UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ALEX HIGDON **Plaintiff** **V** **JUDGE GAIL S. TUSAN** **Defendant**	**CIVIL ACTION NO. 1:13-CV-0506**

FIRST AMENDED VERIFIED COMPLAINT

COMES NOW, Plaintiff, Alex Higdon, and files this first amended complaint seeking redress of grievances resulting from acts committed by the Defendant Judge Gail S. Tusan under the color of state law. Judge Tusan perpetrated multiple deprivations of the Plaintiff's rights secured under the Constitution and laws of the United States of America which include retaliation against the Plaintiff for exercising his 1st Amendment rights, ruling on the merits of the Plaintiff's pending case during a CBS News interview, slandering the Plaintiff in a public forum, and denying the Plaintiff his right to protect his children's physical health and well-being. While both official and unofficial forms of judicial immunity have enabled Judge Tusan to escape accountability for the majority of misconduct she engineered in this case, she will not be eligible to enjoy that same refuge for the causes of action advanced herein as they were intentional acts whose nature and function were non-judicial, and therefore, unsheltered by the safe haven of judicial immunity. Defendant Tusan had the right to be wrong inadvertently, but had no right to do wrong intentionally. The pleading henceforth will affirm a wealth of intentional wrongdoing committed by Judge Gail S. Tusan and those wrongs she could not forge through provision were fabricated through pretext and prevarication.

JURISDICTION AND VENUE

1. This civil rights action is brought pursuant to, inter alia, the First, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, the Federal Tort Claims Act, 28 U.S.C. §§ 2671, et seq. and at law for relief from commission of tortious acts.

2. This Court has subject matter jurisdiction over federal claims pursuant to the constitutional provisions enumerated and 28 U.S.C. § 1331 and § 1343 (3) and (4), as they are brought to redress deprivations of rights, privileges, and immunities secured by the US Constitution and the considerable damages sought from those deprivations exceed $75,000 dollars. In addition, this Court has supplemental jurisdiction over the state law claims included herein pursuant to 28 U.S.C. § 1367.

3. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C § § 2201 and 2202, and Federal Rule of Civil Procedure Rule 57. This Court also has jurisdiction to award injunctive relief pursuant to 42 U.S.C. 1983 and Federal Rule of Civil Procedure Rule 65.

4. Venue is proper in the Atlanta Division of the Northern District of Georgia, under 28 U.S.C. § 1391(b), in that the Defendant is located in this state and district, and the substantial part of the acts and/or omissions giving rise to Plaintiff's claim occurred in this district.

PARTIES

5. Alex Higdon ("Plaintiff") is an individual and citizen of both the State of Georgia and the United States of America and resides in Fulton County, Georgia. His address is 6030 China Rose Lane, Johns Creek, Georgia, 30097. He is a parent of four (4) minor children and has lived in Fulton County Georgia during the entire pendency of all claims pertinent to this litigation.

6. Judge Gail S. Tusan ("Defendant"), at all times relevant to the claims asserted in this action, was a Family Court Judge in the Superior Court of Fulton County, Georgia charged with the judicial, ministerial, executive, and administrative responsibilities bestowed upon a judicial officer employed with the State of Georgia. At all times relevant to the claims asserted in this action, the Defendant acted under the color of law and is being sued for damages in her individual capacity and

for declaratory relief in her official capacity. At all times relevant to the claims asserted in this action, the Defendant's conduct was the proximate cause of the violations against the Plaintiff's federally protected rights, as more particularized herein.

FACTUAL ALLEGATIONS

7. Defendant Tusan owns an extensive history of the misconduct plainly affirmed by the record in this case. The portion of that misconduct chronicled in the forthcoming factual allegations is a small, yet representative sample of judicial impropriety which prefigured Defendant Tusan's February 27th, 2012 illegal interview with CBS News regarding a case pending in her court.

8. Plaintiff is the parent of four (4) minor children, Aidon (6), Carter (5), Jordan (3), and Blake (3). He is a licensed clinical psychologist who has practiced in Georgia for thirteen (13) years.

9. Plaintiff was married on May 15th, 2004 and initiated marital separation on November 6th, 2009. The Plaintiff's decision to separate in November was precipitated by his former spouse's refusal to adhere to the administration of a highly successful, doctor led, data driven, research based treatment protocol designed to meet the considerable health challenges of all four (4) children.

10. Plaintiff's initial orchestration of the treatment protocol in April 2008 and his diligent two (2) year maintenance thereof was immensely effective in ameliorating the substantial health challenges present in all four (4) children. Among the many improvements include, but are not limited to, the full recovery of the second oldest child from Autism Spectrum Disorder and the partial recovery of the oldest child from the same disorder before the treatment protocol was dismantled.

A. Defendant Permits Former Spouse To Violate Standing Order

11. The Plaintiff's former spouse filed for divorce on April 21st, 2010 violating the parties' agreement to use mediation in constructing a consent agreement before lawyers were hired. Five (5) days after filing, the former spouse was in contempt of the court's standing order by (1) closing out the couple's only joint bank account (E-1) and by (2) closing out the couple's only joint credit card.

The former spouse was earning five (5) times the salary of the Plaintiff and by illegally sequestering marital assets she was able to suffocate any hope of him sustaining legal representation.

12. After agreeing on May 3rd, 2010 to split the 2008 joint tax return (E-2) and distribute monies immediately, former spouse reneged on her agreement to distribute and instead withheld IRS monies owed to Plaintiff thereby eliminating his ability to retain representation for the divorce case.

13. On July 28th, 2010, the Plaintiff was forced to release the counsel he had retained for the divorce case and proceed by defending himself pro se due to his inability to pay a second retainer.

B. Guardian Ad Litem Misrepresents Her Credentials and Affiliations to Fraudulently Induce the Plaintiff to Consent to Her Appointment

14. Early June 2010, the former spouse's counsel Erin Shane Stone began her campaign to appoint attorney Dawn Smith to be the Guardian Ad Litem (GAL) for the Higdon v. Higdon divorce case. Mrs. Stone claimed Mrs. Smith would be "*perfect match*" for the beleaguered family as she had extensive experience with special needs children and a "*subspecialty*" in the field of autism.

15. Wary of the opposing counsel's unbridled enthusiasm for bringing aboard a GAL specializing in autism that she claims to have never met, the Plaintiff constructed a list of questions in order to properly vet Mrs. Smith regarding the possibility of future participation.

16. Most important among the concerns addressed in the Plaintiff's list of questions was his need to be assured that any GAL appointed would have no connection to an organization called the Autism Society of America (ASA). While ASA has been well meaning in their attempts to support families with autistic children, they are well known in the autism recovery community for their bias against biomedical treatment of autism choosing instead to focus exclusively on employing behavioral interventions ignorant of medical and metabolic forces driving the disease.

17. Despite recent fissures in the organization's groupthink provoked by evolving science, ASA remains steadfastly married to a strictly behavioral approach to autism. Because the Plaintiff's success over a two (2) year period in recovering his children from their illnesses was based in large

part upon biomedical interventions addressing their underlying medical maladies, he understood that someone affiliated with this organization would pose a dire threat to dismantle the entire treatment protocol. It must be noted, however, that before one unfairly paints Plaintiff unsympathetic to behaviorist organizations like ASA, the Marcus Institute and the Emory Autism Center, he is fourteen (14) years a behavioral psychologist with a certification in ABA from the Marcus Institute and nearly twenty (20) years of training parents using mostly behavioral and cognitive behavioral techniques.

18. On May 19th, 2010, the Plaintiff's soon to be discharged counsel sent an email (E-3A) to the Plaintiff containing dialogue between the GAL and opposing counsel Erin Stone. Mrs. Stone directly asked the GAL if she knew "*any guardians that you would recommend for a case involving 4 children, ages 1 - 3 1/2 with the oldest child autistic*." The GAL gave this enthusiastic reply:

> "Erin – That is actually one of my areas of expertise. I maintained a practice representing children with special needs for 14 years before I joined AVLF. I am presently President of the Council for Parent Attorneys and Advocates, copaa.net, the professional organization for lawyers that represent disabled kids. My subspecialty was autism, I represented many children on the autistic spectrum."

19. On June 7, 2010, the Plaintiff's counsel once again sent an email (E-3B) to Plaintiff proving she successfully asked the GAL a series of direct questions regarding her credentials and possible connection to ASA. The GAL's answers to the Plaintiff's questions were as follows:

> "Janne – Thanks for contacting me. My experience with autism is several fold. Since 1994 I have represented families with children with disabilities, including autism, in educational cases. I am aware of the Autism Society of America but have no connection to it, nor do I have a particular opinion on the Association. I have represented over 40 children with autism and have served as Guardian personally on 2 cases where autism was an issue in dispute, served on several others where autism was present but not a material issue and have supervised Guardians on over 10 other cases involving autism (I am the former Director of the GAL program at AVLF). On "alternative treatment programs which are outside of the normal realm of behavior modification learning techniques" I let the scientific research and the treating experts be my guides. I am very familiar with all aspects of autism, including the organic nature of the condition. Please let me know if I can provide any further information. Thanks so much. Dawn"

20. Based upon the GAL's claims that (1) autism was an "*area of expertise*" for which she possessed a "*subspecialty*," (2) that she was "*aware of the Autism Society of America but have no*

connection to it, nor do I have a particular opinion on the Association," and (3) that she was *"very familiar with all aspects of autism, including the organic nature of the condition*," the Plaintiff gave his consent to have the GAL appointed fiduciary representing the best interests of the children.

21. In direct contravention to her claims made by email and those made during nine (9) in-person exchanges with Plaintiff, GAL testified to the following at final trial (E-4A):

> **Mr. Higdon**: I'm sorry. Just about your credentials in the autism field?
>
> **Mrs. Smith:** I have no credentials in the autism field.
>
> **Mr. Higdon:** When you mention it's a subspecialty of yours, what does that mean?
>
> **Mrs. Smith:** No. I mentioned that I represent, for 20 years, families with children with disabilities, pursue the educational interventions that they require and sometimes some insurance issues and other issues. And when I said it was a subspecialty, I've represented more families of children on the spectrum than any other disability.
>
> **Mr. Higdon:** How would you define autism?
>
> **Mrs. Smith:** I think it's primarily a disorder of language. I mean it's what the DSM-IV would say.

22. After ten (10) months of touting her experience and expertise as a "*subspecialist*" in the field of autism, the Plaintiff was caught off guard by the curious erosion of the GAL's credentials that had ensued. Even more troubling than this disappearance of distinction was the GAL's apparent loss of her ability to evince even an elementary understanding of the disease of autism stating: "*I think it's primarily a disorder of language*."

23. Although a language disorder can sometimes accompany a diagnosis of autism, autism is in no way a language disorder. Examples of the three language disorders that most often accompany an autism diagnosis include childhood speech apraxia and expressive and receptive language delay. Ironically, these are the same language disorders that Blake Higdon was suffering from during the ten (10) months Mrs. Smith colluded with the former spouse and her expert to obstruct his assessment and treatment thereof, and the same language disorders that the Plaintiff was able to obtain diagnosis

for (E-5) once the GAL was dismissed and DFACS was called to pressure the former spouse into permitting the Plaintiff to take his son Blake Higdon to a professional for assessment and treatment.

24. On January 20th, 2013, the Plaintiff received more disturbing news regarding the GAL's credentials from a client and ex-litigant in a case where Defendant Smith was also appointed GAL. Not only was this individual certain of the GAL's connection to ASA, she assured the Plaintiff that the she was a prominent board member of the organization in 2004. On January 22, 2013, Plaintiff called the headquarters of ASA to corroborate his client's claims and Exhibit 6 is the certified document sent by the organization via email confirming her participation on the board of directors.

C. Defendant Protects Gal from Accountability for the Commission Of Several Due Process Violations Against Plaintiff and His Children

25. During the sixty (60) day status conference held on August 5th, 2010, Guardian Ad Litem Dawn Smith was first introduced to the Plaintiff. Hidden from the Plaintiff was the GAL's extensive history with the Defendant and the fact that three (3) of her law firm's four (4) bosses, Boyd, Collar, Nolan, and Tuggle, were the Defendant's Campaign Manager and two (2) Senior Advisors.

26. Having spoken at length with the former spouse but never with the Plaintiff, Mrs. Smith recommended to the Judicial Officer Gary Alembik that the oldest child Aidon be placed in the most restrictive learning environment available for his autism, that is, a self-contained classroom with children of the most profound impairment. The GAL made this recommendation having never been introduced to the Plaintiff or visiting the institution she recommended. Raising the ire of the GAL, the Plaintiff was able to quash her recommendation as state and federal law requires the family's (4) year old autistic son to be placed in the least restrictive learning environment possible which was consistent with his remaining at the private school he was already attending.

27. Upon motion of the former spouse during the one hundred twenty (120) day status conference held on September 28th, 2010, the GAL Smith recommended change of temporary custody reducing the Plaintiff's time with his children from an even 50/50 split with the former

spouse to every other weekend and Wednesday nights. The GAL's recommendation was based of four (4) falsehoods told by the former spouse having to do with child bedding, morning hygiene, diaper purchasing, and responsiveness to daycare emergency calls. The GAL's allegations advocating for a change in custody were enthusiastically advanced without any adherence to the Defendant's due process rights. This was the second time the GAL was permitted to blindside the Defendant by using the former spouse's uncontested allegations to divest him of custody without extending to him any notice of the allegations or an opportunity to contest the false claims before hearing.

28. During this September 28th, 2010 status conference, the Plaintiff was also denied an ability to counter the allegations made against him by the GAL as Judicial Officer Gary Alembik refused the Plaintiff his right to argue against the GAL remarking "*I know Dawn*," as if to suggest her version of events was beyond reproach. Under oath at the final trial, GAL admitted Alembik denied Plaintiff his due process right to a hearing saying to Plaintiff, "*he did cut you off.*" (E-4B) Here we have a GAL under oath admitting that not only did she deny Plaintiff proper notice of the charges against him by the former spouse and an opportunity to contest them with her, she confirmed that he was denied an opportunity to be heard by a Judge before his custody rights were unlawfully stricken.

29. On November 15th 2010, Plaintiff filed his Emergency Motion to Amend the Temporary order and compel his former spouse to pay litigation expenses. Only a quarter of the claims advanced in that pleading, that is, those related to the children's medical issues, were ever heard during any hearing. The vast majority of abuse allegations against the GAL and former spouse which addressed several violations of the Plaintiff's rights were never permitted to be heard by the Defendant.

D. During Plaintiff's 1st Emergency Hearing on December 15th, 2010, Defendant Denies Cross Examination of Gal While off the Record

30. On December 15th, 2010, the Defendant presided over the penultimate hearing held prior to the final trial on March 28th, 2011. The hearing was held to address the remaining issues left from

the November 22nd, 2010 hearing on the former spouse's child support request as well as Plaintiff's Emergency Motion to Amend the Temporary Order and his September, 28th, 2010 Contempt Motion.

31. Instead of fully addressing the Plaintiff's outstanding motions and both of his new motions, the only issues permitted airtime during the December 15th, 2010 hearing concerned the controversy surrounding the medical issues of the children. The Defendant excluded a hearing of all other issues by arbitrarily limiting each party's "*time*" to two and a half (2.5) hours and stating "*The only issue in the court's mind that we need to be addressing today is whether or not there is a medical emergency that affects your children*." Seven (7) hours of videotaped expert medical testimony was truncated by the Defendant in an effort to shunt all issues to the final trial.

32. While opposing counsel was performing direct examination of the GAL on December 15th, 2010, Judge Tusan sent a note to the Plaintiff on official court stationary demanding (E-7):

> "*Dr. Higdon, In light of your using up all of your time, please write legible straight forward questions re the GAL's testimony for the Court to consider asking her*."

33. The Defendant made this ex parte request off the record while the direct examination of the Guardian Ad Litem was being performed by opposing counsel.

34. The former spouse's only custody witness was the GAL. After opposing counsel finished her direct of the GAL, the Defendant proceeded to ask only a select portion of those questions the Plaintiff was forced to concoct during the ten (10) minute period spanning the end of the GAL's direct examination and the quick restroom break granted to all parties thereafter.

35. Due to the Defendant's decision to deny the Plaintiff his right to cross examination the GAL, most of her violations of the Plaintiff's rights have never been exposed. The Defendant omitted not only Plaintiff's most important questions scrutinizing the actions of the GAL, but the legal audiotapes of the GAL revealing further violations of Plaintiff's rights were never permitted admittance during this hearing. Moreover, Defendant has stated on the record an improper bias against using legal audiotapes as evidence claiming "*I find taping, recordings to be inappropriate*."

E. During Plaintiff's 2nd Emergency Hearing on January 31st, 2011, Defendant Denies Cross Examination of Gal While on the Record

36. Nearly five (5) weeks after the court ordered the former spouse to have her expert assess the children and make recommendations for treatment based on clinical and testing data, the Plaintiff filed his second Emergency Motion to compel her to provide medically necessitated assessments and treatments for the 20-month old twins Blake and Jordan on January 14th, 2011. This second hearing to force the former spouse to comply with the court was held on January 31st, 2011. Despite refusing to have testing and clinical evidence for the Higdon twins reviewed seven (7) weeks after the Defendant ordered it on December 15th, 2010, the former spouse was not penalized or admonished during this second emergency hearing. Instead, the Defendant once again ordered the former spouse to have the testing and clinical data examined by her expert so Blake and Jordan Higdon could be assessed and treated for several confirmed medical maladies.

37. The Defendant Judge Gail S. Tusan began the January 31st, 2011 emergency hearing by turning to the pews and greeted an unsworn Guardian Ad Litem with the following question. (E-8A)

> **Judge Tusan**: Ms. Smith, I would like to start with you, please. So what I want to know is in your opinion has Dr. Higdon either continued to raise or raised, has raised, something new subsequent to the hearing about the twins that's contained in the motion.
>
> **Guardian Ad Litem**: Nothing new, your honor.

38. No more than three (3) minutes after the Defendant finished quizzing the Guardian Ad Litem about the hearing's motion that the Judge was required to have read herself, the troubling exchange ensued between the Defendant, Guardian Ad Litem and the Plaintiff. (E-8B)

> **Judge Tusan**: Okay. All right. So for purposes of both experts seeing the twins personally, are you able for the record to articulate what the issue is, I guess, from Dr. Higdon's perspective as to the twins?
>
> **Guardian Ad Litem**: I believe that he has reviewed the testing, and I'm not an expert and don't know if it's valid or not valid. But he has reviewed the testing, and as I understand it has concerns about the same type of levels, biomedical markers, that the parties had been observing with the older two children for the past several years. He has concerns that they are low or indicate a problem.

Mr. Higdon: Can I -- is it possible to object, your honor?

Judge Tusan: No; not now.

Guardian Ad Litem: In addition, he has concerns that there are chronic illnesses and that one or more of the children exhibit some hallmarks of autism. The hallmarks of autism he hasn't said anything about.

Judge Tusan: Okay. All right. So I guess to say that he wants them to have a current thorough evaluation, is that too broad and generic?

Guardian Ad Litem: I don't believe he wants a thorough evaluation. I think he wants the physician in California to read results. He has not indicated he wants a thorough evaluation.

Judge Tusan: Okay. So assuming that he would answer my question to you in his own words differently, do you have -- I mean, in terms of trying then to send his issue through the process, the process as outlined back last June and reaffirmed by this court in December, does it -- it doesn't necessarily require a physical, I mean, a personal evaluation or does it?

Guardian Ad Litem: I believe it does.

Judge Tusan: Okay. So why do you say that?

Guardian Ad Litem: Because I believe that when you're, my lay opinion, that when you're assessing children, particularly for developmental disabilities, that there is an array of things you look at. One is the biomedical markers, which he has almost focused exclusively on. The others are -- that's why we have developmental pediatricians. They look at their developmental and behavioral issues as well as language issues. If you'll recall, at the hearing in December you talked about why other things like the checklists that Dr. Nathanson-Lippitt had recommended that have not been completed were important for them to complete for the other two children. Biomedical markers alone, I do not believe, are sufficient.

Mr. Higdon: May I cross, your honor? There's a lot of falsehoods she's –

Judge Tusan: I don't think you need to cross, sir. Right now I’m kind of gathering information.

Mr. Higdon: She misstated a few things.

Judge Tusan: Yeah. I heard them all, and they're on the record, if you'd have a seat, please.

39. Just as she had in previous hearings, the Defendant chose to gather testimony from the Guardian Ad Litem and deny the Plaintiff his right by law to cross-examine her during the hearing. Uniform Superior Court Rule 24.9(7) and Fulton County Family Division Rule 4000-9.7 states "*The GAL shall be subject to examination by the parties and the Court*." The language contained in this provision is mandatory and not hortatory as the Court's usage of "shall" denotes a command.

F. Defendant's Pattern Of Due Process Violations Deprive Plaintiff His Right to Provide Appropriate Medical Care For His Children

40. For the sake of brevity, the Plaintiff has eliminated from this text the factual content of several court hearings which contain near identical Defendant misconduct in the usage of the GAL. Instead, the Plaintiff offers the foregoing dialogue from the January 31st, 2011 emergency hearing as a template to assist the reviewer in conceptualizing and organizing the facts surrounding this Defendant's pattern of misconduct which is as complex, as it is pervasive.

41. Enumerated below is a cycle of conduct depicting the Defendant's negligent and abusive utilization of the GAL and the resultant deprivation of the Plaintiff's liberty interest in meeting the medical and emotional needs of his four (4) children. This cycle represents the Defendant's abject abandonment of due process mandates and consists of the following three (3) elements or phases:

(1) PROXY- Defendant abdicates duty to adjudicate to GAL.
(2) PUSH- Defendant pushes controversy off the docket in a rush to judgment.
(3) PROTECT- Defendant protects GAL and self from scrutiny and accountability.

42. Proxy is characterized by the Defendant abandonment of her due diligence responsibility to properly prepare for cases and compose her own opinions rather than outsourcing this obligation to the GAL. Serving as proxy, the GAL was the Defendant's North Star and it was blasphemy to counter GAL contentions as very early in the process the Defendant and her Judicial Officer Gary Alembik made it clear by their words and deeds that GAL recommendations were sacrosanct.

43. Push is characterized by Defendant's pattern of precipitously pushing unresolved material matters toward disposition. The record is strewn with examples demonstrating that once Defendant

had her mind made up for her by proxy, she would immediately push the matter off her docket by refusing to vet claims, arbitrarily restricting argument time, and cutting off or eliminating witnesses.

44. Protect is characterized by the Defendant's pattern of protecting and defending the GAL from scrutiny that could have called into question the process or content of her decision making. The protection methods employed by the Defendant include, but are not limited to, her refusal to allow the GAL and related witnesses to be cross-examined and concealing GAL and Court wrongdoing by producing fraudulent court orders based on false statements of fact.

45. Outlined in paragraphs thirty-seven (37) and thirty-eight (38) is a segment of dialogue from the January 31st, 2011 emergency hearing which encompasses all phases of the Defendant's cycle of abandonment. First, the Defendant began the emergency hearing by turning to the pews and asking an unsworn Guardian Ad Litem whether the Plaintiff "*has raised…something new subsequent to the hearing about the twins that's contained in the motion*." This typifies Proxy in that the Defendant is asking the GAL to explain to her the contents of a document most material to the hearing and a document the Defendant was ethically and morally obligated to have read herself. Furthermore, the Defendant extended the GAL's powers of proxy when she invited her to speak for the Plaintiff and the many physicians on his children's treatment team by asking "*Are you able for the record to articulate what the issue is, I guess, from Dr. Higdon's perspective as to the twins*?"

46. In speaking for the Plaintiff, the GAL knowingly made several false statements representing a mere rote regurgitation of the former spouse's primary talking points which hold (1) Plaintiff is playing doctor, (2) Plaintiff claims the two youngest children have autism, and (3) Plaintiff is only interested in biomedical data regarding his children's health and not their behavioral and developmental conditions. These damaging assertions advanced by the former spouse and now parroted by the GAL were pushed through uncontested as Defendant failed to question their veracity.

47. The first talking point claims the Plaintiff is playing doctor and is signified by the GAL insistence that the Plaintiff, not the physician, has concerns "*that they are low and indicate a*

problem", "*about the same type of levels*," and "*that there are chronic illnesses*." If the Plaintiff was permitted cross-examination he could have easily demonstrated to the court that it was the physician responsible for helping us recover our second oldest child from Autism and nearly recovering our first who held grave concerns about the children regarding the matters referenced by the GAL.

48. The second talking point claims the Plaintiff believes the twins have autism and is signified by the GAL insistence that the Plaintiff thinks "*One or more of the children exhibit some hallmarks of autism. The hallmarks of autism he hasn't said anything about*." If the Plaintiff was permitted cross-examination he could have reiterated on the record for the third time that he does not believe his twins have autism and is desperately attempting to avoid that possibility by obtaining treatments for their metabolic conditions which are identical to their older affected siblings.

49. The final talking point claims the Plaintiff is only interested in biomedical data regarding his children's health and not their behavioral and developmental conditions. This falsehood is signified by the GAL insistence that the Plaintiff pays no attention to behavioral or developmental aspects of his children's health but only to "*Biomedical markers, which he has almost focused exclusively on*." If the Plaintiff was permitted cross-examination he could have easily demonstrated to the court the data from the sixteen (16) months of physical and occupational therapy of his twin sons displayed diagnosis for several developmental delays in both children with one child exhibiting profound delays. He could have also reminded the court of the perjured testimony twice given by the former spouse who claimed neither twin was being treated for developmental delays but only torticollis resulting from the cramped confinements of their mother's womb.

50. During the final moments of the January 31st, 2011 emergency hearing, Defendant responded to Plaintiff's plea for additional time to prepare his case for final trial. With only eight (8) weeks left before the trial, former spouse was permitted with impunity to withhold for many months not only the medical information that was the cause of the that hearing, but several other financial documents all of which were material to Plaintiffs case. Defendant's response was as follows (E-9):

> "Okay. Well, let me give you a good tip. It may be appropriate then for you to *shift gears and spend the next month trying to get ready for your final trial and the financial issues as opposed to trying to really come up with a medical guarantee that your twins or your other two children will be cured or have no issues, or whatever it is that you're trying to secure for them*, because there is so much time in each day. I know you are a working professional, and if you're going to do this yourself, then in order to be ready for the trial -- because there is more to the divorce than just this -- then *you probably need to get going on the rest of this, okay, and maybe just back off of the other issue.* But if you're all consumed with one issue, then you are definitely not going to be prepared for the trial that's going to begin at 9:00." (Emphasis Added)

51. This blatant effort by the Defendant to push the controversy off the docket in a rush to judgment was no anomaly as the December 15th, 2010 hearing transcripts are littered with similar examples of her negligence. Perhaps most egregious were the Defendant's opening remarks during the final hearing held on March 28th, 2011 (E-4C). With all issues of physical and legal custody yet to be adjudicated, Defendant was three (3) sentences into her address when she offered the following:

> "So I would just caution, especially Dr. Higdon, that you make sure that you organize your time in a way that you can *get to the financial property issues as opposed to trying to convince the court of what you believe the children need for their health and general welfare*. Okay?" (Emphasis Applied)

52. From start to finish, the cycle of abandonment was played to perfection during the January 31st, 2011 Emergency hearing as Judge Tusan (1) asked the GAL to speak for her, the Plaintiff, and the physicians, then (2) pushed hard and fast to make GAL recommendations the law of the case, and (3) moved to quash any cross-examination to counter false claims. And finally, just as she was closing the door on the rights of the Plaintiff and his children for the final time, the Defendant turned back around and carelessly uttered the following admonition: "*You probably need to get going on the rest of this, okay, and maybe just back off of the other issue…shift gears and spend the next month trying to get ready for your final trial and the financial issues as opposed to trying to really come up with a medical guarantee that your twins or your other two children will be cured or have no issues, or whatever it is that you're trying to secure for them*."

G. Defendant Violates Plaintiff's Due Process Rights By Ruling Upon A Contempt Claim She Never Heard

53. On September 28th, 2010, the Plaintiff filed a Motion for Contempt against the former spouse which addressed, inter alia, her decision to unlawfully withhold marital funds in order to deny the Plaintiff representation and force him to proceed pro se.

54. On November 22nd, 2010, the first of three (3) pre-final hearings was scheduled to address not only the Plaintiff's September 28th, 2010 Motion for Contempt, but several additional motions including the Plaintiff's November 15th, 2010 Emergency Motion to Amend the Temporary Order, and the Plaintiff's September 20th, 2010 Motion for Temporary Alimony and Litigation Expenses. After the hearing, the Plaintiff's Motion to Defer Ruling was accepted as notwithstanding the Plaintiff's Emergency Motion, no other issue was addressed during the November 22nd, 2010 hearing other than his spouse's child support claim which itself was incompletely pled.

55. As a part of the February 4th, 2011, Temporary Order, the Defendant denied the Plaintiff's Motion for Contempt without hearing any evidence or holding the required show cause hearing despite having ordered three (3) rules nisi. Where the onus for the initial violation of the Plaintiff's right to representation was on the shoulders of the former spouse, the Defendant's violation of the Plaintiff's substantive and procedural due process rights would assure the former spouse that the Plaintiff would be forced to proceed to final trial without fair representation, a fundamental violation of his rights.

56. All transcripts affirm that during the three (3) hearings held on November 22nd, 2010, December 15th, 2010 and January 31st, 2011, the Defendant refused to address Plaintiff's outstanding contempt charges against his former spouse choosing instead to address other issues.

H. Defendant Cancels Plaintiff's Contempt and Gal Removal Hearings And Refuses To Pronounce an Order for Each Pleading

57. On December 9th, 2010, the Plaintiff filed a second Motion for Contempt against the former spouse. The Defendant granted the Plaintiff a rule nisi for this December 9th, 2010 Motion for

Contempt against his former spouse for, inter alia, her pattern of refusing him attendance at crucial doctor's visits concerning the substantial health challenges of his four (4) children.

58. On December 28th, 2010, Plaintiff filed his Motion to Remove the GAL based on several allegations of GAL impropriety that Defendant refused to address during the December 15th, 2010, hearing. The Guardian Ad Litem's misconduct included several false statements of fact and countless due process violations. The Defendant granted a February 14th, 2011 hearing on the matter.

59. On February 8th, 2011, the Defendant instructed her assistant Dawn Dixon to send an email informing the Plaintiff his February 14th, 2011 hearing for his December 9th, 2010 Contempt motion and his December 28th, 2010 GAL Removal motion had been cancelled. The Defendant falsely claimed the court essentially heard the contents of each motion during a January 31st, 2011 hearing. The email from Dawn Dixon (E-11) read as follows:

> "Judge Tusan has made the decision to remove this hearing due to the fact that the hearing that was held on 1/31/11 in which a Temporary Order was generated covered most of these issues."

60. Evidence adduced by the Plaintiff from the transcripts of the January 31st, 2011 hearing was in direct contravention to the Defendant's contention that she heard "*most of these issues*." The record reveals the only issue addressed was the former spouse's continued refusal to have the medical testing of the two youngest children examined by her expert in order to secure recommendations for their treatment. That order was a directive the court previously pronounced on December 15th, 2010 and an order his former spouse failed to execute until many months after the final hearing when the Plaintiff brought complaint against the former spouse to the Department of Family and Children Services. Not a scintilla of evidence from the Plaintiff's Contempt Motion or the thirty-five (35) pages of his GAL Removal Motion can be found in the January 31st, 2011 hearing record.

I. Defendant Enables Dilatory Tactics of Former Spouse, Guardian Ad Litem, and Spouse's Expert Witness

61. Family Pediatrician and autism specialist Dr. Rachel West was the professional most responsible for the successful care coordination of the children's many health challenges over a two (2) year period. In lieu of relying upon the expert testimony of the Dr. West to guide future decisions for treatment, the former spouse chose on August 25th, 2010 to hire the developmental pediatrician Dr. Linda Nathanson-Lippett to be her expert witness to counter Dr. West's recommendations.

62. During that first meeting on August 25th, 2010 and in subsequent meetings with Nathanson-Lippett, the former spouse lied extensively about the health history of all the children denying major developmental deficits and clinical symptomology. Dr. Nathanson-Lippett ignored concerns of the Plaintiff and failed to challenge the former spouse about the inconsistencies in her reports of the children's condition. One of the most egregious falsehoods advanced by former spouse was her insistence that their twin's engagement in sixteen (16) months of physical and occupational therapy was for torticollis only and not the well-documented developmental deficits (E-12) in gross and fine motor skill, motor strength and endurance, sensory processing, and self regulation.

63. With the February 14th, 2011 hearing to remove the GAL cancelled, the GAL with Nathanson-Lippett close behind began accusations against Plaintiff claiming he had Munchausen's By Proxy and was doctoring the test results of the children to evince pathology where none existed. Ironically, the position of guiding major medical decisions was one held exclusively by the Plaintiff during the previous thirty (30) months and his stewardship over that time was lauded by GAL as "*courageous*" and by the former spouse's medical expert Nathanson-Lippett who stated (E-13):

> "I think the work you did with your kids to this point is phenomenal and I think that probably you --you know, looking at Aidon, I think that you probably did heroic things in getting this kid to be as good as he is now."

64. On or about February 17th, 2011, the former spouse's expert Dr. Nathanson-Lippett remarked to Plaintiff that the twin's medical testing results he obtained from Dr. Rachel West were "*too bad to be true.*" In contravention to earlier appraisals of his efforts in guiding the children's medical care, Dr. Nathanson-Lippett was now accusing the Plaintiff of falsifying testing results.

65. Upon his hearing the accusations levied against him by the GAL and Nathanson-Lippett regarding the falsification of testing results, the Plaintiff immediately requested a retesting with official screeners to make sure blood and urine of the children were in no way altered. All three (3) parties, the GAL, Dr. Nathanson-Lippett, and the former spouse, began their highly successful campaign to delay the process of retesting despite the non-stop efforts of the Plaintiff to secure results and recommendations before the final trial.

66. In response to the dilatory tactics of the former spouse, GAL, and Nathanson-Lippett, the Plaintiff filed his motion to stay/continue final trial on or about February 18th, 2011. This motion was summarily denied by the Defendant without any argument related to the issue of medical testing.

67. Notwithstanding Dr. Nathanson-Lippett's many attempts to delay the dissemination of the children's second round of confirmatory testing results, the Plaintiff was finally able to obtain them only a few days before final trial. Soon thereafter, Nathanson-Lippett suddenly claimed she no longer wanted to treat the Higdon twins and therefore could not be accountable for assessing their testing results. At the time she withdrew, Nathanson-Lippett possessed the data confirming the veracity of all the Plaintiff's contentions about the medical illness of his children as she stated at final trial "*I think the results of repeating those tests which came back in the same way, indicate that we're not dealing with Munchausen's By Proxy*" (E-4D).

68. Despite the Defendant twice ordering the Plaintiff's former spouse to secure recommendations for the children's assessment and treatment during two previous hearings, despite her February 4th, 2011 Temporary Order commanding the execution of those previous orders, and despite the Plaintiff's Motion to Continue the final trial pending the former spouse's execution of her

orders to obtain the children's treatment recommendations, the Defendant allowed the former spouse to arrive at the final trial having failed to secure the ordered assessment and treatment recommendations based upon clinical and testing data twice confirming the children's maladies.

69. Astonishingly, the Defendant never held the Plaintiff's former spouse accountable for failing to honor three (3) court orders compelling her to obtain medical assessment and treatment recommendations from her expert despite a second round of medical testing confirming the results of the first. By permitting her to escape accountability, the Defendant assured the Plaintiff's former spouse that there would be no evidence at the final trial to counter the gravamen of her case which held the two (2) youngest children had no medical challenges requiring treatment and the Plaintiff's insistence otherwise underscored his infirmity and lack of fitness to continue as lead decision maker regarding his children's medical needs.

J. Defendant Denies Examination of Gal During Final Hearing On March 28th, 2011 and Continues Pattern of Covering Up Gal Wrongdoing

70. During the open moments of the final trial on March 28th, 2011, the following exchange occurred just before GAL was whisked off the stand and reassured by Defendant her appearance was cameo and therefore relieved from further questioning (E-4E):

> **Mr. Higdon:** In your recommendation to have her have the medical decision making, did you take into consideration the fact that she denied treatment for her twins for 16 months in a preventative diet that's now been confirmed by the testing –
>
> **Judge Tusan:** Apparently so.
>
> **Mr. Higdon:** How is that, your honor -- I'm sorry -- apparently?
>
> **Judge Tusan:** You're asking if the guardian took into account what you believed to be the reality of what has happened into her conclusion, and I'm saying her report, which is several pages, indicates the basis for the report.
>
> **Dr. Higdon:** Okay. How can you give a parent full medical custody or even partial medical custody that denies her twelve -- actually eight-month-old twins treatment for months?

> **Judge Tusan:** Okay. I'm going to prevent that question because that's an argumentative question. That's your perception of what happened. There's nothing in the guardian's report that says that and then says on top of that I'm suggesting medical decision-making authority go to the mother. That's not what's in her report. That's your perspective of what has happened. That would be in your report, not hers.
>
> **Mr. Higdon:** Okay. You are aware, Ms. Smith, that the recent testing that's twice done now has confirmed that the kids have allergies to Gluten and Casein-
>
> **The Court:** Dr. Higdon, I'm going to cut off the questioning because you're trying to get her to change her report. That's not the point of her testimony. That is not the point of her being on the stand, for you to try to change the report or the conclusion. She's reached her point and her conclusion. I asked her at the beginning 'has anything occurred to cause her to change it', she said no. We're going to stand on that, and I think we're finished.

71. At the moment when the Defendant stymied the Plaintiff's cross, he had just begun the portion of GAL questioning aimed at discrediting her claim that the Plaintiff was suffering from Munchausen's By Proxy and must relinquish his position as primary decision maker regarding the children's medical decisions. The Defendant's denial of the Plaintiff's line of questioning assured the GAL's false contentions would go unchallenged.

72. Far from "*trying to get her to change her report*," the Plaintiff was trying to have the Guardian Ad Litem resolve the glaring contradiction of her dogged insistence that the children were healthy when the incontrovertible evidence adduced by the Plaintiff proved otherwise.

73. Over objection, the Court cut short the Plaintiff's cross of the GAL stifling not only his ability to counter the aforementioned contradiction, but also his right to share legally recorded audiotapes revealing several additional inconsistencies in the GAL's testimony including several false statements about material evidence given during the previous four (4) hearings.

74. Regarding the questions asked by the Plaintiff prior to the GAL's release, the Defendant is seen clearly protecting the GAL from having to answer questions about her recommendation to give the former spouse total control of medical custody. The Plaintiff only wanted to ascertain how a

GAL could recommend medical custody to a parent who denied her children medically necessitated treatments while concealing the fact that each twin was diagnosed with developmental delays.

75. Once again, when the Plaintiff had his opportunity to begin presenting evidence for his case on the second day of final trial, the Defendant refused to allow him to bring the GAL back for questioning despite the Plaintiff's repeated attempts to explain the material nature of her testimony.

76. Exhibit 14 stands as a blatant public declaration accurately encapsulating the Defendant's extra-judicially held bias which precludes the thorough and sifting cross examination of a key witness. Speaking of the practice of cross-examining GAL's during divorce proceedings, the Defendant declared the following in an interview she granted to the Family Law Newsletter (E-14):

> "I give the guardian the benefit of the doubt that they're doing this because of a sincere desire to help, and yes, I guess there's a presumption that there has been appropriate training to be of help. So I'm pretty protective regardless of what the outcome is, unless it's just clear that some rule has been violated, or they just have done a horrible job. They just shouldn't be made the target of a vigorous cross-examination like 'What could you possibly have been thinking?' because that just isn't appropriate. And so if I'm looking at it incorrectly and other judges disagree, then there probably is a need for us to come to terms. To be clear, I don't have a problem with the guardian's findings being explored prior to trial. It just seems to me when we get to the trial, to make the guardian's report the big issue, as opposed to one person's opinion, that may or may not be adopted depending on how the evidence develops." (page 10, column 2)

K. Plaintiff Files Motion for New Trial Contesting Several Gross Abuses of Discretion by the Defendant

77. On June 13th, 2011, the final decree of divorce was pronounced. The Plaintiff's pendent Motion for New Trial was filed on June 29th, 2011 and addressed more than a dozen abuses of discretion and violations of law committed by the Defendant.

78. Two of the most egregious abuses contained in the pleading are (1) the Defendant's pattern of refusing to allow the GAL to be properly cross examined during trial and over a nine (9) month period and (2) her decision to allow the Plaintiff's former spouse to appear at final trial without securing treatment recommendations for the Higdon children.

L. Defendant Commits Several Retaliatory Acts During Contempt Hearing Which Violate Clearly Established Laws

79. The Plaintiff filed a Motion for Contempt against his former spouse on April 29th, 2011 and an amended motion on August 1st, 2011. The pleading was necessitated by the former spouse's continued refusal to secure treatment recommendations for the youngest Higdon children and by her insistence on denying the Plaintiff access to the children's doctor's visits.

80. After Defendant ignored Plaintiff's Contempt filing for several months, he was able to secure a rule nisi for an August the 30th, 2011 hearing only after his former spouse filed a contempt motion for child support arrearages based upon perjured testimony given by the former spouse.

81. The Defendant began the Plaintiff's belated contempt hearing by attempting to coerce him into dropping his Motion for New Trial and filing a Motion for Modification instead, an act tantamount to a judge dispensing legal advice with intent to compromise his case. If he would have agreed to modify, the Plaintiff would have instantly lost his ability to appeal the divorce degree.

82. Exhibit 15 reveals oral evidence of the Defendant's thinly veiled attempts to bully the Plaintiff into abandoning his appeals at the trial and appellate court levels. If successful, the Defendant's unlawful and erroneous actions would have been shielded from scrutiny. Defendant claimed she was only trying to move the Plaintiff' "*on to the next court*" for modification. However, the Plaintiff understood that due to the One Family, One Judge rule, she would be that "*next court*."

83. Frustrated by the Plaintiff's refusal to drop his Motion for New Trial pleading, the Defendant took several retaliatory measures during the August 15th, 2011 hearing and in her order on the Motions for Contempt filed on August 30th, 2011. First, as she did twice before, the Defendant refused to hold the Plaintiff's Contempt hearing and soon thereafter ruled that she had heard evidence, an irrefutable false statement of fact made by the Defendant and affirmed by the record.

84. Second, the Defendant made an illegal change in physical custody by superseding the legal custody provisions of the Temporary order without holding the required hearing showing such a

change was in the best interests of the children. This change of custody stripped the Plaintiff of his ability to force the former spouse to have children medically assessed and treated. Only two (2) months prior to the August 15th, 2011 hearing, the Plaintiff had been able to force the former spouse to have Blake Higdon examined by a licensed speech therapist who diagnosed him with childhood speech apraxia and receptive and expressive language delay. Similar assessment and subsequent treatment for Blake was no longer possible after Defendant made this unlawful change of custody.

85. Third, during the portion of the August hearing which was brought by the former spouse for child arrearages, the Defendant retaliated against the Plaintiff by ordering a contempt citation against him despite the fact that (1) there was only exculpatory evidence supporting the judgment, (2) the child support worksheet was fraudulently filed as former spouse claimed she had spent $48,000 in extraordinary educational expenses when in fact there was only $8,000 spent, and (3) former spouse was shown to have perjured herself with impunity during the hearing by claiming Plaintiff had not paid any monthly child support despite being able to produce checks for every month.

86. Finally, in her August 30th, 2011 order which contained a retaliatory contempt citing against the Plaintiff for child support arrearages, the Defendant claimed the Plaintiff willfully failed to pay the amount due "*because of his belief that he has been ordered to pay more than he should.*" This offering by the Defendant is another false statement of fact clearly belied by reviewing the Plaintiff's words plainly appearing on the face of the hearing transcript. In addition to her retaliatory citation for contempt, the Defendant made an illegal award against the Plaintiff for attorney's fees (1) failing to state a required statutory basis for the award, (2) failing to hold the required hearing on the matter, and (3) failing to render the required findings of fact.

M. Plaintiff Files Recusal Motion for the Commission of Several Retaliatory Acts Violating Clearly Established Laws

87. On August 30th, 2011, the Defendant delivered an order on Motions for Contempt containing six (6) false statements of fact by the Defendant clearly evident from hearing transcripts.

88. Upon receipt of this order, the Plaintiff filed his Motion for Recusal on September 5th, 2011, based upon the Defendant's written order and her actions during the contempt hearing.

89. On September 27th, 2011, the Defendant filed her order denying the Plaintiff's Motion to Disqualify/Recuse. Although the Defendant deemed the affidavit timely and legally sufficient, she denied it suggesting that a judge giving legal advice and falsifying orders does not represent an extra-judicial bias worthy of disqualification or worthy of passing the pleading to another judge for review.

N. Defendant Refused to Follow The Law Requiring She Hold a Hearing Before Denying an Untraversed Pauper's Affidavit

90. On October 18th, 2011, the Plaintiff filed his request for a Pauper's affidavit in response to his former spouse's attempt to collect on the fraudulently obtained contempt judgment by filing a supersedeas bond. The Defendant summarily denied the Plaintiff's untraversed affidavit without holding the statutorily required hearing pursuant to OCGA § 9-15-2 and then granted the bond.

91. The Defendant's breach of the Plaintiff's rights was a clear violation of OCGA § 9-15-2 which enabled the Plaintiff's former spouse to initiate garnishment proceedings against him based on a judgment secured with perjured testimony. The Plaintiff's Motion to Set Aside the Supersedeas Bond has been languishing in her court several months past the ninety (90) day requirement to rule.

O. Factual Allegations Proximal To Primary Cause of Action

92. On December 28th, 2011, the Plaintiff's former spouse invoked an illegally self-effectuating change of custody clause contained in the final divorce decree (E-16). It states that "*In the event that Mother becomes aware of any of the following occurring, father shall immediately lose his right of visitation for six (6) months or until either party obtains a court order modifying visitation: (A) Father directly or indirectly performs medical testing*."

93. This provision allowed the Plaintiff's former spouse to unlawfully restrict the Defendant's rights to visitation over a six (6) month period based solely upon her "awareness" and this unlawful change of custody procedure required no adjudication by a judicial officer in a court of law.

94. In response to the illegal detention of his children, the Plaintiff filed a series of pleadings beginning on January 6th, 2012 which include a Motion for Contempt, an Emergency Motion for Contempt, a Temporary Restraining Order, an Interlocutory Injunction, and a Motion for Declaratory Judgment. Notwithstanding several calls and emails by the Plaintiff to the Court imploring action, all five of the above pleadings were forsaken by the Defendant and languish to this day without an order.

95. After several weeks of unrequited contact from the Plaintiff regarding the illegal detention of his children, he was compelled to file a Petition for Habeas Corpus on January 27th, 2011.

P. Plaintiff Interviewed by CBS Regarding Judicial Misconduct

96. After having been alerted to the Plaintiff's travails with Judge Tusan by other similarly disenfranchised litigants, CBS News Investigator Jeff Chirico contacted the Plaintiff and conducted a three (3) hour interview on February 24th, 2011 regarding judicial impropriety.

97. The lion's share of interview content centered around the pervasive pattern of judicial misconduct and abuse committed by the Defendant against not only the Plaintiff, but against several other family court litigants in the Fulton County community.

98. Three (3) days after the interview, Jeff Chirico's request to install recording equipment in the courtroom was denied by the Defendant who cited privacy issues related to the children.

Q. Defendant Grants Defamatory Interview with CBS News

99. On February 27th, 2012, the Defendant, Judge Gail S. Tusan granted CBS News Investigative Reporter Jeff Chirico an interview related to topics of judicial impropriety.

100. The Defendant was asked about several charges of misconduct against her and spoke specifically on the merits of the Plaintiff's case over which she was presiding.

101. The Plaintiff transcribed a portion of that interview from the CBS film clip of Jeff Chirico and the Defendant Judge Tusan. In the following excerpt, Judge Tusan is clearly shown violating the law and several Canons in the Code of Judicial Ethics by addressing the merits of a case over which she was presiding. An exchange in that interview contained the following dialogue:

> ***Judge Tusan:*** Dr. Higdon has filed several appeals in his case, his divorce is over but he has filed several post judgment actions.
>
> ***Mr. Chirico:*** (Fumbling around to locate the Tusan envelop used in trial).
>
> ***Judge Tusan:*** Family court judges spend a lot of time, as I did on the envelope, to explain to the litigant (Mr. Higdon) the best ways to keep his papers organized… You are required to do your own cross examination.
>
> ***Mr. Chirico:*** You didn't allow him to do that.
>
> ***Judge Tusan:*** That's not the case.
>
> ***Mr. Chirico:*** Well, according to this letter you wrote that's not true. (showing the Judge a Letter she wrote to Mr. Higdon during the hearing denying him cross).
>
> ***Judge Tusan:*** Sir I am telling you that his rights were not abridged. He had the right and he was able to ask plenty of questions in all of the hearings that we had…in his case and in other cases he's been able to ask questions.
>
> ***Mr. Chirico:*** He says he was denied the right four (4) times to cross examine the guardian ad litem.
>
> ***Judge Tusan:*** Did you talk to the guardian ad litem or to the other side?

102. The Defendant not only spoke of specific factual elements of the case over which she was presiding, her interview was tantamount to testifying in the media regarding her participation in the Higdon divorce case, an egregious violation of clearly established law forbidding such contact.

103. When Jeff Chirico responded that the Plaintiff was not allowed to cross examine the Guardian Ad litem, the Defendant made a false statement of fact by claiming "*That's not the case*."

104. When the Defendant was handed a copy of the letter she wrote to the Plaintiff denying him cross of the Guardian Ad Litem, she made two additional false statements of fact by claiming (1) the Plaintiff's "*rights were never abridged*" and (2) "*he was able to ask plenty of question in all of the hearings*." The veracity of both statements is clearly undermined by a review of the record.

105. The Defendant's testimony to CBS broadcaster Jeff Chirico was a public declaration about the primary contested issue in the Plaintiff's pendent Motion for New Trial, an irrefutable violation of the procedural due process guaranteed by 14th Amendment of the U.S. Constitution.

R. Defendant Presides Over Habeas Corpus Hearing, Affirms the Merit of the Hearing then Commits a False Statement of Fact Claiming Habeas was "Frivolous"

106. Instead of immediately recusing herself sua sponte for her violations of due process, on the day following her CBS News interview where she spoke on the merits of the Plaintiff's divorce case, the Defendant presided over the his Habeas Corpus Petition against his former spouse.

107. During the opening moments of that February 28th, 2012 hearing, the Defendant moved sua sponte to dismiss a meritless dismissal attempt of the Plaintiff's former spouse. Replete with boilerplate language and bare conclusory allegations, the former spouse's dismissal motion was countered by Defendant herself in a pre-prepared, three (3) page dismissal order (E-9A) affirming the presence of legal merit in Plaintiff's Habeas Corpus complaint. The Defendant even began her recitation of the order with the following words, "*I'm going to focus on the merits of the Habeas*." Notwithstanding the illegal and insulting nature of the action, Defendant further confirmed the merit of Plaintiff's Petition by granting him supervised parenting time for the remainder of the six (6) months stating on her Habeas order "*the Court does, however, wish to have the Plaintiff co-parent his children*" and then magnanimously extended his right to do so if "*supervised by a third party.*" (E-18)

108. In an illegal maneuver which can only be interpreted as wanton, oppressive, and bad faith conduct, Defendant changed her mind regarding Plaintiff's Petition and declared the pleading "*frivolous*" in her April 23rd, 2012 global pre-filing injunction order (E-19). This reversal by the Defendant was two (2) months after she had read her three (3) page dismissal defending the legal merit of Plaintiff's Habeas and pronounced an order permitting "*Plaintiff to co-parent his children*."

S. Defendant Coerces Plaintiff To Suspend Litigation.

109. As she had attempted in an earlier contempt hearing previously outlined in this text, the Defendant made considerable efforts to coax the Plaintiff into changing the nature of his pleadings during his hearing for his Petition for Habeas Corpus against his former spouse. Because Defendant

knew she could not impose such a change due to the absence of any history of Plaintiff frivolity, she instead spent several minutes at hearing attempting to convince him to withhold further pleadings.

110. Under the guise of "assisting" all parties to the litigation, the Defendant directed the following question to the Plaintiff (E-9B):

> ***Judge Tusan:*** Would you agree, just to assist the court in trying to assist you and your children and their mother, would you agree on the record that you won't file anything else for a moment?

T. Defendant Threatens to Enjoin Plaintiff from Pleading

111. After the Plaintiff refused to submit to the Defendant's pressure to cease filing pleadings based on his belief that all injustices should be redressed, the Defendant protested claiming "*I can't get to the motion for new trial because you have filed appeals from these other injustices*." In actuality, no appeal has prevented the Defendant from holding the required hearing on the New Trial Motion and even if there was such a supersedeas suspending her jurisdiction, that suspension would have been based upon valid appeals accepted to review the Defendant's misconduct in the case.

112. While the Defendant steadfastly purported a desire only to "*help*" the Plaintiff quickly advance to his Motion for New Trial hearing, her declaration of intention was belied by the fact that she had already produced a ruling on his Motion for New Trial during her CBS interview with Jeff Chirico one day earlier declaring the Plaintiff's "*rights were not abridged!"*

113. During the final moments of the Habeas hearing, the Defendant went on to deliver the following threat in response to Plaintiff's insistence that his legitimate grievances be aired (E-9C):

> "Well, I'm putting you on notice that I am researching then the proprieties of a do not file anything else order for a moment until the system can respond to your numerous pleadings and filings."

U. Plaintiff Files Second Recusal Motion

114. On February 29th, 2012, the Plaintiff obtained evidence of the Defendant's testimony on the merits of the case during her interview with CBS News Investigator Jeff Chirico.

115. The videotaped interview clearly shows the Defendant speaking on the merits of the case and making false statements of fact regarding the Plaintiff's pendent Motion for New Trial over which she has been scheduled to preside.

116. On March 1st, 2012, the Defendant pronounced an Order on the Plaintiff's Petition for Habeas Corpus containing several gross abuses of discretion by the Defendant irrefutably affirmed by the record. Among the most egregious abuses include multiple false statements of fact committed by the Defendant and production of an order permitting an illegal change in custody without the required hearing that proves such a change was necessitated based upon the best interests of the children.

117. The Plaintiff timely filed his Motion for Disqualification/Recusal of Judge Gail S. Tusan on March 5th, 2012. This pleading was founded upon (1) the CBS News videotape featuring Jeff Chirico interviewing the Defendant while she violated several clearly established laws and (2) the Defendant's freshly penned Habeas Corpus order with gross abuses of discretion abounding.

V. Defendant Denies Second Recusal Motion

118. On April 23rd, 2012, the Defendant pronounced her Order denying the Plaintiff's Motion for Disqualification or in the Alternative Motion for Recusal filed on March 5th, 2012.

119. Exhibit 17 reveals the content of the order which consists of regurgitated caselaw that culminates into a conclusory and unsubstantiated claim of legal insufficiency.

120. The Defendant pronounced her denial of the Plaintiff's Motion to Recuse with the understanding that she was forbidden by law to speak to the media on the merits of a case pending in her court and forbidden to slander a litigant under any conceivable circumstances.

W. Defendant's April 23rd, 2012 Global Pre-Filing Injunction Violates Plaintiff's Constitutional 1st And 14th Amendment Rights

121. On the same day the Defendant filed her order on the Plaintiff's Motion to Recuse, she also filed a global pre-filing injunction restricting all submissions to the Superior Court without holding the required due process hearing on the merits of restricting this precious right.

122. In the injunction order, Defendant claimed Plaintiff was a frequent frivolous filer despite having no history of frivolous submissions in her court. As has been her wont in previous orders, Defendant made multiple false statements of fact which can be affirmed by the record. One of Defendant's more blatant falsifications was her deeming the Plaintiff's Habeas Corpus frivolous two (2) months after defending its merit during the hearing and in subsequent order. See Exhibit 19.

123. To lawfully construct a global pre-filing injunction restricting the filing submissions of a litigant, a judge is required not only to extend the substantive due process of actually possessing at least one frivolous filing by that litigant in her court, she must also submit to the procedural due process requirements of holding a hearing on the matter of frivolity with an impartial arbiter. Regarding these protections, the Plaintiff's inalienable rights to both were flagrantly affronted.

124. Since imposing her global pre-filing injunction restricting submissions, the Defendant has permitted several motions material to his case to unlawfully languish past the ninety (90) day requirement in which a judge is commanded to produce an order. These vanishing claims confirm the Defendant's creation of a new Orwellian class of litigant called the unlitigant. Where a claim advanced by a conventional litigant has a status of either 'ruled upon' or 'yet to be ruled upon,' an unlitigant's claim can have but one status, 'never to be ruled upon.' Once the claim has disappeared from the legal landscape never to be ruled upon, there is no public record of the pleading and no way for the unlitigant to advocate at either the trial or appellate court levels.

125. The Defendant's order restricting submissions represents an abject violation of the Plaintiff's constitutional rights to free speech and access to the courts.

126. The simultaneous arrival of the Defendant's recusal and submissions orders would seem to suggest the presence of other forces at work not named happenstance. The evidence proffered in this case will reveal that the synchronicity of their appearance was a planned occurrence in an effort to deter the Plaintiff from responding not only to the Plaintiff's recusal motion, but to the order restricting submissions itself.

X. Court Colleagues Collude With Defendant to Conceal Corruption

127. After the Defendant refused to recuse, the Plaintiff filed his Petition for Mandamus on April 23rd, 2012. In addition to numerous violations of law including the Defendant's refusal to rule on 18 out of 38 Plaintiff pleadings which were left to languish past the 90 days required for ruling, the Mandamus sought to compel the Defendant to comply with clearly established law mandating that she recuse herself immediately from any matters related to the Higdon v. Higdon divorce case.

128. Newly elected Fulton County Superior Court Judge Kelly Amanda Lee presided over the Mandamus suit against the Defendant Judge Gail S. Tusan. After many months in her possession, the Judge not only ruled to dismiss the Petition for Mandamus against the Defendant with prejudice claiming in bare conclusory language that it "*lacked substantial justification*," she improperly prompted the Judge to file for Attorney's Fees against the Plaintiff by stating (E-20):

> "The Court finds that Plaintiff's action lacks substantial justification. Therefore, *the Court will entertain a motion for reasonable attorney's fees and expenses*, supported by an attorney's affidavit, and will set a date and time certain for the issue of attorney's fees to be heard upon proper motion" (Empahsis Applied)

129. This unsubstantiated ruling by Judge Lee and her subsequent prompt of suit left the Plaintiff ponder, was this the brand of compassion she had in mind when the beleaguered Judge attempted to placate furious constituents during the 2010 election by promising them (E-10) she would be "*a more compassionate judge*" if only they would forgive her attempts to conceal her two (2) DUI convictions and vote her to the bench?

130. After Judge Lee's unlawful disposition of the Plaintiff's Petition for Mandamus, the Plaintiff filed his Discretionary Appeal to the Supreme Court of Georgia. Despite providing several examples of caselaw where the Court accepted discretionary applications in cases where the judicial offense was far less egregious than those committed by Judge Tusan, the Supreme Court of Georgia rejected both the Plaintiff's Discretionary Application Brief and his Motion for Reconsideration with one sentence denials devoid of argument stating merely, "*DENIED*."

131. On June 4th, 2012 the Plaintiff filed his Rule 40b Emergency Motion which requested the Georgia Court of Appeals to immediately abolish the Defendant's illegal pre-filing injunction against him and allow him to pursue his case unfettered by court interference. For nearly nine (9) months, this Rule 40b Emergency Motion has languished in that court without a ruling. In an effort to assure the Georgia Court of Appeals had not lost the document among the shuffle of pleadings, CBS News contacted the Chief Justice John J. Ellington to inquire into the pleading's whereabouts. While Justice Ellington confirmed his awareness of the motion's existence, he would give no indication as to why it was being delayed or when the Rule 40b Emergency Motion, a motion most commonly ruled upon within thirty (30) days of receipt, would be properly adjudicated.

FIRST CAUSE OF ACTION
(1ST Amendment to the US Constitution- Free Speech/Retaliation Claim)
(42 U.S.C. § 1983)

132. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in paragraphs one (1) through one hundred and thirty (130) of this complaint verbatim.

133. Plaintiff was interviewed by CBS regarding his experience what the media outlet deemed "rampant judicial misconduct in Georgia Courts", a legitimate matter of public concern.

134. When the Plaintiff spoke of his travails with Judge Tusan during the three (3) hour CBS interview, he was exercising his clearly established right to criticize a public official, a right widely considered the "highest rung of the hierarchy of First Amendment values," and one entitled to special protection. *NAACP v. Claiborne Hardware Co*., 458 U.S. 886, 102 S.Ct. 3409, L.Ed.2d 1215 (1982)).

135. On February 27th, 2012, three days after the Plaintiff was interviewed by CBS News Investigative reporter Jeff Chirico regarding this matter of public concern, the Defendant also granted an interview with said reporter. The Defendant was asked about several issues related to the Plaintiff's case including many of his claims of judicial impropriety against her.

136. In an effort to retaliate against the Plaintiff and stymie his constitutional right to speak freely, Defendant spoke directly on the merits of his case during the February 27th, 2011 interview.

137. With Defendant's decision to violate the statutory mandate in Canon 3 of the US Code of Judicial Conduct forbidding public comment, the Plaintiff suffered not only public embarrassment and humiliation which would chill those of ordinary fitness from continuing to exercise their constitutional rights, but the act itself was a fundamental breach of his constitutional rights.

138. When the Defendant stated during the interview that she had given the Plaintiff an opportunity to cross-examine the Guardian Ad Litem and had done so in every hearing, she was publically adjudicating the merits of the Plaintiff's primary enumeration of err contained in his pendent Motion for New Trial.

139. Notwithstanding the brazen impropriety of the Defendant's substantive violation of clearly established law, this public method of adjudication deprived the Plaintiff of his procedural due process rights to proper notice, hearing, and an impartial arbiter for his Motion for New Trial.

140. Because the Defendant forsook her lawful obligation to immediately recuse herself upon wantonly violating the Judicial Code of Ethics during the CBS News interview, the Plaintiff was further deprived of an impartial arbiter only one day later during the hearing for his Petition for Habeas Corpus on February 28th, 2011.

141. The Defendant's partiality is displayed upon the record of the Habeas Corpus hearing as it affirmatively demonstrates her blatant attempts to coerce the Plaintiff into arresting his right to speak freely through the courts. Defendant's efforts to disenfranchise Plaintiff include her unabashed request, "*[W]ould you agree on the record that you won't file anything else for a moment?"*

142. Further attempts during the February 28th, 2011 Habeas Corpus hearing to deprive the Plaintiff are evidenced in the Defendant's retaliatory restriction of the Plaintiff's parental rights enabled by the Defendant's use of an unlawful self-executing provision in the divorce decree. Astonishingly, the six (6) month suspension of Plaintiff's visitation rights was effectuated upon the conjured suspicions of the Plaintiff's former spouse who claimed a box of urine testing mistakenly

sent to her home was proof Plaintiff was planning to secretly test the children. Armed with clause and canard, Defendant was able to contrive an outcome indirectly that she could not command directly.

143. The Defendant's impropriety during her interview with CBS and her subsequent adjudication of the Plaintiff's Petition for Habeas Corpus the following day was far from aberration. Notwithstanding the immediate temporal proximity of the Defendant's retaliation against the Plaintiff for his exercise of free speech on February 28th, 2011, the evidence against the Defendant will demonstrate a pattern of retaliatory animus infecting her decisions that long predates February 2012 and one which has continued unabated to this day.

144. The Defendant's conduct violated clearly established constitutional and/or other federal rights of which the Defendant knew, or of which a reasonable public official should have known.

145. The acts, omissions, policies, patterns, practices, and customs of this Defendant complained of herein were intentional, reckless, and show a callous disregard for, or deliberate indifference to the Plaintiff's personal safety, security, freedom, and civil and constitutional rights.

146. These violations are compensable pursuant to U.S.C. § 1983. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost income and benefits, future pecuniary losses, compensatory and punitive damages, and other consequential damages soon to be divulged.

SECOND CAUSE OF ACTION
(1ST, 5TH, 9TH, AND 14TH Amendment to the US Constitution -
Right to Care, Custody and Nurture of Children)
(42 U.S.C. § 1983)

147. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in paragraphs one (1) through one hundred thirty-nine (139) of this complaint verbatim.

148. A parent's right to care, custody, and control of his or her children is the oldest of liberty interests so fundamental as to be guaranteed protection under the First, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution. Troxel v. Granville, 530 US 57 - Supreme Court

(2000); Doe v. Irwin, 441 F Supp 1247; U.S. D.C. of Michigan (1985). This right protects a parent from state interference and demands that any deprivation of the right to parent one's children is preceded by procedural and substantive due process. U.S. Const. Amend. XIV, § 1

Defendant's Protection Of Gal Deprives The Plaintiff His Right To Care For The Health And Wellbeing Of His Children.

149. When the Defendant's took her public stand on February 27th, 2011, the action represented a continuation of her pattern of protecting with the GAL by (1) denying evidence discrediting the GAL's many false contentions and (2) declining to consider the many ways in which the GAL behavior has violated the Plaintiff and his children. The Defendant's efforts to shield the GAL from scrutiny and conceal wrongdoing were clear violations of Plaintiff's constitutional rights.

150. When she falsely stated during the CBS interview that the Plaintiff's "rights were not abridged," the Defendant was covering up one specific instance of impropriety. When she continued on to falsely claim that "in all hearings" the Plaintiff was able to ask questions, it was her effort to conceal GAL impropriety throughout the entirety of the case. These declarations by the Defendant effectively dismissed with prejudice any possibility a court of law could revisit the now thoroughly discredited claims of the former spouse which include (1) her claim that the two youngest children had no medical challenges requiring treatment and (2) her claim that somehow the Plaintiff knowingly and intentionally falsified the urine and blood testing results of his children to garner attention to himself.

151. The Plaintiff naively assumed the inherent absurdity of such claims would preclude them from ever taking flight in a court of law, but in Judge Tusan's Court they soared. Beneath the Defendant's protective wings the GAL enjoyed an indefeasible immunity from liability obviating any obedience to due process. Had the Defendant obeyed the law and mandated the GAL's adherence to procedural safeguards, she would have compelled the GAL and all interested parties to plunge far deeper into the very complex issues surrounding the children's suffering. Instead, the Defendant's

CBS interview disposed of the entire matter with prejudice as once she pronounced her order there would be no circling back to examine the infirmity of GAL decisions and no listening to forsaken audiotapes highlighting her impropriety.

152. The interplay between defendant and guardian in this case personifies the Defendant's deeply troubling internet manifesto (E-14) regarding the role of a GAL which states, inter alia, "They just shouldn't be made the target of a vigorous cross-examination like 'What could you possibly have been thinking?' because that just isn't appropriate." Not only is such an examination appropriate, it should be inviolate. The GAL is proffering a report based predominantly on hearsay evidence which, in practice, most often supplants custodial adjudication from the bench. It is a Judge's moral and ethical imperative to accurately appraise the process and performance of a GAL as the best interests of the children are at stake. Failing to thoroughly vet the GAL means thoroughly failing to protect the children.

153. Whether or not the Defendant is willing and/or able to comprehend the implications inherent within her internet manifesto, it is clearly illegal, immoral, and unjust for a presiding judge to make baseless presumptions about the training and fitness of a witness, to protect a witness until someone surmounts an inappropriately held extra-judicial bias, and to deny the right of a litigant to question a witness at final trial and deny his right to "make a big issue" of a report from which custody decisions are almost exclusively derived. Where Defendant's actions in the instant case serve as a judicial primer on what a judge must never do vis a vis a GAL, this companion manifesto serves as a court compendium on what a judge must never say regarding the role of a GAL.

Defendant's Protection of Self Deprived the Plaintiff His Right to Care for the Health and Wellbeing of His Children.

154. The Defendant's February 27th, 2011 CBS Interview was an act of self preservation epitomizing a commitment to turf protection rather than her charge of child protection. When she denied that she denied GAL cross-examination and then covered up that she was covering up her

violation, the Defendant deprived Plaintiff his liberty interest to meet the medical and emotional needs of his four (4) children.

155. More specifically, by continuing to insist that she has not "abridged" the rights of the Plaintiff, the Defendant was denying the commission of several procedural violations which had dire substantive consequences for both the Plaintiff and his children. The Defendant's adoption of the GAL's verbal and written recommendations without due process deprived the Plaintiff of his right to protect and care for his children by abdicating to the GAL her responsibility to reconcile the differences in each party's interpretation of the true medical condition of the children. The Defendant's dogged persistence in maintaining her untenable stance during the interview and beyond assured the children they would continue to bear the burden of neglect resulting from former spouse's denial of recommended treatments and dietary supplementation.

Defendant's Unlawful Interview Enables Former Spouse to Violate
The Right of Plaintiff and the Best Interests of the Children

156. The Defendant's February 27th, 2011 CBS Interview empowered the former spouse to deprive the Plaintiff of his liberty interest in meeting the medical and emotional needs of his four (4) children. When the Defendant took her bold, public position finding the Plaintiff's claims of neglect and abuse by the Court, GAL, and former spouse non-credible, she was empowering and emboldening the former spouse to take positions in and out of court contrary to the Plaintiff rights. One need only examine court records as such positions were manifest during the Habeas Corpus hearing held the very next day. Astonishingly, the Defendant ordered a retaliatory six (6) month restriction of the Plaintiff's visitation rights based on the former spouse's false claim that a box of urine testing confirmed he was set to secretly test his children for medical maladies.

157. Assuming arguendo, that the former spouse actually foiled a plot to secretly urine test her child, in what world would such an act legitimize the resultant parental negation and alienation that ensued? How could the parent who was obstructing the child's ability to be assessed for his ailments

be acting consistent with the child's best interests? The Defendant's disturbing answer to this question enabled the former spouse to continue acting contrary to the best interests of the four (4) children by depriving the Plaintiff his right to provide them the proper medical and emotional care they desperately needed.

Defendant's Denial of Court Access Deprived The Plaintiff His Right to Care For the Health and Wellbeing of His Children.

158. The Defendant's CBS News interview was a denial of his access to the courts in that it deprived the Plaintiff his right to have his legal claims justly adjudicated. The Defendant's insistence on presiding while concealing a disqualifying bias rendered meaningless any state court remedy the Defendant was lawfully seeking. When the former spouse's misconduct forced the Plaintiff to turn to the courts for support in protecting and providing for his children's medical needs, he was denied any meaningful access due to the Defendant's partiality.

159. By the Defendant taking a public position clearly adverse to the Plaintiff, she was alerting the former spouse that she possessed carte blanche to pursue whatever ends she desired. Proof of this permission granted the spouse is found in the perversion of justice that quickly ensued post-interview which included a six (6) month restriction of the Plaintiff's visitation and a global pre-filing injunction restricting his filing submissions. In the Defendant's court, the former spouse quickly learned that on her quest to avert justice, she would find asylum, and on the Plaintiff's quest to acquire it, he would find abuse.

Defendant Deprived Plaintiff of Time and Attention Needed To Care For the Considerable Needs Of His Children

160. Regarding the Plaintiff's time used accessing the court, the Defendant's refusal to relent and renounce her position as presiding judge rendered meaningless countless hours he spent pursing justice. Precious, irretrievable years have been needlessly squandered as the Plaintiff has been forced to defend himself and his children on five (5) separate fronts including the State Court of Fulton County, the Superior Court of Fulton County, the Georgia Court of Appeals, the Supreme

Court of Georgia, and the United States District Court. Had the Defendant honored the law and her oath, there would have been no recusal motion, no second mandamus petition, no third and fourth and fifth motions to set aside, and no need for the instant pleading this reader is reading. The Defendant's unlawful actions on February 27th, 2011 and the campaign of concealment thereafter robbed this Plaintiff of time to care and nurture his children that can never be recovered.

161. The Defendant's conduct violated clearly established constitutional and/or other federal rights of which the Defendant knew, or of which a reasonable public official should have known.

162. The acts, omissions, policies, patterns, practices, and customs of this Defendant complained of herein were intentional, reckless, and show a callous disregard for, or deliberate indifference to the Plaintiff's personal safety, security, freedom, and civil and constitutional rights.

163. These violations are compensable pursuant to U.S.C. § 1983. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost income and benefits, future pecuniary losses, compensatory and punitive damages, and other consequential damages soon to be divulged.

THIRD CAUSE OF ACTION
(14th Amendment to the US Constitution- Due Process Claim)
(42 U.S.C. § 1983)

164. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in paragraphs one (1) through one hundred thirty-nine (139) of this complaint verbatim.

165. The Fourteenth Amendment expressly forbids judicial officials like the Defendant from arbitrarily depriving one of life, liberty, or property without due process of law. The underlying intent of this Clause centers on preventing government officials such as herself from abusing her power, or employing it as an instrument of oppression.

166. Pretermitting losses incurred from deprivations that are inconsequential, judges who violate constitutional rights must be held to account for the injuries they impose upon others. The deprivations imposed upon the Plaintiff by Defendant's behavior on February 27th, 2012 were far

from de minimus. The gravity of these deprivations begin with the loss of Plaintiff's right to notice and a fair hearing and extend to the more exigent concerns of his right to care for the fragile health and wellbeing of his children.

167. In addition to the aforementioned violations contained in previous counts, the Judge's illegal and immoral public pronouncements sufficiently implicate several additional due process violations which represent tangible losses to the liberty interests of the Plaintiff based upon the 14th Amendment. These violations include the following:

> (1) The Defendant deprived the Plaintiff of an impartial arbiter in his Motion for Recusal when she persisted in presiding while in possession of a disqualifying bias.
>
> (2) The Defendant deprived the Plaintiff of an impartial arbiter when she filed her global pre-filing injunction while in possession of a disqualifying bias. Furthermore, she also deprived the Plaintiff of his rights to substantive due process by failing to produce a minimal amount of credible evidence sufficient to support a legal basis for her injunction restricting submissions, that is, the presence of at least one frivolous filing in her court over a thirty month period.
>
> (3) The Defendant deprived the Plaintiff of his right to right to care, custody, and control of his children by publically declaring the Plaintiff's rights "were not abridged" thereby insulating the GAL from scrutiny regarding her baseless and improper recommendation to restrict the Plaintiff's parental rights.

168. The Defendant's conduct violated clearly established constitutional and/or other federal rights of which the Defendant knew, or of which a reasonable public official should have known.

169. The acts, omissions, policies, patterns, practices, and customs of this Defendant complained of herein were intentional, reckless, and show a callous disregard for, or deliberate indifference to the Plaintiff's personal safety, security, freedom, and civil and constitutional rights.

170. These violations are compensable pursuant to U.S.C. § 1983. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost income and benefits, future pecuniary losses, compensatory and punitive damages, and other consequential damages soon to be divulged.

FOURTH CAUSE OF ACTION
(1ST Amendment to the US Constitution- Access to Courts/Retaliation Claim)
(42 U.S.C. § 1983)

171. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in paragraphs one (1) through one hundred thirty-nine (139) of this complaint verbatim.

172. As with the free speech claim outlined above, to prevail in an access to the courts retaliation claim, a litigant must ultimately show that (1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter First Amendment activity in the future; and (3) the First Amendment activity was "at least a motivating factor" in the Defendant's decision to take the retaliatory action. *Massey v. Johnson,* 457 F.3d 711, 716 (7th Cir.2006)).

173. When the Defendant spoke of the merits of the Plaintiff's case to the media on February 27th, 2011, the injury sustained from that violation was far more extensive than the obvious embarrassment and humiliation he experienced from having his integrity slandered in a public forum. The Defendant's CBS News interview foreclosed the Plaintiff's right to have his legal claims justly adjudicated by summarily disposing of his Motion for New Trial without the required notice and hearing. Ironically, the Defendant's public pronouncement that the Plaintiff's "*rights were not abridged*" was itself, an irrefutable abridgement of his rights.

174. It is axiomatic that when a party engages in actions that effectively cover-up evidence, that party violates a Plaintiff's right to access the courts by rendering the legal remedy he sought futile. *Bell v. City of Milwaukee*, 746 F.2d 1205, 1261 (7th Cir.1984). When the Defendant claimed on February 27th, 2011 that she had permitted the Plaintiff to cross-examine the Guardian Ad Litem in "*all of the hearings*," she was blatantly engaging in an act of covering up evidence as her own hand-written note on court stationary denying the Plaintiff his cross of the GAL coupled with the transcripts of four (4) hearings clearly belie her claim.

175. Because "the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances, the Constitution guarantees that all citizens have an adequate opportunity to raise constitutional claims before impartial judges." *Bill Johnson's Restaurants, Inc*. v. *NLRB*, 461 U. S. 731, 741 (1983). Regarding the question of the Defendant's impartiality, the mere fact that the she spoke on the merits of a matter currently pending in her court violated the Plaintiff's due process rights by immediately foreclosing any opportunity that he could ever receive a fair trial in subsequent hearings with the Defendant as an impartial arbiter.

176. Far from honoring her duty on February 27th, 2011 to immediately recuse herself the moment she made evident her disqualifying bias, the Defendant concealed her transgression and scurried back on the bench to further frustrate the litigation of the Plaintiff as she presided over his Petition for Habeas Corpus just hours after her interview with Jeff Chirico. The Judge's choice to preside while concealing a disqualifying bias rendered meaningless any state court remedy the Defendant was lawfully seeking, a de facto denial of his right to access the courts.

177. The Defendant's March 1st, 2011 order on the Plaintiff's Petition for Habeas contains four (4) irrefutable false statements of fact and a parade of pretext penned to cover up the Defendant's retaliatory motive to make an illegal change of custody without the required hearing to consider the best interests of the children. The record will show that armed with an illegal self-effectuating provision in the divorce decree and no inculpatory evidence whatsoever, the Defendant enabled and emboldened the former spouse's act of illegally detaining his children. That detainment and subsequent suspension of his parental rights for six (6) months was effectuated upon the conjured suspicions of the former spouse who claimed a box of urine testing mistakenly sent to her home was proof the Plaintiff was planning to secretly test his children for medical maladies.

178. During the February 28th, 2011 Habeas hearing the Defendant requested the Plaintiff commit to suspending any further filing not predicated on any past history of frivolity in her court, but solely upon a professed need to "*help*" both parties quickly dispose of the Motion for New Trial

that she already ruled upon during her CBS interview one day prior. After Plaintiff declined the Defendant's invitation to agree on the record to not "*file anything else for a moment*," the Defendant threatened the Plaintiff that if he refused to submit to her unconstitutional request of suspending his efforts to redress grievances, she would consider restricting his court access by filing a global pre-filing injunction, an order necessitating a fair hearing for its recipient. Her threat was as follows:

> "Well, I'm putting you on notice that I am researching then the proprieties of a do not file anything else order for a moment until the system can respond to your numerous pleadings and filings."

The not so subtle subtext underlying the Defendant's threat suggests the Plaintiff's pleadings were precipitated by something other than the injustices perpetuated by the Defendant herself.

179. True to the Defendant's threats made during the February 28th, 2011 Habeas hearing, the Defendant filed an order restricting the filing submissions of the Plaintiff on April 23rd, 2012. Absent any procedural due process and the necessary substantive due process of having at least one frivolous suit filed by the Plaintiff in her court, the Defendant imposed a global pre-filing injunction thereby denying the Plaintiff his constitutional right to meaningful access to the courts. Furthermore, in an act insinuating more causation than coincidence, the Defendant's order denying her own recusal arrived simultaneously alongside her order imposing a global pre-filing injunction.

180. The Defendant's deployment of this global pre-filing injunction has been used to deny the Plaintiff access to courts by allowing several of his claims to languish far past the ninety (90) days for which she is required to rule. This recent method of disenfranchising the Plaintiff entails the evisceration of his case, one evaporating claim at a time. This curious method of claim dispensation was deployed long before February 27th, 2012 as the record reveals eighteen (18) of the thirty-eight (38) properly filed pleadings by the Plaintiff have neither been heard nor ruled upon. The lion's share of these spurned creations has been M.I.A. for more than sixteen (16) months.

181. The Defendant's impropriety during her interview with CBS and her subsequent adjudication of the Plaintiff's Petition for Habeas Corpus the following day was far from aberration.

Notwithstanding the immediate temporal proximity of the Defendant's retaliation against the Plaintiff for exercising his constitutional right to access the courts on February 28th, 2011, the evidence against the Defendant will demonstrate a pattern of retaliatory animus infecting her decisions that long predates February 2012 and one which has continued unabated to this day.

182. The Defendant's conduct violated clearly established constitutional and/or other federal rights of which the Defendant knew, or of which a reasonable public official should have known.

183. The acts, omissions, policies, patterns, practices, and customs of this Defendant complained of herein were intentional, reckless, and show a callous disregard for, or deliberate indifference to the Plaintiff's personal safety, security, freedom, and civil and constitutional rights.

184. These violations are compensable pursuant to U.S.C. § 1983. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost income and benefits, future pecuniary losses, compensatory and punitive damages, and other consequential damages soon to be divulged.

FIFTH CAUSE OF ACTION
(1ST Amendment to the US Constitution - Defamation Claim)
(42 U.S.C. § 1983)

185. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in paragraphs one (1) through one hundred thirty nine (139) of this complaint verbatim.

186. The publication of the Defendant's February 27th, 2011 remarks violating Canon 3 of the US Code of Judicial Conduct is even more troubling in light of the defamatory nature of the comments themselves. When handed evidence of a letter penned by her own hand denying the Plaintiff his right to cross the GAL, the Defendant knew she was making false statements of fact by claiming the Plaintiff was able to cross-examine the GAL "*in all hearings*" and further claiming "*his rights were never abridged*."

187. Unless the Defendant can divine some plausible justification for her precipitous, pre-hearing publication, some modicum of due process should have come into play before she sought to

attach a badge of infamy to the Plaintiff. Instead, the Defendant was callously indifferent to the Plaintiff's rights by publically impugning his integrity with an official action so factually baseless as to amount to wanton, oppressive, and bad faith conduct. It must be noted that the principle and practice of integrity is not just important to the profession of the Plaintiff, it means everything.

188. The enumerations below represent a smattering of liberty deprivations that have arisen in conjunction with the stigmatizing injury the Plaintiff sustained to his reputation on February 27th, 2012. Each example is a testament to the nexus between the Defendant's defamatory statements and the publication of those statements which sufficiently implicates several tangible losses to the liberty interests of the Plaintiff. These violations to the Plaintiff's constitutional rights are as follows:

> (1) The Defendant deprived the Plaintiff of his due process rights to notice, a hearing and an impartial arbiter for his Motion for New Trial when she decided to publically pronounce her ruling on the matter February 27th, 2012.
>
> (2) The Defendant deprived the Plaintiff of an impartial arbiter to redress his ensuing grievances when she refused to recuse herself immediately upon uttering certain words and phrases during the CBS interview with Jeff Chirico.
>
> (3) The Defendant deprived the Plaintiff of an impartial arbiter in his Petition for Habeas Corpus when she persisted in presiding while in possession of a disqualifying bias evidenced by her CBS interview.
>
> (4) The Defendant deprived the Plaintiff of an impartial arbiter in his Motion for Recusal when she persisted in presiding while in possession of a disqualifying bias.
>
> (5) The Defendant deprived the Plaintiff of an impartial arbiter when she filed her global pre-filing injunction while in possession of a disqualifying bias. Furthermore, she also deprived the Plaintiff of his rights to substantive due process by failing to produce a minimal amount of credible evidence sufficient to support a legal basis for her injunction restricting submissions, that is, the presence of at least one frivolous filing in her court over a thirty month period.
>
> (6) The Defendant deprived the Plaintiff of his right to right to care, custody, and control of his children by publically declaring the Plaintiff's rights were not abridged thereby insulating the GAL from scrutiny regarding her baseless and improper recommendation to restrict the Plaintiff's parental rights.

189. To have his right to a fair hearing affirmed in a court of law, a Plaintiff should never be asked to bear the insurmountable burden of successfully traversing the foregoing faits accomplis.

190. The Defendant's conduct violated clearly established constitutional and/or other federal rights of which the Defendant knew, or of which a reasonable public official should have known.

191. The acts, omissions, policies, patterns, practices, and customs of this Defendant complained of herein were intentional, reckless, and show a callous disregard for, or deliberate indifference to the Plaintiff's personal safety, security, freedom, and civil and constitutional rights.

192. These violations are compensable pursuant to U.S.C. § 1983. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost income and benefits, future pecuniary losses, compensatory and punitive damages, and other consequential damages soon to be divulged.

CONCLUSION

193. The reign of impropriety perpetrated upon the Plaintiff by Judge Gail S. Tusan thoroughly exemplifies the condition of moral constipation. As the longest tenured Judge in the Superior Court of Fulton County Georgia, Judge Tusan fully understood the attendant moral and legal obligations to which the Plaintiff and his children were entitled and yet, she refused to purge a response commensurate with that understanding. Even more disturbing has been the Defendant's impenitence. Nowhere in this case's voluminous record do we find Defendant wrestling with the demons of her condition. Instead, we witness a wide swath of misconduct signifying her steadfast allegiance to the 11th Commandment "Thou Shall Not Get Caught" rather than her oath of "Faithfully and Impartially Discharging All Duties Incumbent."

194. Seen in a vacuum, one might mistake the Defendant's deftness in distorting the facts and contorting the law as a solo venture. Sadly, the record affirms the Defendant's campaign of concealment and her decisions to defy the dictates of her oath have been family affairs sanctioned by judicial officials in the State and Superior Courts of Fulton County, the GA Court of Appeals, and the Supreme Court of Georgia. This unholy collaboration leaves one to ponder…How long will the

Defendant be permitted to declare the clock has struck thirteen before one court official from the state of Georgia has the integrity to contest the veracity of that thirteenth strike and all those preceding?

195. Notwithstanding this collaborative effort to disenfranchise the Plaintiff, the Defendant herself must bear the burden of accountability for the wrongdoing she has sought to conceal. When the truth is finally heard beyond these proceedings, it will reveal a remorseless judge retreating to acts of judicial thuggery secure in the knowledge she enjoys sanctuary from scrutiny by relying on her two greatest accomplices, a stable full of sympathetic colleagues and an acuity for exploiting vulnerable litigants by deploying the letter of the law to defile its spirit.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendant on all claims as follows:

a. Entry of a Declaratory Judgment in accordance with Rule 57 of the Federal Rules of Civil Procedure declaring that Defendant, Judge Gail S. Tusan, is no longer permitted to preside over the Higdon v. Higdon divorce proceeding effective immediately;

b. Entry of a Declaratory Judgment in accordance with Rule 57 of the Federal Rules of Civil Procedure declaring that Plaintiff is immediately entitled to free and unencumbered access to file his pleadings in the Superior Court of Fulton County Georgia thereby abolishing all previous restrictions ordered by Judge Gail S. Tusan.

c. For an award of compensatory damages to Plaintiff equal to the injury suffered from Defendant’s unconstitutional and unlawful practices, including damages for physical injury and pain and suffering, past, present and/or future wage loss, income and support, and medical damages, all in a sum which is to be determined at trial according to proof;

d. For an award of exemplary and punitive damages against Defendant in an amount sufficient to punish her for reprehensible conduct against Plaintiff;

e. For an order awarding Plaintiff costs of suit, including litigation expenses, out-of-pocket expenses, and reasonable attorneys' fees, in accordance with all applicable provisions of law, including but not limited to the provisions of 42 U.S.C. § 1988, 42 U.S.C. § 12,205, and 29 U.S.C. § 794(a)(b) in an amount which this Court deems just, equitable and proper;

f. That the Court exercise continuing jurisdiction during the enforcement of its judgment;

g. For such and other relief as the Court deems just, equitable, and proper.

JURY DEMAND

Plaintiff hereby requests trial by jury on any and all issues herein triable by a jury.

This the 26th day of February, 2013

____
Alex Higdon, Pro se

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