

2015 FEB - 6 2 P 4: 13

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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FILED
Clerk of the Superior Court

FEB 06 2015

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

John Roe, Individually,

Plaintiffs,

v.

Grossmont Union High School District;
and Does 2 through 100, inclusive,

Defendants.

CASE NO. 37-2015-00004806-CU-PO-CTL

COMPLAINT FOR DAMAGES FOR:

1. NEGLIGENCE
2. NEGLIGENT SUPERVISION/FAILURE TO WARN
3. NEGLIGENT HIRING/RETENTION
4. NEGLIGENT FAILURE TO WARN, TRAIN, OR EDUCATE
5. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
6. SEXUAL HARASSMENT

[Demand for Jury Trial]

1 Defendants as described in this Complaint.

2 **BACKGROUND FACTS APPLICABLE TO ALL COUNTS**

3 6. Plaintiff was born on May 26, 1996. Plaintiff attended Granite Hills High School in El
4 Cajon, California. Plaintiff met Perpetrator in 2012. Perpetrator was Plaintiff's drama teacher.

5 7. Over a period of several months, Perpetrator groomed Plaintiff. Perpetrator cultivated
6 Plaintiff's trust by encouraging Plaintiff to confide in him regarding school, family, friends and
7 other personal issues. Perpetrator presented himself as a confidant and friend that Plaintiff
8 could trust and talk to freely.

9 8. Perpetrator sexually molested Plaintiff between October 2012 and June 2013.
10 Perpetrator touched and fondled Plaintiff's genitals during and after class, theater rehearsals,
11 and plays. Perpetrator kissed Plaintiff on the mouth and put his hand inside of Plaintiff's
12 underwear.

13 9. Perpetrator kept Plaintiff after class for the purpose of these sexual contacts. Plaintiff
14 was tardy for his next class (English) regularly, which resulted in Plaintiff failing that class in
15 two succeeding semesters.

16 10. Perpetrator insisted that Plaintiff keep the Perpetrator's conduct a secret. Perpetrator's
17 actions and demands prevented Plaintiff from coming forward earlier and reporting the abuse.
18 Defendant is therefore estopped from asserting the claims presentation requirement as a defense
19 to this action.

20 11. Plaintiff is informed and believes and on that basis alleges that Perpetrator sexually
21 molested at least one other minor prior to his sexual molest of Plaintiff.

22 12. Plaintiff is informed and believes and on that basis alleges that an individual made a
23 complaint to Defendant School District regarding Perpetrator's sexual molest of another minor
24 prior to Perpetrator's sexual molest of Plaintiff.

25 13. Plaintiff is informed and believes and on that basis alleges that an individual made a
26 report to El Cajon Police Officer Legowitz, the officer assigned to Granite Hills High School,
27 regarding Perpetrator's sexual abuse of a minor.

28 14. Officer Legowitz confronted Plaintiff about the allegations of abuse on February 6,

1 2014. At that time Plaintiff reluctantly confided the abuse to Officer Legowitz.

2 15. Officer Legowitz reported the abuse to Plaintiff's mother on February 7, 2014.

3 16. Shortly after reporting the sexual abuse to Officer Legowitz, Defendant School District
4 arranged for Plaintiff to receive psychological counseling or therapy at no cost to Plaintiff.

5 Plaintiff is informed or believes and on that basis alleges that the therapy was paid for by

6 Defendant School District directly, or alternatively that the treatment was paid for by Defendant

7 School District's liability insurer. Neither Defendant School District nor its insurer notified the

8 Plaintiff in writing of the applicable statute of limitations within which claims are required to be

9 made against a public entity. The failure to provide such written notice tolls the statute of

10 limitations, and any applicable claims presentation requirement, from the time the therapy was

11 provided, pursuant to California Insurance Code section 11583.

12 17. On August 5, 2014, a date within six months of the date that Plaintiff: 1) first disclosed

13 the sexual abuse to Officer Legowitz; 2) was first capable of reporting the abuse in spite of the

14 Perpetrator's demands not to tell; and 3) first understood that the Perpetrator's actions were

15 harmful, Plaintiff timely presented Defendant School District with a claim for damages to

16 person or property as required by Government Code section 911.2. Defendant School District

17 wrongfully returned Plaintiff's claim without action on August 11, 2014, on the basis that the

18 claim was not timely presented.

19 18. On September 11, 2014, Plaintiff presented Defendant School District with an

20 application for leave to file late claim. Although the claim filing requirements had been tolled

21 by Defendant's payment of Plaintiff's counseling costs, Defendant School District wrongfully

22 rejected Plaintiff's application for leave to file late claim via letter dated October 10, 2014.

23 19. The sexual abuse and exploitation of Plaintiff, and the circumstances under which it

24 occurred caused Plaintiff to develop various psychological coping mechanisms which

25 reasonably made him incapable of ascertaining that the Perpetrator's conduct was harmful to

26 him, or that he suffered injury as a result of the Perpetrator's conduct until after Plaintiff

27 reported the abuse to Officer Legowitz.

28 20. As a result of the wrongful conduct alleged herein, Plaintiff has suffered, and continues

1 to suffer great pain of mind and body, shock, emotional distress, physical manifestations of
2 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
3 enjoyment of life; was prevented and will continue to be prevented from performing Plaintiff's
4 daily activities and obtaining the full enjoyment of life; has sustained and continues to sustain
5 loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses
6 for medical and psychological treatment, therapy, and counseling.

7 21. Plaintiff has suffered and will continue to suffer a serious and lifelong personal physical
8 injury as a result of the abuse. Plaintiff's physical injury requires and will require time-
9 consuming and expensive treatment.

10 **FIRST CAUSE OF ACTION**

11 **NEGLIGENCE**

12 **(Against All Defendants)**

13 22. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

14 23. Defendants had a duty to protect the minor Plaintiff when he was entrusted to their care
15 by Plaintiff's parents. Plaintiff's care, welfare, and/or physical custody was temporarily
16 entrusted to Defendants and Defendants voluntarily accepted the entrusted care of Plaintiff. As
17 such, Defendants owed Plaintiff, a minor child, a special duty of care, in addition to a duty of
18 ordinary care, and owed Plaintiff the higher duty of care that adults dealing with children owe to
19 protect them from harm.

20 24. Defendants, by and through their agents, servants and employees, knew or reasonably
21 should have known of the Perpetrator's dangerous and exploitive propensities and/or that the
22 Perpetrator was an unfit agent. It was foreseeable that if Defendants did not adequately exercise
23 or provide the duty of care owed to children in their care, including but not limited to Plaintiff,
24 the children entrusted to Defendants' care would be vulnerable to sexual abuse by the
25 Perpetrator.

26 25. Defendants breached their duty of care to the minor Plaintiff by allowing the Perpetrator
27 to come into contact with the minor Plaintiff without supervision; by failing to adequately hire,
28 supervise, or retain the Perpetrator who they permitted and enabled to have access to Plaintiff;

1 by failing to investigate or otherwise confirm or deny such facts about the Perpetrator; by failing
2 to tell or concealing from Plaintiff's parents, guardians, or law enforcement officials that the
3 Perpetrator was or may have been sexually abusing minors; by failing to tell or concealing from
4 Plaintiff's parents, guardians, or law enforcement officials that Plaintiff was or may have been
5 sexually abused after Defendants knew or had reason to know that the Perpetrator may have
6 sexually abused Plaintiff, thereby enabling Plaintiff to continue to be endangered and sexually
7 abused, and/or creating the circumstance where Plaintiff was less likely to receive
8 medical/mental health care and treatment, thus exacerbating the harm done to Plaintiff; and/or
9 by holding out the Perpetrator to the Plaintiff and his parents or guardians as being in good
10 standing and trustworthy. Defendants cloaked with the facade of normalcy Defendants' and/or
11 the Perpetrator's contact and/or actions with the Plaintiff and/or with other minors who were
12 victims of the Perpetrator, and/or disguised the nature of the sexual abuse and contact.

13 26. As a result of the above-described conduct, Plaintiff has suffered, and continues to suffer
14 great pain of mind and body, shock, emotional distress, physical manifestations of emotional
15 distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of
16 life; has suffered and continues to suffer spiritually; was prevented and will continue to be
17 prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of life;
18 has sustained and will continue to sustain loss of earnings and earning capacity; and/or has
19 incurred and will continue to incur expenses for medical and psychological treatment, therapy,
20 and counseling.

21 **SECOND CAUSE OF ACTION**

22 **NEGLIGENT SUPERVISION/FAILURE TO WARN**

23 **(Against All Defendants)**

24 27. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

25 28. Defendants had a duty to provide reasonable supervision of the Perpetrator; to use
26 reasonable care in investigating the Perpetrator; and to provide adequate warning to the
27 Plaintiff, the Plaintiff's family, and minor students of the Perpetrator's dangerous propensities
28 and unfitness.

1 29. Defendants, by and through their agents, servants and employees, knew or reasonably
2 should have known of the Perpetrator's dangerous and exploitive propensities and/or that the
3 Perpetrator was an unfit agent. Despite such knowledge, Defendants negligently failed to
4 supervise the Perpetrator in the position of trust and authority as a school teacher, counselor,
5 surrogate parent, emotional mentor, and/or other authority figure, where he was able to commit
6 the wrongful acts against the Plaintiff. Defendants failed to provide reasonable supervision of
7 the Perpetrator, failed to use reasonable care in investigating the Perpetrator, and failed to
8 provide adequate warning to Plaintiff and Plaintiff's family of the Perpetrator's dangerous
9 propensities and unfitness. Defendants further failed to take reasonable measures to prevent
10 future sexual abuse.

11 30. As a result of the above-described conduct, Plaintiff has suffered, and continues to suffer
12 great pain of mind and body, shock, emotional distress, physical manifestations of emotional
13 distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of
14 life; has suffered and continues to suffer spiritually; was prevented and will continue to be
15 prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of life;
16 has sustained and will continue to sustain loss of earnings and earning capacity; and/or has
17 incurred and will continue to incur expenses for medical psychological treatment, therapy, and
18 counseling.

19 **THIRD CAUSE OF ACTION**

20 **NEGLIGENT HIRING/RETENTION**

21 **(Against All Defendants)**

22 31. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

23 32. Defendants had a duty to not hire and/or retain the Perpetrator, and other employees,
24 agents, volunteers, and other representatives, given the Perpetrator's dangerous and exploitive
25 propensities.

26 33. Defendants, by and through their agents, servants and employees, knew or reasonably
27 should have known of the Perpetrator's dangerous and exploitive propensities and/or that the
28 Perpetrator was an unfit agent. Despite such knowledge, Defendants negligently hired and/or

1 retained the Perpetrator in the position of trust and authority as a school teacher, counselor,
2 surrogate parent, emotional mentor, and/or other authority figure, where he was able to commit
3 wrongful acts against the Plaintiff. Defendants failed to use reasonable care in investigating the
4 Perpetrator and failed to provide adequate warning to Plaintiff and Plaintiff's family of the
5 Perpetrator's dangerous propensities and unfitness. Defendants further failed to take reasonable
6 measures to prevent future sexual abuse.

7 34. As a result of the above-described conduct, Plaintiff has suffered, and continues to suffer
8 great pain of mind and body, shock, emotional distress, physical manifestations of emotional
9 distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of
10 life; has suffered and continues to suffer spirituality; was prevented and will continue to be
11 prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of life;
12 has sustained and will continue to sustain loss of earnings and earning capacity; and/or has
13 incurred and will continue to incur expenses for medical and psychological treatment, therapy,
14 and counseling.

15 **FOURTH CAUSE OF ACTION**

16 **NEGLIGENT FAILURE TO WARN, TRAIN, OR EDUCATE PLAINTIFF**

17 **(Against All Defendants)**

18 35. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

19 36. Defendants breached their duty to take reasonable protective measures to protect
20 Plaintiff and other minor students from the risk of childhood sexual abuse by the Perpetrator,
21 such as the failure to properly warn, train, or educate Plaintiff and other minor students about
22 how to avoid such a risk, pursuant to *Juarez v. Boy Scouts of America, Inc.* (2000) 81
23 Cal.App.4th 377.

24 37. As a result of the above-described conduct, Plaintiff has suffered, and continues to suffer
25 great pain of mind and body, shock, emotional distress, physical manifestations of emotional
26 distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of
27 life; has suffered and continues to suffer spiritually; was prevented and will continue to be
28 prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of life;

1 has sustained and will continue to sustain loss of earnings and earning capacity; and/or has
2 incurred and will continue to incur expenses for medical and psychological treatment, therapy,
3 and counseling.

4 **FIFTH CAUSE OF ACTION**

5 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

6 (Against All Defendants)

7 38. Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth
8 herein.

9 39. Defendants' conduct was extreme and outrageous and was intentional or done
10 recklessly.

11 40. As a result of Defendants' conduct, Plaintiff experienced and continues to experience
12 severe emotional distress resulting in bodily harm.

13 41. As a result of the above-described conduct, Plaintiff has suffered, and continues to suffer
14 great pain of mind and body, shock, emotional distress, physical manifestations of emotional
15 distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of
16 life; has suffered and continues to suffer spiritually; was prevented and will continue to be
17 prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of life;
18 has sustained and will continue to sustain loss of earnings and earning capacity; and/or has
19 incurred and will continue to incur expenses for medical and psychological treatment, therapy,
20 and counseling.

21 **SIXTH CAUSE OF ACTION**

22 **SEXUAL HARASSMENT (Civ. Code ¶ 51.9)**

23 (Against All Defendants)

24 42. Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth
25 herein.

26 43. During Plaintiff's time as a student at Granite Hills High School, Perpetrator
27 intentionally, recklessly, and wantonly made sexual advances, sexual solicitations, sexual
28 comments and sexual requests and engaged in other visual, verbal or physical conduct of a

1 sexual nature based on Plaintiff's gender that were unwelcome, pervasive and severe, including
2 but not limited to engaging in sexual talk with Plaintiff and touching Plaintiff in a sexually
3 motivated and illegal manner, all while Perpetrator was acting in the course and scope of his
4 agency with Granite Hills High School, Defendant School District, and Does 2 through 100.

5 44. The incidents of sexual misconduct and sexual harassment outlined herein took place
6 while Plaintiff was under the control of Perpetrator, in his capacity as a teacher at Granite Hills
7 High School, and while specifically acting on behalf of Defendant School District and Does 2
8 through 100.

9 45. During Plaintiff's time as a student at Granite Hills High School, Perpetrator
10 intentionally, recklessly, and wantonly did acts which resulted in harmful and offensive contact
11 with intimate parts of Plaintiff's person. Perpetrator used his position as a teacher to require
12 Plaintiff to give into his sexual suggestions, and used his authority and position of trust to
13 exploit Plaintiff physically, sexually, and emotionally.

14 46. Because of Plaintiff's relationship with Perpetrator, Plaintiff's young age and immaturity
15 as a minor student, Plaintiff's inexperience, and Perpetrator's unsupervised sexual grooming,
16 Plaintiff was unable to terminate the student-teacher, student-counselor, student-advisor, and
17 student-mentor relationships he had with Perpetrator.

18 47. Because of Perpetrator's position of trust and authority over Plaintiff, Plaintiff's mental
19 and emotional state, Plaintiff's young age as a minor under the age of consent, and Perpetrator's
20 sexual grooming of Plaintiff, Plaintiff was unable to and did not give meaningful consent to
21 such acts.

22 48. Even though Defendant School District and Does 2 through 100 knew or should have
23 known of these activities by Perpetrator, Defendant School District and Does 2 through 100 did
24 nothing to investigate, supervise, or monitor Perpetrator to ensure the safety of the minor
25 students.

26 49. Defendant School District and Does 2 through 100 breached their duties to Plaintiff.

27 50. As a result of the above-described conduct, Plaintiff has suffered, and continues to
28 suffer, great pain of mind and body, shock, emotional distress, physical manifestations of

1 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
2 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will
3 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
4 enjoyment of life; has sustained and will continue to sustain loss of earnings and earning
5 capacity; and/or has incurred and will continue to incur expenses for medical and psychological
6 treatment, therapy, and counseling.

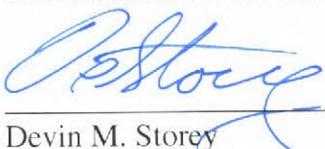
7 WHEREFORE, Plaintiff prays for damages; punitive damages; costs; interest; attorney's
8 fees; statutory/civil penalties according to law; and such other relief as the court deems
9 appropriate and just.

10 **JURY DEMAND**

11 Plaintiff demands a jury trial on all issues so triable.

12
13 THE ZALKIN LAW FIRM, P.C.

14 Dated: 2/6/15

15 By: 
16 Devin M. Storey
17 Attorney for Plaintiff