to December 10, 2012, generally meeting once every two weeks, ostensibly for "family counseling", Defendant Mary Ellen Schneider demanded, directed and asserted to both Plaintiffs that they should not and would not have

³On Aug 15, 2012 the NYS OCFS ruled that Ben Gary did not commit any acts of maltreatment, and that the charges against him were unfounded.

conversations with each other that concerned or had the topics of [1] visitations, [2] future plans for reunification and association, [3] past experiences and time together, [4] court or legal topics; if Schneider observed or discovered that the Plaintiffs had participated in such prohibited conversation, Schneider threatened that she would make sure that the “counseling” would continue, and she would never issue a discharge from “counseling”, thus ensuring that the Plaintiffs would be prevented from ever being reunited.

92. Schneider justified these prohibited conversations by stating variously that [1] she did not think these were topics that were appropriate for a father and daughter to discuss under the circumstances, and that [2] because Anya E had a disability, she should be prohibited from discussing these topics, and that [3] because the agents and officials at Ulster County CPS had prohibited these conversations it would be less confusing to the Plaintiffs to comply with those restrictions.
93. On numerous occasions throughout that period, Plaintiff Ben Gary questioned to Schneider the legal viability of these prohibitions of association and speech between himself and his daughter, and informed her that such speech and association was protected under constitutional law.
94. On one of those occasions, on or about September 24, 2012, so as to clarify the circumstances, Ben Gary provided an example to Schneider of the freedom of religion and the practice thereof between himself and his daughter, and how that too would be protected, and that is something that Schneider could not prohibit.
95. Schneider replied that she didn't care about such legal protections, that she considered them largely academic or theoretical and unenforceable, and that if she thought that

religious practice, association and speech between a parent and their child was not appropriate she would preemptively prohibit that activity as well.

96. On December 19, 2012, Defendants Denise Woltman, in concert with Defendant Charlene Boswell, called Ben Gary to a conference room at Ulster County CPS offices, and accused him of having disciplined his daughter on December 12, 2012, by having pinched her on the buttock in response to her exhibiting excessive horseplay; Defendant Charlene Boswell was not present, but was cited by Woltman as having been previously consulted and in concurrence with this conference.
97. Woltman asserted that Ben Gary did not have the right to discipline his child Anya E as such, and directed him to never effect said discipline, and then threatened sanctions upon him, of further denial of association and visits with his child if he did so. Furthermore in retaliation for Ben Gary questioning the exercise and assertion of his parenting rights at this meeting, Woltman demanded redundant, unnecessary and gratuitous 'parenting education classes' to "correct" his expression, beliefs and practice of those rights, also under threat of further denial of association and visits with his child if he refused to do so.
98. The restraining order sought and obtained on October 11, 2011, by the defendants Amy Greene, Kelly Whittaker, Elisabeth Krisjanis, Esq., Jillian Jackson, Esq., Barbara Sorkin, so as to prohibit the aforementioned constitutionally privileged and protected behavior and activity, has been effective since then and has been in continual effect to the filing date of this complaint, and has resulted in essentially a complete denial of association and interaction of the Plaintiffs', despoiling the parent/child bonds between

them, enforcing a separation apart from each other for 99.4% of the time, and causing extreme mental anguish, grief and emotional distress by that separation.

99. All during that time Plaintiff Ben Gary exercised continual efforts and due diligence in administrative and judicial venues to oppose the actions of the defendants and to retain exercise of the rights he and his daughter Anya E were being denied and that were violated.
100. For that duration to the current date, and the continuing duration subsequent to the filing of this complaint, the county defendants are responsible for denying the free association of the instant Plaintiffs, and for denying other rights, and are included as damages and injuries suffered and cited in this complaint as a continuing and ongoing injury, and will be amended as a calculable sum certain as is necessary for damages. Plaintiffs have received treatment for emotional distress and grief, and continue to receive ongoing therapy to deal with the grief of losing a parent, and of losing a child.⁴
101. Within this duration and as of January 2013, these defendants caused the co-plaintiffs, father and daughter, to be forcibly denied familial contact and association that included important holidays normally spent, enjoyed and celebrated together – including two consecutive birthdays, two Thanksgivings, two Halloweens, two Christmases, two New Years Days, an Easter, a Father’s day, and an Independence day, and the association of Anya E’s paternal relatives.

Facts Pertinent to Defendants Valerie Lyn Wacks and Lawrence Shelton:

102. **B. Gary T** is the father of Plaintiff Anya E.

⁴Plaintiffs have been receiving therapy and counseling from Dr. Kathleen Caproni, PhD, Mary Ellen Schneider LMSW, Michael Astor MA, LCSW-R, and Beth Abrams, MD.

103. Suzanne Mary Cayley is the mother of Plaintiff Anya E.
104. On February 14, 2011, Anya E's mother, Suzanne M. Cayley, filed an ex parte petition in New York State Family Court, Ulster County, citing differences in parenting style and seeking full custody of Anya E.
105. On that date Suzanne Cayley immediately prohibited all contact or communication between Plaintiffs Ben Gary and Anya E, father and daughter.
106. Cayley also ceased all contact and communication between Anya E and Ben Gary's extended family members.
107. Anya E vehemently objected to being forcibly estranged from her father and expressed her wishes to be reunited with him.
108. Both father and daughter, plaintiffs in this case, due to this imposed isolation were emotionally distressed, in anguish and grief, and suffered from separation anxiety. Both wished to be again in each other's company, associate freely, speak with each other, and enjoy their parent-child relationship as they had prior to the petition's filing.
109. Cayley had conflicting personal and legal reasons from Anya E's legal and personal positions in the case for keeping Anya E and Ben Gary separated⁵; Anya E's personal wishes and legal position were in conflict with Cayley's, and Cayley had a conflict of interest in the matter in regard to Anya E's legal position.
110. On February 15, 2011 the Family Court assigned Valerie Lyn Wacks, Esq., to represent Anya E as her attorney in the proceedings, and to exclusively advocate for Anya E's wishes in court.

⁵Cayley stood to gain financially by obtaining court ordered full child support payments by achieving full custody; due to her personal animosity toward the father, Cayley sought to estrange Anya E's father from Anya E so as to remove him as an involved and influential parent and to have exclusive parenting to herself with Anya E; due to her personal animosity toward the father, and documented mental pathology, as an exclusive caretaker Cayley sought to unilaterally inculcate Anya E with her own unfounded beliefs and opinions about the father, without countering or critical input from the father. None of these positions were in advocacy of or coincided with Anya E's wishes or legal stance.

111. Wacks' explicit legal duty was effectuate Anya E's legal position in court to advocate her wishes, and had no other legal duty to any other entity or cause.
112. On February 23, 2011, Ben Gary filed a cross-petition also seeking sole custody.
113. On February 23, 2011, Suzanne Cayley responded by filing a family offense petition against Ben Gary, claiming harassment and reckless endangerment, and then sought and received an order of protection for herself and for Anya E, prohibiting contact from Ben Gary; on March 8, 2011 after a hearing, the order of protection was rescinded.
114. Pursuant to subsequent court related psychological evaluations, Suzanne Mary Cayley has been diagnosed with presenting Borderline Personality Disorder tendencies, and other court ordered psychological evaluations revealed that she had been instilling false accusations of abuse to Anya E about her father⁶.
115. Valerie Lyn Wacks, Esq., a Defendant in this civil case, was paid by the NYS Office of Attorneys for Children, and/or other public agency.
116. The New York Office of Attorneys for Children, and/or other public agency paying for Defendant Wacks services, receive federal financial assistance.
117. Anya E was not given the opportunity or option to accept or reject this assignment of counsel, or to ask for a change of counsel. Anya E was not informed of her rights and discretion in participating in the court case, nor was she informed of her representing counsel's obligation to advocate for her wishes.
118. Said assignment was involuntary, and made by the county municipality through its agents without Anya E's input.

⁶In re, Report Recommendation Dr. Steven B. Silverman 5/17/2011, Report evaluation Dr. Kathleen Caproni 2/1/2012.

119. As the attorney for Anya E, Wacks had an absolute duty to Plaintiff Anya E to represent and advocate for Anya E's wishes and desired goals and outcome in the Family Court, pursuant to federal constitutional law.
120. Specifically, and pertinent to this cause of action, Defendant Wacks **did not have discretion** to:
- a. Discriminate against Anya E on the basis of gender, age, disability or perceived disability, and deny her the rights secured by federal law based upon such discrimination.
 - b. Substitute her own wishes for Anya E; advocate for anything other than Anya E's wishes in the Family Court; or to prosecute for the best interests of Anya E if in doing so it was different than Anya E's wishes for the case outcome, or interim outcome.
 - c. Represent or advocate for any other party to the case, unless it was in furtherance of Anya E's advocacy.
 - d. Ignore, dismiss, or be negligent in determining Anya E's wishes and desires in the case.
 - e. Ignore an affirmative duty to inform the Family Court of the Anya E's wishes.

- f. To lie or misrepresent to the court Anya's wishes or statements of her wishes.
- g. To reveal or disperse confidential communications or information, under the client/attorney obligation, to parties or persons any information Anya E requested to keep confidential.
- h. To refuse to cooperate with, and share in cooperation with, any person Anya E directed her to in assisting the prosecution of her case, or to affirmatively interfere with that cooperation.

- 121. On March 8, 2011, a *pendente lite* hearing on the ex parte custody order was held.
- 122. At the hearing, Defendant Wacks made an oral motion to substantively recuse the testimony, wishes and intent of the Plaintiff Anya E, on the basis she was disabled, even though these were rights reserved and entitled to Anya E by law.
- 123. Wacks further asserted that she would unilaterally and presumptively substitute her own substantive assessment and unilateral plan of advocacy for Anya E, instead of advocating for Anya E's wishes.
- 124. Defendant Wacks did not have any substantive cause or confirmed basis to make this conclusion and decision, other than her explicitly stated prima facie and conclusory discriminatory motive.
- 125. Pursuant to this abdication of her legal duty to Anya E, based upon discriminatory grounds, at this hearing Defendant Valerie Lyn Wacks argued strongly in favor of the restraining order separating her client Plaintiff Anya E from Ben Gary, against the

wishes of her client she was assigned to represent, Anya E, who very much wanted to be reunited with her father.

126. On March 11, 2011, Ben Gary filed a motion with the Family Court, moving for an injunction against Suzanne Cayley against removing Anya E from her existing residence that was shared by her father Ben Gary, to places unknown; Anya E wished to remain in her home and near her father.
127. On March 18, 2011, Ben Gary filed a motion with the Family Court, moving for an order directing Defendant Wacks to recognize Plaintiff Anya E's "wishes, preferences, and other input as to instant matters of Custody/Visitation"
128. On March 20, 2011, Defendant Valerie Lyn Wacks opposed the motion that sought to keep Anya E in her current residence, defending Suzanne Cayley's custodial rights to do what she wanted, a person Wacks did not represent and should have had no advocacy for, and in contradiction of the wishes of Wacks' client she was assigned to represent, Anya E, who wished to remain in the residence that was in the same house as her father, and not be taken even farther away from him.
129. Wacks' advocacy for Ms. Cayley, in opposition to both instant Plaintiffs' wishes, further evidenced a gender based discriminatory motive against Ben Gary.
130. On or about March 26, 2011, Defendant Wacks filed a response to the Ben Gary's motion for Wacks to recognize Anya E's wishes, and for Wacks to properly advocate for those wishes.
131. Wacks admitted in that response that she intended to use her own "substitute judgment" in place of Anya E's wishes, based upon her own inexpert opinion and discriminatory premise and intent of treatment for Anya E.

132. Notwithstanding this, Wacks admitted that it was her duty to inform the court as to Anya E's wishes, of which Wacks never did; Wacks furthermore requested a psychological evaluation of Anya E, to further determine whether Anya E was psychologically unable to express her wishes.
133. Based substantially upon Defendant Wacks advocating the removal of Anya E from her home and father, and who had falsely represented Anya E's wishes to the court, on March 31, 2011, the Family Court denied the motion, permitting Suzanne Cayley to physically remove Anya E from her residence, and be taken away from her father to places unknown, to which Suzanne Cayley did, on or about March 31, 2011, in fact forcibly remove Anya E from her residence and for the purposes of taking her away from her father. The motion's denial and consequent removal Anya E from her father's residence were due substantially to Defendant Wacks' argued opposition.
134. On or about March 25, 2011, Ben Gary filed a motion with the Family Court seeking shared custody of Anya E, during the *pendente lite* proceedings; Defendant Valerie Lyn Wacks opposed the motion, against the wishes of her client she was assigned to represent, Anya E, who wished to be reunited with her father.
135. On June 3, 2011, the Family Court denied the motion, permitting Suzanne Cayley's continued prohibition of contact or communication between Anya E and Ben Gary. This denial was due in substantial part to Defendant Wacks' argued opposition.
136. On April 4, 2011 a hearing was held pursuant to a filed a motion by Ben Gary for increased visitation with his daughter Anya E, seeking equal time with his daughter as her mother had. At this hearing Defendant Valerie Lyn Wacks opposed this motion, in contradiction of the wishes of her client Plaintiff Anya E.

137. On April 25, 2011, Ben Gary filed a motion for increased visitation with his daughter Anya E, seeking equal time with his daughter as her mother had, and on June 15, 2011 a hearing was held. At this hearing Defendant Valerie Lyn Wacks opposed this motion, in contradiction of the wishes of her client Plaintiff Anya E.
138. On May 17, 2011, pursuant to court order in response to motions made by Wacks and by Ben Gary, a psychological evaluation was performed upon Anya E, by Dr. Steven B. Silverman, a licensed psychologist.
139. Dr. Silverman, in his filed evaluation report, did not conclude that Anya E was unable to express her wishes competently; this evaluation was served upon Defendant Wacks.
140. On July 5, 2011, in response to a motion to dismiss a petition for contempt, Defendant Wacks did again advocate for the rights of the Ms. Cayley, a person Wacks did not represent, and an advocacy that contradicted the wishes of her client Anya E.
141. Wacks' submission further evidenced a discriminatory motive against Plaintiff Ben Gary, based upon gender.
142. On July 10, 2011, Anya E conveyed to Ben Gary that when she shared her wishes with her mother (Ms. Cayley the temporary custodial parent), that she wished to have more visitation time with her father, her mother would cry hysterically, and punish her in various ways, and advised her father that she learned never to speak of her wishes again to her mother out of fear of being punished.
143. Anya E affirmed that she had already conveyed these wishes to her attorney Valerie Lyn Wacks, but that Wacks did not agree with what Anya E wanted, and affirmatively opposed her desires. Anya E wanted to communicate further with Wacks, but at that juncture however she was afraid that Wacks would disclose to her mother these

wishes, and relayed the fact that she was afraid of her mother hearing anymore of her wishes, for fear of retaliation and further punishment.

144. Because of these constraints and her wishes, Anya E asked her father, Ben Gary, to confidentially relay her wishes and concerns to her attorney Wacks.
145. In response to his daughter's request, Ben Gary prepared a letter in his daughter's behalf conveying her wishes and concerns, and supplanted the letter with a DVD home movie video of his daughter stating and expressing these wishes desire for confidentiality on July 10, 2011 in conversation with Ben Gary in Olivebridge NY.
146. Ben Gary also stressed that his daughter had requested confidentiality of these wishes, and on July 11, 2011, Ben Gary sent the letter and DVD to Valerie Lyn Wacks, conveying to Wacks Anya E's wishes in the matter of visitation and custody, by Certified Mail.
147. On or about July 19, 2011, Anya E again directly told her counsel Valerie Lyn Wacks, in an in-person consult, that she wanted at least 3 consecutive nights per week visitation during the custody proceedings, and that she wished ultimately to have her father have physical custody of her in the custody proceedings.
148. Upon receiving her clients clear, wishes, instruction and directive Wacks refused to entertain, accept or prosecute those wishes for her client and told Anya E she would not do so, and would continue to substitute her own wishes for Anya E's wishes in the case.
149. Anya E furthermore informed Wacks that she should consult with her father, Ben Gary, and cooperate with him in furtherance of her wishes.
150. Anya E conveyed these facts to Ben Gary, and other witnesses, in person on July 24, 2011.

151. On or about July 29, 2011, Ben Gary moved for increased visitation time with his daughter, in concert with her wishes for same, of which Defendant Wacks was aware of and advised.
152. On August 18, 2011, a hearing was convened in Ulster County Family Court, to entertain Ben Gary's motion for increased visitation.
153. At that hearing it was disclosed, via oral motion and written motion from Defendant Lawrence Shelton dated August 10, 2011, that Shelton in fact affirmatively conspired with Defendant Valerie Lyn Wacks, between July 12, 2011 and August 18, 2011, to oppose Ben Gary's motion for increased visitation, and did in fact contradict and oppose Wacks' own client's, Anya E, wishes in the case. Shelton's acts both in conspiracy with Wacks, and independently of his own recognizance, were knowingly and intentionally premised upon discrimination against Anya E, to deny her rights.
154. Additionally, the motion submitted on the day of the hearing was never noticed or previously served upon Ben Gary prior to the hearing as required by NYS Civil Practice Law and Rules (CPLR); there could not have been timely service as NYS CPLR Rules require a minimum of 13 days from serving and filing date by mail and the return date for response.
155. Further jurisdictional defects of the motion were that it had no Notice of Motion cover and had no Certificate of Service affidavit. All in violation of NYS CPLR Rules, and in violation of due process, denying Ben Gary an opportunity to respond or oppose prior to submission to the court.
156. Additionally, Defendant Wacks shared and disclosed attorney-client privileged information, that Plaintiff Anya E explicitly and specifically requested be kept confidential, with Defendant Shelton, who was counsel for Suzanne Cayley; Wacks

additionally shared the DVD video with Suzanne Cayley, and other unknown named persons, again substituting her own intent and wishes for Anya E, and illegally violating Anya E's rights, premised upon discrimination and other impermissible intent.

157. In the motion submitted by Defendant Shelton, in referencing the confidential DVD video provided by Ben Gary and Anya E to Defendant Wacks, and which affirmed that its contents were obtained from, filed in concert and conspiracy with, and certified by Defendant Wacks, Defendant Shelton submitted false statements under oath to the court in the form of quotations from Plaintiff Anya E that she never made, as well as misrepresenting conversation between Anya E and Ben Gary by excerpting dialogue out of context to present a substantively false presentation of facts and conversation to the court, in opposing the increased visitation that both Plaintiffs Ben Gary and Anya E had sought.
158. In particular, **Defendant Shelton**, in acknowledged conspiracy **with Defendant Wacks, falsely asserted** to the court via sworn affidavit, that Anya E had explicitly stated, (in referencing the DVD video provided to Wacks):

“You didn't hit me all the time”

Which was a false submission to the court, affirmed and submitted under oath by both Defendants Wacks and Shelton, and a substantially different statement than **what Plaintiff Anya E actually said**, which was (referencing the original):

“They think that you're the one who hit me all the time, but you're not.”

159. Due to these misrepresentations of fact and falsehoods submitted to the court by Defendants Wacks and Shelton, and based upon the submissions of Wacks' and

Shelton's discriminatory "substituted judgment" the court subsequently denied the motion for further increases in visitation, causing emotional distress and grief to the Plaintiffs.

160. These defendants furthermore corrupted the court record under their oaths as officers of the court, by submitting false statements purported to be stated by Anya E, that were materially the opposite of what she actually stated and expressed.
161. On October 19, 2011, an additional psychological evaluation report was made on Anya E, by psychologist Dr. Kathleen Caproni, PhD to determine, among several things, whether Anya E was able to have and express her wishes competently. The evaluation report affirmed again that Anya E had the full capacity to do so. A copy of that report was also served upon Defendant Wacks.
162. On August 17, 2011, Defendant Wacks, by faxed letter, instructed Plaintiff Ben Gary to not discuss any court matters with Anya E, refused to cooperate in the case with Ben Gary, ignoring her client Anya E's desire and directives to cooperate with her father in the court proceedings.
163. Wacks communication to Ben Gary was in furtherance of her motive to isolate her own representation of Anya E from any adult oversight, and continue her acts of discrimination unimpeded, claiming the right to discriminate against Anya E on the basis of disability.
164. The acts detailed supra and infra by Defendant Wacks and Shelton, furthermore constitute legal malpractice; Wacks caused irreparable harm and damages, and a knowing and intentional pattern of the breach of legal duty to her client Anya E.
165. On or about October 11, 2011, a NYS FCA Article 10 hearing was convened, to determine whether a Temporary Restraining Order (TRO) would be issued against Ben

Gary preventing contact with his child Anya E (described in detail supra, see Facts Pertinent to Defendants Dept of Social Services (DSS) Defendants), paragraph 23.

166. At this hearing, Defendant Wacks, misrepresenting the wishes Anya E, did not oppose issuance of this TRO. Wacks in fact advocated for the issuance of the TRO, against her client's wishes, and went further on her own initiative in moving the court to additionally prohibit telephone communications between Ben Gary and Anya E, again in contradiction of her client's wishes, who did not wish to be estranged from her father.
167. In that and subsequent hearings and fact finding in the Ulster County Family Court on this TRO issue, on the dates:
 - a. October 11, 2011,
 - b. October 26, 2011
 - c. November 3, 2011
 - d. November 23, 2011
 - e. December 6, 2011
 - f. December 15, 2011
 - g. January 23, 2012
 - h. February 9, 2012, and
 - i. March 8, 2012,
168. Defendant Wacks did affirmatively, on each of these individual dates and in a pattern spanning those dates, aggressively and intentionally oppose her own client's wishes, and advocated for the issuance of the TRO, in violation of Anya E's federally

guaranteed rights, who wished to be reunited freely with her father, and not be subject to constrained, supervised and state controlled visitation with her father.

169. Due in substantial part to Defendant Wacks' efforts opposing her client's wishes and legal position, the restraining order was issued, causing prejudice to Anya E.
170. Defendant Wack's antipathetical prosecution of her client's representation in these hearings and all other , where her non-discretionary mandate was to represent her client's wishes, is a matter of court record and self admission, revealing her continuing intent and pattern to deny Anya her legal rights and entitlements, based upon Wacks' stated discriminatory intents. Not once did Wacks even ever convey Anya E's wishes to the court as is required by law.
171. Additionally, Defendant Wacks in these proceedings was in conspiracy with the instant Ulster County Department of Social Services Defendants, see above, in denying Plaintiff Ben Gary's federal rights, the denial of which was detailed supra, see Facts Pertinent to Defendants Dept of Social Services (DSS) Defendants, paragraph 23, et. seq.

ENUMERATED COUNTS OF LIABILITY

THE AMERICANS WITH DISABILITIES ACT & THE REHABILITATION ACT OF 1973

Congress enacted the ADA in 1990, "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. 12101(b)(1).

It found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. 12101(a)(2).

For those reasons, Congress prohibited discrimination against individuals with disabilities by public entities: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. 12132.

Additionally, under the amendments made via the Americans with Disabilities Amendments Act (ADAAA) in 2008, discrimination against individuals who are regarded as or perceived to have a disability are covered under the Act as well.

Title II of the ADA covers activities of State and local governments, and requires that these entities give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting and town meetings).

State and local governments facilities are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program or activity being provided.

Under Title III of the ADA Congress also prohibited discrimination against individuals with disabilities by private entities who provide a public accommodation or service, codified at 42 U.S.C. 12182.

The U.S. Rehabilitation Act of 1973, Section 504, prohibits discrimination on the basis of disability in programs conducted by federal agencies, and in any state agency administering programs receiving Federal financial assistance. The standards for citing and addressing discrimination under the Rehabilitation Act are the same as those used in the Americans with Disabilities Act.

Plaintiff Anya E. [redacted] is a "qualified individual with a disability" within the meaning of the ADA and the RA in that she has a mental impairment that substantially limits one or more major life activities OR that she is "being regarded as having such an impairment", as per 42 U.S.C. 12102(1)(A), 12102(1)(C) & 12102(3)(A).

COUNT I

VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT

42 U.S.C. 12182 et seq.

172. The factual allegations of Paragraphs 102 through 171 of this Complaint are hereby realleged and incorporated by reference.
173. Defendant Valerie Lyn Wacks, in the capacity of a private entity who owns and operates a place of public accommodation and who offers services to the public from that place, specifically an office of an attorney, as defined by 42 U.S.C. 12181(7)(F), did violate Title III of the ADA, by discriminating against and denying Plaintiff Anya E the full and equal services and privileges due to her, to wit legal services and representation, on the basis of Anya E's disability or perceived disability, as per 42 U.S.C. 12102(1)(A, C), & 12102(3)(A), as it is generally prohibited under 12182(a, b(1)), and as it is specifically prohibited under 12182(b)(2)(A).
174. And where Anya E is a person who is a person who either has a disability or is being treated as person with a perceived disability; and where Anya E alleged disability did not alter the nature of the services she was entitled to receive.
175. And where the explicit statements issued by and actions effected by Wacks evidenced the discrimination against and exclusion of Anya E from equal treatment and services on the basis of disability. Specifically that since Wacks believed Anya E had a disability, Wacks would deny her representation of her wishes in court, and generally in the case.

176. And pursuant to that discriminatory intent and unequal treatment, Wacks did deny Anya E the rights, privileges and duties owed to her of effective legal representation and counsel, by the refusal to represent and advocate Anya E's wishes and desires in court where she was a party to an action.
177. And consequent to that denial Anya E did suffer the denial of legal services, on the basis of disability, and Wacks did prevent Anya E from receiving her constitutional rights under both the United States and New York State constitutions including the right to access the courts, the right to counsel, the right to equal protection, the right to due process, the right to free speech, the right to free association, the right to be free of discriminatory treatment, and the right to parent-child association and non-interference thereon.
178. And proximate to these denials, Anya E suffered emotional distress and grief from being denied access to and associations with her father, as well as presumed and per se damages consequent to being denied such association.
179. And where Wacks owed a legal duty to Anya E, that was withheld on the basis of disability, and made no accommodations to preserve Anya E's rights and owed duty.
180. The services Wacks provides to the public, and to which Anya E was entitled to receive include legal services pursuant to 22 NYCRR Rule 7.2 and Section 241 of the Family Court Act.
181. Rule 7.2(d) requires Wacks to provide zealously advocate the child's position.
182. Rule 7.2(d)(1) requires Wacks to ascertain the child's position, by consulting with and advising the child to the extent of and in a manner consistent with the child's capacities.

183. Rule 7.2(d)(2) requires that Wacks should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests.
184. Rule 7.2(d)(3) explains that when the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position. Defendant Wacks refused to comply with Rule 7.2(d)(1) and (d)(2) solely because of Anya E's disability or perceived disability.
185. Defendant Wacks did not have reasonable or verifiable basis as an initial matter to make a pre-emptive determination that Anya E was incapable of expressing her wishes, and for Wacks to refuse the advocacy of those wishes.
186. Additionally and subsequently, Defendant Wacks was made aware and knew, or should have known, that Anya E had the capacity for knowing, voluntary, and considered judgment as to her own legal wishes, because Wacks was in receipt of the reports of Dr. Steven Silverman, and Dr. Kathleen Caproni, both licensed psychologists, that verified that Anya E "is clearly able to express her wishes."
187. Furthermore, in deviating from Anya E's express wishes, Defendant Wacks failed to inform the court of the child's articulated wishes as is required by regulation and statute and controlling precedent.

188. Furthermore defendant Wack's used criteria and methods of administration that were discriminatory on the basis of disability or perceived disability, by (1) failing to assess properly the services and supports that would enable Anya E to have full legal representation and services to her wishes presented to the judicial system, (2) failing to inform Anya E of her options and ability to have her case presented, and (3) allocating the resources provided to Defendant Wacks in a manner contrary to the desires of Anya E, but rather in contravention of her desires.
189. Defendant Wacks did not maintain a reasonable basis for denying the right and services to Anya E based on her perceived disability, nor did Wack make any attempt of reasonable modification in policy, practice or procedure to accommodate said perceived disability so as to ensure Anya E's rights, privileges and owed duty.
190. Defendant Wacks' denial of legal services on the basis of disability prevented Anya E from receiving her constitutional rights under both the United States and New York State constitutions including the right to access the courts, the right to counsel, the right to equal protection, the right to due process, the right to free speech, the right to association, the right to be free of discriminatory treatment, and the right to parent-child association and non-interference thereon.
191. Defendant Wacks' actions constitute discrimination in violation of Title III of the ADA, 42 U.S.C. 12182, as well as its implementing regulations in Title 28 C.F.R. 36.104, 36.201, 36.202.
192. Anya E suffered emotional distress and grief from being denied access to and associations with her father, she suffered a legally compromised circumstance and position in court

case, as well as presumed and per se damages consequent to being denied such association.

193. WHEREFORE, Plaintiffs demand that this Court: (1) Enjoin Defendant Wacks from further withholding of legal services that comply with Rule 7.2, the Family Court Act, and constitutional law on the basis of Anya E's perceived disability in violation of the Americans with Disabilities Act; (2) Declare and adjudge that Defendant Wacks violated the Americans with Disabilities Act and implementing regulations by failing to provide Anya E with the services she was entitled to under Rule 7.2 and the Constitution; and (3) Any further relief that may be appropriate and just.

COUNT II

VIOLATIONS OF TITLE II OF THE ADA,

42 U.S.C. 12131 et seq.

194. The factual allegations of Paragraphs 102 through 171 of this Complaint are hereby realleged and incorporated by reference.
195. The NY Office of Attorneys for Children is considered to be a public entity subject to Title II of the ADA, 42 U.S.C. 12131(1).
196. The New York State Office of Attorneys for Children provides legal services to children in Family Court proceedings and Supreme Court custody matters. More than 700 attorneys in private practice are designated by the Appellate Division as members of county panels, and are then appointed by Family Court Judges and Supreme Court Justices to represent children on a case-by-case basis.

197. Defendant Valerie Lyn Wacks ("Wacks") is a member of the county panel and is appointed to provide services to clients by the courts pursuant to the Office of Attorneys for Children (OAC) program, New York Supreme Court, Appellate Division, Third Judicial Department.
198. Wacks' services are provided without substantial oversight and she alone is responsible for the operation and administration of her division of the public entity she is a member, agent and designee of.
199. Wacks is responsible for operation of a local arm of a public entity, pursuant to 42 U.S.C. 12131(1)(A) & (B), as to all cases assigned to her under that OAC designation. Regulations implementing Title II of the ADA require that a public entity administer its services, programs and activities in "the most integrated setting appropriate" to the needs of qualified individuals with disabilities. 28 C.F.R. 35.130(d).
200. The ADA's implementing regulations further provide that "a public entity may not, directly or through contractual or other arrangements, utilize criteria or other methods of administration: (i) that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the entity's program with respect to individuals with disabilities ." 28 C.F.R. 35.130(b)(3).
201. As part of the services Wacks provides and is paid for as a county member of the Office of Attorneys for Children, and which Anya E is to receive include legal services pursuant to 22 NYCRR Rule 7.2 and Section 241 of the Family Court Act.
202. Rule 7.2(d) requires Wacks to provide zealously advocate the child's position.

203. Rule 7.2(d)(1) requires Wacks to ascertain the child's position, by consulting with and advising the child to the extent of and in a manner consistent with the child's capacities.
204. Rule 7.2(d)(2) requires that Wacks should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests. Rule 7.2(d)(3) explains that when the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position. Defendant Wacks refused to comply with Rule 7.2(d)(1) and (d)(2) solely because of Anya E's perceived disability.
205. Defendant Wacks was made aware and knew, or should have known, that Anya E had the capacity for knowing, voluntary, and considered judgment because she received the reports of Dr. Steven Silverman, and Dr. Kathleen Caproni, both licensed psychologists, that verified that Anya E "is clearly able to express her wishes."
206. Furthermore, in deviating from Anya E's express wishes, Defendant Wacks failed to inform the court of the child's articulated wishes as is required by regulation and statute.
207. Defendant Wack's used a criteria and a methods of administration that subjected Anya E on the basis of disability or perceived disability by (1) failing to assess properly the services and supports that would enable Anya E to have full legal representation and her wishes presented to the judicial system, (2) failing to inform Anya E of her options and ability to have her case presented, and (3) allocating the resources provided to Defendant

Wacks in a manner contrary to the desires of Anya E, but rather in contravention of her desires.

208. Defendant Wacks did not maintain a reasonable basis for denying the right and services to Anya E based on her perceived disability.
209. In addition, Defendant Wacks' denial of legal services on the basis of disability prevented Anya E from receiving her constitutional rights under both the United States and New York State constitutions including the right to access the courts, the right to counsel, the right to equal protection, the right to due process, the right to free speech, the right to association, the right to be free of discriminatory treatment, and the right to parent-child association and non-interference thereon.
210. Defendant Wacks' actions constitute discrimination in violation of Title II of the ADA, 42 U.S.C. 12132, as well as its implementing regulations at 28 C.F.R. pt. 35.
211. Anya E suffered emotional distress and grief from being denied access to and association with her father, she suffered a legally compromised circumstance and position in court case, as well as presumed and per se damages consequent to being denied such association.
212. WHEREFORE, Plaintiffs demand that this Court: (1) Enjoin Defendant Wacks from further withholding of legal services that comply with Rule 7.2, the Family Court Act, and constitutional law on the basis of Anya E's perceived disability in violation of the Americans with Disabilities Act; (2) Declare and adjudge that Defendant Wacks violated the Americans with Disabilities Act and implementing regulations by failing to provide Anya E with the services she was entitled to under Rule 7.2 and the Constitution; and (3) Any further relief that may be appropriate and just.

COUNT III

VIOLATIONS OF THE REHABILITATION ACT of 1973

213. The factual allegations of Paragraphs 102 through 171 of this Complaint are hereby realleged and incorporated by reference, and the charging allegations of Counts I & II.
214. The State of New York, and in turn, Defendant Wacks who receive funds as an agent and county agent or member of New York's Office of the Attorney for Children, as a recipient of federal financial assistance, is subject to the Rehabilitation Act, 29 U.S.C. 794.
215. Discrimination on the basis of disability is also prohibited by Section 504 of the Rehabilitation Act, 29 U.S.C. 794(a): No otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity.
216. Plaintiff Anya E is a person with a defined disability covered by the Rehabilitation Act and she is qualified to receive legal services from programs, or activities from the State and Wacks, as county member and agent of the State, specifically the services found in Rule 7.2 of the NYCRR, the Family Court Act, and the common law right to legal representation.
217. Defendant Wacks violated the Rehabilitation Act and discriminated against a qualified individual with a disability within the meaning of the Rehabilitation Act by administering legal programs and activities receiving federal financial assistance in a manner that

denied Anya E the benefits of such programs or activities and by failing to reasonably modify the State's mental health services system to avoid discrimination against Anya E 29 U.S.C. 794(a).

218. Specifically, on the basis of Anya E's disability, and despite knowing that Drs. Silverman and Caproni, both licensed psychologists, reported that Anya E maintained the ability and capacity to receive the services, refused to convey Anya E's wishes to the Court and refused to zealously advocate for Anya E's desired outcome.
219. Defendant Wacks' actions constitute discrimination in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. 794, and its implementing regulations.
220. Anya E suffered emotional distress and grief from being denied access to and associations with her father, she suffered a legally compromised circumstance and position in court case, as well as presumed and per se damages consequent to being denied such association.
221. WHEREFORE, Plaintiffs demand that this Court: (1) Enjoin Defendant Wacks from further withholding of legal services that comply with Rule 7.2, the Family Court Act, and constitutional law on the basis of Anya E's perceived disability in violation of the Rehabilitation Act; (2) Declare and adjudge that Defendant Wacks violated the Rehabilitation Act and implementing regulations by failing to provide Anya E with the services she was entitled to under Rule 7.2; (3) Award damages in an amount to be proven at trial; and (4) Grant any further relief that may be appropriate and just.

COUNT IV

LEGAL MALPRACTICE

The factual allegations of Paragraphs 102 through 171 of this Complaint are hereby realleged and incorporated by reference.

222. Defendant Valerie Lyn Wacks failed to exercise the care, skill, and diligence commonly possessed and exercised by a member of the legal profession, in violation of New York Bar Association rules, Rules of the Chief Judge of New York, and other related rules, laws and regulations.
223. Specifically, she failed to advocate for her client, Anya E, and the legal interests of her client and, instead, argued against the position and wishes of her client in contravention of regulations governing her appointment.
224. These breaches of duty to Anya E and to conduct required by the legal profession, include, but are not limited to, the following acts of malpractice:
 - a. Defendant Wacks failed to consult with and advise Anya E of the options available to her in both Wacks' representation, and in the legal proceedings.
 - b. Defendant Wacks did not explain her role and obligations in representing and advocating Anya E's wishes.
 - c. Defendant Wacks did not convey Anya E's wishes to the court, or any deviations thereof.
 - d. Defendant Wacks shared privileged information with other parties and counsel that Anya E explicitly stated to her that she wanted kept confidential.
 - e. Defendant Wacks did individually, under oath and to the court, affirmatively misrepresent statements made by Anya E, both orally and by sworn affidavit, that

were substantively opposite of what Anya E had said, and in contradiction of her wishes and beliefs.

- f. Defendant Wacks did further, in concert and conspiracy with Defendant Lawrence Shelton, misrepresent statements made by Anya E to the court, both orally and by sworn affidavit, that were substantively false, and were opposite in both meaning and statement of what Anya E had said, and in contradiction of her wishes and beliefs, and in antitheses of the legal position Anya E had wished to be advocated in court.
- g. Furthermore, in contradiction of her client's explicit stated wishes and direction to have her father Ben Gary included and a part of her legal litigation, Defendant Wacks refused to confer, cooperate, share or consult Anya E's legal strategy with Anya E's father; against her client's wishes Wacks affirmatively and explicitly prohibited her father from speaking to Anya E about any of her legal strategy, desires, litigation wishes or intentions.

225. The negligence of Defendant Wacks was the proximate cause of Anya E losing her legal rights, not having a voice in court, and not receiving the relief that she desired.

226. Specifically, Anya E's request to have expanded visits with her father and to have her father have primary custody, were not advocated for, and have not been conveyed to the courts.

227. On the contrary, Defendant Wacks actually argued to the court against her client's position in an effort to limit visitation, deny custody, and encourage impositions and enhancements of restraining orders between them.

228. Plaintiff Anya E incurred actual damage as a result of Defendant Wacks' failure to advocate for her position and by not advising the courts of Anya E's position.
229. Specifically, Anya E has received reduced time and association with her Father, has not had unmonitored visitation, has had her legal position for preferred custody with her father irretrievably compromised, lost and dismantled, among other things, as a proximate result of the failure of Defendant Wacks to advance the legal position of Anya E and to instead argue against it.
230. WHEREFORE, Plaintiffs demand that this Court: (1) Enjoin Defendant Wacks from further withholding of legal services that comply with Rule 7.2, the Family Court Act, and constitutional law and to advocate for the position of Anya E; (2) Declare and adjudge that Defendant Wacks committed and continues to commit legal malpractice by failing to provide Anya E with the services she was entitled to under Rule 7.2, the Family Court Act, and constitutional law; and (3) Any further relief that may be appropriate and just.

Conspiracy to Interfere with Civil Rights

Title 42 USC 1985(3), provides that:

"If two or more persons in any State or Territory conspire for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; [.] in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the

party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

Furthermore, Title 42 USC 1985(2) provides in pertinent part:

"[If] two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;"

COUNT V

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

42 USC 1985(3)

231. The factual allegations of Paragraphs 59 through 70, and 165 through 171 of this Complaint are hereby realleged and incorporated by reference.
232. Defendant Wacks did conspire with Defendants Kelly Whittaker, Amy Greene, Elisabeth Krisjanis, Esq., and Jillian Jackson, Esq., individually with each and in concert with all, to deny Plaintiff Ben Gary his federal and state rights, on the basis of his gender, which include but are not limited to, the right to be free of gender discrimination and the right to equal opportunity to parent his child (14th Amend US Const), as detailed and itemized under Count XXII, and under New York State Human Rights Law, N.Y. EXEC. LAW § 296. herein.

233. Furthermore Wacks did conspire with Defendants Kelly Whittaker, Amy Greene, Elisabeth Krisjanis, Esq., Jillian Jackson, Esq., individually with each and in concert with all and Denise Woltman to deny Anya E's federal and state rights which include but are not limited to the right to be free from disability discrimination as detailed and itemized under Counts [counts that demonstrate denial of anyas rights based upon disability] herein.
234. Proximate to Wacks' involvement in this conspiracy, both Plaintiffs suffered damages and injury, by being forcibly and involuntarily taken away from each other, and suffered extreme and continual emotional distress, alienation of affections, grief and anguish at the loss of each other's company, and other injuries and damages.

COUNT VI(a)

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

42 USC 1985(3)

235. The factual allegations of Paragraphs 151 through 160 of this Complaint are hereby realleged and incorporated by reference.
236. Between June 2011, and August 2011, Defendant Lawrence Shelton did conspire with Defendant Valerie Lyn Wacks, to deny Anya E her right to access to courts (1st Amend US Const) and effective counsel (6th Amend US Const) and substantive due process (5th Amend US Const), on the motivated by reason of alleged disability, by submitting on August 18, 2011, under oath, and to the court, misrepresented statements ascribed to

Anya E, both orally and by sworn affidavit, that were substantively opposite of what Anya E had said, and in contradiction of her wishes and beliefs.

237. Defendant Lawrence Shelton, in concert and conspiracy with Defendant Wacks, did further misrepresent statements made by Anya E to the court, both orally and by sworn affidavit, that were substantively false, and were opposite in both meaning and statement of what Anya E had said, and in contradiction of her wishes and beliefs, and in antitheses of the legal position Anya E had wished to be advocated in court.
238. These actions were in furtherance of the scheme that Valerie Lyn Wacks effected to deny Anya E her constitutional rights directly, as well as on the basis of disability or perceived disability; specifically the rights of access to courts, effective counsel, substantive due process, of equal protection and free association and to parent-child familial association (14th Amend US Const).
239. Anya E was harmed by this action, by having sought visitation with her father denied, her wish for custody under her father undermined, and her legal case irreparably compromised. This lead to much emotional distress, loss of parent child consortium, grief and breach of parent child association and enjoyment.

COUNT VI(b)

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

42 USC 1985(2)

240. The factual allegations of Paragraphs 151 through 160 of this Complaint are hereby realleged and incorporated by reference.

241. Between June 2011, and August 2011, Defendant Lawrence Shelton did conspire with Defendant Valerie Lyn Wacks, for the purpose of impeding, hindering, obstructing, or defeating Plaintiff Anya E the due course of justice, with intent to deny her the equal protection of the laws (14th Amend US Const) in both procedural and substantive due process (5th Amend US Const), specifically by having put forth on August 18, 2011, under oath, and to the court, misrepresented statements ascribed to Anya E, both orally and by sworn affidavit, that were substantively opposite of what Anya E had said, and in contradiction of her wishes and beliefs.
242. And in doing so, denied her right to access to courts, effective counsel, on the motivated by reason of alleged disability, and other reasons.
243. Defendant Lawrence Shelton, in concert and conspiracy with Defendant Wacks, did further misrepresent statements made by Anya E to the court, both orally and by sworn affidavit, that were substantively false, and were opposite in both meaning and statement of what Anya E had said, and in contradiction of her wishes and beliefs, and in antitheses of the legal position Anya E had wished to be advocated in court.
244. Both co-conspirators did thusly succeed in impeding, hindering, obstructing, or defeating the court case proceeding, presentation and wishes in the court case that Anya E was entitled to.
245. These actions were in furtherance of the scheme that Valerie Lyn Wacks effected to deny Anya E her constitutional rights directly, as well as on the basis of disability or perceived disability; specifically the rights of access to courts (1st Amend US Const), effective counsel (6th Amend US Const), substantive due process (5th Amend US Const), equal

protection (14th Amend US Const), of free association (1st Amend US Const) and to parent-child familial association (14th Amend US Const).

246. Anya E was harmed by this action, by having sought visitation with her father denied, her wish for custody under her father undermined, and her legal case irreparably compromised, as well as suffering emotional distress, loss of parent child consortium, alienation of affections and company, and other injuries.

COUNT VII

VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT,

42 U.S.C §§12131 et seq.

247. The factual allegations of Paragraphs 91 through 95 of this Complaint are hereby realleged and incorporated by reference, and the charging allegations of Counts I & II.
248. Where Anya E is a person that falls under the definition of a disabled person or perceived disabled person under the ADA, and where Mary Ellen Schneider acting as an employee of Ulster County Mental Health Department, a public entity, acting individually and in concert with other Ulster County employees and defendants, did discriminate against Anya E on the basis of disability or perceived disability.
249. And where Schneider owed a duty to provide services to Anya, and where Schneider did not make any reasonable accommodations or efforts in consideration for Anya E's alleged disability.
250. Schneider violated Anya's ADA right to be free of discrimination, by directing and demanding, to both Plaintiffs Anya E and Ben Gary, that Anya E be prohibited from

speaking about legal or court matters, future visits or past experiences with her father, against Anya E's wishes and intent, on the basis of disability, asserting that such conversation and speech was not permissible on the basis of disability, and in doing so did prevent Anya E from having free association and parent/child familial association with her father.

251. By doing so, Schneider further discriminated by denying Anya's rights and privileges to access to courts, freedom of speech, freedom of association, and freedom from parental/child association interference, on the basis of disability or perceived disability.
252. Anya E suffered emotional distress, grief and per se damages by violation of her parent-child familial association, and the continuing denial of company with her father.

COUNT VIII

VIOLATIONS OF THE REHABILITATION ACT of 1973

253. The factual allegations of Paragraphs 91 through 95 of this Complaint are hereby realleged and incorporated by reference, and the charging allegations of Counts I & II..
254. Where Anya E is a person that falls under the definition of a disabled person under the ADA or perceived disabled person, and where Mary Ellen Schneider acting as an employee of Ulster County Mental Health Department, a public entity that receives federal funding, acting individually and in concert with other Ulster County employees and defendants, did discriminate against Anya E on the basis of disability or perceived disability.

255. And where Schneider owed a duty to provide services to Anya, and is subject to the Rehabilitation Act, 29 U.S.C. 794, and where Schneider did not make any reasonable accommodations for Anya E.
256. Schneider violated Anya's ADA right to be free of discrimination, by directing and demanding, to both Plaintiffs Anya E and Ben Gary, that Anya E be prohibited from speaking about legal or court matters, future visits or past experiences with her father, against Anya E's wishes and intent, on the basis of disability, asserting that such conversation and speech was not permissible on the basis of disability, and in doing so did prevent Anya E from having free association and parent/child association with her father.
257. By doing so, Schneider further discriminated by denying Anya's rights and privileges to access to courts, freedom of speech, freedom of association, and freedom from parental/child association, on the basis of disability or perceived disability.
258. Anya E suffered emotional distress, grief and per se damages by violation of her parent-child familial association, and the continuing denial of company with her father.

COUNT IX

Violations of Plaintiffs' Constitutional Rights and other Rights

42 USC 1983

259. The factual allegations of Paragraphs 91 through 95 of this Complaint are hereby realleged and incorporated by reference.

260. As provided for by 1983, Mary Ellen Schneider, a person acting under color of state law, violated Plaintiffs Anya E and Ben Gary constitutional rights of access to courts, freedom of speech, and freedom of association (1st Amend US Const), and right to parent-child association (14th Amend US Const).
261. Between May of 2012, and January 2013, Mary Ellen Schneider, a person acting under color of state law, acted to effect the denial of these rights, by demanding to both Plaintiffs, as prerequisite to lifting of constraints, that the effectuation of these rights be prohibited, to which Plaintiffs involuntarily acceded to, as detailed in paragraphs 83(b-c) & 91.
262. Specifically, Schneider violated Plaintiff's rights by directing and demanding, to both Plaintiffs Anya E and Ben Gary, individually and together, that the Plaintiffs be prohibited from speaking with each other about legal or court matters, future visits or past experiences with her father, against Anya E's wishes and intent, asserting that such conversation and speech was not permissible, and in doing so Schneider would take knowing action to prohibit and prevent Anya E and Ben Gary from having free association, speech with each other, and parent/child associations with each other.
263. By doing so, Schneider further discriminated by denying Anya's rights and privileges to access to courts, freedom of speech, freedom of association, and freedom from interference of parental/child association.
264. Plaintiffs have each suffered emotional distress, and the continuing denial of each other's company due to Schneider's actions.

COUNT X

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

42 USC 1985(3)

265. The factual allegations of Paragraphs 91 through 95 of this Complaint are hereby realleged and incorporated by reference.
266. Mary Ellen Schneider violated Anya E and Ben Gary constitutional rights of access to courts, freedom of speech, freedom of association, and right to parent-child association.
267. Between May of 2012, and January 2013, Mary Ellen Schneider, a person acting under color of state law, acting in concert and in conspiracy with Defendants Denise Woltman, Charlene Boswell, and other unknown named persons, also acting under color of law, as agents and employees of Ulster County Child Protective Services, acted to effect the denial of these rights, by demanding as a prerequisite to lifting of constraints, that the effectuation and free expression of these rights be prohibited, to which Plaintiffs involuntarily acceded, as detailed in paragraphs 83(b-c) & 91.
268. Specifically as detailed above, denying Anya's rights and privileges to access to courts, freedom of speech, freedom of association (1st Amend US Const), and freedom from interference of parental/child association (14th Amend US Const).
269. And denying Ben Gary's rights and privileges in his freedom of speech, freedom of association, and freedom from interference of parental/child familial association.
270. Plaintiffs have suffered emotional distress, and the continuing denial of each other's company due to Schneider's actions.

COUNT XI

VIOLATIONS OF PRIVACY

271. Between May of 2012, and January 2013, Defendant Mary Ellen Schneider did violate her duty to Ben Gary to keep privileged medical and therapeutic information and communications private and privileged, as per duties under federal HIPAA and state rules under NYCPLR 4504, et seq, by releasing to third parties, specifically Ulster County Child Protective Services and Denise Woltman, and other unknown named persons, without adhering to the terms of authorization or permission from Ben Gary; Ben Gary's authorization of release explicitly required previous or concurrent release of said information to Plaintiff Ben Gary before any release to third parties, so as to verify its accuracy and amend if necessary, as were the explicit terms of his authorization to share such information.
272. This disclosure resulted in inaccurate, privileged, misleading or incomplete information being conveyed with no opportunity to correct, and was used to further deny visits and association between Ben Gary and his daughter Anya E, causing obstruction of their parent/child interaction, and causing emotional distress.

COUNT XII

VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT

42 U.S.C. §§12131

273. Paragraphs 75 to 80 are incorporated by reference herein.

274. Defendants Denise Woltman, Charlene Boswell, and other unknown named persons, acting as agents and employees of Ulster County Child Protective Services, a public entity that provides services to the general public, and upon Anya E being a person who was qualified to receive such services, the Defendants acting individually and in concert with other Ulster County employees and defendants, did discriminate against Anya E on the basis of disability or perceived disability.
275. Woltman and Boswell violated Anya E's ADA right to be free of discrimination, by directing and demanding, to both Plaintiffs Anya E and Ben Gary, that Anya E be prohibited from speaking about legal or court matters, future visits or past experiences with her father, against Anya E's wishes and intent, on the basis of disability, asserting that such conversation and speech was not permissible on the basis that due to Anya's alleged disability she should be denied these topics of speech and association, and in doing so did prevent Anya E from having free association and parent/child association with her father.
276. By doing so, Woltman and Boswell further discriminated by denying Anya's rights and privileges to access to courts, freedom of speech, freedom of association, and freedom from parental/child association interference, on the basis of disability or perceived disability.
277. These actions caused Anya E emotional distress, confusion, fear and per se damages by interference of parental/child association, and communications between them.

COUNT XIII

VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT

42 U.S.C. §§12131

278. Paragraphs 75 to 80 are incorporated by reference herein.
279. Defendants Denise Woltman, Charlene Boswell, and other unknown named persons, acting as agents and employees of Ulster County Municipality, a public entity that provide services to the public, did violate Anya E's right to be free of discrimination on the basis of disability or perceived disability; where Anya E is a person who has a qualified disability or is perceived to have a disability, and who is entitled to receive services and benefits from the Defendants, and where said defendants did not provide an accommodation to take into consideration said disability or perceived disability.
280. Specifically, on or about January 18, 2012, at a visit re-scheduled by Denise Woltman, but not noticed to Ben Gary, see paragraphs 74 to 79, Anya E expressed sadness and anger at not seeing her father.
281. Woltman, Boswell and other Unknown Named Persons, in response to Anya E's aforementioned reaction and based on disability or perceived disability, did subsequently deny her further visits outside of the CPS facility, and discriminated against her on the basis of disability or perceived disability by downgrading her visitation amenities, status, opportunities and freedoms.
282. The defendants did not make any accommodation or reasonable modification to their policy or procedure in order to preserve her rights and not be treated disparately.

283. Denise Woltman violated Anya E's rights, by treating her differently, and by effectively punishing her for emotional distress and grief based upon disability or perceived disability.

COUNT XIV

VIOLATIONS OF THE REHABILITATION ACT of 1973

284. Paragraphs 75 to 80 are incorporated by reference herein.

285. Defendants Denise Woltman, Charlene Boswell, Ulster County Child Protective Services, and Ulster County Municipality, and other unknown named persons, are recipients of federal financial assistance, and subject to the Rehabilitation Act, 29 U.S.C. 794.

286. Discrimination on the basis of disability is also prohibited by Section 504 of the Rehabilitation Act, 29 U.S.C. 794(a): No otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity.

287. Plaintiff Anya E is a person with a defined disability covered by the Rehabilitation Act and she is qualified to receive services, programs, or activities from the defendants cited in this paragraph.

288. Defendant Denise Woltman and Charlene Boswell, Ulster County Child Protective Services, Ulster County Municipality, and other unknown named persons, violated the Rehabilitation Act and discriminated against a qualified individual with a disability, or

perceived disability, within the meaning of the Rehabilitation Act by administering legal programs and activities receiving federal financial assistance in a manner that denied Anya E the benefits of such programs or activities and by failing to reasonably modify the Child Protective Services system to avoid discrimination against Anya E, 29 U.S.C. 794(a).

289. Defendants Denise Woltman, Charlene Boswell, and other unknown named persons, acting as agents and employees of Ulster County Municipality, a public entity that receives federal funding, did violate Anya E's right to be free of discrimination on the basis of disability or perceived disability.
290. Specifically, on or about January 18, 2012, at a visit re-scheduled by Denise Woltman, but not noticed to Ben Gary, see paragraphs 74 to 79, Anya E expressed sadness and anger at not seeing her father.
291. Woltman, Boswell and other Unknown Named Persons, based upon Anya E's aforementioned reaction and on disability or perceived disability, did subsequently deny her further visits outside of the CPS facility, and discriminated against her on the basis of disability or perceived disability by downgrading her visitation amenities, status, opportunities and freedoms.
292. The defendants did not make any accommodation or reasonable modification to their policy or procedure in order to preserve her rights and not be treated disparately.
293. Denise Woltman, Boswell and other Unknown Named Persons violated Anya E's rights, by treating her differently, and by effectively punishing her for expression and reaction of grief, and premised that treatment upon Anya E's disability or perceived disability.

COUNT XV

**VIOLATIONS OF CONSTITUTIONAL GUARANTEES AND RIGHTS,
TITLE 42 USC 1983**

294. The factual allegations of Paragraphs 82 through 87 of this Complaint are hereby realleged and incorporated by reference.
295. From January 2012 to December 2012, and of a continuing nature, Defendants Denise Woltman, Charlene Boswell, and other unknown named persons, acting as agents and employees of Ulster County Child Protective Services, and acting under color of state law, did violate Plaintiffs right under the state and federal constitutions, by directing and demanding, to both Plaintiffs Anya E and Ben Gary, that the Plaintiffs be prohibited from speaking about legal or court matters, future visits or past experiences with her father, against Anya E's wishes and intent, asserting that such conversation and speech would not be permitted, further the defendants prohibited Ben Gary from taking photos of his daughter or videography of his daughter; these prohibitions were under threat of complete enforced disassociation between the Plaintiffs, and in doing so did would prevent the Plaintiffs from having free association and parent/child association with her father, and causing extreme emotional distress to both Plaintiffs by these strictures.
296. Said actions of these defendants did violate specifically Plaintiffs rights and privileges of:
- a. The right of access to courts, and the free conversation or planning thereof

- b. (1st Amend US Const);
- c. The right to equal protection (14th Amend US Const);
- d. The right to free speech (1st Amend US Const);
- e. The right to free association (1st Amend US Const);
- f. The right to parent-child familial association and non-interference thereon (14th Amend US Const);
- g. The right to plan or coordinate their lives together for the present and for the future, enjoyment of reminiscence of past experiences, or prepare legal proceedings together (1st and 14th Amend US Const).
- h. The right to free expression (1st Amend US Const);
- i. The right to practice, discuss and contemplate upon their religion without interference (1st Amend US Const).

297. Due to the violations of these rights, and the forced separation caused by the Defendants, that had no basis in law, both Plaintiffs have suffered from continual and severe emotional distress, mental anguish, depression, grief and loss of parent-child consortium.

COUNT XVI

VIOLATIONS OF CONSTITUTIONAL GUARANTEES AND RIGHTS,

TITLE 42 USC 1983

298. Defendants Ulster County Child Protective Services, and Ulster County Municipality, entities acting under color of state law, are liable for not properly training educating,

instructing, informing, or advising Denise Woltman, Charlene Boswell, Amy Greene, Kelly Whittaker and other unknown named persons, that demanding the suspension of guaranteed legal rights and privileges is a violation of Plaintiff's constitutional and other rights, and a legal privilege that is inviolate, and cannot be a target of prohibition.

299. Defendants Ulster County Child Protective Services, and Ulster County Municipality's failure to properly train, educate, instruct, inform, or advise Denise Woltman, Charlene Boswell, Amy Greene, Kelly Whittaker and other unknown named persons, were proximate and contributory in the effectuation of the denial of the Plaintiffs' rights and privileges; these failures resulted in extreme emotional distress of the Plaintiff's, and were consequent to the Defendants' actions. Both Plaintiffs have suffered from continual and severe emotional distress, mental anguish, depression, grief and loss of parent-child consortium.

COUNT XVII

VIOLATIONS OF CONSTITUTIONAL GUARANTEES AND RIGHTS,

TITLE 42 USC 1983

300. Defendants Ulster County Child Protective Services, and Ulster County Municipality, entities acting under color of state law, are liable for failure to properly train Denise Woltman, Charlene Boswell, Amy Greene, Kelly Whittaker and other unknown named persons, as required by Chapter 525 of the Laws of 2006 (New York State), and codified in NYS Social Services Law 421, as well as failure to maintain the mandatory periodic training required therein.

301. Due to this failure, Defendants Denise Woltman, Charlene Boswell, Amy Greene, Kelly Whittaker, and other unknown named persons, were sub-standardly educated or knowledgeable, or incompetent in the administration of their legal duties and obligations, leading to the counts of liability of the Plaintiffs, as detailed hereto and hereof in other counts, and the damages suffered by Plaintiffs.
302. Defendants Ulster County Child Protective Services, and Ulster County Municipality's failure to properly train, educate, instruct, inform, or advise Denise Woltman, Charlene Boswell, Amy Greene, Kelly Whittaker and other unknown named persons, were proximate and contributory in the effectuation of the denial of the Plaintiffs' rights and privileges.
303. These failures contributed to the defendants' improper administration of their duties and responsibilities, resulting in the denial of constitutional and other rights to the Plaintiffs; Plaintiffs suffered from forced isolation from each other, and extreme emotional distress, consequent to the Defendants' actions.

COUNT XVIII

VIOLATIONS OF CONSTITUTIONAL GUARANTEES AND RIGHTS,

TITLE 42 USC 1983

304. From November 2011 to December 2012, Defendants Ulster County Child Protective Services, and Ulster County Municipality, acting under color of state law, interfered with Plaintiffs' freedom of association (1st Amend US Const) and right to parent-child familial association (14th Amend US Const) by promulgating administrative rules of, and

the imposition of prohibiting the giving of gifts to each other. Said prohibition resulted in emotional distress and familial alienation and estrangement, and emotional distress to the Plaintiffs.

COUNT XIX

VIOLATIONS OF CONSTITUTIONAL GUARANTEES AND RIGHTS,

TITLE 42 USC 1983

305. Paragraphs 96 to 97 are incorporated here by reference.
306. On December 19, 2012, Defendants Denise Woltman, and Charlene Boswell, acting under color of state law, interfered with Plaintiff Ben Gary's freedom of association rights and the right to parent without state interference, after accusing Ben Gary of pinching his child on the buttock, Woltman asserted that he did not have the right to discipline his child Anya E, in a manner within his discretion and permissible and protected by NY State law (NY Pen Law 35.10(1)), and other law, directing him not to effect said discipline even if it was within his legal discretion to do so, and that he thought appropriate, and threatening sanctions upon him, of further denial of association and visits with his child if he did exercise these rights and privileges under New York law, and furthermore in retaliation for the exercise and assertion of his rights demanded redundant, unnecessary and gratuitous parenting education classes' to "correct" his expression, beliefs and practice of those rights, as Ben Gary had already taken and completed a parenting class.

307. Said prohibition exerted by the defendants interfered with Ben Gary's right to parent his child (14th Amend US Const), affecting his free discretion to teach and inform his child, and was contributory to denying his sharing of lessons and creed to his child (1st and 14th Amend US Const), and grief in the loss of those entitlements, and loss of free assembly and of parent child consortium.

COUNT XX

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

308. Paragraphs 64-71 and 98-99 are incorporated by reference herein.

309. Defendants Kelly Whittaker, Amy Greene, Elisabeth Krisjanis, Esq., and Jillian Jackson, Esq. , acting under color of State Law, are liable for the negligent infliction of emotional distress upon Plaintiffs Ben Gary and Anya E, under the laws of New York State and the United States.

310. These Defendants owed a duty of care to the Plaintiffs in the exercise of their administration of child protective services.

311. They negligently applied improper laws and improper standards as a premise to separate and cause the Plaintiffs to be taken from each other, to date going on a year and a half.

312. The Defendants knew, or should have known within their capacity as professionals and experts in these fields, that the administrative and judicial charges they levied against Ben Gary were insufficient as a matter of law.

313. To the extent that they were ignorant of the laws and policies in their professional field, Defendants Ulster County Municipality and Ulster County Child Protective Services are

liable for insufficiently training the natural person Defendants, and were contributory to the emotional distress.

314. Due to the forced separation caused by the Defendants, that had no basis in law, both Plaintiffs have suffered from continual and severe emotional distress, mental anguish, depression, grief and loss of parent-child consortium.

COUNT XXI

VIOLATIONS OF CONSTITUTIONAL GUARANTEES AND RIGHTS,

TITLE 42 USC 1983

315. Paragraphs 58 to 71 are incorporated here by reference as if fully stated.
316. On or about October 5, 2011, Defendants Kelly Whittaker, Amy Greene acting in person, and Elisabeth Krisjanis, Esq., Jillian Jackson, Esq., and Barbara Sorkin, acting by documents and submissions, who are all persons acting under color of State law, individually and in conspiracy with each other, did knowingly, intentionally, and culpably interfere, curtail, limit and control in violation of law, Ben Gary's lawful and retained rights and privileges to parent his child Anya E., commanding and prohibiting him from exercising his privileged and discretionary rights under federal and state law from parenting his child, as detailed and itemized, letters "a" through "s", in paragraph 63, which is incorporated by reference as if fully rewritten here.
317. Specifically under threat of using state action to remove and separate the Plaintiffs from each other, by directing Ben Gary to, and demanding that Ben Gary obey and abide by their ad hoc rules and edicts.

318. Additionally, the Defendants did in fact use their authority under of state law to effectuate the removal of Plaintiffs from each other, and under threat of criminal sanction prevented the Plaintiffs from having free association with each other.
319. By these actions the Defendants did violate Plaintiffs' right, by denying them:
- a. The right of access to courts, and the free conversation or planning thereof (1st Amend US Const);
 - b. The right to equal protection (14th Amend US Const);
 - c. The right to free speech (1st Amend US Const);
 - d. The right to free association (1st Amend US Const);
 - e. The right to parent-child familial association and non-interference thereon (14th Amend US Const);
 - f. The right to plan or coordinate their lives together for the present and for the future, enjoyment of reminiscence of past experiences, or prepare legal proceedings together (1st and 14th Amend US Const).
 - g. The right to free expression generally and with each other (1st Amend US Const);
320. Due to the violations of these rights, and the forced separation of the Plaintiffs caused by the Defendants, that had no basis in law, both Plaintiffs have suffered from continual and severe emotional distress, mental anguish, depression, grief and loss of parent-child consortium.

321. Additionally these actions in fact did negatively impact the custody Plaintiff had been litigating for, by undermining any possible custody award with the sanction imposed by the Defendants' actions.

COUNT XXII

VIOLATIONS OF CONSTITUTIONAL GUARANTEES AND RIGHTS,

TITLE 42 USC 1983

322. Defendants Kelly Whittaker, Amy Greene, Elisabeth Krisjanis, Jillian Jackson, Esq., Barbara Sorkin, Ulster County Child Protective Services/Ulster County Dept of Social Services, Ulster County Municipality, and other unknown named Defendants did knowingly, illegally and intentionally discriminate against Plaintiff **B. Gary T** on basis of gender, as part of an ongoing conduct, practice and pattern of discrimination against male parents in Ulster County, NY, by the disproportionate initiation of and investigation, accusation and prosecution of male parents of children in child protective actions and cases, disproportionately charging them more often than female parents, and also for the discriminatory purpose of prejudicing men in retaining their parental rights over their children compared to women, all in violation of equal protection and to be free of private and governmental discrimination, as protected by the 14 Amendment of the US Constitution, as well as by the New York State constitution.
323. This discrimination is a per se injury to Ben Gary, but also led to the forced separation of the Plaintiffs, that had no basis in law, and the damages suffered by continual and severe emotional distress, mental anguish, depression, grief and loss of parent-child consortium.

COUNT XXIII

VIOLATIONS OF CONSTITUTIONAL GUARANTEES AND RIGHTS,

TITLE 42 USC 1983

324. Paragraphs 51 to 58 and et seq. are incorporated here by reference.
325. Defendants Kelly Whittaker, Amy Greene, Barbara Sorkin, Ulster County Child Protective Services, Ulster County Municipality, committed acts of gender discrimination (14th Amend US Const), by which they were motivated, and of unlawful retaliation in violation of New York State Social Services Law 413, and Immunity from Liability under New York State Social Services Law 419, and due process clauses (5th & 14th Amend US Const), for the reporting of a case of suspected child abuse or neglect.
326. Specifically, within days of Ben Gary reporting an incident of suspected abuse to the NYS SCR Hotline, on Sept 21, 2011, of a incident of possible child abuse or neglect upon his child from a third party, to wit Suzanne Cayley, the Defendants instituted a neglect proceeding against him on Sept 28, 2011, in both Family Court and administrative CPS maltreatment proceeding against him under Administrative procedures under New York Social Services law.
327. That retaliatory proceeding resulted in his child being taken away from him arbitrarily and capriciously, in violation of law as detailed elsewhere in this complaint.
328. Furthermore, the Defendants' discriminatory and disparate treatment of Ben Gary is evidenced by the their ongoing pattern of ignoring or declining to pursue, investigate or charge the female parent of the subject child, as detailed in the statement of facts.

329. These actions both discriminated against and penalized Ben Gary for the exercise of his legal duty, and chilled future due diligence and lawful action of Ben Gary from reporting further acts of abuse or neglect of his child, out of fear from further retaliation from the Defendants.

COUNT XXIX

MALICIOUS PROSECUTION

330. Paragraphs 58 to 73 are incorporated herein by reference.

331. Defendants Elisabeth Krisjanis, Esq. and Jillian Jackson, Esq., and other unknown named persons, did commit malicious prosecution against Plaintiff Ben Gary, by charging him with Child Neglect or Abuse, in a quasi-criminal court action, when they were aware, or should have been aware, that none of the acts alleged constituted any act of neglect or abuse, and that they knew or should have known, that the facts upon which they based the charge of neglect or abuse were insufficient, as a matter of NYS statutory law, to sustain a finding of neglect or abuse, and in fact that all the acts alleged were privileged, guaranteed, reserved and protected under the U.S. and N.Y.S. Constitutions.

332. Furthermore, their motivation, whether in conjunction with and/or separately from the was to separate the Plaintiffs and infringe upon their parental-child rights, association and speech.

333. Furthermore, in conjunction with and/or separately from the above acts, the Defendants' motivation, intent and purpose was to discriminate against Ben Gary on basis of and for

the prejudicial intent of gender discrimination, to negatively affect the custody proceedings that Plaintiff was then litigating.

334. Ben Gary was exonerated on the merits, of any neglect or maltreatment allegations by OFCS administrative court decision, August 15, 2012.
335. Due to the actions of the Defendants, that had no valid basis in law, Plaintiff has suffered from continual and severe emotional distress, mental anguish, depression, grief and loss of parent-child consortium. Additionally these actions in fact did negatively impact the custody trial Plaintiff had been litigating, by undermining any possible custody award with the sanction imposed by the Defendants' actions.

COUNT XXX

MALICIOUS PROSECUTION

336. Paragraphs 58 to 73 are incorporated herein by reference.
337. Defendants Kelly Whittaker, Amy Greene and other unknown named person did commit malicious prosecution against Plaintiff Ben Gary for by charging him with Maltreatment, in a quasi-criminal administrative action, when they were aware, or should have been aware, that none of the acts alleged constituted any act of abuse or maltreatment, and that they knew or should have known, that the facts upon which they based the charge of neglect or abuse were insufficient, as a matter of NYS statutory law, to sustain a finding of neglect or abuse, and in fact that all the acts alleged were privileged, guaranteed, reserved and protected under the U.S. and N.Y.S. Constitutions.

338. Furthermore, their motivation, whether in conjunction with and/or separately from the was to separate the Plaintiffs and infringe upon their parental-child rights, association and speech; the defendants bad faith was additionally evidenced by false statements of facts, about Ben Gary having been involved with domestic violence and Anya E being "highly autistic", put into the record and submitted to the administrative court, see paragraphs 88 to 90.
339. Furthermore, in conjunction with and/or separately from the above acts, the Defendants' motivation, intent and purpose was to discriminate against Ben Gary on basis of and for the prejudicial intent of gender discrimination, and for the purpose of disrupting the custody proceedings concurrent at that time.
340. Ben Gary was exonerated on the merits, of any neglect or maltreatment allegations by OFCS administrative court decision, August 15, 2012.
341. Due to the actions of the Defendants, that had no valid basis in law, Plaintiff has suffered from continual and severe emotional distress, mental anguish, depression, grief and loss of parent-child consortium.

COUNT XXXI

CRUEL AND UNUSUAL PUNISHMENT

8th Amendment to the U.S. Constitution

342. The Defendants Elisabeth Krisjanis, Jillian Jackson, Esq., Barbara Sorkin, Ulster County Child Protective Services/Ulster County Dept of Social Services, Ulster County

Municipality, and other unknown named Defendants violated the prohibitions against cruel and unusual punishment against the Plaintiffs.

343. Plaintiffs were subjected to cruel and unusual and/or excessive punishment in violation of the 8th Amendment of the U.S. Constitution, and to the states through the 14th Amendment (see *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947)) of the U.S. Constitution, without legal substantive due process or premise, and that said Defendants' actions, abusing and misusing the power vested to them as agents of the state and government, upon and against Plaintiffs were:

- a. By its severity degrading to the Plaintiffs' dignity;
- b. Was inflicted arbitrarily and capriciously;
- c. Actions that amounted to severe punishment for Plaintiffs' constitutionally protected activity and behavior;
- d. Effectuated punishment that was clearly out of proportion to the alleged offense, (see *Solem v. Helm*, 463 U.S. 277 (1983))
- e. And was effectively punishment that would be clearly rejected throughout society, offends society's sense of justice, and decency, and was patently unnecessary, (see *Trop v. Dulles*, 356 U.S. 86, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958))
- f. Offensive to society's expectations for the sanctity of the family and parent child bonds.

344. The result of the Defendants' actions amounted to extended psychological torture in the deprivation and forced denial of each other's care and comfort, denial of father-child

company, denial of familial interaction and association, severe emotional distress, mental anguish, depression, and grief, under a continuing multi-year sanction, threat and extortion of criminal sanctions and imprisonment, subject to pillory and public denigration via the publication of this status to the community.

COUNT XXXII

TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIP

345. Paragraphs 80-81 are hereby incorporated by reference.
346. On or about January 27, 2012, Defendants Ulster County Mental Health Department, Mary Ellen Schneider, Joseph Bennett, and other unknown named persons, knowing that the Plaintiffs were being treated as such, contacted Dr. Kathleen Caproni, a therapist who had been contracted and hired by and was treating Ben Gary, his daughter Anya E, and Suzanne Cayley, in family co-therapy counseling, and the Defendants explicitly demanded, directed, commanded and implicitly threatened Dr. Caproni to cease administering therapy to the Plaintiffs.
347. Defendants did not have authority to make such demands, but due to the Defendants' interference and pressure, Dr. Caproni did in fact affirmatively cease administering therapy to the Plaintiffs.
348. The Defendants disrupted a contiguous duration of therapy, interfered with the therapeutic goals and treatment that had been accomplished, interfered with Dr. Caproni's ability to provide court ordered reports on the results of that therapy, forced Plaintiffs into therapy with a social worker, Mary Ellen Schneider, as replacement worker for the

therapy being received from Dr. Caproni, a licensed psychologist, and rendered moot and wasted all the monies paid to Dr. Caproni by Ben Gary for these services.

349. Additionally, whereas Dr. Caproni was of the expert opinion via written report that Plaintiffs should be reunited, whereas Mary Ellen Schneider impeded and affirmatively opposed the reunification of the Plaintiffs via unconstitutional demands on their relationship, as detailed in Counts IX and X.

COUNT XXXIII

INTERFERENCE WITH PARENTING RIGHTS FOR CHOICE OF THERAPIST

42 USC 1983

350. Paragraphs 80-81 are hereby incorporated by reference.
351. On or about January 27, 2012, Defendants Ulster County Mental Health Department, Mary Ellen Schneider, Joseph Bennett, and other unknown named persons, knowing that the Plaintiffs were being treated as such, contacted Dr. Kathleen Caproni, a therapist who had been contracted and hired by and chosen by Ben Gary, and additionally directed by the Family Court, to treat his daughter Anya E, and himself, in family co-therapy counseling; Defendants demanded, directed, commanded and implicitly threatened Dr. Caproni to cease administering therapy to the Plaintiffs.
352. Defendants did not have authority to make such demands, but due to the Defendants' interference and pressure, Dr. Caproni did in fact affirmatively cease administering therapy to the Plaintiffs.

353. The Defendant did thus interfere with Ben Gary's parental and discretionary choice of what medical practitioner to use in the treatment of his daughter, and did thus interfere with his parental rights (14th Amend US Const.); additionally the Defendants actions violated due process, as there was no process at all adhered to, it was simply and directly effectuated ad hoc.
354. The Defendants disrupted a contiguous course of therapy, interfered with the therapeutic goals and treatment that had been accomplished, interfered with Dr. Caproni's ability to provide court ordered reports on the results of that therapy, forced Plaintiffs into therapy with a social worker, Mary Ellen Schneider, as a replacement worker for the therapy being administered from Dr. Caproni, a licensed psychologist, wasted and rendered moot all the monies paid to Dr. Caproni by Ben Gary for those services.
355. Additionally, whereas Dr. Caproni was of the expert opinion via written report that Plaintiffs should be reunited, whereas Mary Ellen Schneider impeded and affirmatively opposed the reunification of the Plaintiffs via unconstitutional demands on their relationship, as detailed in Counts IX and X.

COUNT XXXIV

DEFAMATION

356. Defendants Kelly Whittaker, Amy Greene, Elisabeth Krisjanis, Jillian Jackson, Barbara Sorkin, Ulster County Municipality, and unknown named Defendants, are liable for defamation of character of **JB. Gary T** by casting aspersions of moral turpitude, and besmirching his character, professional standing, moral creed and constitution,

fatherhood and personhood, where the premise and allegations of legal violation and other defamation were untrue and false, and furthermore by having these accusations and characterizations published or to be made public directly or incidentally, through public court documents, publication of restraining orders, and/or by other means.

357. Plaintiff has suffered a sullyng of his reputation in his personal and professional life and relationships, and a harm to his business directly and adjunctively due to their actions, and from these aspersions having reached third parties, and the public community at large, causing per se and actual irreparable injury to Plaintiffs in his social and community life from the indelible stigma of suspicion as to the charges levied against him, e.g., abuse of children, danger to other people, substandard parent, and other things.

Damages:

358. As a direct and proximate result of the Defendants' unlawful, unconstitutional, prejudicial, and malfeasant acts, the Plaintiffs have sustained injuries and damages:
- a. The forced emotional and physical disassociation and rendering asunder of family between loving father and daughter, under threat of criminal sanction and imprisonment, for 14 months as of the filing date of this complaint, and the psychological pain resulting from denial of their right to free familial association and enjoyment of each other's company; continual and severe emotional distress, mental anguish, depression, grief and loss of parent-child consortium, and alienation of affections and familial bonds;

- b. The heinous teaching, invidious psychological damage and imprinting of Anya E to fear her father, and the Parental Alienation effected upon her, the severing of parent-child bonds, to view him as person of suspicion, of someone to be feared, that he is a danger to her, that she cannot speak freely to him without punishment, and that he violated the law and abused her, and is incapable of parenting her, or providing life, moral or religious guidance;
- c. All Social ties and bonds severed between father and daughter;
- d. Extreme emotional distress resulting from these violations of law and duty to Plaintiffs;
- e. The effectuation of a negative substantive impact upon custody and assessments of parental fitness, and opportunity for same;
- f. Loss of business and standing in the community
- g. Costs, fees and expenses incurred and expended countering the actions of the Defendants.

359. WHEREFORE, Plaintiffs request that this Court enter judgment against the Defendants proportional to their respective liability to be determined in an awards determination hearing, providing the following relief:

- a. Compensatory damages covering the expenses, in legal costs, and ancillary costs that Plaintiff Ben Gary was compelled to expend in countering Defendants' unfounded actions, in the amount of \$18,000.00, exclusive of costs and interest, that Plaintiff is found to be entitled;

- b. Punitive/exemplary damages against Defendants in the amount of \$10,000,000.00 for the emotional pain and suffering endured by Plaintiffs for the duration of time they were forced to be apart from each other, which Plaintiffs stipulate to be 14 months as of the filing date of this complaint, exclusive of costs and interest;
- c. Punitive/exemplary damages against Defendants in the sum certain calculable amount of \$500,000.00 per month, or proportional fraction thereof, for any continuing suffering and prejudice that Plaintiffs endure, after the filing of this complaint, for the pain and suffering as detailed in the body of this complaint, due to the Defendants' refusal to cease and desist their unlawful and liable actions against the Plaintiffs;
- d. An order placing Plaintiffs in the position that they would have been in had there been no violation of their rights or entitlements, to the extent possible;
- e. Psychological and counseling for Anya E, to ameliorate, correct, and make whole the improper, exploitive and illegal psychological damage done to her per the forced separations of Plaintiffs, and official inculcation of denigration of character of her father by the Defendants, parental alienation, to be paid for by the Defendants;
- f. An order enjoining and restraining the Defendants from further acts of constitutional and statutory violations, discrimination or retaliation;
- g. An order declaring the Defendants' conduct unconstitutional and/or otherwise unlawful;
- h. Enter a permanent injunction, upon proper motion, requiring Defendant Ulster County Municipality to adopt appropriate policies and legal standards education

training of its agencies, contractors and employees related to the mental health counseling, investigation, intrusive preventative actions and prosecution of alleged neglectful or abusive guardians, so as to preemptively comport with constitutional and statutory guarantees and rights of the affected individuals, and so as to correct the Defendant's current endemic practice of improper institutional policies of interfering with parents' rights and discriminatory practices;

- i. An award of interest, costs, and attorney's fees;
- j. Any additional award amounts determined at a damages determination trial;
- k. Any and all other remedies provided pursuant to 42 U.S.C. 1983, the ADA, the Rehabilitation Act, the New York State Human Rights Law ("HRL"), N.Y. Exec. L. 290, et seq., and equitable jurisprudence;
- l. Take other appropriate measures to overcome the above described discrimination, statutory and constitutional violations; and
- m. Declaratory relief, and other further relief as the Court deems appropriate.

JURY TRIAL DEMAND

360. Plaintiffs demand a jury trial, pursuant to the Seventh Amendment to the Constitution of the United States, as to all claims for these causes of actions and as to damages.

Dated: December 28, 2012

Respectfully submitted,

B. Gary T , Plaintiff,
Parent and Next Friend for
Plaintiff Anya E