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I CERTIFY THAT THE FOLLOWING
IS A COMPLETE AND EXACT COPY OF THE
ORIGINAL THEREOF


Josh Lamborn
ATTORNEY FOR Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

E.S., a Minor Child, by and through
JEREMIAH ROSS, Guardian *Ad Litem* of
E.S.,

Plaintiff,
v.

STATE OF OREGON, by and through its
Department of Human Services,

Defendant.

Case No. **14CV05451**

COMPLAINT

Sexual Battery; Battery; Abuse of a Vulnerable
Person; Negligence;

JURY TRIAL DEMANDED

Not Subject to Mandatory Arbitration

Filing Fee: ORS 21.160(1)(d) - \$793.00;
Amount Prayed For: \$6,150,000.00

Plaintiff alleges:

GENERAL ALLEGATIONS

1.

E.S. is a 3 year-old girl, appearing through a pseudonym, who presently resides with her adoptive mother and father in Waldport, Oregon.

2.

Jeremiah Ross is the duly-appointed guardian *ad litem* for E.S.

3.

Kimberly Janelle Vollmer (hereinafter referred to as "Vollmer") is a 35-year old resident of Portland, Multnomah County, Oregon. At all times relevant to the allegations herein, Vollmer was certified by defendant, State of Oregon Department of

1 Human Services, as a foster care provider, and E.S. was residing in Vollmer's foster
2 home.

3 4.

4 The Department of Human Services (hereinafter referred to as "DHS") is a duly
5 authorized agency of defendant, State of Oregon. DHS is responsible for the delivery
6 and administration of programs and services to children and families, including but
7 not limited to child protective services and foster care.

8 5.

9 From September of 2011 until January 14, 2013, E.S. was placed by DHS in the
10 home of Kimberly Vollmer for foster care.

11 6.

12 At all times relevant, DHS and its agents and employees were in a special
13 relationship with E.S. by virtue of their statutory and contractual obligations to foster
14 children generally, and to E.S. individually, as her legal and physical custodian, and
15 they owed her a duty to provide her with a safe home and to protect her from physical
16 and emotional mistreatment and injury while in foster care.

17 7.

18 In hiring Vollmer as a foster parent, DHS empowered Vollmer to perform all
19 duties of a foster parent, including providing E.S. with moral and ethical guidance and
20 teaching her basic life skills and values. DHS knew and expected Vollmer's duties as

1 foster parent to include gaining E.S.'s trust and confidence, providing moral guidance,
2 teaching her basic life skills and values including bathing and self-care, providing
3 structure and discipline, and engendering in E.S. the belief and trust that all of
4 Vollmer's actions were appropriate for a parent to take. In engaging in the
5 aforementioned actions, Vollmer was acting within the time and space limitations of
6 her position as a foster parent; they were motivated, at least partially and initially, by a
7 purpose to serve DHS; and they were the kinds of acts she was tasked to perform.
8 Vollmer was, therefore, acting within the course and scope of the duties delegated to
9 her by DHS as a foster parent when doing so. These actions resulted in the abuse that
10 led to plaintiff's injuries as alleged below.

11 8.

12 DHS had the right and responsibility to supervise and monitor its foster parents,
13 including Vollmer.

14 **FIRST CLAIM FOR RELIEF**

15 **Sexual Battery**

16 9.

17 The plaintiff realleges and incorporates herein paragraphs 1-8.

18 10.

19 On one or more occasions between September 1, 2011 and January 14, 2013,
20 Vollmer sexually abused E.S. by digitally penetrating her vagina.

1 11.

2 As a result of Volmer's sexual abuse, E.S. suffered trauma to her hymen in the
3 form of partial transections at the 3, 6 and 9 o'clock positions.

4 12.

5 As a result of her sexual abuse in the Vollmer foster home, E.S. will require future
6 counseling and other treatment and incur related expenses in an estimated amount of
7 \$25,000.00, the actual amount to be proven at trial.

8 13.

9 As a further result of her sexual abuse in the Vollmer foster home, E.S. has
10 suffered non-economic losses, including, but not limited to, emotional injury and
11 mental anguish, trauma, an inability to form close relationships, nightmares and sleep
12 disruption, mistrust in the intentions of others, lack of self-esteem, depression, and
13 anxiety. Plaintiff prays for non-economic damages arising from the acts alleged in this
14 claim in the amount of \$1,000,000.00.

15 14.

16 The requirement of tort claim notice does not apply because E.S. was under the
17 age of 18 years when the acts or omissions giving rise to this claim occurred, the
18 claim is against the DHS, and E.S. was in the custody of the Department of Human
19 Services pursuant to an order of a juvenile court under ORS 419B.150 or 419B.185
20 when the acts or omissions giving rise to this claim occurred.

SECOND CLAIM FOR RELIEF

Battery

15.

The plaintiff realleges and incorporates herein paragraphs 1-8 and 14.

16.

On one or more occasions between September 1, 2011 and January 14, 2013, Vollmer physically contacted E.S. with an intent to cause harmful or offensive physical contact, including, but not limited to, striking and pushing E.S.

17.

As a result of the physical abuse alleged in paragraph 16, E.S. suffered physical pain and discomfort, emotional injury and mental anguish, trauma, an inability to form close relationships, nightmares and sleep disruption, mistrust in the intentions of others, lack of self-esteem, depression, and anxiety. Plaintiff will require future counseling and other treatment and incur related expenses in an estimated amount of \$25,000.00, the actual amount to be proven at trial, and in addition, has suffered non-economic harms and losses arising from the acts alleged in this claim in the amount of \$1,000,000.00.

11

111

11

THIRD CLAIM FOR RELIEF

Negligence

18.

Plaintiff realleges and incorporates herein paragraphs 1-17.

19.

By the time E.S. was taken into custody by DHS in June 2011 when she was 15 months old, DHS knew she suffered from neglect from her biological mother and father and that she was diagnosed in November 2011 with Adjustment Disorder with Anxiety by Philip Berk, M.S. through the Morrison Center. From this information, DHS knew or should have known that E.S. was particularly vulnerable, and required a safe and stable foster home.

20.

On March 7, 2012, DHS received a report of abuse from an employee of a medical office who witnessed Vollmer strike another foster child in her care, 3-year-old N.E., in the face with the back of her hand. The employee also reported concern that Vollmer had foster children in her care. The report was closed at screening.

21

On March 27, 2012, DHS received a report that another child in Vollmer's foster care, a 7-month old infant, had a severe diaper rash and blisters, and that the child could not sit down due to the pain of the rash. The report was closed at screening.

1 22.

2 On June 8, 2012, DHS received a report that the same infant as is referred to in
3 paragraph 21 had smashed fingers and bruising on her fingers, lower back; and
4 forehead. DHS interviewed Vollmer, who blamed the child's hand injury on the
5 actions of another child who had slammed a toy box lid onto the infant's fingers.
6 Following a discussion with DHS workers, Vollmer agreed that the toy box lid would
7 be removed. Following that incident, DHS workers expressed concern about the age
8 and number of children placed in Vollmer's care. DHS closed the June 8, 2012 report
9 as unfounded on July 13, 2012.

10 23.

11 On July 27, 2012, DHS received a report from Vollmer that the same child's hand
12 had once again been smashed in the toy box, from which the lid had not been
13 removed.

14 24.

15 On August 1, 2012 and September 14, 2012, DHS received reports that the child
16 referred to in paragraphs 21-23 had blood in her diaper, a cause for which could not
17 be determined. On September 20, 2012, DHS received a report that the child had
18 vaginal bleeding. The report was closed at screening. On September 23, 2012, DHS
19 received a report that the child had bruises on her back. The report was closed at
20 screening.

1 25.

2 On September 25, 2012, a DHS child welfare worker recommended that certifiers
3 closely re-evaluate the certification capacity for Vollmer, noting the series of reported
4 injuries and the fact that the four children under the age of four in her home were
5 vulnerable to their young age and had high supervision needs. DHS left the four
6 children in Vollmer's care following the September 25, 2012 recommendation.

7 26.

8 DHS negligently caused E.S.'s injuries alleged in paragraphs 11-13 and 16-17 in
9 one or more of the following ways:

10 A. In negligently certifying Vollmer to be a foster parent when they knew, or
11 in the exercise of reasonable care should have known, that she had
12 physical challenges, borderline intelligence, poor financial management
13 skills, and would be financially dependent upon payments for her service
14 as a foster parent;

15 B. In placing four children under the age of four, including E.S., in Vollmer's
16 care when DHS knew, or in the exercise of reasonable care should have
17 known, that Vollmer was incapable of adequately caring for them;

18 C. In failing to remove E.S. from Vollmer's care after the reports about
19 Vollmer's abuse and neglect of N.E. and another child in her care, and
20 concerns about Vollmer's overall capacity to care for four young children

were received by DHS, as alleged in paragraphs 20-25; and

D. In failing to limit Vollmer's certification capacity.

27.

As a result of DHS's negligence as alleged in paragraph 26, E.S. suffered the harm and damages alleged in the First and Second Claims for Relief.

FOURTH CLAIM FOR RELIEF

Abuse of a Vulnerable Person – ORS 124.105

28.

Plaintiff realleges and incorporates herein paragraphs 1-27.

29.

E.S. was at all relevant times vulnerable and entitled to the protection of ORS 124.100 *et seq.*, because she was an incapacitated person for purposes of ORS 124.100(1)(e)(C) and ORS 125.005(5) since a condition existed in which her ability to receive and evaluate information effectively or to communicate decisions was impaired to such an extent that she did at the relevant times presently lack the capacity to meet the essential requirements for her physical health or safety, including those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness was likely to, and did, occur. Specifically, a condition existed such that E.S. lacked a wide range of cognitive and functional abilities relating to receipt and evaluation of information and

1 communication, including:

2 (a) Her ability to use and understand words, regardless of whether
3 they were written or spoken, was extremely limited;

4 (b) She was unable to communicate effectively with or otherwise
5 engage others, including those who may have been in a position to
6 help her meet her basic needs. Despite use of her limited abilities to
7 receive and evaluate information when she was able to do so, and
8 use of her limited abilities to communicate when she was able to do
9 so, E.S. was in fact unable to meet her basic health and safety needs;

10 (c) She was unable to understand basic concepts related to self-care,
11 medical treatment, common dangers and personal safety;

12 (d) She was wholly unable to manage money or purchase necessities,
13 and had no money;

14 (e) She was unable to understand (i) that she had the need and the
15 right not to be abused by others; (ii) that she had basic needs and
16 rights to emotional security and bodily integrity; and (iii) the nature
17 of the abuse that was being perpetrated upon her;

18 (f) She was unable to make or to communicate any decision that would
19 cause her essential requirements for physical health and safety to be
20 met;

- (g) At the times the abuse occurred, E.S. was isolated from anyone who might have been able to help her, except the perpetrator of her abuse;
- (h) She was further unable to place phone calls, to communicate electronically, or in any way to contact law enforcement or medical providers or anyone outside her foster home to meet her needs;
- (i) Her ability to receive and evaluate information effectively or to communicate decisions may have been impaired by Vollmer's threats and coercion, including threats that she or other children would be removed from Vollmer's home if they told anyone about the abuse; and
- (j) Her ability to receive and evaluate information effectively or to communicate decisions was further impaired by the physical and psychological effects of the ongoing acts of abuse perpetrated upon her by Vollmer.

30.

The conduct alleged in paragraphs 10 and 16-17 constituted physical abuse within the meaning of ORS 124.105(1)(a), (g), and (h).

31.

18 Pursuant to ORS 124.100(2) and (5), defendant is responsible for the physical
19 abuse of E.S. as alleged in paragraph 30 because defendant permitted Vollmer to
20 engage in the abuse by knowingly failing to act under circumstances in which a

1 reasonable person should have known of the physical abuse.

2 32.

3 As a result of the defendant's omissions as alleged in this Fourth Claim for Relief,
4 E.S. suffered the injuries and damages alleged, and is entitled to an amount equal to
5 three times her economic and non-economic damages, pursuant to ORS 124.100(2)(a)
6 and (b).

7 33.

8 Plaintiff is entitled to recover reasonable attorney fees pursuant to ORS
9 124.100(2)(c) and reasonable fees for the services of the guardian *ad litem* pursuant to
10 ORS 124.100(2)(d).

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, plaintiff prays for judgment against defendant as follows:

13 1. On the First Claim for Relief for Sexual Battery:

14 a. Economic damages in the amount of \$25,000.00;
15 b. Non-economic damages in the amount of \$1 million; and
16 c. Costs and disbursements incurred herein.

17 2. On the Second Claim for Relief for Battery:

18 a. Economic damages in the amount of \$25,000.00;
19 b. Non-economic damages in the amount of \$1 million; and
20 c. Costs and disbursements incurred herein.

3. On the Third Claim for Relief for Negligence:

a. Economic damages in the amount of \$50,000.00 as alleged in the First and Second Claims for Relief;

b. Non-economic damages in the amount of \$2 million as alleged in the First and Second Claims for Relief; and

c. Costs and disbursements incurred herein.

4. On the Fourth Claim for Relief for Abuse of a Vulnerable Person:

a. Treble economic damages in the amount of \$150,000.00;

b. Treble non-economic damages in the amount of \$6 million;

c. Reasonable attorney fees pursuant to ORS 124.100(2)(c);

d. Reasonable fees for the services of the guardian *ad litem* pursuant to

ORS 124.100(2)(d); and

e. Costs and disbursements incurred herein.

Dated: May 27, 2013.

THE LAW OFFICE OF JOSH LAMBORN, P.C.

Josh Lamborn, OSB 973090
Attorney for Plaintiff

Trial Attorney: Josh Lamborn