

CAUSE NO. 2011-CI-09771

PARENTS OF JOHN DOE 102,
INDIVIDUALLY AND AS NEXT
FRIENDS OF JOHN DOE 102,
A MINOR CHILD,

Plaintiffs,

vs.

TEXAS MILITARY INSTITUTE OF
SAN ANTONIO, TEXAS D/B/A
TMI THE EPISCOPAL
SCHOOL OF TEXAS; AND EPISCOPAL
CHURCH CORPORATION IN WEST
TEXAS A/K/A DIOCESE OF WEST
TEXAS OF THE PROTESTANT
EPISCOPAL CHURCH IN THE UNITED
STATES OF AMERICA,

Defendants.

IN THE DISTRICT COURT OF

BEXAR COUNTY, TEXAS

150th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURES

TO THE HONORABLE DISTRICT COURT JUDGE:

COMES NOW Plaintiffs, Parents of John Doe 102, Individually and on behalf of their son, John Doe 102, a minor, and file this their *Original Petition and Request For Disclosures*, complaining of Defendants, Texas Military Institute of San Antonio, Texas doing business as TMI The Episcopal School of Texas, and Episcopal Church Corporation in West Texas a/k/a Diocese of West Texas of the Protestant Episcopal Church in the United States of America, and would respectfully show the Court the following:

**I
Discovery Control Plan**

1.01 Discovery is intended to be conducted in accordance with a Level 3 Discovery Control Plan pursuant to TEX. R. CIV. P. 190.1 and Rule 190.4.

II **Parties**

2.01 Plaintiffs, Parents of John Doe 102 (hereinafter “Victim’s Parents” or “Parents”) and their son John Doe 102 (“hereinafter “Doe” or “Victim”), reside in Menlo Park, San Mateo County, California. Doe is a minor male who, at the time of the bullying, sadomasochistic sexual threats, ritualistic abuse, sexual harassment and assaults complained of herein, was residing at the Defendants’ boarding school in Bexar County, Texas. The true identities of John Doe 102 and his parents are being provided to Defendants under separate cover.

2.02 Defendant Texas Military Institute of San Antonio, Texas, doing business as TMI The Episcopal School of Texas (hereinafter “TMI”), is a domestic nonprofit corporation which can be served with process through its registered agent, Frank D. Goza, 20955 Tejas Trail West, San Antonio, Texas 78257.

2.03 Defendant Episcopal Church Corporation in West Texas a/k/a Diocese of West Texas of the Protestant Episcopal Church in the United States of America (hereinafter “Diocese”) is a domestic nonprofit corporation which can be served with process through its registered agent, Gary R. Lillibridge, 111 Torcido, San Antonio, Texas 78209.

2.04 Defendants are sued in all of their assumed, common or business names, pursuant to TEX. R. CIV. P. Rule 28 and notice is hereby given so that real parties in interest may appear and defend this action.

III **Jurisdiction and Venue**

3.01 Venue is proper in this case in Bexar County, Texas pursuant to Texas Civil Practice and Remedies Code §15.002(a)(1) because the incidents made the basis of this case occurred in Bexar County, Texas.

3.02 The court has jurisdiction of this case based on appropriate subject matter and based upon sufficient amount in controversy.

IV **Statement of Facts**

4.01 Doe's grandfather was a "legacy" graduate of TMI who went on to a distinguished military career. Doe was very inspired by his grandfather and wanted to attend TMI to follow in his grandfather's footsteps. In early 2010, Doe and his mother travelled to Texas to tour the TMI campus. On that occasion, the Director of Admissions of TMI made specific representations to Doe's mother about its "zero tolerance" for bullying, hazing or other injurious activities. She was assured that the faculty was carefully screened and that it was a safe boarding school environment in which to place her son. Based upon these assurances, Doe's parents enrolled their son at TMI for the 2010-2011 school year. Representations had been made to Doe and his mother that residents were placed in dorms that were age-appropriate. Carl Estrada was Ewing Dorm's advisor (known as a "prefect"), chosen and assigned by TMI to monitor and mentor freshmen like Doe.

4.02 For the first few weeks of the school term, Doe adjusted well to the boarding school environment and even joined the football team and attended camping trips. But by the middle of August 2010, the bullying and harassment of Doe began with other non-cadet students calling him a "Nazi" (ostensibly because of his short blond hair and blue eyes) and other slurs. This bullying was reported by Doe's father to Sergeant Partridge, the Cadet Corp faculty member responsible for Doe's unit. In response, TMI promised, "we do not tolerate that kind of behavior here...I will look out for [Doe], not only in the Corps but also in the dorms." Reassured that their child would be safe, Doe's parents allowed him to remain at the school.

4.03 From early September through early October 2010, the bullying and harassment escalated. The bullies called Doe “gay,” “a Nazi,” and even assaulted him by throwing him against a wall, grabbing him by the throat, choking him and chasing him in the dorm common room where he literally ran into a dorm parent who promised to address this behavior. But, to Doe’s dismay, the situation was never addressed by the dorm parent, faculty, or school administration, and the abuse continued. These attacks included times when up to six students would repeatedly rush into Doe’s bedroom at night, chanting “all for Allah,” covering their faces with their T-shirts and harassing and terrorizing Doe. On one late-night occasion when certain members of this group rushed into Doe’s room, two of the assailants pinned Doe to the bed by holding the bed sheet down while a third assailant waved a lit blowtorch in Doe’s face and made repeated threats to rape him. Doe was continuously terrified for his safety while in his dorm room. One of the perpetrators of these incidents was in fact the dorm prefect, Carl Estrada.

4.04 It was not until Doe returned home to California for Columbus Day weekend and felt safe that he told his parents about the abuse, ridicule, and bullying he was suffering. Of course, TMI already knew of many of the incidents of bullying Doe had endured but failed to take any action, and permitted it to continue. Upon being told by his son about the incidents described above, Doe’s father immediately flew to San Antonio from California with his son to report the incidents to law enforcement and Child Protective Services. He also went to his son’s dorm room to remove Doe’s belongings and to withdraw his son from TMI. He was never questioned by TMI as to why he was cleaning out his child’s room and withdrawing his son, obviously because the school was already aware of what had been happening. Some months later, Doe’s parents were contacted by a lawyer for TMI who threatened to enforce the tuition contract for payment of the outstanding tuition for the remainder of the school year even though Doe had been withdrawn under these circumstances.

V
CAUSES OF ACTION AGAINST DEFENDANT TMI

5.01 **NEGLIGENCE:** Defendant TMI, acting by and through its officers, members, agents, employees, alumni and/or representatives, failed to exercise the ordinary care of a reasonably prudent boarding school under the same or similar circumstances, particularly with regard to the following acts and/or omissions:

- (a) Failure to implement and enforce reasonable policies and procedures to detect and prevent bullying and abuse though Defendant knew or should have known that bullying and abuse was a predictable risk in a residential school environment;
- (b) Failure to investigate reports of bullying and abuse;
- (c) Failure to take prompt action against perpetrators;
- (d) Failure to offer counseling to the student victim;
- (e) Failure to report to law enforcement and/or CPS as required by Chapter 261 of the Texas Family Code;
- (f) Failure to educate students and staff about bullying and abuse and that such acts would not be tolerated at TMI;
- (g) Failure to create a safe environment for students;
- (h) Failure to notify parents of bullying and abuse incidents with regard to their child and;
- (i) Promoting, condoning and creating an environment where bullying and abuse would be tolerated despite the national awareness of the harmful and devastating effects of such behavior.

5.02 **NEGLIGENT ASSUMPTION OF RISK:** Plaintiffs allege that the actions of Defendant TMI have inflicted emotional distress upon Plaintiffs. Defendant and its officers, agents are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 302B, under the legal doctrine of negligent assumption of risk of intentional or criminal conduct which states:

An act or omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such harm is criminal.

Restatement (Second) of Torts, Section 302B.

5.03 **NEGLIGENT MISREPRESENTATION:** Plaintiffs assert that Defendant TMI is liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 311, under the legal doctrine of negligent misrepresentation involving risk of physical harm:

- (1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results
 - (a) to the other, or
 - (b) to such third persons as the actor should expect to be put in peril by the action taken.
- (2) Such negligence may consist of failure to exercise reasonable care
 - (a) In ascertaining the accuracy of the information, or
 - (b) In the manner in which it is communicated.

Restatement (Second) of Torts, Section 311.

5.04 **CONCERT OF ACTION:** Plaintiffs asserts that all entities and individuals who are named as Defendants are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 876, under the legal doctrine of concert of action, as joint venturers, as agents of these entities, and as shareholders of this entity under which theories Plaintiffs seeks damages from all Defendants jointly and severally.

5.05 **PREMISES LIABILITY:** At time of trial, Plaintiffs will prove that Doe was an invitee to the premises at issue, including Ewing Dorm, which were owned and/or maintained by Defendant TMI and which they represented to be safe. Defendant TMI owed a duty of care to those who might be harmed by criminal acts on its premises when the risk of criminal conduct was so great that it was both unreasonable and foreseeable. In that Defendant was aware or

should have been aware of criminal acts of bullying and assault against students in the dorm. Defendant is therefore liable under a theory of premises liability.

5.06 **BREACH OF FIDUCIARY AND *IN LOCO PARENTIS* DUTIES:** Defendant TMI breached its fiduciary duty and duty of care to act *in loco parentis* to Doe. TMI had care, custody and control of Doe and the assailants as residents living full time in its boarding facility. As such, TMI was placed in the highest position of trust and confidence as to their relationship with the residents since per the law they were serving *in loco parentis*. TMI breached this trust and confidence when it failed to protect Doe and thereby violated its fiduciary duty to him.

5.07 **RATIFICATION:** Plaintiffs allege that Defendant TMI ratified the acts, omissions and customs of assailants by failing to stop the abuse. As a result, Defendant TMI is responsible for the acts and/or omissions of the assailants as if they were its own acts.

5.08 **BREACH OF CONTRACT:** Parents of Doe contracted with TMI for room and board for Doe while he attended school there. TMI represented that one of the services to be provided as part of the room and board was a safe environment for Doe while he lived there full-time. TMI breached its contract with Doe's parents in failing to provide the services promised. Therefore, Plaintiffs plead breach of contract and seek recovery of tuition paid and attorney's fees.

5.09 The acts or omissions of Defendants pled in Paragraphs 5.01-5.08 herein proximately caused injuries to Plaintiffs.

VI
CAUSES OF ACTION AGAINST THE
EPISCOPAL DIOCESE OF THE WEST

6.01 Plaintiffs assert that TMI is the agent of the Diocese for the purpose of all acts complained of herein.

6.02 **NEGLIGENCE:** Defendant Diocese, acting by and through its officers, members, agents, employees, alumni and/or representatives, failed to exercise the ordinary care of a reasonably prudent boarding school under the same or similar circumstances, particularly with regard to the following acts and/or omissions:

- (a) Failure to implement and enforce reasonable policies and procedures to detect and prevent bullying and abuse though Defendant knew or should have known that bullying and abuse was a predictable risk in a residential school environment;
- (b) Failure to investigate reports of bullying and abuse;
- (c) Failure to take prompt action against perpetrators;
- (d) Failure to offer counseling to the student victim;
- (e) Failure to report to law enforcement and/or Child Protective Services as required by the Chapter 261 of the Texas Family Code;
- (f) Failure to educate students and staff about bullying and abuse and that such acts would not be tolerated by Defendant;
- (g) Failure to create a safe environment for students;
- (h) Failure to notify parents of bullying and abuse incidents with regard to their child and;
- (i) Promoting, condoning and creating an environment where bullying and abuse would be tolerated despite the national awareness of the harmful and devastating effects of such behavior.

6.03 **NEGLIGENT ASSUMPTION OF RISK:** Plaintiffs alleges that the actions of Defendant Diocese through TMI have inflicted emotional distress upon Plaintiffs. Defendant Diocese and its officers, agents are liable for acts and/or omissions pursuant to the Restatement

(Second) of Torts, Section 302B, under the legal doctrine of negligent assumption of risk of intentional or criminal conduct which states:

An act or omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such harm is criminal.

Restatement (Second) of Torts, Section 302B.

6.04 **NEGLIGENT MISREPRESENTATION:** Plaintiffs assert that Defendant Diocese is liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 311, under the legal doctrine of negligent misrepresentation involving risk of physical harm:

- (1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results
 - (a) to the other, or
 - (b) to such third persons as the actor should expect to be put in peril by the action taken.
- (2) Such negligence may consist of failure to exercise reasonable care
 - (a) In ascertaining the accuracy of the information, or
 - (b) In the manner in which it is communicated.

Restatement (Second) of Torts, Section 311.

6.05 **CONCERT OF ACTION:** Plaintiffs asserts that all entities and individuals who are named as Defendants are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 876, under the legal doctrine of concert of action, as joint venturers, as agents of these entities, and as shareholders of this entity under which theories Plaintiffs seeks damages from all Defendants jointly and severally.

6.06 **PREMISES LIABILITY:** At time of trial, Plaintiffs will prove that Doe was an invitee to the premises at issue, including Ewing Dorm, which was owned and/or maintained by

Defendant Diocese through TMI and which it represented to be safe. Defendant Diocese owed a duty of care to those who might be harmed by criminal acts on its premises when the risk of criminal conduct was so great that it was both unreasonable and foreseeable. In fact, Defendant Diocese through TMI was aware or should have been aware of criminal acts of bullying and assault against students in the dorm. Defendant Diocese is therefore liable under a theory of premises liability.

6.07 BREACH OF FIDUCIARY AND *IN LOCO PARENTIS* DUTIES: Defendant Diocese breached its fiduciary duty and duty of care to act *in loco parentis* to Doe. Defendant Diocese through TMI had care, custody and control of both Doe and the assailants as residents living full-time in its boarding facility. As such, Defendant Diocese was placed in the highest position of trust and confidence as to its relationship with the residents since per the law they were serving *in loco parentis*. Defendant Diocese breached this trust and confidence when it failed to protect Doe and thereby violated its fiduciary duty to him.

6.08 RATIFICATION: Plaintiffs allege that the Defendant Diocese ratified the acts, omissions and customs of the TMI faculty and staff. As a result, the Defendant Diocese is responsible for the acts and/or omissions of the faculty and/or staff who were responsible for the safety of Doe. TMI is the agent of the Diocese and therefore any knowledge possessed by TMI and acts of TMI are imputed by law to the Diocese.

6.09 BREACH OF CONTRACT: Parents of Doe contracted with the Diocese through TMI for room and board for Doe while he attended school there. One of the services represented by TMI that were to be provided as part of the room and board was a safe environment for Doe while he lived there full time. The Diocese breached its contract with Doe's parents in failing to provide the services promised. Since TMI is the agent of the Diocese,

Plaintiffs plead breach of contract and seek recovery of tuition paid and attorney's fees against the Diocese.

6.10 The acts or omissions of Defendant Diocese pled in Paragraphs 6.01- 6.09 herein proximately caused injuries to Plaintiffs.

VII **CLAIMS OF FRAUD AGAINST ALL DEFENDANTS**

7.01 Plaintiffs alleges fraud against Defendants TMI and the Diocese in that (1) Defendant TMI (and the Diocese through TMI as its agent) made material representations about their boarding school and the care and safety that Doe would receive while he attended; (2) these representations were false since Doe was not protected and, instead, was subjected to repeated acts of terrorism; (3) Defendants knew these statements were false when they made them or made them recklessly; (4) Defendants intended that the Plaintiffs rely on their misrepresentations, since TMI made these representations in trying to induce Plaintiffs to place their child at TMI and while he was attending there; (5) Plaintiffs relied on the misrepresentations since they enrolled their son at TMI and continued to leave him enrolled for a period of time even after the bullying started, relying on TMI's representations that they would act on the complaints, which did not happen; and (6) Doe suffered injuries in consequence from these acts of bullying and terror.

VIII **CLAIMS OF GROSS NEGLIGENCE** **AND FOR PUNITIVE DAMAGES**

8.01 Plaintiffs also assert that both Defendants were grossly negligent and seek punitive and exemplary damages in order to punish and deter the outrageous conduct of Defendants. Facts as alleged above will be proven by clear and convincing evidence from Plaintiffs and others that Defendants had an actual custom and practice of looking the other way

and disregarding complaints made to them. These were acts of gross negligent in that, either by act or omission, they exposed Doe to an extreme degree of risk of harm, considering the probability, magnitude and extent of the harm that would likely impact him and that ultimately did. Further, Defendants had real, subjective awareness of the risks involved, but nevertheless preceded with callous indifference to the rights, safety, and welfare of Doe, physically and psychologically.

IX **DAMAGES**

9.01 As a result of the conduct and incidents described herein, Parents of Doe have incurred and continue to incur counseling expenses and other expenses incurred on Doe's behalf in the past which were reasonable and necessary. In all reasonable probability, Parents of Doe will continue to incur such psychological expenses in the future.

9.02 As a result of the conduct, incidents and injuries described herein, Doe has experienced physical pain and suffering and bodily injury.

9.03 As a result of the conduct, incidents and injuries described herein, Doe has experienced severe physical, emotional and psychological pain and suffering in the past and in all reasonable probability will continue to sustain severe psychological and emotional pain and suffering in the future.

9.04 As a result of the conduct and incidents described herein, Doe has suffered mental anguish in the past and, in all reasonable probability, will continue to sustain mental anguish in the future.

9.05 As a result of the conduct and incidents described herein, Doe has suffered many other damages, including loss of self-esteem, loss of trust, and depression. In all reasonable probability, his educational, social and professional adjustment in the past has been affected and

in all probability his future educational social and professional life will be adversely impacted as well.

9.06 Doe will likely suffer a diminished wage-earning capacity in the future.

9.07 Doe has suffered physical impairment damages.

9.08 Parents of Doe paid Defendants for board and room for Doe with assurances of his care and safety, which Defendants violated. Therefore, Parents of Doe are entitled to damages of their cost of tuition for breach of contract damages, and attorney's fees associated therewith.

9.09 As a result of the above, Plaintiffs seeks damages in excess of the jurisdictional limits of the Court.

X

CLAIM FOR PRE-JUDGMENT AND POST-JUDGMENT INTEREST

10.01 Plaintiffs claim interest in accordance with §304.104, et seq., Texas Finance Code and any other applicable law.

XI

REQUEST FOR INITIAL DISCLOSURE

11.01 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants herein are required to disclose to Plaintiffs within fifty (50) days of service of this request the information or material described in Rule 194.2 to be produced to Merritt & Watson P.L.L.C, Attorneys for Plaintiffs, 8499 Greenville Avenue, Suite 206, Dallas, Texas 75231-2424 during normal business hours.

XII

JURY DEMAND

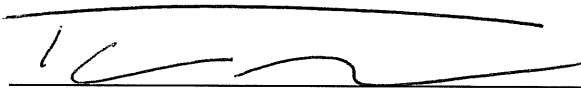
12.01 Plaintiffs request a jury to hear the evidence in this case.

XIII
PRAYER

13.01 FOR THE REASONS STATED ABOVE, Plaintiffs Parents of John Doe 102, Individually and on behalf of their son, John Doe 102, a minor, pray that upon final hearing of this cause, they have judgment against Defendants, jointly and severally, for all damages described herein, including actual damages, punitive damages, costs of suit, attorney's fees, interest allowable by law and for such other relief to which they may be justly entitled.

RESPECTFULLY SUBMITTED:

Merritt & Watson PLLC



Tahira Khan Merritt PLLC

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