

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK:  
BROOKLYN DIVISION

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JANE DOE, Individually and as  
Parent/Guardian of BABY DOE,

Docket No: 16-CIV-\_\_\_\_\_ -  
- \_\_\_\_\_ - \_\_\_\_\_

PLAINTIFFS,

-against-

Hon. \_\_\_\_\_,  
U.S.D.J.

MERCK & CO, INC.; HEALTH AND  
HUMAN SERVICES; SYLVIA MATHEWS  
BURWELL, in her official capacity as Secretary  
of HEALTH AND HUMAN SERVICES;  
ROBERT M. CALIF, MD, in his official capacity  
as Commissioner of FOOD AND DRUG (a division  
of HHS), and JULIE GERBERDING, MD, MPH,  
Individually

DEFENDANTS  
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**COMPLAINT**

Plaintiff JANE DOE [“JANE DOE”], Individually and as Parent/Guardian of BABY  
DOE [“BABY DOE”], a seven-teen year old autistic minor [collectively “PLAINTIFFS”], by  
and through their attorney Patricia Finn, Attorney P.C., allege as follows:

**NATURE OF CASE**

1. This is an action for damages under *42 U.S.C. § 300aa-31* National Vaccine Injury Act of  
1986, [“Vaccine Act”]; CITIZEN’S ACTION; alleging research fraud, scientific malfeasance,  
evidence tampering and vaccine injuries against Merck & Co, Inc. [“MERCK”], and alleging  
conspiracy to commit research fraud, scientific malfeasance, evidence tampering and vaccine  
injuries against alleged, co-conspirator\ co-defendant Julie Gerberding [“GERBERDING”], a

medical doctor currently working as an Executive Vice President at MERCK, and is the former director of the Centers for Disease Control [“CDC”] between 2002-2010, a division of Defendant Health and Human Services [“HHS”].

2. This is an action alleging deprivation of rights under 42 U.S.C. 1983, and a conspiracy to deprive PLAINTIFFS’ rights, against the government defendants, and seeks to enjoin the Food and Drug Administration [“FDA”], a division of Defendant HHS, from licensing, and/or permitting the use, sale and/or distribution of MERCK’s measles, mumps and rubella [“MMR”] vaccine in the State of New York.

### **VERSTRAETEN’S EVIDENCE & SIMPSONWOOD AGREEMENT**

3. PLAINTIFFS sought after equitable relief and damages for fraud, and conspiracy to commit fraud, flow from an illegal scheme formed on or about June 8, 2000, between government and industry vaccine scientists at a place called Simpsonwood Resorts, a remote conference facility in Norcross, Georgia, located outside of Atlanta where CDC is headquartered.<sup>1</sup>

4. PLAINTIFFS allege government officials and pharmaceutical executives hastily convened an impromptu meeting at Simpsonwood on the weekend of June 7 & 8, 2000, to discuss evidence of vaccine harm uncovered by CDC researcher Tom Verstraeten, MD, and then after two days of discussion and investigation into the damaging findings, the doctors and scientists agreed to keep the evidence uncovered by Dr. Verstraeten, linking Thimerosal containing vaccines to brain damage in children, from Congress and from Defendant Secretary of HHS and from “let’s say out of less responsible hands.” *Exh. Two, Simpsonwood Transcripts*,

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<sup>1</sup> Association of American Physicians and Surgeons, Inc.  
<http://www.aapsonline.org/vaccines/cdcfdaexperts.htm> (last retrieved July 18, 2016)

pg. 256.

5. According to the words of one doctor at Simpsonwood, there was an “aura” about the importance of the scientific evidence uncovered by Verstraeten, but remarkably they all then agreed to conceal the credible evidence of  vaccine safety uncovered by Verstraeten to avoid “litigation”, violating federal and state laws that required the immediate disclosure of the evidence of hidden vaccine dangers uncovered by CDC, for the very childhood vaccines being mandated upon children in the United States in order to attend school, and in this case injured BABY DOE. NYS PHL 2164, school required vaccines [“2164”]. *See Exh. Two, Simpsonwood Transcripts, pg. 258-259*

6. PLAINTIFFS allege the 2000 Simpsonwood Agreement quickly expanded into a full blown conspiracy to cover up any research findings adverse to MERCK’s school required vaccines, and led to the tampering with scientific evidence and concealment of damaging CDC research results in not one, but two CDC studies; the now exposed 2004 Atlanta Autism Study<sup>2</sup> and completely, non credible 2002 Danish Autism Study<sup>3</sup>

7. PLAINTIFFS allege both the CDC 2004 Atlanta Autism Study and 2002 Danish Autism Studies research results were tampered with and the results falsified by MERCK and  GERBERDING while at CDC, and then the sanitized and manipulated versions were published in Pediatrics and the New England Journal of Medicine.

8. PLAINTIFFS allege co-Defendants MERCK and GERBERDING worked in concert and with knowledge, and manipulated the research results in the Atlanta and Danish studies, and then furnished falsified evidence to RESPONDENT HHS during 2002-2010 Omnibus Autism

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<sup>2</sup> DeStefano, et.al, Age at first measles-mumps-rubella vaccination in children with autism and school-matched control subjects: a population-based study in metropolitan Atlanta, *Pediatrics*, Feb 2004, Volume 113, Issue 2, 259-66, (hereinafter “2004 Atlanta Autism Study”)

<sup>3</sup> Meldgaard, et.al. A Population-Based Study of Measles, Mumps, and Rubella Vaccination and Autism, *New England Journal of Medicine*, November 7, 2002, 347: 1477-1482 (hereinafter “2002 Danish Study”).

Proceedings [“OAP”], in opposition to BABY DOE’s test case petition, as proof the MMR vaccine is safe for children and not associated with autism.

9. To the contrary, MERCK’s dangerous and ineffective FDA licensed MMR vaccine not only injured BABY DOE, but continues to threaten PLAINTIFFS and New Yorker’s at large, by preventing the availability of a safer and more effective vaccine that can actually protect and promote overall public health, than MERCK’s current FDA licensed MMR vaccine that is clearly not doing the job.

10. The overuse of vaccinations in the United States cannot be understated, and the risks are of great consequence to PLAINTIFFS and the public, because manipulating disease for profit without liability is a dangerous practice, and there are very real risks associated with the shedding of the live viruses from the MMR, and possibility of transmissions to others, for an “unavoidably unsafe” vaccine that does not work.

11. The practice of vaccinating is dangerous, and there is a very real risk of the live MMR vaccine combining with the wild version naturally occurring in the environment, leading to the creation of a vaccine resistant superbug out of a formerly, benign childhood illnesses that no vaccine is effective against.

12. MERCK’s FDA-licensed MMR targets children with a vaccine that does not work, and causes brain damage in some children, and poses a very real threat from shedding to individuals like PLAINTIFFS, who are at a greater risk for vaccine injury whether through injection or secondary exposure, and have already been seriously injured by the knowingly defective and ineffective MMR vaccine.

13. PLAINTIFFS seek for this Court enjoin MERCK’s MMR FDA license that caused their injuries alleged in the Complaint, and continues to threaten PLAINTIFFS’ health to prevent

irreparable harm.

14. PLAINTIFFS allege they are members of a class of persons who are different, as compared to others in similarly situated in New York State, and that they are at a greater risk and genetically pre disposed to a heightened injury from the MMR through shedding of the live vaccine.

15. PLAINTIFFS' allege, but for the fraud and conspiracy to commit fraud by Defendant MERCK and the CDC and FDA scientists who met at Simpsonwood, BABY DOE would not have been vaccine injured in the first place, and/or he would have received VICP compensation for his injuries allegedly caused by MERCK's "MMR vaccine, the preservative Thimerosal or a combination of both" mandated upon him under §2164 in order to go to school.

16. At Simpsonwood in June 2010, Dr. Verstraeten had presented to his fellow researchers and scientists at CDC, FDA and the pharmaceutical representatives who had all been summoned to the emergency meeting, a model he had created showing a strong association between neurologic developmental disorders and exposure to the mercury based preservative Thimerosal being used in some of the school required vaccines in the United States. <sup>4</sup>

17. In response, the key government and industry leaders quickly convened at Simpsonwoods to discuss the potentially devastating findings of Dr. Verstraeten's model demonstrating a statistically significant association with vaccines and neurological developmental disorders, for example, autism in children. *See Exh. Two, Simpsonwood Transcript at 41-42.*

18. These were devastating research findings uncovered by Dr. Verstraeten of potential vaccine harm being caused by school required vaccines to children in the United States, and it was evidence concealed from Defendant Secretary of HHS and the Special Masters during the OAP by the CDC, FDA and MERCK scientists, because it was damaging evidence adverse to

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<sup>4</sup> Upon information and belief, MERCK's vaccines that Baby Doe received did not contain Thimerosal.

MERCK's FDA licensed MMR vaccine.

19. On July 10, 2000, about a month after the Simpsonwood Agreement was formed, in Queens, New York, BABY DOE's medical records show he received a series of vaccines mandated under §2164 to attend school, and began to regress into autism.

### **SUBJECT MATTER JURISDICTION**

21. This Court has jurisdiction pursuant to 42 U.S.C. § 300aa-22-23 & 31 of the National Vaccine Injury Act, 1986, ["Vaccine Act"]; Citizen's Actions; 42 U.S.C. § 1983; Civil Action for Deprivation of Rights; and 28 U.S.C. § 1331, Federal Question Jurisdiction.

### **VENUE**

22. Pursuant to 31 § U.S.C. § 3732(a), venue is proper in the Eastern District of New York. Defendant MERCK engages in substantial business transactions in Queens County.

23. MERCK is a multi-national pharmaceutical company headquartered at 2000 Galloping Hill Road, Kenilworth, New Jersey, 07033.

24. For more than forty years, MERCK has had a de-facto exclusive license from the Food and Drug Administration ["FDA"] to manufacture and sell the MMR vaccine (which comes in trivalent and quadravalent compound) in the United States.

25. MERCK is the exclusive provider of the MMR vaccine for all children in the United States, and is a leading seller of childhood vaccines around the world. Upon information and belief, MERCK's annual revenue estimates exceed \$42 billion.

<http://www.merck.com/about/our-history/facts/home.html>

## PARTIES

26. BABY DOE is a seventeen year old autistic, minor-Plaintiff suffering from vaccine-induced autism, and at all times relevant living in Queens, New York.
27. Plaintiff JANE DOE, is the natural parent and guardian of BABY DOE, and at all times relevant, living in Queens, New York.
28. Defendant MERCK is a multi-national, pharmaceutical corporation headquartered in New Jersey which currently markets twelve (12) of the leading seven (17) vaccines recommended by the Centers for Disease Control [“CDC”] for school aged children ages 2 – 17 years old.
29. Defendant Health and Human Services [“HHS”] is composed of the CDC and FDA. HHS was the designated Respondent in the 2002-2010 Omnibus Autism Proceedings [“OAP”] and was authorized to be sued for the vaccine injuries under the 1986 No-Fault Vaccine Injury Compensation Program [“VICP”] in the United States Court of Federal Claims pursuant to the Vaccine Act. *See 42 U.S.C. §§ 300aa-1 to 300aa-34.*
30. Defendant Madame Secretary of HHS, Sylvia Mathews Burwell, [“SECRETARY BURWELL”] was appointed to her current position in 2014, and is named as a Defendant in her official capacity, as the person in charge of the federal agency overseeing the CDC and the FDA, and has been authorized to be sued in this action pursuant to the Vaccine Act of 1986, 42 U.S.C. §§ 300aa-1 to 300aa-34.
31. Defendant ROBERT M. CALIF, MD, is the Commissioner of the Food and Drug Administration [“FDA”], and division of HHS, and named herein as Defendant in his official capacity, and the person in charge of overseeing MERCK’s FDA-issued MMR vaccine license.
32. Defendant GERBERDING is currently the Executive Vice President of Strategic

Communications, Global Public Policy and Population Health for MERCK, and is named herein as an individual Defendant. GERBERDING is a medical doctor and former Director of the Division of Healthcare Quality Promotion at CDC from 1998 – 2002. GERBERDING became the Director of the CDC from 2002-2009, and subsequently accepted a position with MERCK as Director of Global Vaccines in 2010.

### **NOTICE OF INTENT TO SUE**

33. On or about November 2, 2015, PLAINTIFFS served on SECRETARY BURWELL of HHS a sixty day Notice of Intent to Sue. *See Exh. One, Notice of Intent to Sue.*

### **CEASE AND DESIST**

34. On July 20, 2016, PLAINTIFFS sent Defendants MERCK and GERBERDING a Cease and Desist letter advising Defendants of the filing of this lawsuit, providing a copy of the Complaint requesting Defendants take voluntary, corrective measures required under federal law and FDA licensing regulations, agreed to by MERCK as a condition of the FDA-issued MMR license, and to voluntarily suspend the sale, distribution or recommended use of the MMR pending the outcome of the litigation. *Exh. Three, July 12, 2016 letter to MERCK and GERBERDING.*

35. Absent MERCK's compliance and willingness to take corrective measures required by FDA's licensing of the MMR vaccine, PLAINTIFFS advised Defendants MERCK and GERBERDING they will file for a preliminary injunction to restrain FDA license for the MMR issued to MERCK, and to restrain the sale, distribution and or recommended use of the MMR in the State of New York pending the outcome of the lawsuit.

## PROOF OF CONSPIRACY

36. PLAINTIFFS allege the Simpsonwood Agreement led to BABY DOE's vaccines injuries, and the fraud at CDC between 2002 and 2010 to protect MERCK's FDA MMR license, and the same fraud and conspiracy is continuing today with the FDA licensed MMR vaccine causing PLAINTIFFS their irreparable harm.

37. GERBERDING now at MERCK, is continuing with the scientific fraud that began at CDC in the Autism and Danish Studies, in violation of §33 of the Vaccine Act, causing PLAINTIFFS' injuries and irreparable harm by continuing to insist MERCK's MMR is safe and is efficacious, which it is not.

38. The Complaint alleges prior to joining MERCK in 2010, and being promoted to Executive Vice Present in 2014, GERBERDING was assisting MERCK in protecting it's "no fault" monopoly over the MMR vaccine while at the same time over-seeing the vaccine-autism research studies being undertaken at CDC, at the behest of Defendant Secretary of HHS, in response to the explosion of autism rates in children in the United States. *See CDC Data & Statistics Autism Spectrum Disorder <http://www.cdc.gov/ncbddd/autism/data.html> (last retrieved 7/11/16, and also "When 1 in 88 is really 1 in 29, Marcella Piper Terry: <http://vaxtruth.org/2012/04/when-1-in-88-is-really-1-in-29/> (last retrieved 7/11/16);*

39. PLAINTIFFS allege in the Complaint they were doubly damaged in the conspiracy by their vaccine injuries and the denial of VICP compensation in Vaccine Court, caused by the alleged conspiratorial conduct and fraud of the Defendants, and are being irreparably harmed now by the falsification of same MMR safety and efficacy evidence that was proffered into evidence by RESPONDENT HHS in the OAP, and is today part of the FDA license approval

granted for the MMR in October of 2015.

40. Defendants MERCK and GERBERDING knew the MMR vaccine did not work in preventing the control or spread of childhood illnesses as falsely claimed, and Defendants MERCK and GERBERDING knew the MMR instead was causing brain injuries in some children with certain mitochondrial disorders, MTHFR mutations, or who were otherwise not suitable for the vaccinations, and together MERCK and GERBERDING worked in concert with knowledge and intent to harm to conceal the scientific evidence linking vaccines to autism, proximately causing PLAINTIFFS' injuries and irreparable harms alleged in this Complaint.<sup>5,6</sup>

#### **2004 IOM REPORT RECOMMENDATIONS**

41. In May of 2004 the Institutes of Medicine ["IOM"], consisting mostly of doctors and scientists with strong financial ties to the pharmaceutical industry, issued a report recommending against any further government, vaccine-autism research declaring the MMR to be safe, while remarkably at the same time, an estimated 5,400 OAP vaccine injury cases were pouring into the Vaccine Court alleging vaccine-induced autism seeking VICP compensation. *See 2014 IOM Report* <http://www.ncbi.nlm.nih.gov/books/NBK25349/> (last visited July 7, 2016).

42. The May *2004 IOM Report* recommended against any further government vaccine-autism research, purportedly relying upon on a "body of evidence" that was based upon the research results being manipulated by the co-conspirator  ERCK and GEBERDING at CDC, and the

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<sup>5</sup> See <http://www.cambridgepublichealth.org/news/article.php?id=172> (last retrieved 7/11/2016) re: At Harvard, 99% of undergraduate students and 98% of graduate students meet all state immunization requirements and have received two doses of the vaccine.

<sup>6</sup> <http://www.ageofautism.com/2015/02/measles-hysteria-the-truth-about-a-non-epidemic-in-eight-simple-slides.html> (last retrieved 7/11/16).

vaccine autism researchers who worked for GERBERDING, who co-authored the now discredited 2004 Atlanta Autism Study, exposed as fraudulent by the study's co author, CDC Whistleblower Dr. William Thompson; and the completely non credible 2002 Danish Autism Studies, authored by the now fugitive and indicted felon Dr. Poul Thorsen, who allegedly stole the childhood autism research monies, and is now wanted by the FBI.

43. The 2004 IOM Report, and the Atlanta and Danish studies were designed by MERCK and GERBERDING, while GERBERDING was still Director of CDC, and were part of the “body of evidence” relied upon by IOM in the 2004 Report, declaring the MMR to be safe for children, when the newly discovered evidence PLAINTIFFS offer in this Complaint demonstrates the MMR is anything but safe, and MERCK and GERBERDING knew in 2004 the MMR was not safe or effective when IOM issued its report as the cover for their research fraud.

44. The May 2004 IOM Report was engineered by MERCK as part of the scheme to conceal the evidence of vaccine harm caused by the MMR being uncovered by CDC, and to snuff out any other research or scientific evidence being discovered outside of CDC, by independent researchers who were making similar findings like Verstraeten of vaccine harm, recommending for more not against, further research into the vaccine-autism connection being completely discounted by the IOM in the 2004 Report.

45. The May 2004 IOM Report was created to be the publically, issued statement putting everyone on notice the MMR vaccine was safe, and according to CDC Whistleblower Dr. William Thompson was part of the cover-up, and issued to close the door on CDC vaccine-autism research while the 5,400 OAP test cases were pending in Vaccine Court “setting the research 10 years behind”. *Exh. Four, CDC Whistleblower transcripts, recordings of Dr.*

Thompson's statements, pg. 17, ln. 493.

46. The 2004 IOM Report stated:

*“The committee concludes that much more research must be conducted on autism. However, research should be directed towards those lines of inquiry most supported by the current state of knowledge. The vaccine hypotheses are not currently supported by the evidence....*

*“From a public health perspective the committee does not consider a significant investment in studies of the theoretical vaccine-autism connection to be useful at this time.”*

*“Committee concludes” no more research needed.”*

*“Even recommending research is recommendation for policy.”*

(2004, IOM Report, See <http://www.nap.edu/read/10997/chapter/2#7>)

47. MERCK then went after the medical licenses and physician practices of any medical doctor or researcher outside of CDC, who even suggested further research into the possibility of autism being caused by school required vaccines. [REDACTED] well aware all along of the hidden vaccine dangers in the school required vaccines, and knowing fully-well of the MMR vaccine's failed efficacy.

48. In 2007, three years after the 2004 IOM report was issued the first of the six OAP test case hearings was held, *Cedillo vs. HHS*, alleging vaccine induced autism. See *Cedillo v. HHS*, 617 F.3d 1328 (Fed. Cir. 2010)

49. In 2010, all the OAP petitions were dismissed for “failing to establish a medical theory connecting the vaccine to the injury” required under the *Althen* three prong test for VICP Compensation, See *Althen vs. HHS.*, and in 2011 all the appeals were denied

50. In 2010, GERBERDING took a position at MERCK as Director of Global Vaccines, upon information and belief, the *quid pro quo* and reward for her role in the conspiracy while at CDC; her reward for her part in the alleged tampering with scientific evidence CDC furnished

to RESPONDENT HHS admitted in opposition to the OAP test cases, and for her part in the manipulated CDC 2004 Atlanta Autism Study , and completely non credible findings in the 2002 Danish Autism Studies, all of which comprised the “body of evidence” cited by IOM in the 2004 Report, declaring the MMR vaccine safe for children, causing PLAINTIFFS’ injuries for fraud, and conspiracy to commit fraud alleged in this Complaint.

### **VACCINE INJURY COMPENSATION PROGRAM [“VICP”]**

51. In the United States of America, vaccine injuries in children do commonly occur. Since 1986, when what is commonly referred to as the “Vaccine Court” was first established, the VICP has awarded \$3.3 billion dollars in compensation to individuals injured by vaccines, including compensation for serious injuries, paralysis, autism and death<sup>7</sup>. *See Althen v. Sec’s of Health & Human Servs., 418 F.3d 1274 (Fed. Cir. 2005) (Medical science is “a field bereft of complete and direct proof of how vaccines affect the human body.”)*

52. There have been few government funded studies done on the effects of mass vaccinations on children's health in the United States. No studies on the safety and efficacy of current vaccination schedule mandated under §2164 exist. No longitudinal studies comparing vaccinated children with non vaccinated have been undertaken by CDC.

53. Information of alleged failed vaccine efficacy has been known to CDC scientists and US health officials for decades for the very vaccines that are causing the irreversible brain injuries, paralysis, allergies and death being compensated in the VICP. *See Poling v. HHS, 02-1466V (conceding vaccines induced autism in child petitioner).*

54. Many vaccines children receive in the United States are made overseas in China and

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<sup>7</sup> <http://www.hrsa.gov/vaccinecompensation/statisticsreport.pdf> (last visited on June 2, 2015).

Japan that are purportedly shipped refrigerated to New York for children to inject, drink and snort in order to attend school, and the risks of vaccinating for the more benign childhood illnesses targeted by many of the childhood vaccinations arguably outweigh the benefits.

55. The laboratories making the vaccines for the pharmaceutical companies are often unsanitary and fined for safety violations, and produce millions of cheaply manufactured “unavoidably unsafe” vaccines with liability for mistakes and defects, *See Bruesewitz v. Wyeth LLC*, 131 S. Ct. 1068 (2011), (the Supreme Court held in *Bruswetz* that Congress had set up a special vaccine court as a way to provide compensation to injured children without driving drug manufacturers from the vaccine market).

56. Yet the MMR vaccine is so lucrative a product MERCK hardly needs a no fault liability shield to stay in the market. In *Brusewetz* in 2011, the Supreme Court upheld the Vaccine Act’s no fault liability provisions of the Vaccine Act.

57. Three significant cases and the 1986 Vaccine Act form the basis of vaccine law and jurisprudence in the United States: *Jacobson v. Massachusetts*, a landmark 1905 Supreme Court decision establishing “police power” to force vaccine; *Zucht v. King*, a 1922 Supreme Court case, applying to school required vaccines; and *Bruesewitz v Wyeth*, a 2011 Supreme Court case upholding pre-emption and no fault liability provisions of the 1986 Vaccine Act.

58. Together, these cases and the Vaccine Act have had the peculiar effect of completely abrogating ordinary tort law protections in the United States, namely the right to sue pharmaceutical companies directly for injuries caused by the school required vaccines mandated in New York State under §2164.

## **FACTS OF COMPLAINT**

59. The Complaint alleges after Simpsonwood, MERCK recruited GERBERDING at CDC, and she in turn recruited the CDC vaccine-autism researchers who worked under her supervision and control, including CDC Whistleblower Dr. William Thompson, a co author of the now exposed 2004 Atlanta Autism Study, and author of the 2002 Danish Autism Study fugitive CDC autism-vaccine researcher Dr. Poul Thorsen, one of America's Ten Most Wanted by the FBI.

60. GERBERDING allegedly aided and abetted MERCK and was responsible for the CDC's fraudulent vaccine autism research results admitted in the OAP in opposition to BABY DOE's test case, and was illegal evidence manufactured by GERBERDING at CDC to effectuate the civil conspiracy alleged in this Complaint, and to protect MERCK's position as the industry leader in the wildly, profitable "no fault" childhood vaccination program in the United States, that injured BABY DOE.

61. The names of CDC vaccine-autism researchers that worked for GERBERDING, and co-authors of the study are:

**2004 ATLANTA AUTISM STUDY**

*Dr. William W. Thompson, CDC Whistleblower*

*Dr. Frank DeStefano*

*Dr. Tanya Karapurkar Bhasin*

*Dr. Marshalyn Yeargin-Allsopp*

*Dr. Coleen Boyle*

62. The unprecedented, and dramatic rise in autism in the United States at the turn of the century corresponded with the number of childhood vaccines required to attend school, that has tripled between 1986 and 2000 after the "no fault" liability 1986 Vaccine Act was passed.

*Various Petitioners v. HHS: Autism Master File, Autism General Order #1, filed July 3, 2002.<sup>8 9</sup>*

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<sup>8</sup> <http://www.uscfc.uscourts.gov/sites/default/files/autism/Autism+General+Order1.pdf> (last visited 06/20/2016).

<sup>9</sup> <http://www.cdc.gov/vaccines/schedules/hcp/imz/child-adolescent.html>

63. The vaccine-autism researchers who worked under GERBERDING's supervision and control at CDC, were authorized to conduct the childhood vaccine research studies as part of a federal response to the thousands, and thousands of parents alleging MERCK's MMR vaccine, the mercury-containing preservative Thimerosal or a combination of both that had injured their perfectly, healthy and normally developing children. *See General Order #1 See Various Petitioners v. HHS: Autism Master File, filed July 3, 2002,*

64. Defendants MERCK and GERBERDING worked together to allegedly sabotage the OAP cases, and are now continuing the alleged fraud in derogating their duties and obligations to Defendant Madame SECRETARY BURWELL, and together Defendants MERCK and GERBERDING are violating state and federal laws, and the terms of FDA's MMR license, for their own pecuniary benefit, proximately causing PLAINTIFFS injuries and irreparable harms alleged in the Complaint.

#### **2002-2010 OMNIBUS AUTISM PROCEEDINGS (OAP)**

65. SECRETARY BURWELL had been identified and authorized by Congress under the 1986 Vaccine Act to be named as RESPONDENT HHS in the 2002- 2010 Omnibus Autism Proceedings [OAP].

66. Between 2002 and 2010, BABY DOE's OAP VICP petition and approximately 5,400 other petitions were filed for VICP compensation alleging vaccine induced autism following the administration of school required vaccinations.

67. In July of 2002, General Order #1 was issued by the Special Masters forming the Omnibus Autism Proceedings ["OAP"] combining all 5,400 petitions together, and authorizing a Petitioners' Steering Committee to select six test case petitions representative of all 5,400

petitioners.

68. The stated purpose of the OAP in General Order #1 was to determine “if vaccines cause autism and if so under what conditions.”

69. The OAP consisted of six test cases, in which three Special Masters would hear general and specific causation evidence. BABY DOE’s test case was selected in 2007, shortly before the hearings were to begin, and was substituted for the formerly selected Hannah Poling case, that was settled in 2007 with the government conceding Hannah’s autism had been vaccine induced. *See Autism General Order #1, issued July 3, 2002. See Hazlehurst v. HHS, 604 F.3d 1343, (Fed. Cir. 2010) Poling v. HHS, No. 02-1466V (2011) Cedillo v. HHS, 617 F.3d 1328 (Fed. Cir. 2010) Dwyer v. Sec’y, HHS, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); King v. Sec’y, HHS, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); Mead v. Sec’y, HHS, No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).*

70. By June of 2010, every OAP VICP petition, except for *Poling vs. HHS*, was dismissed for “failing to establish a medically acceptable, scientific theory of causation” and for failing to establish a mechanism demonstrating how vaccines can induce autism, *See Althen vs. HHS. Poling v. HHS, No. 02-1466V (2011) Cedillo v. HHS, 617 F.3d 1328 (Fed. Cir. 2010).*

**POLING vs. HHS**  
**GOVERNMENT CONCEDES VACCINE INDUCED AUTISM**

71. Upon information and belief, in about 2004 Hannah Poling’s OAP test case was selected by Petitioners’ Steering Committee, as representative of the other 5,400 OAP petitioners who had survived the statute of limitations, and were all seeking OAP VICP compensation under the Vaccine Act, and all of the petitions were alleging similar injuries of vaccine induced autism in

formerly, normally healthy children prior to vaccinating.

72. Upon information and belief, *Poling*'s case had been originally selected as a potential test case petition, but was then settled in 2007 in a confidential agreement, with RESPONDENT HHS conceding the vaccines Hannah received on July 17, 2000, had caused her vaccine induced autism, and for some strange reason Hannah's case was then removed as an OAP test case, and replaced with BABY DOE's test case in 2007. See *Order Deferring Motion for Complete Transparency, e-filed April 10, 2008, Poling vs. HHS*.<sup>10</sup>

73. In *Poling vs. HHS*, Andrew Zimmerman M.D., who had appeared as the government's expert witness in five of the six other test cases, also happened to be Hannah's treating physician and her expert witness in her OAP case.

74. In *Poling vs. HHS*, Dr. Zimmerman had diagnosed Hannah with "regressive encephalopathy with features of autism spectrum disorder." Id.

75. In *Poling vs. HHS*, Dr. Zimmerman issued an expert report on November 30, 2007, explaining causation concluding Hannah's autism had been vaccine induced the result of a "metabolic overload" and "vaccine induced fever." Id.

76. RESPONDENT HHS however continued to assert as evidence in the OAP, the opinion of Dr. Zimmerman rendered in the first test case of *Cedillo vs. HHS*, finding no causation, even though RESPONDENT HHS was in possession of Dr. Zimmerman's expert report and opinion in the *Poling* case, which detailed the mechanisms linking Hannah's vaccines to vaccine-induced autism, i.e., "metabolic overload" and "vaccine induced fever."

77. In accordance with the OAP General Order #1, all of the evidence in any of the other test cases was required to be incorporated as evidence in the other test cases.

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<sup>10</sup> <http://www.uscfc.uscourts.gov/sites/default/files/opinions/CAMPBELL-SMITH.POLING041008.pdf> (last visited July 7, 2016)

78. DOJ attorney Vincent J. Matonoski was the lead trial attorney in the OAP, and Dr. Zimmerman was the primary government expert witnesses in the field of child neurology for HHS.

79. During his closing argument in the hearing for OAP test case petitioner *Hazlehurst vs. HHS*, Attorney Matonoski misleadingly argued to the Court as follows:

*"Dr. Zimmerman actually has not appeared here, but he has given evidence on this issue, and it appeared in the Cedillo case. I just wanted to read briefly because his name was mentioned several times by Plaintiffs in this matter. What his views were on these theories, and I'm going to quote from Defendant's Exhibit FF in the Cedillo case, which is part of the record in this case as I understand it:*

*"There is no scientific basis for a connection between measles, mumps and rubella MMR vaccine or mercury intoxication in autism despite well intentioned and thoughtful hypotheses and widespread beliefs about apparent connection with autism and regression. There's no sound evidence to support a causative relationship with exposure to both or either MMR and / or mercury. (emphasis added)*

*We know his views on this issue."*

*Exh. Five, Transcript Hazelhurst vs. HHS, Court of Federal Claims Attorney Vincent Matanoski's closing, page 695, line 19).*

80. Upon information and belief, approximately 3 weeks later, on November 9, 2007 the same Vincent Matanoski, of the U.S. Department of Justice signed the Rule 4-c report in what would have been the 4<sup>th</sup> test case in the OAP, *Poling v. HHS*.

81. The Rule 4-c Report which was approved for entry by Department of Justice attorneys Vincent Matanoski and Lynn Ricciardella concludes as follows:

*"...facts of this case meet the statutory criteria for demonstrating that the vaccinations CHILD received on July 19, 2000, significantly aggravated an underlying mitochondrial disorder, which predisposed her deficits in cellular energy metabolism, and manifested as a regressive encephalopathy with features of **autism spectrum disorder**.*

*Therefore, Defendant recommends that compensation be awarded to Plaintiffs in*

accordance with 42 U.S.C. 300aa-11(c)(1)(C)(ii).” [Emphasis Added]

See Order Deferring Motion for Complete Transparency, e-filed April 10, 2008, Poling vs. HHS.

### **ALTHEN STANDARD FOR VICP RECOVERY**

82. In *Althen* vs. *HHS*, 58 Fed. Cl. 270 (2003) the Court established a three prong test for VICP recovery. The Special Master held “*Althen*’s burden is to show by preponderant evidence that the vaccination brought about her injury by providing: (1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury. If *Althen* satisfies this burden, she is ‘entitled to recover unless the [government] shows, also by a preponderance of evidence, that the injury was in fact caused by factors unrelated to the vaccine.” (*Althen*, at 5.)

83. Respondent HHS, although obligated to disclose by General Order #1 Dr. Zimmerman’s expert findings adverse to MERCK’s MMR license, continued to assert as evidence in the OAP only the first opinion of Dr. Zimmerman written in the OAP test case *Cedillo* vs. *HHS* finding no causation, and offered instead into evidence the falsified 2004 Atlanta Autism Study results and 2002 Danish Autism Studies results manufactured by MERCK and GERBERDING at CDC, in furtherance of the conspiracy, to protect MERCK’s “no fault” monopoly over the FDA-issued MMR vaccine license.

84. Upon information and belief, the vaccinations Hannah received on July 19, 2000 were the MMR and at least one Thimerosal containing vaccine. The phrase “significantly aggravated an underlying mitochondrial disorder” is another  of saying “significant aggravation of a pre-existing condition,” which is legally a form of causation under the National Childhood Vaccine

Injury Act (42 U.S. Code § 300aa–22).

85. After *Poling*'s case was settled in 2007, the OAP continued but without Dr. Zimmerman's expert report explaining the mechanisms of how "metabolic overload" and "vaccine induced fever" can cause autism satisfying the *Althen* Standard for recovery and VICP compensation.

86. Instead of Dr. Zimmerman's expert report in *Poling*, the *Atlanta* and *Danish* studies manipulated by MERCK and GERBERDING, were relied upon by the Special Masters in their respective Opinions dismissing the OAP for petitioners' failure to establish under *Althen* "a medical theory causally connecting the vaccination and the injury." See *Hazlehurst v. HHS*, 604 F.3d 1343, (Fed. Cir. 2010) *Poling v. HHS*, No. 02-1466V (2011) *Cedillo v. HHS*, 617 F.3d 1328 (Fed. Cir. 2010) *e Dwyer v. Sec'y, HHS*, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *King v. Sec'y, HHS*, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *Mead v. Sec'y, HHS*, No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

87. BABY DOE, very much like Hannah Poling, had been seriously injured by a battery of school required vaccines he received on July 10, 2000, a month after the Simpsonwood.

88. However, very much unlike Hannah Poling, who had also received her vaccines in July of 2000 the month after Simpsonwood, BABY DOE's test case would be dismissed by the Special Master on March 12, 2010 in a 310 page decision holding, in part, on page 3:

*"After considering the record as a whole, I find that petitioners have failed to establish by preponderant evidence that [name removed] condition was caused or significantly aggravated by TCVs. They failed to demonstrate either that the mercury component of TCVs can cause ASD or that it did so in [name removed] case. None of the causation hypotheses advanced were reliable as medical or scientific theories.*

*...The [Petitioners] witnesses setting forth this improbable sequence of cause and effect were outclassed in every respect by the impressive assembly of true experts in their respective fields who testified on behalf of respondent. Therefore, I hold that petitioners*

*have failed to establish their entitlement to compensation, and their petition is denied.”*

*See CD v. Sec’y, HHS, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010);*

89. Upon information and belief, BABY DOE’s case had been selected by Petitioner’s steering committee as the sixth test case after *Poling* settled because of the strength of his test case evidence, and regrettably because of the seriousness of his injuries the on-set of which followed a series of vaccines received in July 2000, a month after Simpsonwood.

90. The district Court in this case applying the *Althen* Standard for recovery applicable to the VICP, and considering the expert findings of Dr. Zimmerman in *Poling*’s settlement, and discounting the *Atlanta* and *Danish* Studies, would more likely than not find by a preponderance of evidence, OAP petitioners have established a “medically acceptable scientific theory of causation” entitling them to VICP compensation available under the Vaccine Act. *See Althen vs. HHS*

**HAZELHURST vs. HHS, OAP TEST CASE**  
**PETITIONER’S MITOCHONDRIAL DISORDER**

91. In another OAP test case, *HAZELHURST vs. HHS*, Dr. Zimmerman appeared again but this time as the government’s expert witness. *See Hazlehurst v. HHS, 604 F.3d 1343, (Fed. Cir. 2010).*

92. Dr. Zimmerman’s diagnosis of test case petitioner *Yates Hazlehurst*’s neurological condition was “regressive encephalopathy with features of autism spectrum disorder,” which is word for word the exact same neurological diagnosis of Hannah Poling by Dr. Zimmerman, which the government conceded in the *Poling* Rule 4-c report caused Hannah’s injuries.

93. Upon information and belief, Dr. Zimmerman had diagnosed at least one other OAP

petitioner he treated later in 2009 for vaccine-induced autism, making a similar diagnosis of that child having “vaccine-related encephalopathy with features of apraxia and autism.”

94. Subsequent extensive tests conclusively show that *Poling, Hazlehurst and Cedillo* CHILD petitioners, all had mitochondrial disorder. The other OAP CHILD petitioner never underwent testing for a mitochondrial disorder, but was found to have a double methylenetetrahydrofolate reductase [“MTHF”] mutation linked to vaccine-induced autism caused by “metabolic overload”<sup>11</sup>.

95. In 2009, *YH v. HHS* was heard before the United States Court of Appeals for the Federal Circuit upon an appeal requesting a remand.

96. During oral argument in *YH v. HHS*, while responding to the Court’s questions regarding the emerging scientific and medical evidence of whether vaccines can cause autism and what level of proof should apply for compensation, HHS’s Department of Justice attorney Lynn Ricciardella stated to the Justices that:

*“we’re not even at the stage where it’s medically or scientifically possible” to determine whether vaccines can cause autism.”*

*See Exh. Six, Hazelhurst vs. HHS, United State Court of Appeals for Federal Circuit excerpt transcript dated June 30, 2014.*

97. Lynn Ricciardella stated this despite the fact that she knew the opposite was true since she had signed a Rule 4-c report in the other case, *Poling vs. HHS*, conceding that Hannah Poling suffered autism as a result of a vaccine injury.

104) Lynn Ricciardella was allegedly in possession of Dr. Zimmerman’s opinion in *Poling* which expressed to a reasonable degree of medical certainty that the vaccine injury suffered by *Poling* caused her autism

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<sup>11</sup> <http://www.jpands.org/vol9no4/boris.pdf>

105) Lynn Ricciardella, on behalf of RESPONDENT HHS represented to the United States Court of Appeals for the Federal Circuit that “we’re not even at the stage where it’s medically or scientifically possible” to conclude that vaccines cause autism when their own expert witness contrarily concluded a vaccination injury caused *Poling's* autism.

106) In 2008, Hannah Poling’s father Dr. John Poling, a neurologist, went on CNN and explained to Dr. Sanjay Gupta how his daughter had a mitochondrial disorder, and that RESPONDENT HHS had settled his daughter’s case conceding her autism was vaccine induced, and that the United States government had compensated his daughter for her vaccine injuries during the OAP that were life-altering<sup>12</sup>. *See Order Deferring Motion for Complete Transparency, e-filed April 10, 2008, Poling vs. HHS.*

107) In 2010, Yates Hazelhurst’s father Rolf Hazelhurst, Esq., filed a Congressional Complaint, alleging fraud in the withholding of scientific evidence by RESPONDENT HHS in Dr. Zimmerman’s report, that demonstrated “a medical theory causally connecting the vaccination and the injury” that was described by Dr. Poling on CNN to Dr. Gupta in April of 2008, but was never admitted into evidence during the OAP.

108) Dr. Zimmerman’s expert report in *Poling* was unavailable to OAP test case petitioners during the Appeal, because it was not part of the lower court’s record during the hearings.

109) In 2010 test case *Hazelhurst vs. HHS* was dismissed and the appeal denied in 2011. *See Rolf Hazelhurst’ testimony before Congress and exhibits including Dr. Zimmerman’s expert reports; <https://www.scribd.com/doc/115393658/Andrew-Zimmerman>*

### **CEDILLO VS. HHS, SEALED LABORATORY EVIDENCE**

110) *Cedillo vs. HHS*, was the first of the six OAP test case heard by the Special Masters in

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<sup>12</sup> <https://www.youtube.com/watch?v=YxfqqsZ8BV0>

June of 2007. Child petitioner Michelle Cedillo had been diagnosed with a mitochondrial disorder commonly found in vaccine injured children.

111) In *Cedillo vs. HHS*, Defendant MERCK somehow was able to get access to Petitioner Cedillo's confidential laboratory evidence that was supposed to be part of her sealed medical records, prohibited from disclosure under the VICP and Court Rules. See 300aa-12(d)[(4)](A).

112) In *Cedillo vs. HHS*, on the eve of the hearing, MERCK furnished to RESPONDENT HHS a surprise witness British Doctor Steven Bustin, who was allowed to testify during the *Cedillo* hearing, although it was past the Court established deadline for the submission of new evidence to be considered by the Special Master in the test case.

113) Dr. Bustin was allowed to testify, and it was damaging testimony discrediting Cedillo's laboratory evidence that was the lynch pin of Child petitioner's theory of causation required under *Althen*.

114) Dr. Bustin's evidence was admitted into evidence without previous notice or disclosure to Petitioners in advance, and would have been inadmissible evidence in the district Court but was allowed in *Cedillo*, because there is no right of confrontation of witnesses in the Vaccine Court, and the Federal Rules of Evidence and Federal Rules of Civil Procedure do not apply in VICP hearings.

115) Upon information and belief, MERCK furnished Dr. Bustin to RESPONDENT HHS to attack Cedillo's OAP case, and to directly attack Petitioner's theory of causation to help tip the scales, further prejudicing the already out-resourced and "outclassed" OAP Child petitioner in *Cedillo*, hamstringing every other subsequent OAP test case that followed *Cedillo*. See *CD v. Sec'y, HHS, No. 03-1202V, 2010 WL 892250* (Fed. Cl. Spec. Mstr. Mar. 12, 2010)

116) In *Cedillo*, Dr. Bustin gave extensive testimony regarding the tests and procedures used in

the laboratory to determine whether *Cedillo* had evidence of a measles infection in her gut which Petitioners had alleged was more likely than not the cause of Michelle's injuries and autism.

117) Upon information and belief, at the same time MERCK was engaged in a smear campaign in Britain funding hack journalist Brian Deer, in a relentless and slanderous attack upon Dr. Andrew Wakefield, whose MMR research was also part of the record relied upon by CHILD petitioner in *Cedillo*. See <http://www.vaccinetruth.org/measles-in-the-gut.html>

118) In a published paper by Dr. Wakefield in Britain in 1998, Dr. Wakefield had found a vaccine-strain measles virus in the gut of measles-vaccinated children with autism, and recommended further research into the vaccine-autism connection, and then he was targeted by MERCK and Wakefield's medical license was revoked.

119) In the United States, fellow autism researcher Dr Jeffrey Bradstreet had made similar findings and presented evidence to the Institute of Medicine in 2004, showing vaccine-strain measles virus in the cerebral-spinal fluid of three children with autism and bowel disease which should not be found in central nervous system children, demonstrating the surfactants in vaccines can breach the blood brain barrier, allowing vaccine ingredients to gain access to the Central Nervous system.

120) Upon information and belief, in June of 2015, Dr Bradstreet's office was raided by the FDA, and a few days later his body was found in a river with a gunshot wound to the chest, police say was an apparent suicide.

121) MERCK provided Dr. Bustin to sabotage the OAP test cases to protect its "no fault" monopoly over the MMR vaccine, in furtherance of the conspiracy that injured PLAINTIFFS alleged in the Complaint.

122) The Court of Appeals was critical of the conduct of Department of Justice lawyers during

the OAP hearings and concurred with petitioner's counsel that "the government's failure to produce or even to request the documentation underlying Dr. Bustin's reports is troubling."

*Cedillo v. HHS, 617 F.3d 1328 (Fed. Cir. 2010)*

123) On February 12, 2009, Special Master Hastings dismissed *Cedillo's* test case holding with regard to the theory that some children are genetically hyper-susceptible to mercury toxicity he concluded that the "petitioners have failed to demonstrate that this theory has any validity" and incorporated into his rulings the now exposed, allegedly fraudulent and falsified 2004 Atlanta Autism Study findings, and the completely non credible 2002 Danish Autism Studies authored by fugitive Dr. Poul Thorsen.

### **CONGRESSIONAL INQUIRY NOT HAPPENING** **SAYS CDC**

122) On July 29, 2015, Rep. William Posey's addressed Congress about CDC Whistleblower Dr. William Thompson urging Congress to investigate statements and documents provided to him by Thompson's attorneys, relating to the alleged fraud in this Complaint of MERCK and GERBEDING, and the cover up of the now exposed 2004 Atlanta Autism Study, that examined the possibility of a relationship between the MMR vaccine and autism, found a relationship, then threw the evidence in a garbage can at CDC.

123) CDC then published a falsified version of the Atlanta Study results in 2004 in Pediatrics that was entered into evidence by RESPONDENT [REDACTED] during the OAP hearings. *See Vaxxed the Documentary, in camera access provided at the Court's request.*

124) Congressman Posey urged Congress to investigate and quoted a statement from CDC Whistleblower Dr. Thompson about the 2004 Atlanta Autism Study that was provided to his

office from Dr. Thompson's lawyers, he read on the floor of Congress on July 29, 2015, as follows:

*"All the authors and I met and decided sometime between August and September '02 not to report any race effects for the paper. Sometime soon after the meeting we decided to exclude reporting any race effects, the co-authors scheduled a meeting to destroy documents related to the study. The remaining four co-authors all met and brought a big garbage can into the meeting room and reviewed and went through all the hard copy documents that we had thought we should discard **and put them in a huge garbage can [emphasis added]**. However, because I assumed it was illegal and would violate both FOIA and DOJ requests, I kept hard copies of all documents in my office, and I retained all associated computer files. I believe we intentionally withheld controversial findings from the final draft of the Pediatrics paper."*

125) Congressman Posey, testified before Congress, those were Dr. Thompson's words that were provided to him from Thompson's attorneys,  the documents the CDC Whistleblower kept in his safe have not been made available to PLAINTIFFS.<sup>13</sup>

126) In a letter dated October 27, 2015, from Deana Morris, current Director of CDC's Washington, D.C.'s office, Ms. Morris allegedly refused to comply with Rep. Posey's request for answers in response to CDC Whistleblower Dr. Thompson's admissions that the CDC co-authors of the 2004 Atlanta Autism Study had thrown the original data sets from the study into a garbage can, and then concealed the destroyed evidence admitted into evidence in the OAP by RESPONDENT HHS, causing PLAINTIFFS' injuries for fraud, and conspiracy to commit fraud, against MERCK and GERBERDING alleged in this Complaint, *Exh. Seven, Letter from CDC to Rep. Posey, October 27, 2015*.

127) According to Ms. Morris, in a non-responsive letter dated October 27, 2015 back to Rep.

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<sup>13</sup> <http://www.c-span.org/video/?c4546421/rep-bill-posey-calling-investigation-cdcs-mmr-research-fraud> (last visited on 06/21/2016),  
[https://www.youtube.com/watch?v=uNWTOMei\\_6A](https://www.youtube.com/watch?v=uNWTOMei_6A) (last visited on 06/21/16),  
<https://www.youtube.com/watch?v=-3cyoJLGbTw> (last visited on 06/21/2016),  
<https://www.youtube.com/watch?v=gz6pQ0uiSM8> (last visited on 06/21/2016),  
[https://www.youtube.com/watch?v=F\\_NIq35UI4](https://www.youtube.com/watch?v=F_NIq35UI4) , (last visited on 06/21/16).

Posey, “CDC is not in a position to comment on any on-going review”, stating as follows:

*October 27, 2015*

*Dear Congressman Posey:*

*Thank you for your letter regarding your July 29, 2015, speech and your request for certain documents and materials. The Centers of Disease Control and Prevention (CDC) was aware that certain concerns had been raised regarding a 2004 Pediatrics article authored by CDC scientists. CDC takes any concerns about the integrity of our scientific work very seriously and is committed to reviewing such concerns consistent with applicable federal regulations and our agency’s existing policies and procedures. However, CDC is not a position at this time to comment on any ongoing review.*

*We value your commitment to public health and appreciate your support for protecting the public again vaccine-preventable diseases. If you have any further questions or concerns, please do not hesitate to contact Randy Katsoyannis in the CDC Washington Office at MKatsoyannis@cdc.gov or (202) 245-0600*

*Sincerely,*

*Dear  Moris*

*Id.*

128) Upon information and belief, according to CDC Whistleblower Dr. William Thompson, GERBERDING knew all about the fraud and destruction of evidence, and she too had failed to respond to earlier Congressional inquiries in 2004 into the Atlanta Autism Study involving her role among the "five authors" of the now exposed and allegedly fraudulent study, See *Vaxxed, from Controversy to Catastrophe, the Movie*.

129) A decade later in July of 2015, Rep. Bill Posey (R-Fla.) was urging Congress again to investigate claims that CDC had concealed a possible link between childhood vaccinations and autism uncovered in the 2004 Atlanta Autism Study, calling attention to CDC Whistleblower Dr. William Thompson who provided what Rep. Posey said was proof that the agency “intentionally withheld controversial findings” about the connection between the MERCK’s MMR vaccine and autism. *Id.*

- 130) Upon information and belief, Dr. Frank DeStefano, the CDC's Director of Immunization Safety and another co-author of the 2004 Atlanta Autism Study did not deny the allegations of Dr. Thompson but publically stated that "he plans to review his notes with an eye to reanalyzing the data.." [See <http://fox13news.com/2014/08/28/journal-questions-validity-of-study-linking-autism-and-vaccines/> last retrieved March 2, 2015].
- 131) Upon information and belief, CDC scientist another co-author of the 2004 Atlanta Autism Study Dr. Colleen Boyle had lied to Congress December of 2002 under oath when she previously reported the MMR vaccine is safe, and  is not associated with autism, when neither claim is truthful. [https://www.youtube.com/watch?v=F\\_NIq35U14](https://www.youtube.com/watch?v=F_NIq35U14)
- 132) GERBERDING who was supervising Dr. Boyle and the other researchers at CDC knew Dr. Boyle's statements to Congress were not truthful, because earlier that fall in 2012, Boyle and the co authors of the CDC 2004 Atlanta Autism Study had met in a conference room at CDC, under the direction and supervision of GERBERDING, threw the original data sets into a garbage can to conceal their research findings yielding a statistically, significant correlation between vaccines and autism, particularly in boys of African American descent who were part of the Atlanta Metropolitan Area Study.
- 133) GERBERDING allegedly instructed the CDC vaccine autism researchers in the 2004 Atlanta Autism Study two years earlier in 2002, to remove the data sets showing a positive "race effect" from the study findings, to reduce the statistical power of study's findings showing a statistically significant link between MMR and autism particularly prevalent in males under age three of African American descent who were part of the Atlanta metropolitan area study.
- 134) GERBERDING allegedly, instructed the CDC vaccine autism researchers to remove the

children from the study without birth certificates, which also happened to be race related, but kept in all other data sets that were part of the original study that showed no link between MMR and autism.

135) To be clear, GERBERDING removed from the study only the data sets showing a race effect, and were data sets yielding a statistically significant correlation between MMR and autism, particularly in African American little boys.

136) In a 2010 nationwide study of CDC's Autism and Developmental Disability Monitoring Network, the results found autism incidence about 25% higher in African Americans than Caucasians.

137) Again in 2010, a study in the Journal of Toxicology and Environmental Health showed that blacks were at significantly greater risk of regressing into autism after receiving the Thimerosal-containing Hepatitis B vaccination series as infants. When analyzed further, the data showed that black boys receiving the HepB series were 53% more likely to have autism than those black boys not receiving any shot.

138) In 2014, another study was published in *Pediatrics*, showed higher rates of all categories of autism among African Americans in Los Angeles County compared to Caucasians, with the incidence of severe autism elevated by 263% among foreign-born blacks and 152% for U.S. born blacks as compared to U.S. born whites.

139) Based upon all the population data and CDC's most recent autism incidence estimates, at least 100,000 African-American male children could have been spared debilitating neurological injury if the CDC scientists had told the truth when the increased risk was first known to them at least dating back to the Simpsonwood Agreement in June 2000, if not sooner.

140) GERBERDING and the other CDC autism researchers under her direction and control, not only worked together to falsify their research findings in the 2004 Atlanta Autism Study, and the 2002 Danish Autism Study, GERBERDING is still conspiring with MERCK scientists and executives in researching, developing, designing, licensing, manufacturing, distributing, selling, marketing, and/or introducing MERCK's MMR vaccine into interstate commerce in New York State, knowing all along the vaccines are not working as claimed, and causing autism in some children to protect MERCK's "no fault" monopoly over school required vaccines mandated on 5 and 7 year old children in this State under §2164, causing PLAINTIFFS' damages and irreparable harm alleged in this Complaint.

### **CLAIM FOR REFLIEF**

#### **COUNT ONE**

##### **MERCK's and GERBERDING'S Violation of the Vaccine Act**

141) PLAINTIFFS re-allege and incorporate by reference the preceding paragraphs as if more fully set forth herein.

142) PLAINTIFFS seek damages (general, specific, compensatory, exemplary, punitive, consequential and special damages) for their vaccine injuries, and alleged tampering with CDC's and MERCK's vaccine safety and efficacy evidence entered into evidence by RESPONDENT HHS during the OAP hearings, and is relief available to them under the Vaccine Act 42 U.S.C. § 300aa-23 TRIAL which provides in pertinent part that PLAINTIFFS must establish Defendants MERCK's and GERBERDING's:

(A) fraud or intentional and wrongful withholding of information from the Secretary during any phase of a proceeding for approval of the vaccine under section 262 of this title,

(B) Intentional and wrongful withholding of information relating to the safety or

efficacy of the vaccine after its approval, or

(C) Other criminal or illegal activity relating to the safety and effectiveness of vaccines, which activity related to the vaccine-related injury or death for which the civil action was brought.

143) MERCK scientists and GERBERDING have knowingly engaged in illegal fraudulent conduct and presented to SECRETARY BURWELL, to Congress and to the Special Masters in the OAP, falsified research information about  R safety and efficacy, and the co defendant/co conspirators MERCK and GERBERDING knew the MMR was not safe for children, and turned out to be significantly less effective than MERCK represented it to

144) Due to the willful and fraudulent misrepresentations of Defendant MERCK, the United States government is not receiving the product  it contracted to purchase. Instead, the product being licensed by FDA as the MMR vaccine was presented with overstated claims of efficacy and safety and was mislabeled, mishandled, adulterated and certified based upon such false representation, and is preventing the licensing of a safe and effective vaccine that protects the public health.

145) MERCK's ineffective and dangerous MMR vaccine is mandated upon children in all fifty states to attend school, and are being forced upon them through a *de facto* exclusive licensing agreement that MERCK enjoys as the sole pro  er, and distributor of the MMR vaccine in the United States causing PLAINTIFFS' irreparable harm by exposure to shedding of unnecessary childhood vaccine.

146) This results in millions of vaccines per year being purchased from MERCK and injected into school aged children who in turn may experience brain and other injuries, as BABY DOE

suffered after receiving the §2164 mandated vaccines in order to go to school in June of 2010, that allegedly does not work as claimed by MCK in its October 2015 FDA MMR license renewal.

- 147) Only in the United States is MMR mandated for children. It is also worth noting the entire nation of Japan stopped using the MMR vaccine. Government health chiefs in Japan claim a four-year experiment with MMR vaccine had serious financial and human costs. Of the 3,969 medical compensation claims in Japan relating to vaccines in the last 30 years, a quarter had been made by those badly affected by the combined measles, mumps and rubella vaccine.
- 148) The MMR was banned in Japan in 1993 after 1.8 million children had been given two types of MMR and a record number developed non-viral meningitis and other adverse reactions. Official figures show there were three deaths while eight children were left with permanent handicaps ranging from damaged hearing and blindness to loss of control of limbs.
- 149) PLAINTIFFS seek an injunction, damages, legal fees, and such other remuneration as the Court finds just and proper available under the Vaccine Act, *Citizen's Action for fraud*, and 42 *U.S.C. 1983*, alleging a deprivation of rights.

## **COUNT TWO**

### **Fraud & Conspiracy to Commit Fraud (against MERCK and GERBERDING)**

150) PLAINTIFFS re-assert and incorporate by reference the allegations set forth in the preceding paragraphs, as if more fully set forth herein.

151) PLAINTIFFS plead a cause of action to recover damages for a civil conspiracy, alleging fraudulent concealment and fraudulent misrepresentation of scientific evidence of vaccine safety and vaccine efficacy in violation of the Vaccine Act, and other federal and state laws, and was

scientific evidence known to exist, and known to be credible by the co-defendants, co-conspirators MERCK and GERBERDING.

152) PLAINTIFFS allege Defendants MERCK and GERBERDING are working in concert, and continuing now to conceal the scientific evidence uncovered by CDC of vaccine harm to children, and together Defendants MERCK and GERBERDING deceived PLAINTIFFS, deceived the Special Masters, deceived Congress and are deceiving MADAME SECRETARY BURWELL now with the current FDA MMR licensing, in furtherance of the conspiracy, causing PLAINTIFFS' injuries and irreparable harm alleged in the Complaint.

153) It would take more than ten years to expose GERBERDING and MERCK, and uncover a cover up to conceal, and misrepresent a body of credible scientific evidence linking MERCK's vaccines to autism, paralysis and even death by vaccination in children mandated to take the vaccines to attend school under NYS PHL 2164.

*Simpsonwood Agreement*

154) This Complaint alleges a conspiratorial agreement was formed between MERCK scientists and CDC and FDA scientists and doctors in June of 2000, when government and MERCK vaccine researchers first met at Simpsonwood to discuss evidence uncovered by a CDC researcher of linear relationship between Thimerosal exposure found in some school required vaccines and vaccine harm to children it was causing including brain damage.

155) This Complaint alleges fraud and conspiracy to commit fraud, and relies upon the specific words spoken between the government-industry vaccine policy makers who convened at Simpsonwood on June 7 & 8, 2000, and their agreement to keep Dr. Verstraeten's evidence of vaccine harm to children "out of let's say less responsible hands." *See Exh. Two, Simpsonwood Transcripts, pg. 256*

156) Upon information and belief, Dr. Verstraeten would later author another study in 2002 directly conflicting with the results of his original model's findings discussed at Simpsonwood, and it too was allegedly part of the cover-up, and conflicted with his original model presented in June of 2000, that were findings considered serious enough at the time to bring dozens and dozens of high ranking vaccine doctors and scientists from FDA and CDC and industry together for the emergency weekend meeting at Simpsonwood.<sup>14</sup>

157) On June 7 & 8, 2000, fifty-one physicians and scientists from MERCK, the CDC and FDA quickly assembled to discuss the evidence a CDC scientist found of a clear link between Thimerosal-containing vaccines, autism and other neuron-developmental disorders in children.

*See Simpsonwood Transcripts, pg. 31*

158) The transcript from the Simpsonwood Conference details a conspiratorial agreement formed by the attendees to prevent the public from learning about the linear relationship between Thimerosal exposure and autism. Dr. Bill Weil of the American Academy of Pediatrics noted:

*“the number of dose-related relationships are linear and statistically significant....They are statistically significant.” See Exh. Two, Simpsonwood Transcripts, pg. 207*

Dr. Weil also notes that the increase in autism is obviously environmental stating:

*“we don't see that kind of genetic change in 30 years.” See Exh. Two, Simpsonwood Transcripts, pg. 208*

159) Many of the participants were clearly worried about lawsuits against industry. Dr.

Robert Brent, development biologist and pediatrician from Thomas Jefferson University and

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<sup>14</sup> See Verstraeten, et. al., *Safety of Thimerosal-containing vaccines: a two-phased study of computerized health maintenance organization databases*, *Pediatrics*, November 2003, Volume 11, Issue 5, 1039-48.

the DuPont Hospital for Children, said, “the medical/legal findings in this study, causal or not, are horrendous....you could readily find nk scientist who will support the claim with a ‘reasonable degree of certainty.’” See *Exh. Two, Simpsonwood Transcripts, pg. 229*

160) Dr. Robert Chen, then Chief of Vaccine Safety for the CDC’s National Immunization Program, congratulated the group attending the Simpsonwood Conference stating:

*“we have been able to manage to keep it [this information] out of, let’s say, less responsible hands.” See Exh. Two, Simpsonwood Transcripts, pg. 256*

161) Dr. Roger Bernier, Associate Director for Science in the National Immunization Program, in summing up the meeting, said:

*“there was this aura that we were gaged in something as important as anything else we have ever done.” See Simpsonwood Transcripts, pg. 258*

162) One doctor announces as he is leaving the room that he is going to call his son whose wife has just given birth to a newborn grand n. He goes to warn not to give the infant any Thimerosal-containing vaccines stating:

*“...[I] do not want that grandson to get Thimerosal containing vaccine[s] until we know better what is going on. It will probably take a long time. In the meantime, and I know there are probably implications for this internationally, but in the meanwhile I think I want that grandson to only be given Thimerosal-free vaccines.” See Simpsonwood Transcripts, pg. 200*

He goes on to apply the precautionary principle for his family member, but not for the public at large.

*See Exh. Two, Simpsonwoods Transcript.*

*Quid pro quo*

163) The alleged co conspirator\co defendants MERCK and GERBERDING worked together to



help each other out while GERBERDING was still Director of CDC, and GERBERDING was rewarded with her high paying job in 2010 she immediately assumed after her job was done sabotaging the last OAP test case.

164) In 2010, GERBERDING quit CDC and joined MERCK as Director of Global Vaccines at the New Jersey headquarters and reaped her reward for her despicable conduct, and alleged illegal acts that hurt a generations of children forced to inject MERCK's dangerous MMR vaccine.

*Sine quo non*

165) In *Cedillo vs. HHS*, MERCK had somehow improperly gained access to *Cedillo's* confidential laboratory evidence and medical records, and then allegedly tampered with her OAP test case furnishing Dr. Bustin to RESPONDENT HHS, to directly attack *Cedillo's* theory that the presence of MMR in her gut had caused her alleged autism.

166) MERCK furnished Dr. Bustin to RESPONDENT HHS on the Friday before the Monday June 7, 2007 hearing was to begin, sandbagging the already anemic OAP petitioner *Cedillo* who was being "outclassed" by the government's "true" experts during the OAP. *See CD v. Sec'y, HHS, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010);*

167) As part of MERCK's scheme with GERBERDING to tamper with the CDC evidence admitted in opposition to the OAP test cases, MERCK was at the same time orchestrating the British attack on MMR-Autism researcher Dr. Andrew Wakefield, allegedly funding journalist Brian Deer's vicious campaign against his medical license, further tampering with the *Cedillo's* OAP test case because Dr. Wakefield's autism research was being relied upon by *Cedillo* as a theory for demonstrating a mechanism linking the MMR vaccine to vaccine induced autism.

*IOM Report 2004, No further vaccine-autism research necessary*

168) Out of the scientists who contributed to the 2004 IOM Report that misleadingly declared the MMR to be safe for children, the three researchers that recommended further research into the autism-vaccine connection Dr. Geier, Dr. Wakefield and Dr. Bradstreet were all injured.

169) Dr. Geier and Dr. Wakefield lost their medical licenses, and Dr. Bradstreet allegedly committed suicide after his office was raided  FBI and he was being investigated by FDA for about his autism research and treatments.

One of America's Top Ten Most Wanted Fugitives Still Doing CDC Research

170) In 1999, CDC hired a foreign scientist from Denmark Poul Thorsen who produced at least five different vaccine autism research studies published in the 2002  h Autism Studies in Pediatrics . 

171) Upon information and belief, Thorsen manipulated the research results by also removing data sets to achieve CDC desired results, and the Danish Studies were relied upon in the OAP by the Special Masters in dismissing BABY DOE's test case.

172) The eight year, long-term relationship CDC and Poul Thorsen research contract cost the American tax payer more than \$12 million.

173) In January 2009, when Gerberding left CDC, an investigation was launched both in Atlanta and at the Danish university where  sen worked. Soon it was discovered that Poul Thorsen stole between \$1-2 million of autism research money.

174) On April 13, 2011, the U.S. DOJ indicted Poul Thorsen on 22 counts of Fraud by forged instruments (falsified invoices on CDC letterhead, billed his Danish university, which wired money back to Thorsen's CDC federal bank account in Atlanta), and money laundering.

175) Defendant GERBERDING, in furtherance of the conspiracy, turned a blind eye to the

egregious fraud and theft of vaccine-autism research monies by indicted fugitive Poul Thorsen who was working under her auspices at all times relevant, a fugitive now living openly somewhere in Denmark, a criminal and author of the 2002 Danish Autism Studies that were admitted into evidence in the OAP, in opposition to BABY DOE's test case petition furnished to Respondent HHS by CDC.

176) Upon information and belief, Poul Thorsen is still being paid to do research for CDC, and his name has appeared on at least one study published by CDC, after his indictment by the grand jury for stealing the monies earmarked for the childhood vaccine study.

DC Data Sets connecting MMR to Autism thrown in garbage can at CDC

177) According to the CDC Whistleblower Dr. William Thompson, the co authors of the 2004 Atlanta Autism Study met in a conference room in the fall of 2002 at CDC headquarters, with a garbage can, and destroyed the data sets that showed a statistically significant causal link between MERCK's MMR vaccine and vaccine induced autism in some children, fraudulently concealing inculpatory evidence linking BABY DOE's vaccine induced autism to MERCK's vaccines to continue and protect MERCK's FDA-issued MMR vaccine license from revocation. See *Vaxxed, from Controversy to Catastrophe*, released April 2015, the documentary available for in camera inspection at the Court's request.

GERBERDING knew and conspired with MERCK to protect the MMR vaccine license

178) Upon information and belief, after the sabotage to the OAP cases was done, CDC Whistleblower Dr. William Thompson sent a letter to his then superior GERBERDING in 2004 to discuss "problematic results" in relation to the MMR vaccine and autism. His letter highlights the paranoia within the CDC at the time:

"We've not yet met to discuss these matters... I will be presenting the summary of our results from the Metropolitan Atlanta Autism Case-Control Study and I will have to present several problematic results relating to statistical associations between the receipt of MMR vaccine and autism,"

[Exh. Eight, Feb. 2, 2004, letter from Thompson to Gerberding, released by Dr. Hooker on about August 2014].

179) Upon information and belief, Dr. Thompson was then removed as the speaker from the PowerPoint presentation prepared by CDC for the 2004 IOM meeting, and was substituted with Dr. DeStefano by GERBERDING, another co author of the 2004 Atlanta Autism Study, who then made a different presentation to IOM, than what Dr. Thompson had planned for the IOM, exposing what his whistleblower evidence describes as “*several problematic results relating to statistical associations between the receipt of MMR vaccine and autism.*” *Id.*

180) GERBERDING indeed knew about the fraud at CDC with the Atlanta and Danish study results, and purposely took steps to conceal her alleged illegal acts by removing Dr. Thompson as the speaker for the study results and presenter at the IOM, and replaced Dr. Thompson with a more compliant Dr. DeSteffano, in furtherance of the conspiracy.

#### Particulars of the Conspiracy

181) More particularly, PLAINTIFFS allege a cause of action for civil conspiracy to commit fraud with intent to harm, and with direct knowledge of the consequences of the Defendants the acts, and the harms to PLAINTIFFS that would result from those alleged illegal acts.

182) PLAINTIFFS have alleged a series of acts committed by MERCK and GERBERDING, the *Sine Quo Non* of the conspiracy, directed toward carrying out a common scheme that damaged PLAINTIFFS, and were described by vaccine-autism researcher and CDC Whistleblower Dr. William Thompson, on tape, to the parent of a vaccine-injured child and OAP

petitioner Dr. Brian Hooker. *See Exh. Four, CDC Whistleblower transcripts, recordings of Dr. Thompson's statements.*

183) In August of 2014, CDC whistleblower and co-author of 2004 Atlanta Autism Study, Dr. William Thompson who, at all times relevant to this Complaint, worked directly under GERBERDING, confessed to a government-industry wide cover-up of vaccine danger to children linked to MERCK's MMR vaccine,  series of recorded statements he made with Dr. Brian Hooker who is the parent of a vaccine injured child, and former VICP OAP petitioner.

184) In the recordings released publically in August of 2014 exposing the fraud with the 2004 Atlanta study's findings, Dr. Thompson admitted that he and his fellow researchers, Dr. Frank DeStefano, Dr. Tanya Karapurkar Bhasin, Dr. Marshalyn Yeargin-Allsopp, and Dr. Coleen Boyle, destroyed research evidence showing a link between MMR and vaccine-induced autism in adolescent children, describing how the Atlanta Study co-authors threw the evidence into a garbage can at CDC headquarters.

185) Upon information and belief, Dr. Thompson still works for the CDC, and he is collaborating closely with Congress to provide details about his actions in *the 2004 Atlanta Autism Study* regarding the research study results that were allegedly intentionally falsified to be published in *Pediatrics* in 2004.

186) Upon information and belief, CDC has not cooperated with Congressman Posey's request for information regarding the 2004 Atlanta Autism Study data sets the co-authors allegedly, threw in a garbage can, all except for CDC Whistleblower Dr. William Thompson, who stated to Congress he kept his study findings and data sets in safe in his office because he claimed to Congressman Posey he knew it was wrong to destroy the research results.

187) Upon information and belief, CDC has not responded to Administrative Complaints filed

by Dr. Hooker and Dr. Wakefield, involving the alleged destruction of data by CDC researchers in 2004 Atlanta Autism Study, explained in detail by Dr. Thompson to Rep. Posey, and described in the tape recorded conversations with Dr. Hooker. *Exh. Nine, Administrative Complaint of Dr. Hooker and Dr. Wakefield, October 14, 2014 and February 2, 2015.*

188) In August of 2014 after Dr. Hooker released the recordings to the public, Dr. Thompson put out a statement through his attorneys stating he believed that "the final study protocol was not followed":

*"I regret that my coauthors and I omitted statistically significant information in our 2004 article published in the journal Pediatrics. The omitted data suggested that African American males who received the MMR vaccine before age 36 months were at increased risk for autism. Decisions were made regarding which findings to report after the data were collected, and I believe that the final study protocol was not followed."*

*[See <http://www.morganverkamp.com/august-27-2014-press-release-statement-of-william-w-thompson-ph-d-regarding-the-2004-article-examining-the-possibility-of-a-relationship-between-mmr-vaccine-and-autism/> last retrieved March 2, 2015].*

189) Dr. Thompson conceded that the CDC skewed the data relied upon by the government and the PLAINTIFFS in OAP. Upon information and belief, Dr. Thompson went on to state:

*"It was a mutual decision among the five co-authors."*

190) In the recording, CDC Whistleblower Dr. William Thompson admits to altering the findings of the 2004 Atlanta Autism Study and states:

*"I was complicit, and, ah, I went along with this. We didn't report significant findings. You know, I'm not proud of that and, uh, it's probably, it's the lowest; it's the lowest point in my career that I went along with that paper...I have great shame now when I meet families with kids with autism, because I've, because I have been part of the problem."*  
*Exh. Four, pg. 16, Transcripts Dr. Thompson's recorded by Dr. Hooker.*

### COUNT THREE

#### **Violations of the Fraud Enforcement Recovery Act 2009 (against Defendants MERCK and GERBERDING )**

191) MERCK and GERBERDING are violating the Fraud Enforcement and Recovery Act of 2009 by knowingly presenting or causing to be presented false or fraudulent claims of vaccine safety and efficacy to the government and suppressing scientific evidence and information linking the MMR vaccine to autism.

192) MERCK and GERBERDING, knowingly made, used, or caused to be made or used, false research and/or statements discrediting the link between the MMR vaccine and autism, and was scientific evidence proffered in the OAP hearings against PLAINTIFFS.

193) Defendants MERCK and GERBERDING condoned and/ or used (i) used improper testing techniques, (ii) manipulated testing methodology, (iii) abandoned undesirable test results, (iv) falsified test data leading to the dismissal of the OAP test cases by the Special Masters and BABY DOE's injuries and threatens JANE DOE's minor children subject to §2164's MMR mandate this upcoming school applicable to second graders.

194) MERCK's multiple intentional violations of the law were designed to ensure that vaccines manufactured and sold in the United States remain required as a condition of school attendance under state law, and to subvert the CDC's and FDA's responsibility to ensure that all vaccines manufactured, purchased and sold in the U.S. are safe and effective for children.

195) GERBERDING's collusive role that began at CDC, she is continuing now at MERCK, with the continued insistence that MMR is safe and effective in the October 2015 FDA license renewal, and the false representation that MMR is not linked to autism when CDC's own research shows that it is, and caused PLAINTIFFS' injuries and is causing the irreparable harms

alleged in the Complaint.

#### **COUNT FOUR**

##### **2008 Corporate Integrity Agreement (against Defendants MERCK and GERBERDING)**

196) PLAINTIFFS re-assert and incorporate by reference the allegations set forth in the preceding paragraphs, as if more fully set forth herein.

197) Defendants MERCK's and GERBERDING'S fraudulent conduct is allegedly violating the 2008 Corporate Integrity Agreement that MERCK entered into with the Office of Inspector General of the Department of Health and Human Services that was part of its previous settlement with the United States to resolve prior unrelated False Claims Act litigations in 2008 and provided that it would not defraud consumers or the federal government again.

#### **COUNT FIVE**

##### **Violations of the Ninth and Fourteenth Amendments & 42 USC 1983 (against ALL Defendants)**

198) PLAINTIFFS re-assert and incorporate by reference the allegations set forth in the preceding paragraphs, as if more fully set forth herein.

199) FDA's licensing of MERCK's MMR vaccine violates the Ninth and Fourteenth Amendments rights of PLAINTIFFS threaten  their safety and health requiring an injunction enjoining the FDA from licensing the vaccine.

200) The FDA MMR license must be permanently revoked to prevent further irreparable harm to PLAINTIFFS, and a vaccine injury to even one more child mandated to received MERCK's MMR vaccine that is not necessary, does not work, and CDC's own research shows can cause 

brain damage in children. *See Griswold v. Connecticut*, 381 U.S. 479, 497 (1965) (citing *McLaughlin v. Florida*, 379 U.S. 184 (1964))( *requires states to prove that their interference in medical autonomy is “necessary, and not merely rationally related to, the accomplishment of a permissible state policy.*)

201) FDA’s licensing of MERCK’s MMR violates informed consent laws because the allegedly falsified CDC vaccine safety and vaccine efficacy scientific evidence in the Atlanta and Danish studies makes informed consent for the FDA licensed MERCK MMR vaccination impossible, violating PLAINTIFFS’ due process of law.  *See, Code of Federal Regulations Title 45 Volume 46[1] (US laws governing federally funded research requiring informed consent), Nuremberg Code and the related Declaration of Helsinki.*

202) The doctrine of informed consent imposes on a physician the duty to explain the procedure to the patient and to warn him of any material risks or dangers inherent in all collateral therapy, so as to enable the patient to make an intelligent and informed choice about whether or not to undergo the treatment.” *See, e.g., 61 AM. JUR. 2D Physicians, Surgeons, Etc. § 175 (2010); Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92 (1914),( the Court held the operation to which the plaintiff did not consent constituted medical battery).*

203) FDA’s licensing of MERCK’s MMR interferes with PLAINTIFFS’ Ninth and Fourteenth Amendment rights of medical autonomy because of the alleged fraud involving the safety and efficacy of the MMR vaccine, preventing the licensing of an MMR vaccine that does work to justify the risk of shedding from the unavoidably unsafe MMR vaccine licensed to MERCK by the FDA. *See Griswold v. Connecticut*, 381 U.S. 479, 497 (1965) (citing *McLaughlin v. Florida*, 379 U.S. 184 (1964))( *requires states to prove that their interference in medical autonomy is “necessary, and not merely rationally related to, the accomplishment of a permissible state*

policy.)

204) In New York today fortunately there is no public health emergency to mandate children receive the MMR order to attend school under § 2164, and no public health necessity exists requiring FDA to continue to license a harmful MMR vaccine because the FDA-issued MMR license targets and discriminates against PLAINTIFFS, and all school children in New York State with exposure to the MMR vaccine that does not work, when the entire global, and predominantly unvaccinated world population, is at risk to get and transmit the diseases targeted by the FDA MMR license causing irreparable harms.

205) PLAINTIFFS' entitlement to injunctive relief is also established by showing sufficiently serious questions going to the merits to make them a fair ground for litigation, and a balance of equities tipping decidedly in their favor. *See Genesee Brewing Co.*, 124 F. 3d 13 7, 142 (2d Cir. 1997); *Tom Doherty Assocs. v. Saban Entertainment, Inc.*, 60 F.3d 27, 33 (2d Cir. 1995).

206) PLAINTIFFS have demonstrated the great hardship they are now suffering and are threatened to further endure by Defendants' fraudulent conduct making sought after damages and injunctive relief in this lawsuit appropriate.

207) Revoking MERCK's MMR license will not adversely impact the public health because the MMR does not work.

208) At Harvard University so far this year, fifty mumps cases have been confirmed in the Harvard community between Feb. 29 and May 5, 2016. 99% of undergraduate students and 98% of graduate students meet all state immunization requirements and have received two doses of the vaccine demonstrating the failed efficacy of the MMR vaccine.

209) The statistics on recent cases of vaccine targeted illnesses show the vast majority of

people who are contracting measles have been fully vaccinated against it—more than 95 percent in some cases.

210) In the UK, in Northern England, a highly vaccinated part of the country, there were 757 cases in a measles outbreak there in 2013 (January to August)but went unreported.<sup>15</sup>

211) Today in New York State no public health emergency exists to require the FDA to license MERCK’s MMR vaccine targeting 5 and 7 year old children in order to attend school because the newly discovered, and formerly concealed scientific evidence PLAINTIFFS offer in this case, demonstrates the MMR vaccine <sup>16</sup>does not work as claimed, and instead can cause brain damage in children.

212) Prior to the MMR vaccine, the targeted illnesses by the shot were considered to be typical, ordinarily benign childhood illnesses and were never previously considered to by Health Officials to be a public health threat. *See Jacobson vs. Massachusetts*, 197 U.S. 11 (1905) (*requires that a forced vaccination be made possible only in highly circumscribed situations: when there is “an emergency,” “imminent danger,” when “an epidemic of disease...threatens the safety of [society’s] members” and when the epidemic “imperl[s] an entire population.”* *Jacobson* at 29, 27, 29, 31.

213) PLAINTIFFS requested relief furthers the public health goals and objectives because there is no requisite public health emergency to require the MMR vaccine, the Supreme Court said must exist before mandating any vaccination, making the sought after damages and injunctive relief to PLAINTIFFS appropriate and necessary to prevent further irreparable, See

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<sup>15</sup> <https://childhealthsafety.wordpress.com/2015/02/08/officials-covered-up-massive-uk-measles-outbreak-in-highly-mmr-vaccinated-children-adults-officials-withheld-the-evidence-parents-not-warned-children-unprotected-bbc-directly-implica/>

<sup>16</sup> *Ineffectiveness of Measles Vaccines* <http://www.vaccinationcouncil.org/2013/01/18/the-ineffectiveness-of-measles-vaccines-and-other-unintended-consequences-by-dr-viera-scheibner-phd/>

*Jacobson* 197 U.S. at 27.

### **PRAYER FOR RELIEF**

That this Court enter a judgment declaring MERCK's safety and efficacy information regarding the MMR vaccine to be non credible; and to declare MERCK's MMR vaccine unsafe for children;

That this Court declare the MMR, or mercury preservative Thimerosal or a combination of both, more likely than not, caused BABY DOE's vaccine induced autism, applying the *Althen* standard applicable to the VICP OAP cases for entitlement, and to hold OAP Petitioners have established a "medically acceptable theory of causation" linking vaccines to autism entitling them to VICP compensation, See *Althen*

That this Court revoke MERCK's FDA-issued MMR license and enjoin the sale, distribution or recommended use of MERCK's MMR school required vaccination, declaring MERCK's MMR vaccine licensed by the FDA, and the mercury preservative Thimerosal, or a combination of both to be unsafe for children, and to declare the MMR non efficacious in controlling the spread of infectious disease.

That the Court enter judgment against MERCK and GERBERDING awarding damages provided under federal and state law in amount to be determined at trial to the maximum amount allowable under law, and for an award of attorney's fees, costs and fees of the litigation provided for under the Vaccine Act.

### **JURY DEMAND**

PLAINTIFFS demand a trial by jury.

WHEREFORE, PLAINTIFFS seek an Order and Judgment of this Court:

- 1) An Order of this Court revoking MERCK's FDA-issued MMR vaccine license;
- 2) A permanent injunction restraining the sale, distribution and use of MERCK's MMR vaccine mandated for children to attend school in the United States;
- 3) Awarding general and specific, compensatory, exemplary and punitive damages to PLAINTIFFS in an amount to be determined at trial;
- 4) Awarding Special damages for the conspiracy to tamper with evidence that led to BABY DOE's vaccine injuries in July of 2000, and led to the denial of OAP VICP compensation to BABY DOE for his vaccine-induced autism in 2010;
- 5) Such other, further and different relief as the Court deems proper.

Dated: Brooklyn, New York  
July 17, 2016



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Patricia Finn, Esq.  
Attorney for PLAINTIFFS