

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

STACEY MONTERO, in her individual capacity and in her capacity as parent and natural guardian of K.M., a minor child,

Plaintiff,

v.

GREG LEWEN, an individual;
MARTHA JACOBSON, an individual;
JULIETTE LIPPMAN, an individual;
LAURA HOHNECKER, an individual;
and **FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES**, an agency of the State of Florida,

Defendants.

CASE NO. 50 2013 CA 006530XXXXMB AO

**THIRD AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff, STACEY MONTERO, in both her individual capacity and her capacity as parent and natural guardian of minor child, K.M., through her counsel, brings suit against Defendants GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, and the FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES for damages and as grounds therefore alleges:

JURISDICTION AND VENUE

1. This is an action for damages in excess of \$15,000.00, exclusive of interest, attorneys' fees, and costs.
2. Plaintiff STACEY MONTERO is a resident of Florida and is *sui juris*.

3. Defendant GREG LEWEN is a resident of Florida and is *sui juris*.
4. Defendant MARTHA JACOBSON is a resident of Florida and is *sui juris*.
5. Defendant JULIETTE LIPPMAN is a resident of Florida and is *sui juris*.
6. Defendant LAURA HOHNECKER, is a resident of Florida and is *sui juris*.
7. Defendant FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (“DCF”)

is an agency of the State of Florida and is *sui juris*.

8. Venue is proper in Palm Beach County, Florida because the events giving rise to this action occurred in Palm Beach County, Florida.

9. All conditions precedent have been fulfilled, waived, or would otherwise be a useless act under the circumstances. In the case of DCF, Plaintiff has fulfilled the statutory notice requirements of Fla. Stat. § 768.28 *et seq.*, and DCF has waived the statutory six-month notice requirement prior to initiation of a lawsuit against it.

10. Plaintiff retained the undersigned law firm to prosecute her claims, as well as the claims of K.M., a minor child, and agreed to pay the undersigned law firm a reasonable fee.

FACTUAL ALLEGATIONS

11. This matter arises from a dissolution of marriage, timesharing, and parental responsibility dispute between Plaintiff, STACEY MONTERO, and her ex-husband, RAUL MONTERO.

12. In November 2006, as a result of a final judgment dissolving the marriage between STACEY MONTERO and RAUL MONTERO, STACEY MONTERO was to have primary custody of the parties’ minor child, K.M., with RAUL MONTERO having established rights of access to and visitation with K.M., for Wednesday overnights and alternate weekends.

13. In June 2010, RAUL MONTERO filed a Petition for Modification through his attorney, GREG LEWEN, alleging that STACEY MONTERO interfered with his access to and visitation with K.M. STACEY MONTERO vehemently denied those allegations.

14. To this purpose, MARTHA JACOBSON, PHD, was appointed to make a parenting plan recommendation and do psychological evaluations.

15. This “Report” prepared by JACOBSON violated multiple American Psychological Association (“APA”) guidelines, as well as the requirements set forth by the Florida Statutes.

16. JACOBSON’s report was wholly inadequate under the statutes and negligent in its preparation. JACOBSON did not, as part of her evaluation conduct a “psychological evaluation of [K.M.],” but instead conducted a “partial psychological evaluation of the parties.”

17. JACOBSON strongly urged consultation with psychologist LAURA HOHNECKER, a long-time acquaintance, social friend, and mutual referral source. This referral was outside the scope of JACOBSON’s duty as court-appointed evaluator, occurred primarily for reasons of pecuniary gain, and was not in the best interests of K.M.

18. HOHNECKER only met with K.M.’s mother, STACEY MONTERO, once for approximately one (1) hour and RAUL MONTERO was also present during that brief meeting. Despite protest from K.M.’s mother, STACEY MONTERO, HOHNECKER proscribed an inappropriate regimen of medication, i.e. Prozac, for K.M.. HOHNECKER ignored STACEY MONTERO’s objection, and gave this terse and belligerent reply to her, “You have no rights, we will medicate her.” The medication had a dampening effect on K.M.’s demeanor and character, virtually turning her into a “zombie.”

19. During K.M.'s six (6) months of therapy with HOHNECKER, K.M. never spoke to her, but rather communicated only by "blinking." K.M. was petrified of HOHNECKER and referred to her as an "evil person."

20. HOHNECKER was completely biased against K.M.'s mother, STACEY MONTERO, in her treatment of K.M. HOHNECKER attempted to eradicate STACEY MONTERO from K.M.'s life. On multiple occasions, HOHNECKER said to K.M., "Let's get your mother out of your life. Let's talk about your father [RAUL MONTERO]." Even when RAUL MONTERO asked HOHNECKER if he should include STACEY MONTERO in K.M.'s family tree for a school a project, HOHNECKER replied, "Get Stacey [STACEY MONTERO] out of her [K.M.'s] life."

21. After JACOBSON completed her insufficient and inadequate evaluation, RAUL MONTERO amended his Petition for Modification and citing her report, further alleged that K.M. "exhibited profound psychological symptoms and other serious dysfunction."

22. Accordingly, RAUL MONTERO filed an Urgent Motion and Renewed Urgent Motion to attempt to have JAN FAUST appointed as K.M.'s therapist. The trial court judge denied RAUL MONTERO's request.

23. In order to gain a strategic edge in his timesharing modification, RAUL MONTERO and the Defendants disseminated JACOBSON's report to numerous third parties, i.e. friends, acquaintances, employees at K.M.'s school, K.M.'s medical doctors, and other disinterested individuals. RAUL MONTERO and the Defendants even went so far as to have uniformed and armed police officers (some in bullet-proof vests) attend timesharing exchanges and for no reason, whatsoever, shared the report with them.

24. This strategy did not end with attempting to damage STACEY MONTERO's reputation. RAUL MONTERO and the Defendants (upon information and belief, this was led by GREG LEWEN) also made repeated contact with DCF, having investigators come to RAUL MONTERO's home to observe K.M. and falsely telling them about K.M.'s demeanor during timeshare exchanges.

25. In January 2011, a DCF investigator visited the residence of RAUL MONTERO. The DCF investigator's report was based upon JACOBSON's recommended parenting plan report of which no independent investigation was conducted by the DCF investigator to verify the findings contained in said JACOBSON's report. Nonetheless, in the DCF report, the DCF investigator concluded that K.M. suffered a "mental injury" caused by her mother, STACEY MONTERO.

26. RAUL MONTERO's vexatious behavior did not stop there. On June 19, 2011, after spending five (5) hours with the minor the child, RAUL MONTERO called the DCF Emergency Abuse Hotline. In response to that phone call, DCF responded by sending an investigator, MATTHEW WILCOX who worked at DCF for only eleven months, to RAUL MONTERO's home.

27. MATTHEW WILCOX is an employee and/or known agent of a principal, in this case DCF.

28. DCF negligently sent WILCOX to investigate this issue despite the fact that he lacked any experience qualifying him to do same. Prior to his brief employment at DCF, WILCOX held numerous jobs: a restaurant server, substitute teacher, bartender, and salesmen, to name a few. None of these jobs qualify him for DCF employment. It is also noteworthy that

while employed at DCF, WILCOX was suspended without pay when a child under his supervision was shot and nearly killed.

29. WILCOX spent approximately one (1) hour at RAUL MONTERO's home, where he spoke to him and his family. WILCOX observed K.M. and described her as "scared and shivering" and holding a stuffed animal in front of her face. During that visit, RAUL MONTERO's family members informed WILCOX that K.M. neither used the bathroom nor ate while visiting her father and did not talk to anyone during those visits. K.M. communicated with her father, RAUL MONTERO, and his family members by blinking, not talking. K.M. spent most of her time while at her father's residence in a "frozen" catatonic state.

30. On the same day, WILCOX, on behalf of DCF, also visited the residence of K.M.'s mother, STACEY MONTERO. A police officer accompanied WILCOX. WILCOX was full of anger and spoke in a loud, controlling voice. Both STACEY MONTERO and K.M. were petrified. WILCOX's report for DCF stated that STACEY MONTERO's house was very clean, stocked with food and was "entirely normal for a seven year old girl." He noted that K.M. was engaged in play, laughing and interacting with STACEY MONTERO. K.M.'s demeanor at her mother's house is in stark contrast to what WILCOX observed when he was at RAUL MONTERO's residence.

31. Though WILCOX spent over one (1) hour at RAUL MONTERO's residence and interviewed RAUL MONTERO's family members, he spent approximately only twenty (20) minutes at STACEY MONTERO's house and did not interview any of her family members. In that brief time and in spite of K.M.'s playful and jovial attitude, DCF's employee WILCOX improperly and negligently concluded that K.M.'s interaction with her mother, STACEY MONTERO, was of concern to him and that she and K.M. had an "unhealthy relationship."

32. Additionally, WILCOX spoke with K.M.'s teacher who reported that the child was doing very well, both academically and socially.

33. When writing his DCF report, in addition to the home and school visits, WILCOX relied on JACOBSON's recommended parenting plan report, as well as the first DCF Investigator's report (which was also based on that same JACOBSON report). DCF, through the unqualified and inexperienced WILCOX, sought to help RAUL MONTERO in his attempt to gain "100% custody" of K.M. DCF then issued a report finding that STACEY MONTERO was causing mental injury to K.M.

34. WILCOX's DCF report stated, "this was the worst case of abuse he has ever seen" despite the fact that this case was the first case of abuse WILCOX ever investigated while being employed at DCF.

35. DCF's actions in this case were so inappropriate that the DCF agent who was assigned to this case, WILCOX, was ultimately reprimanded by his DCF supervisors relating to his conduct as described in this Complaint.

36. Nonetheless, RAUL MONTERO and LEWEN caused to be appointed as guardian ad litem, JULIETTE LIPPMAN, over the objection of STACEY MONTERO and her counsel.

37. Despite DCF's inaction, RAUL MONTERO and LEWEN proceeded forward with allegations of abuse against STACEY MONTERO in an attempt to deprive her of her custodial rights while providing pecuniary gain to LEWEN.

38. These allegations culminated in an October 5, 2011 Shelter Hearing on Father's Emergency Motion for Change in Custody before Judge Renee Goldenberg.

39. In advance of this hearing, LIPPMAN produced a Guardian Ad Litem report in which she relied heavily on those opinions of JACOBSON (whose report was wholly inadequate

under both statutory and APA guidelines) and the DCF report issued by WILCOX, an individual without any background in psychological evaluation.

40. LIPPMAN's report recommended that K.M. be removed from her mother's custody without any proper foundation or substantiation, despite the fact that when LIPPMAN visited the residence of STACEY MONTERO, K.M. was playful and cheerful. LIPPMAN even commented upon how happy she was to see how different K.M.'s demeanor was at STACEY MONTERO's residence than it was at RAUL MONTERO's residence.

41. Further, upon information and belief, LIPPMAN telephoned RAUL MONTERO the night before the October 5, 2011 Shelter Hearing and stated that she, "had it all covered," and that "it's a done deal."

42. At the Shelter Hearing, JACOBSON testified that she saw K.M. in 2010 and received approximately Eleven Thousand Dollars (\$11,000.00) for her evaluation, deposition, and in-court testimony all paid for by RAUL MONTERO. She also testified to the fact that she knew LEWEN, RAUL MONTERO's attorney, for a "very long time."

43. These statements show that LIPPMAN's intent was not to function in the role of Guardian Ad Litem, but instead to conspire to further the efforts of LEWEN and RAUL MONTERO to deprive STACEY MONTERO of custody of K.M. and for pecuniary gain.

44. At the shelter hearing, DCF employee WILCOX testified that STACEY MONTERO and K.M. had an "unhealthy relationship" despite a complete lack of any supporting evidence of same.

45. LIPPMAN gave one-sided testimony favorable to the father, RAUL MONTERO. Subsequent to the Shelter Hearing, LIPPMAN was discharged due to a conflict of interest.

LIPPMAN's fee was primarily paid by RAUL MONTERO who paid a hefty \$7,500.00, while STACEY MONTERO only contributed a mere \$350.00 towards LIPPMAN's fee.

46. At the close of the Shelter Hearing, without STACEY MONTERO being permitted to cross examine either LIPPMAN or WILCOX or to present testimony from her own experts, and over strenuous objection to the unfounded report of LIPPMAN, the trial Court ordered K.M. to be taken from STACEY MONTERO's custody, and that a "no-contact" order be put in effect. This "no contact" order lasted approximately six (6) months until the Fourth District Court of Appeal remanded it and it was overturned.

47. During the last two (2) months of this six (6) month period, STACEY MONTERO was allowed brief, taped, monitored phone calls by HOHNECKER and RAUL MONTERO with K.M. two (2) times a week. STACEY MONTERO was only allowed to discuss pre-approved topics by HOHNECKER with K.M.. Coincidentally, these topics all chosen by HOHNECKER, herself, centered solely on K.M.'s father, RAUL MONTERO. STACEY MONTERO was not allowed to ask K.M. anything about her friends, school, extra-curricular activities, etc. If the conversation between mother and child veered from the HOHNECKER's list, whatsoever, RAUL MONTERO abruptly ended the conversation by hanging up the telephone.

48. One day, while RAUL MONTERO was out of town on a business trip, HOHNECKER paid a social visit to his residence (this visit was not conducted as a therapy session). HOHNECKER took it upon herself to telephone STACEY MONTERO while K.M. was screaming and crying for the sole purpose of tormenting STACEY MONTERO. During that "sic!" telephone conversation initiated by HOHNECKER, she said to STACEY MONTERO,

“Because you did that to her [K.M.], you are not allowed to come here. You are going to pay for this.”

49. As a result of the actions of LEWEN, DCF, JACOBSON, HOHNECKER, and LIPPMAN, STACEY MONTERO was permitted zero personal contact with K.M. for over six (6) months and only brief, limited phone contact during the last two (2) months of the “no contact” Order, only being reunited with her daughter upon a scathing opinion issued by the Fourth District Court of Appeal (Case No.: 4D11-3632, March 7, 2012) holding that STACEY MONTERO’s due process rights were grossly violated.

50. As a result of this gross violation of STACEY MONTERO’s rights, the Fourth District Court of Appeal remanded for a Palm Beach County juvenile court judge to conduct a new shelter hearing at which time the judge was to give STACEY MONTERO an opportunity to be heard and present evidence. (Case No.: 2011-DP-300411-JO)

51. A new shelter hearing took place upon remand. As a result of this hearing, which took place in the juvenile division of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida in a case styled *In re: K.M.*, Case No. 2011-DP-300411-JO, Judge Donald W. Hafele wrote, in pertinent part, as follows:

The court finds no probable cause to believe that the child has been abused, neglected, or abandoned by the mother or that the child is suffering from or was in imminent danger of illness or injury as a result of abuse, neglect, or abandonment, either at the time of the hearing in October, 2011, or upon review of the evidence adduced in this hearing, pursuant to § 39.402 (1), Florida Statutes (2011). Therefore, in accordance with the last sentence of the 4th DCA’s majority opinion, the court has ordered “the father to return the child to the mother’s custody.” . . .

At the new shelter hearing as directed by the Fourth DCA, ***the evidence presented to this court was nothing short of alarming as it concerned the female child, S.M. [sic], who was seven years old at the time of this hearing.*** A DCF investigation was initiated in June, 2011, by an apparent anonymous hot line call

and the DCF child protective investigator, Mathew Wilcox, along with a police officer, proceeded to the father's home where Wilcox spent one hour speaking to the father and the father's family members and observing the child. Wilcox described the child while at the father's home as, inter alia, "scared and shivering" and holding a stuffed animal in front of her face. Wilcox testified that at this time he had been working for DCF for just eleven months, his prior job being a restaurant server. His discussion with the father and the father's family members confirmed that the child's appearance, as described by Wilcox above, was consistent and constant while she was with the father. Additionally Wilcox was told by the father and his family members that she "didn't use the restroom or eat" while on visits with the father, and did not talk to anyone during those visits.

Following that one hour period and on the same day, Wilcox went to the mother's home. He reported that the mother's house was "very clean, stocked with food and entirely normal for a seven year old girl." He further observed that the child, when in the mother's presence, acted like a normal seven year old girl. She was engaged in play, laughing and interacting with the mother - a stark contrast to what he observed while the child was in the father's company. Notably, he made these observations while at the mother's home on one occasion for "fifteen to twenty minutes." During this extremely short amount of time, Wilcox observed that when he questioned the child at the mother's home, the child hid behind the mother and that the mother appeared to be prompting the child's responses. He concluded that the mother and child's interaction was of concern to him even though he admitted that the child acted in a completely appropriate manner. Nevertheless, he termed the mother and child's interaction as an "unhealthy relationship."

Sometime shortly thereafter, Wilcox spoke to the child's teacher who reported that the child was doing "very well" in school, both academically and socially. Wilcox added that the child appeared physically sound with no sign of self mutilation. [FN 4 – There was some discussions that the child may have self mutilated by scratching a religious symbol onto her skin. Wilcox saw no sign of same and no competent evidence and substantial evidence of this was presented at the new shelter hearing held before this court.]

As a result of Wilcox' approximately one and a half hour investigation as set forth above, his review of a therapist's report (which he relied on "in part"), some photographs provided only by the father and a "Threat Index Matrix" which he described as part of his investigatory protocol, Wilcox concluded that the child had a "mental injury" that was somehow attributable to the mother.

Wilcox presented his findings to his superiors at DCF. Of critical importance to this court was that DCF did not file a shelter petition and in fact took no action whatsoever relative to this matter based on Wilcox's findings. As noted in the Fourth DCA's majority opinion, the 2006 final judgment dissolving the mother and father's marriage, which was entered when the child was just two years old,

“provided, in pertinent part, that the mother was to have primary custody of the parties’ only child, with the (father) having established rights of access to and visitation with the child on certain dates.” Id. at 164.

Despite DCF not filing a shelter petition following Wilcox’ investigation [FN 5 – Testimony adduced at the hearing revealed that Wilcox was ultimately reprimanded by his supervisors relating to his conduct in this case], the father opted to file a Verified Petition for Dependency pursuant to § 39.501, Florida Statutes (2011) and Florida Rule of Juvenile Procedure 8.310(a). As noted above, the Fourth DCA’s majority opinion details the procedural history leading up to the extensive new shelter hearing held by this court.

Among the most striking aspects of the hearing was the testimony of two of the therapists, Laura Hohnecher, Ph.D. and Martha Jacobson, Ph.D. Dr. Jacobson saw the child in 2010 and has collected approximately \$11,000 for her evaluation, deposition and in-court testimony paid for by the father. She testified that she has known the father’s attorney for “a long time.”

Dr. Hohnecher began seeing the child on October 19, 2011. As of the date of the hearing, she has been paid approximately \$2,200.00 by the father and has known and worked with the father’s attorney on family law matters for the last four years. She has also worked on various cases with the (now former) Guardian Ad Litem for the child, Juliette Lippman, Esq., for the past ten years.

During the almost six months of therapy, the seven year old child has NEVER spoken to Dr. Hohnecher. [FN 6 – The attorney for the father repeatedly referred to Dr. Hohnecher as the “head of the treatment team” for the child. The court is unaware of any other members of this “team.”] ***Further, both Dr. Honecher and the father confirmed that the child has not spoken to the father since the child was placed in the father’s custody in October, 2011.*** Despite the child not verbally communicating with her, Dr. Hohnecher has continued to see the child and testified to “improvements” as she now blinks and nods and will communicate in writing. For example, the child will now check off what she wants to eat for breakfast from a list of items provided by the father. Recall, however, that while in the mother’s care and while in school (the latter on a continuous basis even after being removed from the mother’s custody) the child behaved like a normal and happy seven year old child.

Drs. Jacobson and Hohnecher as well as Ms. Lippman testified favorably to the father. It should be added that Ms. Lippman, prior to her stepping down as the guardian (which was done shortly after the mother filed a motion to have her discharged due to conflict of interest) was paid \$7,500.00 by the father and only \$350,00 by the mother.

This court listened carefully to the testimony of Drs. Jacobson and Hohnecher, as well as Ms. Lippman and considered each of their demeanors while testifying. The undersigned judge has been a judge for thirteen years and a trial attorney for more than sixteen years before taking the bench. Over the last almost thirty years, the undersigned has often witnessed expert testimony being colored in favor of the party who is paying the expert. Never however, has the court witnessed such a lack of objectivity, fueled by money, where a child's very life is literally at stake. For the aforesated reasons, the court rejects the testimony of these three witnesses. [FN 7 – The court has no knowledge whatsoever of the ethical responsibilities of a child therapist but certainly questions why Dr. Hohnecher would choose to continue to treat the child in a situation where the child has never uttered a single word to her.]

On the other hand, the court does find the testimony of the expert called by the mother, Joel Klass, M.D., to be credible and untainted by any outside influences. Dr. Klass, who has been practicing child and adolescent psychiatry for approximately forty (40) years, essentially testified that in circumstances such as this, the child should not be punished and taken away from her primary caregiver and placed in an environment where, among other things, she is moaning, whimpering, hiding behind a stuffed animal to hide her face, refusing to wipe herself after going to the bathroom, refusing to bathe herself and will not orally communicate with the father. . . .

In announcing its oral ruling at the conclusion of the hearing, the court used the word “travesty” to describe what has transpired over these many months of legal wrangling. The damage that has been inflicted on this innocent young child may be irreversible. To think that the child had to endure the months of October, November, December, January, February, March and part of April, waking up on Thanksgiving and Christmas mornings, all without the care and comfort of her mother, her primary custodial parent since she was two years old, is unthinkable and indeed a travesty under the facts of this case.

For all the foregoing reasons, the Father's Petition for Dependency is hereby DISMISSED.

(Exhibit “A,” attached hereto) (emphasis added).

52. In the time that STACEY MONTERO was forcibly and improperly separated from K.M., both she and K.M. experienced severe trauma to which they both continue to suffer to this day.

53. Moreover, during this six (6) month period, K.M.'s grades dropped from A's to C's and a few F's. When K.M. was returned to her mother, her grades quickly improved and she began to receive A's once again.

54. During the six months of separation from her mother, STACEY MONTERO, K.M. was heavily medicated to her own detriment, as well as suffered severe psychological trauma to the benefit of MARTHA JACOBSON, LAURA HOHNECKER, GREG LEWEN, JULIETTE LIPPMAN, and DCF.

COUNT I

**DECLARATORY RELIEF REGARDING FLA. STAT. § 61.405 AND
DEFENDANT JULIETTE LIPPMAN'S LIABILITY FOR TORTS
AND WRONGFUL CONDUCT COMMITTED AGAINST
STACEY MONTERO AND THE MINOR CHILD K.M.
IN HER CAPACITY AS A GUARDIAN AD LITEM**

AGAINST DEFENDANT JULIETTE LIPPMAN

55. Plaintiff, STACEY MONTERO, repeats and realleges the allegations of Paragraphs 1 through 54 as if fully set forth herein.

56. This is a count for declaratory relief pursuant to Chapter 86 of the Florida Statutes, et seq.

57. A bona fide dispute exists between Plaintiff STACEY MONTERO, in her individual capacity and in her capacity as parent and natural guardian of K.M., a minor child, and Defendant JULIETTE LIPPMAN.

58. Plaintiff has a justiciable question as to the existence or non-existence of some right, status, immunity, power or privilege, or as to some fact upon which the existence of such right, status, immunity, power or privilege does or may depend.

59. Plaintiff is in doubt as to the right, status, immunity, power or privilege.

60. There is a bona fide, actual, present need for the declaration.

61. The antagonistic and adverse interest are all before the Court by proper process and the relief sought is not for legal advice by the Court, nor to answer questions propounded from curiosity.

62. Specifically, Fla. Stat. § 61.405 states that “[a]ny person participating in a judicial proceeding as a guardian ad litem shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.”

63. Fla. Stat. § 61.405 does not state that absolute immunity automatically attaches to a guardian ad litem, but rather states that a guardian ad litem is “*presumed* prima facie to be acting in good faith,” and further states that only “*in so doing*” good faith, the guardian ad litem “shall be immune”

64. Black’s Law Dictionary explains that “[a] presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption.” It follows, then, that a plaintiff such as the instant plaintiff should be able to state a claim upon overcoming the presumption of good faith afforded to a guardian ad litem.

65. In the only reported opinion construing Fla. Stat. § 61.405, a federal court sitting in the United States District Court for the Middle District of Florida, similarly explained that “a guardian ad litem under Florida law is immune from liability *unless the guardian ad litem was not acting in good faith.*” *Dolin v. West*, 22 F. Supp. 2d 1343, 1352 (M.D. Fla. 1998). However, the *Dolin* court ultimately found that the plaintiff to that lawsuit had not stated a claim against the defendant guardian ad litem.

66. Courts in other states are split on the issue of whether a guardian ad litem is absolutely immune. Compare, e.g., *Fleming v. Asbill*, 42 F.3d 886 (4th Cir. 1994) (applying South Carolina law) (holding that paid guardian ad litem could be held liable by ward for negligent acts during custody dispute), *Marquez v. Presbyterian Hosp.*, 608 N.Y.S.2d 1012 (N.Y. Sup. Ct. 1994) (holding, where a guardian ad litem acts in his or her capacity as an arm of the court, that “the proper standard where there are very young children, and the guardian ad litem role predominates, is that liability should attach only if there is a showing that the law guardian failed to act in good faith in exercising discretion or failed to exercise any discretion at all”), and *Speck v. Speck*, 156 S.E. 706 (Ga. Ct. App. 1931) (“It is the duty of a guardian ad litem to exercise diligence to protect the interests of his ward in all matters relating to the litigation, and he is liable to his ward for such damages as may result from any culpable omission or neglect on his part.”) with *Ward v. San Diego County Dep’t of Social Servs.*, 691 F. Supp. 238, 240 (S.D. Cal. 1988) (holding that guardians ad litem are entitled to quasi-judicial immunity). Cf. *Collins ex rel. Collins v. Tabet*, 806 P.2d 40 (N.M. 1991) (explaining that a guardian ad litem should be afforded immunity for actions taken as an arm of the court, but should not be afforded immunity for actions taken as an advocate for the child).

67. In this case, JULIETTE LIPPMAN acted with bad faith within her purported actions as a guardian ad litem, and Judge Hafele has already explained, with respect to LIPPMAN and two of her co-Defendants, that he had never witnessed a worse case of expert witnesses being fueled by money and showing such a lack of objectivity, “where a child’s very life is literally stake.”

68. Indeed, there can be no doubt that at all times material times discussed in this Complaint, Defendant JULIETTE LIPPMAN acted wantonly and in bad faith. LIPPMAN

intentionally sought to have K.M. removed from her mother's custody based upon her own pecuniary gain and other personal benefits rather than upon any legitimate consideration of the well-being of K.M.

69. However, the law with respect to guardian ad litem liability is unclear and LIPPMAN asserts that Florida law affords her immunity.

70. Since Plaintiff is uncertain as to her ability to assert claims against JULIETTE LIPPMAN for her numerous wrongful actions and conduct taken while she was purporting to act as a guardian ad litem, which a court has already explained was "lack[ing in] "objectivity" and "fueled by money," there is an actual controversy.

WHEREFORE, Plaintiff STACEY MONTERO, in her individual capacity and in her capacity as parent and natural guardian of K.M., a minor child, requests that this Court enter a declaratory judgment that Defendant JULIETTE LIPPMAN's actions in this matter, which were purportedly done in her role as a guardian ad litem, were done in bad faith, and that JULIETTE LIPPMAN is not immune pursuant to Fla. Stat. § 61.405.

COUNT II

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS UPON STACEY MONTERO

AGAINST DEFENDANTS GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, AND DCF

71. Plaintiff, STACEY MONTERO, repeats and realleges the allegations of Paragraphs 1 through 54 as if fully set forth herein.

72. The Defendants named herein intentionally inflicted emotional distress upon STACEY MONTERO.

73. In conspiring to deprive STACEY MONTERO of her custodial rights, the Defendants engaged in conduct that was intentional or reckless, and which they knew or should have known would lead to severe emotional distress to STACEY MONTERO.

74. The Defendants' conduct was outrageous, as to go beyond all bounds of decency, and to be regarded as odious and utterly intolerable in a civilized community.

75. The Defendants' conduct caused severe emotional distress to STACEY MONTERO.

WHEREFORE, STACEY MONTERO, in her individual capacity, prays this Court enter judgment against Defendants GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, and DCF for compensatory damages, actual damages, consequential damages, attorney's fees and costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages.

COUNT III

CONSPIRACY TO INTENTIONALLY INFLICT EMOTIONAL DISTRESS UPON STACEY MONTERO

AGAINST DEFENDANTS GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, AND DCF

76. Plaintiff repeats and re-alleges the allegations of paragraphs 1-54 and 71-75 as though fully set forth herein.

77. The Defendants had an agreement to conspire to intentionally inflict emotional distress upon Plaintiff, STACEY MONTERO.

78. In conspiring to deprive STACEY MONTERO of her custodial rights, the Defendants engaged in conduct that was intentional or reckless, and which they knew or should have known would lead to severe emotional distress to STACEY MONTERO.

79. Defendants each committed overt acts in furtherance of the conspiracy, in bad faith and with a malicious purpose, in order to cause STACEY MONTERO emotional distress by conducting behavior that was outrageous, in that it went beyond all bounds of decency, and should be regarded as odious and utterly intolerable in a civilized community.

80. The Defendants' conduct caused emotional distress to Plaintiff, STACEY MONTERO.

81. STACEY MONTERO's emotional distress was severe.

WHEREFORE, STACEY MONTERO, in her individual capacity, prays this Court enter judgment against Defendants GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, and DCF jointly and severally, for compensatory damages, actual damages, consequential damages, attorney's fees and costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages.

COUNT IV

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS UPON K.M., A MINOR CHILD

AGAINST DEFENDANTS GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, AND DCF

82. Plaintiff, STACEY MONTERO, repeats and realleges the allegations of Paragraphs 1 through 54 as if fully set forth herein.

83. The Defendants named herein intentionally inflicted emotional distress upon K.M.

84. In conspiring to deprive K.M. of her relationship with her mother, and forcing her to take mind-altering medication despite the lack of any meaningful investigations into whether this was appropriate, among other things, the Defendants engaged in conduct that was intentional

or reckless, and which they knew or should have known would lead to severe emotional distress to K.M.

85. The Defendants' conduct was outrageous, as to go beyond all bounds of decency, and to be regarded as odious and utterly intolerable in a civilized community.

86. The Defendants' conduct caused severe emotional distress to K.M.

WHEREFORE, STACEY MONTERO, in her capacity as parent and natural guardian on behalf of minor child K.M., prays this Court enter judgment against Defendants GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, and DCF for compensatory damages, actual damages, consequential damages, attorney's fees and costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages.

COUNT V

CONSPIRACY TO INTENTIONALLY INFLICT EMOTIONAL DISTRESS UPON K.M., A MINOR CHILD

AGAINST DEFENDANTS GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, AND DCF

87. Plaintiff repeats and re-alleges the allegations of paragraphs 1-54 and 82-86 as though fully set forth herein.

88. The Defendants had an agreement to conspire to intentionally inflict emotional distress upon K.M.

89. In conspiring to deprive K.M. of her relationship with her mother, and forcing her to take mind-altering medication despite the lack of any meaningful investigations into whether this was appropriate, among other things, the Defendants engaged in conduct that was intentional

or reckless, and which they knew or should have known would lead to severe emotional distress to K.M.

90. Defendants each committed overt acts in furtherance of the conspiracy, in bad faith and with a malicious purpose, in order to cause STACEY MONTERO emotional distress by conducting behavior that was outrageous, in that it went beyond all bounds of decency, and should be regarded as odious and utterly intolerable in a civilized community.

91. The Defendants' conduct caused emotional distress to K.M.

92. K.M.'s emotional distress was severe.

WHEREFORE, STACEY MONTERO, in her capacity as parent and natural guardian on behalf of minor child K.M., prays this Court enter judgment against Defendants GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, and DCF jointly and severally, for compensatory damages, actual damages, consequential damages, attorney's fees and costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages.

COUNT VI

PROFESSIONAL MALPRACTICE UPON K.M., A MINOR CHILD

AGAINST DEFENDANTS MARTHA JACOBSON AND LAURA HOHNECKER

93. Plaintiff, STACEY MONTERO, repeats and re-alleges the allegations of paragraphs 1-54 as though fully set forth herein.

94. MARTHA JACOBSON and LAURA HOHNECKER have each committed professional malpractice against K.M.

95. MARTHA JACOBSON and LAURA HOHNECKER each acted with bad faith within their purported actions as psychologists during the course of treating and/or assessing K.M.

96. MARTHA JACOBSON and LAURA HOHNECKER had a duty to act in a manner consistent with the standards of competence and professionalism prevailing within the community, including those of the APA guidelines, APA ethics code, and Florida law, including but not limited to appropriately evaluating the child to assist in determining the psychological best interests of the child; ensuring that the child's welfare is paramount; appropriately focusing upon parenting attributes, the child's psychological needs, and the resulting fit; appropriately striving to gain and maintain specialized competence; striving to function as an impartial evaluator; performing unbiased evaluations; striving to avoid conflicts of interest and multiple relationships in conducting evaluations; striving to employ multiple methods of data gathering; striving to interpret assessment data in a manner consistent with the context of the evaluation; striving to complement the evaluation with the appropriate combination of examinations; and striving to base their recommendations upon the psychological best interests of the child; and reporting ethical violations; among other things.

97. MARTHA JACOBSON and LAURA HOHNECKER negligently failed to fulfill the above referenced duties to K.M. and the described conduct fell below the standard of care required of psychologists in the State of Florida.

98. MARTHA JACOBSON and LAURA HOHNECKER performed in a substandard and inadequate manner and deviated from the prevailing standards of psychological practice required of them.

99. As a direct and proximate result of the careless and negligent conduct of MARTHA JACOBSON and LAURA HOHNECKER, K.M. has suffered significant damages, including, without limitation, depriving K.M. of her relationship with her mother when no facts reasonably existed to extinguish such relationship, placing her damaging mind-altering medication, as well as prolonged mental anguish, pain, and suffering.

WHEREFORE, STACEY MONTERO, in her capacity as parent and natural guardian on behalf of minor child K.M., prays this Court enter judgment against Defendants MARTHA JACOBSON and LAURA HOHNECKER for compensatory damages, actual damages, consequential damages, attorney's fees and costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages upon a showing of gross negligence.

COUNT VII

PROFESSIONAL MALPRACTICE

AGAINST DEFENDANT GREG LEWEN

100. Plaintiff, STACEY MONTERO, repeats and re-alleges the allegations of paragraphs 1-54 as though fully set forth herein.

101. GREG LEWEN has committed professional malpractice against K.M.

102. K.M., the MINOR CHILD, was the intended third-party beneficiary of LEWEN's actions as an attorney and it is was the apparent intent of LEWEN's client to benefit K.M. as a third party.

103. As an attorney, Defendant GREG LEWEN had a duty to act in a manner consistent with the standards of competence and professionalism prevailing within the community, including providing representation with the appropriate diligence, honesty, integrity,

forthrightness, loyalty, and fidelity, to fulfill the duties of good faith, of the exercise of due care, honest and fair dealing, and to specifically refrain from engaging in negligent professional conduct, to candidly disclose all relevant facts and explain the real significance thereof, and to exercise reasonable care and diligence in the handling of the client's matters.

104. GREG LEWEN negligently failed to fulfill the above referenced duties to K.M. and the described conduct fell below the standard of care required of attorneys in the State of Florida.

105. GREG LEWEN performed in a substandard and inadequate manner and deviated from the prevailing standards of legal practice required of him.

106. As a direct and proximate result of the careless and negligent conduct of GREG LEWEN, K.M. has suffered significant damages, including, without limitation, depriving K.M. of her relationship with her mother when no facts reasonably existed to extinguish such relationship, as well as prolonged mental anguish, pain, and suffering.

WHEREFORE, Plaintiff, STACEY MONTERO, acting solely in her capacity as parent and natural guardian on behalf of minor child K.M., prays this Court enter judgment against Defendant GREG LEWEN named in this count, for compensatory damages, actual damages, consequential damages, attorneys' fees, costs, and such other relief as this Court deems just and proper.

COUNT VIII

MALICIOUS PROSECUTION OF STACEY MONTERO

AGAINST DEFENDANT GREG LEWEN

107. Plaintiff, STACEY MONTERO, repeats and re-alleges the allegations of paragraphs 1-54 as though fully set forth herein.

108. GREG LEWEN has committed malicious prosecution against STACEY MONTERO.

109. GREG LEWEN caused to be commenced and continued, an original civil judicial proceeding.

110. The termination of the original proceeding constituted a bona fide termination of that proceeding in favor of STACEY MONTERO.

111. There was an absence of probable cause for the original proceeding.

112. There was malice on the part of GREG LEWEN.

113. STACEY MONTERO suffered damage as a result of the original proceeding.

WHEREFORE, Plaintiff, STACEY MONTERO, acting in her individual capacity, prays this Court enter judgment against Defendant GREG LEWEN named in this count, for compensatory damages, actual damages, consequential damages, attorneys' fees, costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages.

COUNT IX

**CONSPIRACY TO COMMIT MALICIOUS PROSECUTION
OF STACEY MONTERO**

**AGAINST DEFENDANTS GREG LEWEN, MARTHA JACOBSON,
JULIETTE LIPPMAN, LAURA HOHNECKER, AND DCF**

114. Plaintiff, STACEY MONTERO, repeats and re-alleges the allegations of paragraphs 1-54 and 107-113 as though fully set forth herein.

115. The Defendants had a conspiracy to commit malicious prosecution.

116. The Defendants had an agreement, and subsequently conspired to maliciously prosecute to harm and cause damage to STACEY MONTERO.

117. The Defendants committed acts in furtherance of the conspiracy, specifically the commencement and continuation of an original civil judicial proceeding, as well as acting in concert for their own pecuniary gain, and without objectivity, to see to it that STACEY MONTERO was deprived of her parent-child relationship with K.M.

118. STACEY MONTERO has suffered substantial damages.

WHEREFORE, STACEY MONTERO, acting in her individual capacity, demands judgment for damages against GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, and DCF named in this count, jointly and severally, for compensatory damages, actual damages, consequential damages, attorneys' fees, costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages.

COUNT X

MALICIOUS PROSECUTION OF K.M., A MINOR CHILD

AGAINST DEFENDANT GREG LEWEN

119. Plaintiff, STACEY MONTERO, repeats and re-alleges the allegations of paragraphs 1-54 as though fully set forth herein.

120. GREG LEWEN has committed malicious prosecution against K.M.

121. GREG LEWEN caused to be commenced and continued, an original civil judicial proceeding.

122. The termination of the original proceeding constituted a bona fide termination of that proceeding in favor of K.M.

123. There was an absence of probable cause for the original proceeding.

124. There was malice on the part of GREG LEWEN.

125. K.M. suffered damage as a result of the original proceeding.

WHEREFORE, Plaintiff, STACEY MONTERO, acting in her capacity as parent and natural guardian on behalf of minor child K.M., prays this Court enter judgment against Defendant GREG LEWEN named in this count, for compensatory damages, actual damages, consequential damages, attorneys' fees, costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages.

COUNT XI

**CONSPIRACY TO COMMIT MALICIOUS PROSECUTION
OF K.M., A MINOR CHILD**

**AGAINST DEFENDANTS GREG LEWEN, MARTHA JACOBSON,
JULIETTE LIPPMAN, LAURA HOHNECKER, AND DCF**

126. Plaintiff, STACEY MONTERO, repeats and re-alleges the allegations of paragraphs 1-54 and 119-125 as though fully set forth herein.

127. The Defendants had a conspiracy to commit malicious prosecution.

128. The Defendants had an agreement, and subsequently conspired to maliciously prosecute to harm and cause damage to K.M.

129. The Defendants committed acts in furtherance of the conspiracy, specifically the commencement and continuation of an original civil judicial proceeding, as well as acting in concert for their own pecuniary gain, and without objectivity, to see to it that K.M. was deprived of her parent-child relationship with STACEY MONTERO.

130. K.M. has suffered substantial damages.

WHEREFORE, STACEY MONTERO, acting in her capacity as parent and natural guardian on behalf of minor child K.M., demands judgment for damages against GREG LEWEN, MARTHA JACOBSON, JULIETTE LIPPMAN, LAURA HOHNECKER, and DCF named in this count, jointly and severally, for compensatory damages, actual damages, consequential damages, attorneys' fees, costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages.

COUNT XII

NEGLIGENT SUPERVISION OR RETENTION

AGAINST DEFENDANT DCF

131. Plaintiff, STACEY MONTERO, repeats and re-alleges the allegations of paragraphs 1-54 as though fully set forth herein.

132. This is a claim for negligent retention or supervision.

133. During the course of Matthew Wilcox's employment, DCF became aware or should have become aware of problems with Matthew Wilcox that indicated his unfitness to handle any matters pertaining to STACEY MONTERO and K.M., but DCF failed to take further action such as sufficiently investigating the situation, discharging Wilcox, or reassigning Wilcox.

134. Evidenced by, among other things, the fact that Matthew Wilcox was reprimanded for his actions relating to the Montero matter by his superiors at DCF but nonetheless kept on the Montero case, DCF received actual or constructive notice of problems with Matthew Wilcox's lack of fitness to perform his duties, and it was unreasonable for DCF not to properly investigate or take sufficient, proper corrective action.

135. Matthew Wilcox participated in committing underlying tortious or wrongful activities that harmed STACEY MONTERO and K.M., including but not limited to intentional infliction of emotional distress upon STACEY MONTERO and K.M., conspiring to commit intentional infliction of emotional distress upon STACEY MONTERO and K.M., and conspiring to maliciously prosecute STACEY MONTERO and K.M., among other things.

136. DCF employee Matthew Wilcox engaged in or showed a propensity to engage in conduct that is in its nature dangerous to members of the general public, and in this instance, K.M. and STACEY MONTERO.

137. DCF, as employer, had notice that Matthew Wilcox was acting or in all probability was acting in a manner dangerous to other persons, and this instance, K.M. and STACEY MONTERO.

138. DCF, as employer, had the ability to control its employee Matthew Wilcox such as to substantially reduce the probability of harm to other persons, and in this instance, K.M. and STACEY MONTERO.

139. STACEY MONTERO and K.M. were injured by acts of Matthew Wilcox, which could reasonably have been anticipated by the employer DCF, and which by exercising due diligence and authority over the employee Matthew Wilcox, might reasonably have prevented.

140. There is a sufficient nexus between Matthew Wilcox's employment with DCF and the harm done to STACEY MONTERO and K.M.

141. There was a relationship between DCF and STACEY MONTERO and K.M. such that DCF owed a legal duty to STACEY MONTERO and K.M. to properly supervise its employees, and in particular, Matthew Wilcox.

142. DCF negligently breached its legal duty to STACEY MONTERO and K.M. to properly supervise its employees, and in particular, Matthew Wilcox.

143. As a direct and proximate result of DCF's negligent retention or supervision of Matthew Wilcox, STACEY MONTERO and K.M. have sustained damages.

WHEREFORE, STACEY MONTERO, acting in her individual capacity and in her capacity as parent and natural guardian on behalf of minor child K.M., demands judgment for

damages against DCF for compensatory damages, actual damages, consequential damages, attorneys' fees, costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages.

COUNT XIII

NEGLIGENCE

AGAINST DEFENDANT DCF

144. Plaintiff, STACEY MONTERO, repeats and re-alleges the allegations of paragraphs 1-54 as though fully set forth herein.

145. This is a claim for negligence.

146. As described more fully above, DCF reported that STACEY MONTERO was an unfit parent and abused K.M., even stating that it was the "worst case of abuse" the DCF agent had ever seen.

147. This was reported despite the fact that none of the assertions by DCF were true.

148. Even after learning that the substance of this DCF report was untrue, DCF failed to take sufficient corrective action, and as a result, K.M. was removed from her mother's care, overmedicated, and is now a "zombie" and emotionally traumatized.

149. STACEY MONTERO and K.M.'s reliance that DCF would properly assess child abuse cases was reasonable and justified.

150. DCF owed a legal duty to STACEY MONTERO and K.M. to ensure that it could properly assess abuse cases.

151. DCF breached its duties to STACEY MONTERO and K.M. by failing to properly assess allegations of mistreatment and child abuse, and also by failing to take sufficient corrective

action even after it had actual or constructive knowledge that its assessment was incorrect and/or improper.

152. As a direct and proximate result of DCF's negligence, STACEY MONTERO and K.M. have sustained damages.

WHEREFORE, STACEY MONTERO, acting in her individual capacity and in her capacity as parent and natural guardian on behalf of minor child K.M., demands judgment for damages against DCF for compensatory damages, actual damages, consequential damages, attorneys' fees, costs, and such other relief as this Court deems just and proper. Plaintiff reserves the right to seek leave to add a claim for punitive damages.

JURY DEMAND

153. Plaintiff STACEY MONTERO, in her individual capacity and in her capacity as parent and natural guardian of K.M., a minor child, demands a jury trial on all issues so triable.

Dated November 3, 2014

Respectfully submitted,

Attorneys for Plaintiff Stacey Montero

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of November, 2014, a true and correct copy of the foregoing has been sent via electronic mail to the following:

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