EXHIBIT "1"

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ELIZABETH MORT and ALEX RODRIGUEZ,	)	
Plaintiffs,	)	**CIVIL ACTION NO. 2:10-cv-01438-DSC**
v.	)	
LAWRENCE COUNTY CHILDREN AND YOUTH SERVICES; LAWRENCE COUNTY; JANE GAJDA, Lawrence County Children and Youth Services Director; SANDY COPPER, Lawrence County Children and Youth Services Supervisor; CHRISSY MONTAGUE, Lawrence County Children and Youth Services Caseworker; and JAMESON HEALTH SYSTEM, INC.,	)	**Electronically Filed**
Defendants.	)	**JURY TRIAL DEMANDED**

SECOND AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. A day after Elizabeth Mort and her fiancé, Alex Rodriguez, arrived home from the hospital with their first child, Isabella, caseworkers from Lawrence County Children and Youth Services ("CYS"), an agency which is operated, managed and supervised by Lawrence County ("Lawrence County") (CYS and Lawrence County sometimes will be collectively referred to as "LCCYS") and a police officer arrived unannounced at their door with a court order to remove their three-day-old infant. LCCYS took Isabella and held her in an undisclosed location for five days until admitting that it had made a mistake. In the meantime, Mort and

Rodriguez, the plaintiffs in this case, were forced to experience the unthinkable: The forcible seizure of their infant daughter by the state without any justification and the fear that they might not get her back.

2. Elizabeth Mort never imagined that the last thing she ate before giving birth to her daughter — a poppy-seed bagel — would lead to the loss of her newborn, but that is exactly what happened after the Jameson Health System, Inc. ("Jameson") failed to account for the possibility that her positive urine drug screen was due to her ingestion of poppy seeds, and LCCYS, relying solely on Jameson's report of the positive prenatal drug test, took Mort's baby into protective custody.

3. LCCYS caseworkers' decision to remove Isabella from her parents — based solely on Jameson's erroneous report of Mort's positive prenatal drug test — was not an unauthorized or even isolated act. In fact, Jameson has a policy of drug-testing all obstetrical patients and then reporting any positive results to LCCYS. Pursuant to their custom, pattern, practice and/or policy, LCCYS, in turn, takes immediate action to remove newborns from parents whenever it receives a report of a positive prenatal drug test from Jameson.

4. The problem with this procedure is twofold: LCCYS is removing newborns without any reasonable suspicion that they have been abused or are in imminent danger of abuse, in violation of parents' fundamental constitutional rights, and Jameson is aiding and abetting that constitutional violation by carrying out a drug-testing regime, the primary purpose of which is to further the goals of LCCYS, not provide medical care to patients.

5. Plaintiffs Mort and Rodriguez have brought this civil rights lawsuit against Defendants to stop CYS, Lawrence County and Jameson from continuing their unlawful practice

of violating the fundamental rights of parents to the care and custody of their children under these circumstances.

PARTIES

6. Plaintiff Elizabeth Mort is a citizen of the United States and is a resident of Lawrence County in the Commonwealth of Pennsylvania. Plaintiff Mort is the natural mother and legal guardian of newborn Isabella Rodriguez.

7. Plaintiff Alex Rodriguez is a citizen of the United States and is a resident of Lawrence County in the Commonwealth of Pennsylvania. Plaintiff Rodriguez is the natural father and legal guardian of newborn Isabella Rodriguez.

8. Plaintiffs are engaged to be married and at all times material hereto have resided with Plaintiff Mort's father, Richard C. Mort, in New Castle, Pennsylvania.

9. Defendant Lawrence County is a political subdivision of the Commonwealth of Pennsylvania with its offices situated at 430 Court Street, New Castle, Pennsylvania 16101. Defendant Lawrence County operates an agency or governmental unit known as Lawrence County Children and Youth Services and is the direct policy-making entity which supervises and manages the activities of Defendant CYS.

10. Defendant CYS is a municipal government entity organized under the laws of Pennsylvania, with its main offices located at 454 Chestnut Street, New Castle, Pennsylvania 16101.

11. LCCYS has a legal responsibility to operate according to the laws of the United States and the Commonwealth of Pennsylvania, including, but not limited to, the United States Constitution.

12. Defendant Jane Gajda is, and at all relevant times here mentioned was, the director of LCCYS. As director, she is responsible for implementing and approving LCCYS' policies and practices. In her capacity as LCCYS director, Defendant Gajda had a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. Defendant Gajda is named herein in her individual capacity. Defendant Gajda is a "person," as that term is defined in 42 U.S.C. § 1983, and at all relevant times has acted under color of state law.

13. Defendant Sandy Copper is, and at all relevant times here mentioned was, the intake supervisor for LCCYS. In her capacity as an LCCYS supervisor, Defendant Copper had a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. Defendant Copper is named herein in her individual capacity. Defendant Copper is a "person," as that term is defined in 42 U.S.C. § 1983, and at all relevant times has acted under color of state law.

14. Defendant Chrissy Montague ("Montague") is, and at all relevant times here mentioned was, a caseworker with LCCYS. In her capacity as an LCCYS caseworker, Defendant Montague had a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. Defendant Montague is named herein in her individual capacity. Defendant Montague is a "person," as that term is defined in 42 U.S.C. § 1983, and at all relevant times has acted under color of state law.

15. Defendant Jameson Health System, Inc. is a private, not-for-profit community health system that owns and operates the Jameson Hospital North Campus, which is located at 1211 Wilmington Road, New Castle, Pennsylvania 16105.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4). Declaratory relief is authorized by 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57. This Court has supplemental jurisdiction over Plaintiffs' state and common law causes of action under 28 U.S.C. § 1367.

17. This Court has personal jurisdiction over the Defendants, who are located in the Western District of Pennsylvania.

18. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(a) in that the Defendants are subject to personal jurisdiction within the Western District of Pennsylvania and the events that give rise to this action occurred within the Western District of Pennsylvania.

FACTS

Jameson's Obstetrical Drug Testing Policy

19. Pursuant to a written policy ("Jameson's Policy"), Jameson requires all obstetrical patients admitted to the maternity care center at Jameson's North Campus to undergo a urine drug screen ("UDS") in order to identify those newborns with potential to demonstrate symptoms of drug withdrawal and to require special observation and treatment. (A true and correct copy of Jameson's Policy is attached as Exhibit A.)

20. This policy is not required by any state or federal law or regulation, and there are no national standards delineating specific criteria for drug-testing pregnant women.

21. According to Jameson's Policy, a UDS is considered positive for opiates if the level of opiate metabolites detected in the urine is 300 nanograms/mL or above. After an initial positive screen, Jameson's Policy requires that a confirmation test be performed.

22. If the initial UDS is positive for opiates, Jameson uses a confirmatory test to confirm the result of the initial UDS and to determine which particular opiate is present, e.g., morphine or codeine. The UDS is considered a confirmed positive for morphine if the level detected in the urine is 100 nanograms/mL or above.

23. The cut-off concentration levels used by Jameson to determine whether an initial or confirmation prenatal drug test is positive for opiates and/or morphine are so low that they are likely to produce false positive results; in fact, Jameson's cut-off levels are far lower than those set by the federal government for federal workplace drug-testing programs.

24. In order to avoid false positive results caused by common foods and medicines, federal guidelines set the "cut-off" concentration levels for drug tests used in federal workplace drug-testing programs at *2000 nanograms/mL or higher* in order for a UDS to be considered positive for the presence of opiates or morphine.

25. If a mother's UDS is positive, Jameson's Policy requires a drug test be performed on a newborn's urine and meconium (an infant's first stools).

26. Jameson's Policy requires the hospital's maternity care center staff to notify its social service department whenever a maternity patient's initial UDS is positive.

27. If the patient's confirmatory UDS is positive, Jameson's Policy specifically requires that the hospital's social service department "*then* notify Children and Youth Services of the positive *confirmatory test result*." (*See* Jameson's Policy, Exhibit A) (emphasis in original.)

28. Jameson's Policy also requires the hospital's social service department to notify LCCYS when a maternity patient's *initial* drug test is positive, even before it has been confirmed, if any of the following factors is present: prenatal history indicating prior drug use or children in foster care; positive urine screen at any time in the pregnancy; physician suspect –

i.e., signs and symptoms upon admission, known methadone patient; unusual patient behavior; or noncompliant prenatal care. (*Id.*)

29. Jameson's Policy of reporting all maternity patients with confirmed positive drug-test results to LCCYS is not required under any federal or state law or regulation.

30. Upon information and belief, Jameson's Policy of subjecting all obstetrical patients to drug tests and informing LCCYS of positive results was created and carried out in cooperation with LCCYS.

31. Upon information and belief, Jameson was aware that it was LCCYS's policy to remove a newborn whenever Jameson disclosed to LCCYS that a prenatal drug test of the infant's mother was positive.

32. Defendant Jameson is further involved with LCCYS through its affiliation with the Children's Advocacy Center of Lawrence County, which is located at Jameson Hospital South Campus. The mission of the Children's Advocacy Center is to prevent the maltreatment of children by coordinating the efforts of diverse professionals who provide services related to the prevention, education investigation, prosecution, and treatment of child abuse. To accomplish that mission, Jameson, through the Children's Advocacy Center, works with various governmental entities, including LCCYS.

The Birth of Baby Rodriguez

33. Plaintiff Mort gave birth to a healthy, 7 lb 3 oz baby girl, Isabella Rodriguez ("Baby Rodriguez"), at 2:14 p.m. on April 27, 2010 at Jameson Hospital's North Campus.

34. Prior to giving birth to Baby Rodriguez, Plaintiff Mort had received necessary and appropriate prenatal medical care.

35. Plaintiff Mort did not use any illegal drugs while pregnant with Baby Rodriguez.

36. At approximately 3:00 p.m. on April 26, 2010, the day before Baby Rodriguez was born, Plaintiff Mort consumed an "everything" bagel from Dunkin' Donuts containing, among other things, poppy seeds.

37. Plaintiff Mort was admitted to Jameson's North Campus for labor and delivery two hours later.

38. Shortly after admission, Plaintiff Mort voluntarily submitted a urine sample after she was informed by a nurse at Jameson that she would be required to undergo a UDS in conformity with Jameson's Policy.

39. No one at Jameson asked Plaintiff Mort whether she had eaten any foods that could affect the test results, nor did anyone at Jameson advise Plaintiff Mort that the ingestion of certain foods, such as poppy seeds, could impact the results of the UDS.

40. Due to the extremely low "cut-off" established by the Jameson Policy, the result of Plaintiff Mort's initial UDS was positive for opiates because the concentration of opiate metabolites in her urine was greater than 300 nanograms/mL.

41. Jameson did not inform Plaintiff Mort that it considered her initial UDS to be positive for the presence of opiates.

42. Plaintiff Mort's obstetrician, Nicole Carlson, M.D. ("Dr. Carlson") was informed of the positive UDS but did not inform Plaintiff Mort of the positive UDS because, in her experience, many of the initial UDS tests come back as "false positives."

43. In addition, Dr. Carlson did not inform Plaintiff Mort of the test results because Plaintiff's urine tests throughout her pregnancy were negative for the presence of drugs; because Dr. Carlson did not believe that the Plaintiff was a drug user; and because she did not want to frighten Plaintiff during her labor/delivery.

44. In accordance with its Policy, Jameson performed a confirmatory test on Plaintiff Mort's urine sample to confirm the initial UDS. The confirmation test indicated the presence of morphine at a level of 501 nanograms/mL, a result well below the federal guidelines for a positive drug test but entirely consistent with the amount of morphine expected to be found in a urine sample within hours of eating poppy seeds.

45. The positive results on the initial and confirmatory drug tests were solely due to Plaintiff Mort's ingestion of a bagel containing poppy seeds a few hours before providing the urine sample and not to any illegal drug use by Plaintiff.

46. Upon information and belief, LCCYS did not investigate in any manner whether Plaintiff Mort's positive drug test could be a false positive due to Plaintiff Mort's ingestion of certain foods or medicines.

47. While neither Plaintiff Mort nor her obstetrician, Dr. Carlson were informed of the confirmation test results, Jameson did inform LCCYS intake supervisor Sandy Copper that Plaintiff Mort tested positive for opiates.

48. Upon information and belief, Defendant Copper did not ask for or receive from Jameson the concentration levels of opiate metabolites or morphine detected in either Plaintiff Mort's initial positive UDS or the positive confirmation test.

49. Upon information and belief, Jameson did not inform LCCYS that foods, such as poppy seeds, could be responsible for the false positive result.

50. Baby Rodriguez was born healthy and the results of the drug tests performed on her were negative.

51. Upon information and belief, Jameson, through its agents and employees, knew at the time it informed LCCYS of Plaintiff Mort's positive test result that Baby Rodriguez neither

had been affected by illegal substance abuse nor had withdrawal symptoms resulting from prenatal drug exposure.

52. Upon information and belief, Jameson and its agents and employees had no reason to believe that Baby Rodriguez had been the victim of child abuse.

53. At no point before discharge was Plaintiff Mort informed of the allegedly positive drug tests.

54. At no point before discharge was either Plaintiff Mort and/or Plaintiff Rodriguez visited by anyone from Jameson's social services department or LCCYS and questioned about drug use or their ability to care for their child.

The Removal of Baby Rodriguez by LCCYS

55. Plaintiff Mort and Baby Rodriguez were discharged from Jameson on Thursday, April 29, 2010, and they returned to their residence.

56. The very next day, on April 30, 2010, LCCYS intake supervisor Sandy Copper instructed LCCYS caseworker Chrissy Montague to seek a court order permitting LCCYS to take Baby Rodriguez into emergency protective custody solely on the basis of Jameson's report to Defendant Copper that Plaintiff Mort had tested positive for opiates.

57. Defendant Montague immediately submitted an oral petition to the Court of Common Pleas of Lawrence County, Juvenile Division, for an *ex parte* order permitting LCCYS to take Baby Rodriguez into emergency protective custody solely on the basis of Jameson's report that Plaintiff Mort had tested positive for opiates.

58. In petitioning for the Order, LCCYS alleged, solely on the basis of Jameson's report to LCCYS that Plaintiff Mort had tested positive for opiates, that Baby Rodriguez was

without proper parental care and that to allow her to remain in her home would be contrary to her welfare because she had been exposed to drugs.

59. LCCYS did not interview Plaintiff Mort, Plaintiff Rodriguez, or any of their family members prior to seeking and obtaining an emergency *ex parte* Order to remove Baby Rodriguez from her parents' custody.

60. LCCYS made no effort to contact Plaintiff Mort's obstetrician, Dr. Carlson, nor did it attempt to obtain copies of Plaintiff Mort's medical records, including the results of her urine drug tests during her pregnancy, prior to seeking and obtaining an emergency *ex parte* Order to remove Baby Rodriguez from her parents' custody.

61. In fact, aside from receiving the UDS test results from Jameson, LCCYS conducted absolutely no investigation of Plaintiff Mort or Plaintiff Rodriguez prior to alleging that Baby Rodriguez was without proper parental care or seeking an emergency *ex parte* Order to remove Baby Rodriguez from her parents' custody.

62. No services were offered by LCCYS to prevent removal of the child from the home.

63. Based upon the allegations of Montague, the Court of Common Pleas issued an *ex parte* Order allowing LCCYS to take Baby Rodriguez into custody.

64. After obtaining the Order, two LCCYS caseworkers and two police officers from the Neshannock Township Police Department arrived at the Plaintiffs' residence on Friday, April 30, 2010, at approximately 3:00 p.m. Both Plaintiffs were present at their residence at the time.

65. It was at that point that Plaintiffs learned for the first time that LCCYS had sought and obtained an *ex parte* court order to remove their newborn baby.

66. Over Plaintiffs' protests and Plaintiff Mort's adamant denial of drug use, LCCYS informed Plaintiffs that they were removing three-day-old Baby Rodriguez from their home and placing her in foster care because Jameson had reported that Plaintiff Mort's drug test results were positive for opiates.

67. During the fifteen minutes that the caseworkers and police officer were at the Plaintiffs' home, they did not interview Plaintiffs Mort or Rodriguez or inspect the home.

68. At the request of one of the police officers, Plaintiff Rodriguez took the officer to the Plaintiffs' room, where Baby Rodriguez was sleeping in a bassinette and then brought her to the living room, where the LCCYS caseworkers were waiting.

69. During the time when they were in Plaintiffs' home, neither of the LCCYS caseworkers ever left Plaintiffs' living room, conducted any investigation or viewed Baby Rodriguez's room, which contained all of the necessary items for a newborn baby, including a crib, changing table, diapers, toys, blankets, and clothing.

70. The caseworkers then took Baby Rodriguez into protective custody and refused to tell the Plaintiffs where they were taking her other than that she would be placed in foster care and left the Plaintiffs' home.

71. Although the Plaintiffs knew that they had not done anything to harm their baby and knew that the drug-test results were in error, they complied with the directions of the police officers and caseworkers because they did not want to make the situation worse.

72. Plaintiff Mort's father, Richard Mort ("Mr. Mort"), immediately returned home from work upon learning that LCCYS had taken his granddaughter into state custody.

73. On Plaintiffs' behalf, Mr. Mort contacted LCCYS and Jameson to try to learn more details about the reasons for taking Baby Rodriguez, but was only told that he should contact an attorney.

74. Mr. Mort then contacted an attorney, who explained that Plaintiff Mort was entitled to a hearing regarding the removal of Baby Rodriguez within 72 hours but that nothing could be done over the weekend.

75. After conducting his own investigation into the possible causes of his daughter's positive drug test, Mr. Mort suspected that Plaintiff Mort's UDS had been positive for opiates because of the poppy seeds on the "everything" bagel she ate from Dunkin' Donuts on the afternoon of April 26, 2010, two hours before being admitted to Jameson for labor and delivery.

76. Shortly after the LCCYS caseworkers took custody of Baby Rodriguez, Plaintiff Mort contacted her obstetrician, Dr. Carlson, to request that Dr. Carlson order a UDS. No one from Jameson or LCCYS had contacted Dr. Carlson to obtain any information or to inform Dr. Carlson that the confirmation test on Plaintiff Mort's UDS showed a positive result.

77. Two hours after Baby Rodriguez was taken from Plaintiffs' home without prior notice, Plaintiff Mort provided another urine sample at Jameson for a UDS, the results of which were negative for all illegal drugs.

78. LCCYS failed to contact the Plaintiffs or perform any investigation of their allegations prior to the informal hearing that was scheduled for Monday, May 3, 2010 at 1:30 p.m. to determine whether Baby Rodriguez's placement in shelter care was necessary.

79. Plaintiffs and Mr. Mort arrived at the court for the informal hearing on May 3, 2010.

80. After they arrived, a lawyer appointed by the court for Plaintiff Rodriguez explained to him that the court would give custody of Baby Rodriguez to him only if he lived apart from Plaintiff Mort and that he would be required to undergo drug testing as a condition of having custody of his child.

81. Plaintiff Mort and her father met with a lawyer appointed by the court to represent Plaintiff Mort. After Plaintiff Mort advised him that she had not used any illegal drugs while she was pregnant and that she believed that her positive drug test was due to her ingestion of poppy seeds on a bagel that she had eaten shortly before she was admitted to Jameson, he arranged for Plaintiff Mort and her father to meet with LCCYS caseworker Montague.

82. Plaintiff Mort and her father then advised Montague of their belief that the positive drug test was due to Plaintiff Mort's ingestion of the poppy-seed bagel and the extremely low "cut-off" levels that Jameson uses to determine whether a drug test is positive for opiates.

83. Montague appeared to believe that Plaintiff Mort's drug test result represented a "false positive" and in fact, admitted to Plaintiff Mort and her father that LCCYS had experienced problems with Jameson in the past and that LCCYS had made a mistake by removing Baby Rodriguez from Plaintiffs' custody.

84. At that point, the Plaintiffs believed that LCCYS would not contest the return of Baby Rodriguez to them at the informal hearing and that she would be returned to them that day.

85. After speaking with the LCCYS solicitor and the lawyers appointed to represent the Plaintiffs outside of the Plaintiffs' presence, Juvenile Court Master Susan Papa refused, for reasons unknown to Plaintiffs, to hold the informal hearing on May 3, 2010 and rescheduled it

for May 6, 2010 at 1:30 p.m., well beyond the statutory requirement that an informal hearing be held within 72 hours of a child's placement in shelter care.

86. Despite its admission that it had made a mistake in removing her from Plaintiffs' home, LCCYS inexplicably refused to immediately return Baby Rodriguez to the Plaintiffs. Instead, Montague informed the Plaintiffs that their baby would remain in an undisclosed foster home and that they would only be allowed to visit their baby the next day at the LCCYS office.

87. The next morning, Plaintiffs arrived at the LCCYS office to visit their baby. This was the first time Plaintiffs had seen Baby Rodriguez since she was taken from them four days before.

88. Plaintiffs learned of the negative result from Plaintiff Mort's April 30, 2010 UDS while they were at the LCCYS office and informed Montague of the result. Although Montague acknowledged the negative result and appeared to believe Plaintiffs' assertion that the positive result from the April 26, 2010 UDS was due to the poppy-seed bagel, LCCYS did not permit the Plaintiffs to take Baby Rodriguez home with them on May 4, 2010.

89. On Wednesday, May 5, 2010, LCCYS contacted Plaintiffs and informed them of its intent to file a motion to dismiss the dependency petition and that Baby Rodriguez would be returned to their custody. Montague delivered Baby Rodriguez to the Plaintiffs' home on May 5, 2010 at approximately 1:00 p.m.

90. On May 6, 2010, LCCYS filed a Motion to Dismiss the Dependency Petition with the Court in which it stated that "[a]fter further investigation, there is no evidence to support illegal drug use by the natural mother, Elizabeth Mort."

91. On May 10, 2010, the Court granted the Motion to Dismiss the Dependency Petition.

LCCYS's Policy of Removing Newborns Based Solely on the Report of a Positive Prenatal Drug Test

92. Upon information and belief, Montague's oral *ex parte* petition to the Juvenile Court requesting that LCCYS be permitted to take into protective custody and detain Baby Rodriguez was made pursuant to a custom, pattern, practice and/or policy of LCCYS that requires caseworkers to seek court orders to take infants into protective custody based solely on a report from a hospital or other medical professional that the infant's mother tested positive for use of an illicit substance while pregnant.

93. Upon information and belief, LCCYS, by virtue of its custom, pattern, practice and/or policy, authorizes its caseworkers to seek to take infants into protective custody based solely on a report from a hospital or other medical professional that the infant's mother tested positive for use of an illicit substance while pregnant and without a reasonable suspicion that the infant has been abused or is in imminent danger of abuse.

94. Upon information and belief, LCCYS failed to adequately train its caseworkers, which represents deliberate indifference to the risk that parents' substantive due-process rights will be violated when caseworkers seek to take infants into protective custody based solely on a report from a hospital or other medical professional that the infant's mother tested positive for use of an illicit substance while pregnant.

95. Upon information and belief, Defendant Gajda, as director of LCCYS, adopted, implemented, and/or enforced LCCYS' custom, pattern, practice and/or policy requiring caseworkers to seek court orders to take infants into protective custody based solely on a report from a hospital or other medical professional that the infant's mother tested positive for use of an illicit substance while pregnant.

96. Plaintiffs are aware, through their counsel, of at least one other instance in which an infant was taken into protective custody based solely on a report from Jameson that the infant's mother tested positive for use of an illicit substance while pregnant.

97. Plaintiffs' counsel have also been informed by lawyers representing parents in dependency proceedings in Lawrence County that LCCYS has a custom, pattern, practice and/or policy of seeking court orders to take infants into protective custody based solely on a report from a hospital or other medical professional that the infant's mother tested positive for the use of an illicit substance while pregnant.

COUNT I
FOURTEENTH AMENDMENT SUBSTANTIVE DUE PROCESS:
PARENTS' RIGHT TO THE CARE AND CUSTODY OF THEIR CHILDREN
(Plaintiffs Mort and Rodriguez vs. Defendants CYS, Lawrence County, Gajda, Copper and Montague)

98. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

99. LCCYS's custom, policy, or practice under which they seek to remove newborn children from their parents based solely upon a report from a hospital or other medical professional of a positive prenatal drug test of the child's mother, and without any further investigation into family circumstances whatsoever ("LCCYS Policy"), violates the Fourteenth Amendment right of parents to substantive due process on its face and as applied to Plaintiffs because it infringes on the fundamental liberty interest of parents to the custody, care, and control of their children.

100. By adopting, implementing, and enforcing the LCCYS Policy and removing Baby Rodriguez from their care and placing her into protective custody, CYS, Lawrence County, Gajda, Copper and Montague violated Plaintiffs' Fourteenth Amendment right to substantive due

process because CYS, Lawrence County, Gajda, Copper and Montague infringed upon Plaintiffs' fundamental liberty interest in the custody, care, and control of their child without any objectively reasonable suspicion that Baby Rodriguez had been abused or was in imminent danger of abuse.

101. Defendants CYS, Lawrence County, Gajda, Copper and Montague violated Plaintiffs' Fourteenth Amendment right to substantive due process by failing to immediately return Baby Rodriguez to Plaintiffs' custody upon realizing that there was no evidence to support illegal drug use by Plaintiff Mort.

102. As a direct consequence of the actions of Defendants CYS, Lawrence County, Gajda, Copper and Montague, including the existence and enforcement of LCCYS's unconstitutional custom, policy, or practice and actions thereunder, Plaintiffs were separated from their newborn child for five days.

103. Plaintiffs have suffered substantial harm as a result of the existence and enforcement of LCCYS's custom, policy, or practice, including but not limited to, emotional and psychological pain and suffering and injury to their reputation.

COUNT II
CONSPIRACY TO VIOLATE PLAINTIFFS' FOURTEENTH AMENDMENT RIGHTS
(Plaintiffs Mort and Rodriguez vs. Defendants Jameson, CYS, Lawrence County, Gajda and Copper)

104. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

105. Upon information and belief, Defendants Jameson, CYS, Lawrence County, Gajda, and Copper entered into a combination, agreement, or understanding to violate Plaintiffs' constitutional rights under the Fourteenth Amendment by carrying out, through Jameson, a policy of drug-testing all obstetrical patients, which resulted in the removal of Plaintiffs' child

from their custody without reasonable suspicion that she had been abused or was in imminent danger of abuse.

106. In furtherance of this combination, agreement, or understanding, Jameson's Policy specifically requires that the hospital's social service department "notify Children and Youth Services of the positive *confirmatory test result*." (*See* Jameson's Policy, Exhibit A) (emphasis in original.)

107. Also in furtherance of this combination, agreement, or understanding, Jameson's Policy also requires the hospital's social service department to notify LCCYS when a maternity patient's *initial* drug test is positive, even before it has been confirmed, under certain circumstances. (*Id.*)

108. Defendants Jameson, CYS, Lawrence County, Gajda and Copper each acted in furtherance of said agreement, combination, or understanding by cooperating in the development of Jameson's obstetrical drug-testing policy, carrying out a drug test of Plaintiff Mort, and taking Plaintiffs' baby into state custody.

109. The aforementioned conspiracy violates 42 U.S.C. § 1983.

110. Defendants' actions violated Plaintiffs' clearly established rights.

111. Defendants CYS, Lawrence County, Gajda, Copper and Jameson acted intentionally to deprive Plaintiffs of their constitutional rights under the Fourteenth Amendment, or in wanton, reckless disregard of those rights.

112. Defendants' actions constituted an extreme departure from the ordinary standard of care and evidences a conscious indifference to Plaintiffs' constitutional rights under the Fourteenth Amendment.

113. Plaintiffs have suffered substantial harm as a result of Defendants' conduct, including but not limited to, emotional and psychological pain and suffering and injury to their reputation.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiffs respectfully request the following:

(a) a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 declaring the policy adopted and enforced by LCCYS to remove newborn children from their parents based solely upon a single positive drug test without any individualized suspicion of abuse or likelihood of abuse to be unconstitutional because it violates the Fourteenth Amendment right to substantive due process;

(b) nominal, compensatory, and punitive damages in an amount to be proven at trial;

(c) an order awarding Plaintiffs the costs incurred in this litigation including attorney's fees pursuant to 42 U.S.C. § 1988; and

(d) such other relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a jury on all issues so triable.

Respectfully submitted,

/s/ Sara J. Rose
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October 24, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Second Amended Complaint was served this 24th day of October, 2011, via the Court's electronic transmission facilities pursuant to Fed. R. Civ. P. 5(b)(3) and Local Rule 5.5 upon the following:

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