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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DOE GUARDIAN, INDIVIDUALLY AND AS
NEXT FRIEND FOR HER MINOR CHILD, **DOE**
MINOR FEMALE, and **DOE GUARDIAN**,
in his individual capacity.

PLAINTIFFS,

VS.

STATE OF HAWAII, DEPARTMENT OF
EDUCATION; AND DOE DEFENDANTS 1-
10,

DEFENDANTS.

CIVIL NO.
(NON-VEHICLE TORT)

COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS TO ANSWER CIVIL
COMPLAINT

COMPLAINT

COME NOW DOE GUARDIAN, individually and in her capacity as Next Friend and legal guardian of her minor granddaughter, DOE MINOR FEMALE (“DMF”), DOE GUARDIAN, in his individual capacity, and DMF, by and through their counsel DAVIS LEVIN LIVINGSTON, and hereby make the following **allegations as causes of action against the above-named Defendants.**

PRELIMINARY STATEMENT

1. On October 10, 2022, 9th grade student DMF was sexually assaulted at Kea‘au High School by an 11th grade student whom Kea‘au High School personnel knew or should have known was sexually violent. After DMF promptly reported the sexual assault, administrators at Kea‘au High School re-victimized DMF again and again by dismissing her claims, keeping DMF’s assailant in class with DMF, refusing to expel DMF’s assailant even he was found by a court of law to have committed Sexual Assault in the Fourth Degree, and failing to protect DMF from additional violence and bullying on campus related to the sexual assault.

2. On or about January 29, 2024, DMF learned that friends of her assailant planned to attack her at school. This credible threat of violence followed months of bullying and threatening behavior. Frightened, she reported the latest threat of violence to Vice Principal Ron Jarvis, who told her to “drop the drama” and did nothing to ensure DMF’s safety.

3. On January 31, 2024, Kea‘au High School students, apparently friends or admirers of CS, made good on their threats to DMF and jumped her at Kea‘au High School. A female student repeatedly punched DMF in the back of the head, causing DMF a concussion, terror, and psychological harm.

4. This lawsuit is filed against the State of Hawai‘i, Department of Education, arising out of the Department of Education’s breach of its duties owed to DMF and her guardians, including its duty to exercise reasonable care to protect DMF against foreseeable dangers on the Kea‘au campus. *Doe Parents No. 1 v. Dep’t of Educ.*, 100 Hawai‘i 34 (2002).

PARTIES AND RELEVANT ENTITIES

5. DMF is a minor born in 2008. She and her legal guardians (“DOE GUARDIANS”) are and were at all relevant times citizens of the State of Hawai‘i living in Hawai‘i County. DMF and DOE GUARDIANS are pseudonyms to protect the identity of a minor child sexual assault victim.

6. At all relevant times, Defendant STATE OF HAWAII, DEPARTMENT OF EDUCATION (“Defendant”) is a department of the State of Hawai‘i. The State of Hawai‘i is a corporate body politic, duly created by law, acting through its departments, including its Department of Education, and through its agencies, employees, and other authorized and apparent agents. Defendant is subject and amenable to the jurisdiction and process of this court, and is sued herein under the provisions of the State Tort Liability Act (“STLA”), HRS Chapter 662.

7. DOE DEFENDANTS 1-10 included herein under fictitious names for the reasons that the true names and identities are presently unknown to Plaintiffs despite reasonable efforts by Plaintiffs to ascertain the same, except that they are connected in some manner with Defendant and/or were actual and/or apparent agents, employees, officers, directors, representatives, licensors or professional corporations of Defendant and/or were in some manner presently unknown to Plaintiffs, engaged in the activities alleged herein in some manner and in some degree responsible for the injuries and damages to Plaintiffs alleged herein. Plaintiffs hereby pray for leave to certify their true names, identities, capacities, activities and/or responsibilities when the aforesaid are ascertained.

JURISDICTION

8. The Circuit Court of the Third Circuit, State of Hawai‘i, has subject matter jurisdiction over the claims set forth in this Complaint pursuant to Chapters 662 and 663 of the Hawai‘i Revised Statutes (“HRS”).

FACTS COMMON TO ALL CLAIMS

1. Defendant operates Kea‘au High School, a public high school located in Kea‘au, Hawai‘i.

2. At all relevant times, Defendant had an *in loco parentis* custodial relationship with Kea‘au students while they were present on school grounds during school hours, obligating Defendant to exercise reasonable care to ensure the safety and welfare of all such students, including DMF.

3. All of the actions and omissions attributed to Defendant herein, including but not limited to all breaches of duty as alleged below, were done by employees or authorized agents of Defendant acting within the course and scope of their employment and/or agency. Defendant is liable for the torts of its employees and/or agents committed within the course and scope of their employment and agency under the STLA, HRS Chapter 662.

4. On August 2, 2022, DMF began her ninth grade year at Kea‘au High School. She was fourteen years old. DMF was nervous and excited about starting high school.

5. On October 10, 2022, DMF was the victim of a sexual assault and attempted rape by a fellow student, “SC,” an eleventh grader at the time. On campus and during school hours, SC and DMF agreed to meet up in a bathroom unmonitored by Kea‘au teachers or staff. Once there, SC began groping DMF and tried to put his hand down her pants. DMF physically resisted the sexual advances and SC slammed her into a wall. DMF, terrified, managed to fight off SC and escape the bathroom.

6. DMF reported the sexual assault and attempted rape to Kea‘au High School that very same day. As a result of DMF’s disclosure to the school, Kea‘au High School pulled video evidence that DMF and SC had met up in the bathroom on October 10. The video showed DMF speed walking away from the bathroom after the sexual assault occurred.

7. After DMF reported the sexual assault and attempted rape to Kea‘au High School, she was not sent home early or encouraged to call DOE GUARDIANS. Instead, she completed the rest of her day at school. Minutes before DMF returned home on the school bus, her guardians received a call from Vice Principal Jarvis – before any official disclosure had been made – inquiring whether they were going to call the police.

8. After DMF reported the sexual assault and attempted rape, personnel from the Hawai‘i State Department of Education called DMF’s legal guardians and advised them to file a police report against SC. DMF determined she was willing to press charges, and her legal guardians began the process of doing so. Though SC was two grades older than DMF, he was still a minor at the time of the attack, and so the case proceeded in Family Court.

9. With the Family Court case against SC was pending, Kea‘au High School did nothing to protect DMF or protect her from further psychological harm. DMF’s legal guardian went to the school multiple times to request SC be transferred out of DMF’s classes, but the school refused these requests. DMF had to see SC, the boy who tried to rape her, in class every day. And while the teacher of the class the two students had together asked DMF if she was “OK” with SC being in her class, DMF, a fourteen-year-old girl, was uncomfortable being asked to make that kind of decision.

10. Meanwhile, DMF began falling behind in class. She began showing signs of anxiety and depression as a result of the sexual assault. Her grades started dropping. Despite repeated requests from her therapist and guardians for greater in-school mental health support services, DMF received no support from the school. Instead, she received an in-school suspension and other disciplinary actions.

11. To make matters worse, upon information and belief, SC's attempted rape of DMF was not the first time SC had been sexually violent with fellow students at Kea'au. Before attempting to rape DMF, SC raped another Kea'au student who had to seek medical care after the fact. That rape also occurred on the Kea'au campus, but the student victim of the attack did not formally report what occurred.

12. On November 14, 2023, the case against SC for Sexual Assault in the Fourth Degree against DMF concluded. Because SC was a minor, the case was handled in the Family Court of the Third Circuit. Upon information and belief, the Family Court concluded that Fourth Degree Sexual Assault had been proved beyond a reasonable doubt and that SC was a law violator. SC was placed on administrative monitoring and ordered to participate with behavioral intervention as well as Catholic Charities Adolescent Sex Offender Treatment Program until he was clinically discharged. SC was also ordered to submit to a polygraph as arranged and coordinated by a therapist.

13. Unfortunately for DMF, SC being found legally responsible for assaulting her did not make school safer for her. SC was not expelled for sexually assaulting DMF. Instead, he was celebrated as a star athlete and given school-wide honors.

14. Indeed, the Family Court's determination that SC had sexually assaulted DMF only made things worse at school. Shortly after the determination, other students began bullying and threatening DMF online. Friends of SC began sending DMF social media messages saying they were going to beat her up.

15. On or around January 29, 2024, DMF went to Vice Principal Ron Jarvis, an administrator at Kea'au High School, and told him that she was being threatened. He told her to "drop the drama" and accused her of exaggerating the threats being made against her.

16. On January 31, 2024, DMF was jumped at school. Another female student punched her in the back of the head as she was walking out of a building. DMF sustained a concussion in the attack.

17. After the January 31, 2024 attack, DMF was blamed by the Kea‘au administration for provoking her assailant. Despite the fact that she did nothing to bring the attack on herself, DMF was told that she was to stay away from the girl who attacked her, and advised that if there were any future altercations between the girls, they would both be suspended.

18. DMF has been given a “behavioral support plan” by Kea‘au High School. However, instead of focusing on proactive steps the school can take to keep DMF safe, the plan instructed DMF to modify her own behavior to minimize the risk of future violence against her. In addition to being nonsensical, this victim-blaming document also communicated to DMF that Kea‘au High School views the violence DMF has been subject to on its campus as something that DMF can control.

FIRST CLAIM FOR RELIEF

NEGLIGENCE

19. Plaintiffs reallege and by reference herein incorporate the allegations contained in paragraphs 1 to 18.

20. At all relevant times, Defendant had an *in loco parentis* custodial relationship with the students of Kea‘au High School, including DMF, while the students were present on school grounds during school hours, thereby giving rise to a “special relationship” between Defendant and its students, including DMF.

21. Because of the foregoing special relationship, Defendant had an enhanced duty to exercise reasonable care in ensuring its students’ safety and welfare, and to take whatever

precautions were reasonably necessary to prevent harms that it anticipated, or reasonably should have anticipated, might befall students. Defendant's duty extends to both students and their guardians.

22. At all relevant times, Defendant owed DMF and DOE GUARDIANS an enhanced duty to exercise reasonable care to protect against the foreseeable risk that DMF would be assaulted and harmed by a third person while she was present in an area on the school grounds that lacked adequate monitoring or security. Defendant's duty arose because the general character or general type of the harm that DMF and her guardians suffered was, at all relevant times, foreseen or reasonably foreseeable by Defendant, regardless of whether the precise nature, details, or manner of occurrence of the harm was foreseeable.

23. At all relevant times, Defendant knew, or in the exercise of its official responsibilities and/or reasonable care should have known, that the minimal level of security at the unsecured and unmonitored bathroom was insufficient to ensure student safety in the face of the foreseeable risks.

24. At all relevant times, Defendant knew, or in the exercise of its official responsibilities and/or reasonable care should have known, that keeping the boy who tried to rape DMF in class with her would cause anxiety, mental pain, anguish, and suffering.

25. At all relevant times, Defendant knew, or in the exercise of its official responsibilities and/or reasonable care should have known, that students were threatening to beat up DMF at school, and that DMF's willingness to press charges against the boy who tried to rape her had placed a target on her back.

26. Defendant breached its duty to protect DMF and DOE GUARDIANS from the foreseeable risks associated with the above, including the foreseeable harm that DMF would be sexually assaulted by another student. Said breach of Defendant's enhanced duty of care proximately caused DMF to be sexually assaulted on October 10, 2022. Accordingly, Plaintiffs are entitled to recover special and general damages from Defendant in an amount to be shown at trial.

27. At all relevant times, Defendant knew, or in the exercise of its official responsibilities and/or reasonable care should have known, that SC posed a serious risk to the safety of other students, including DMF.

28. Defendant breached its duty to protect DMF and DOE GUARDIANS from the foreseeable risks posed by its failure to exercise reasonable care to control the conduct of and/or to adequately supervise SC, who Defendant knew or reasonably should have known was a danger to other students. This breach of Defendant's enhanced duty of care proximately caused DMF to be sexually assaulted by SC on October 10, 2022. Accordingly, Plaintiffs are entitled to recover special and general damages from Defendant in an amount to be shown at trial.

29. Defendant additionally failed in its duty to: (1) keep DMF safe from foreseeable harm while she was in their custody; (2) move SC out of DMF's class after she reported that he attempted to rape her; (3) meaningfully investigate SC's behavior and history; (4) expel SC for sexually assaulting DMF; (5) protect DMF from threats to her safety made after SC's conviction; (6) believe DMF when she said she was being threatened; (7) report the on-line bullying to the Hawai'i Police Department for investigation; (8) provide adequate mental health support for DMF at school; and (9) accommodate her mental health disabilities occurring as a result of the on-campus violence.

30. At all relevant times, Defendant's affirmative conduct related to its security policies and practices for the Kea'au campus – including but not limited to providing security personnel to patrol the campus, responding to credible threats made against DMF, and taking appropriate action to monitor and control the conduct of students determined to pose a risk to others – created a false appearance of security which misled students, including DMF, into believing that they would be safe and secure while on school grounds during school hours. Defendant's creation of a false sense of security proximately caused DMF to be sexually assaulted by CS on October 10, 2022 and subsequently attacked by other students at Kea'au High School. Accordingly, Plaintiffs are entitled to recover special and general damages from Defendant in an amount to be shown at trial.

31. Having undertaken the affirmative acts as set forth in the preceding paragraph, Defendant had a duty to exercise reasonable care in the performance of those affirmative acts. For the reasons set forth herein, Defendant breached its duty to exercise reasonable care in formulating and implementing the security policies and practices for the Kea'au campus. Said breach proximately caused DMF to be sexually assaulted by CS on October 10, 2022. Accordingly, Plaintiffs are entitled to recover special and general damages from Defendant in amounts to be shown at trial.

32. Defendant's duty to exercise reasonable care to ensure the safety of students while on campus during school hours included the duty to exercise reasonable care to formulate and implement appropriate security policies and practices, and to hire, train, and supervise Kea'au administrators, security personnel, and other staff in appropriate security policies and practices. Defendant's actions and omissions, as set forth herein, breached the aforesaid duties, and these breaches proximately caused DMF to be sexually assaulted by CS on October 10, 2022, and

thereafter threatened, bullied, and attacked by other students at Kea‘au High School. Accordingly, Plaintiffs are entitled to recover special and general damages from Defendant in amounts to be shown at trial.

33. As a direct and proximate result of Defendant’s negligence, as aforesaid, DMF was seriously injured and has suffered and will continue to suffer physical pain and suffering, extreme emotional distress, severe mental anguish and depression, post-traumatic stress disorder, loss of enjoyment of life, loss of consortium, and economic losses.

34. As a direct and proximate result of Defendant’s negligence, DOE GUARDIANS have suffered and will continue to suffer extreme emotional distress, loss of consortium, and economic losses.

35. For the reasons set forth herein, Plaintiffs are entitled to recover special and general damages in amounts to be shown at trial to compensate them for their injuries, losses, and expenses.

SECOND CLAIM FOR RELIEF

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

36. Plaintiffs reallege and by reference herein incorporate the allegations contained in paragraphs 1 to 35.

37. Defendant’s negligent conduct, as set forth above, proximately caused Plaintiffs to suffer serious emotional distress and loss of enjoyment of life. Accordingly, Plaintiffs are entitled to recover compensatory damages in amounts to be shown at trial.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against Defendants, and each of them, jointly and severally as appropriate, as follows:

a. for such special and general damages as to which Plaintiffs each shall be entitled according to proof;

b. for costs of suit and reasonable attorneys' fees;

c. for pre-judgment and post-judgment interest; and

d. for such additional relief as the Court deems just and proper under the circumstances.

DATED: Honolulu, Hawai'i, July 29, 2024.

/s/ Hannah H. Matsunaga

MARK S. DAVIS

MICHAEL K. LIVINGSTON

HANNAH H. MATSUNAGA

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DOE GUARDIAN, INDIVIDUALLY AND AS
NEXT FRIEND FOR HER MINOR CHILD, **DOE**
MINOR FEMALE, AND **DOE GUARDIAN**,
IN HIS INDIVIDUAL CAPACITY,

PLAINTIFFS,

VS.

STATE OF HAWAII, DEPARTMENT OF
EDUCATION; AND **DOE DEFENDANTS 1-**
10,

DEFENDANTS.

CIVIL NO. _____
(NON-VEHICLE TORT)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

COME NOW Plaintiffs above named, by and through their counsel, DAVIS LEVIN
LIVINGSTON, and hereby demand trial by jury on all issues triable by jury herein.

DATED: Honolulu, Hawai'i, July 29, 2024.

/s/Hannah H. Matsunaga

MARK S. DAVIS
MICHAEL K. LIVINGSTON
HANNAH H. MATSUNAGA

Attorneys for Plaintiffs

**STATE OF HAWAII
CIRCUIT COURT OF THE
THIRD CIRCUIT**

**SUMMONS
TO ANSWER CIVIL COMPLAINT**

CASE NUMBER

PLAINTIFF

VS.

DEFENDANT(S)

DOE GUARDIAN, INDIVIDUALLY AND AS NEXT FRIEND
FOR HER MINOR CHILD, DOE MINOR FEMALE, AND
DOE GUARDIAN, IN HIS INDIVIDUAL CAPACITY

STATE OF HAWAII, DEPARTMENT OF EDUCATION;
AND DOE DEFENDANTS 1-10

PLAINTIFF'S NAME & ADDRESS, TEL. NO.

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TO THE ABOVE-NAMED DEFENDANT(S)

You are hereby summoned and required to file with the court and serve upon

MARK S. DAVIS, MICHAEL K. LIVINGSTON and HANNAH H. MATSUNAGA

plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.

A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.

The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: <http://www.courts.state.hi.us>

Effective Date of 28-Oct-2019
Signed by: /s/ Cheryl Salmo
Clerk, 3rd Circuit, State of Hawai'i



In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on HAWAII- Phone No. 808-961-7424, TTY 808-961-7422, FAX 808-961-7411, at least ten (10) working days prior to your hearing or appointment date.