

CAUSE NO. _____

JANE DOE	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
BOYS & GIRLS	§	
CLUBS OF AMERICA AND BOYS	§	
AND GIRLS CLUBS OF GREATER	§	
HOUSTON, AND ERIC BALDERAS	§	
<i>Defendants.</i>	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JANE DOE, Plaintiff (hereinafter "Plaintiff") and files her Original Petition complaining of and against BOYS & GIRLS CLUBS OF AMERICA, BOYS AND GIRLS CLUBS OF GREATER HOUSTON and ERIC BALDERAS, and would respectfully show unto the Honorable Court and Jury the following:

I.

PARTIES

1.1 Plaintiff, JANE DOE, is an individual residing in Harris County, Texas. At all relevant times when the torts alleged in this Petition occurred, Plaintiff was a non-emancipated minor.

1.2 Defendant, BOYS & GIRLS CLUBS OF AMERICA, is a Foreign Not-For-Profit Corporation registered to conduct business throughout the United States and Texas as well as Harris County, Texas. This Defendant be served with process by serving its registered agent Corp. Service CO D/B/A CSC-Lawyers at One Commodore Plaza, 800 Brazos, Ste. 330, Austin, Texas 78701 or wherever it may be found.

1.3 Defendant, BOYS AND GIRLS CLUBS OF GREATER HOUSTON, is a Texas Corporation with its principal office at 815 Crosby Street, Houston, Texas 77019. This Defendant may be served with process by serving its registered agent Kevin R. Hattery at 1520-A Airline, Houston, Texas 77009.

1.4 Defendant, ERIC BALDERAS, is an individual residing in the state of Texas housed at the Holiday Unit of the Texas Department of Criminal Justice on 295 N Freeway Service Road, Huntsville, Texas 77320, TDC: 02420275 and may be served at this address. This Defendant is incarcerated for acts alleged in this Petition and, at all times relevant hereto, was acting within the course and scope of his employment with the Defendant(s).

1.5 Plaintiff invokes her right to institute this suit against whatever entity was conducting business using the assumed or common name of "BOYS & GIRLS CLUBS OF AMERICA" with regards to the events described in this Petition. Plaintiff expressly invokes her right under Texas Rule of Civil Procedure 28 to have the true name of this party substituted at a later time upon motion or on the Court's own motion.

1.6 Plaintiff invokes her right to institute this suit against whatever entity was conducting business using the assumed or common name of "BOYS AND GIRLS CLUBS OF GREATER HOUSTON" with regards to the events described in this Petition. Plaintiff expressly invokes her right under Texas Rule of Civil Procedure 28 to have the true name of this party substituted at a later time upon motion or on the Courts own motion.

1.7 Because this lawsuit alleges a sexual assault occurred throughout the wrongful conduct of the Defendants, at a time she was a non-emancipated minor, Plaintiff invokes her right to bring this suit under an alias name to avoid the continuing shame caused by the Defendants' conduct.

II.

VENUE AND JURISDICTION

2.1 Venue for this case is proper in Harris County, Texas, pursuant to 15.002(a)(3) of the Texas Civil Practice and Remedies Code in that County is the county in which Defendant BOYS & GIRLS CLUBS OF GREATER HOUSTON has its principal office.

2.2 The Court has subject matter jurisdiction over this civil action because Plaintiff seeks damages in an amount exceeding the Court's minimum jurisdictional limits.

III.

DISCOVERY CONTROL PLAN

3.1 Pursuant to Rule 190.3 of the Texas Rules of Civil Procedure, Plaintiff requests a Level 2 Discovery Control Plan.

IV. FACTS

4.1 The Boys & Girls Clubs of America (“Club”) was founded by three women in Hartford, Connecticut with the belief that “boys who roamed the streets should have a positive alternative.” The first Club was launched in 1860. In 1906, 53 member organizations were launched marking the start of a nationwide movement through local affiliations. In 1931, the Boys Club Federation of America changed its name to the Boys Club of America. At that time, the focus of the Club was “capturing boys’ interests, improving their behavior and increasing their personal expectations and goals.” Almost 60 years later, the Club began to recognize that girls, too, were a part of its cause and, in 1990, changed its name to the Boys & Girls Clubs of America.

4.2 Over the years, the Club has cared for and mentored thousands of children – both boys and girls. On its website, the Club proclaims that “Child Safety is Job No. 1”. The Club claims that “[t]he safety of young people at Boys & Girls Clubs is always our top priority” because “[y]outh who are mentally and physically safe are better able to learn, grow, and thrive.” The Club claims to continuously enhance safety policies, practices, and trainings to ensure they are centered on youth’s needs. “There is nothing more important to us than keeping children safe and protected,” according to the Club on its webpage.

4.3 The Club clearly understands that inappropriate sexual behavior towards its children is damaging to that child for the rest of his or her life with countless repercussions to the child's development that can lead to depression, suicide, and other physical and psychological trauma that is difficult – if not impossible – to overcome. It is for this reason that the Club publicly claims

“The safety of young people at Boys & Girls Clubs is always our top priority. Youth who are mentally and physically safe are better able to learn, grow, and thrive. Boys & Girls Clubs of America works continuously to enhance safety policies, practices, and trainings to ensure they are centered on youth's needs. There is nothing more important to us than keeping children safe and protected.

Boys & Girls Clubs do not tolerate inappropriate behavior of any kind, including child sexual abuse or misconduct. From strict adherence to policies and guidelines within Club facilities and staffing structure, to equipping young people with the critical thinking and social-emotional skills to make healthy, safe choices, ensuring Club members are safe is the first step to their success.

Boys & Girls Clubs of America advocated for the passage of the U.S. Protect Act, which improved background screening systems and access, and is proud to partner with the following organizations to develop safety practices that benefit ALL youth-serving organizations.”

4.4 According to Chris Newlin, the Director of the National Children’s Advocacy Center, “as the world’s first Child Advocacy Center, the National Children’s Advocacy Center (NCAC) places our utmost priority on the safety of youth. As a proud member of Boys & Girls Clubs of America’s National Child & Club Safety Task Force for the past 10 years, I’ve witnessed and applaud the organization’s continual commitment to protecting youth. From their ongoing investment in best-in-class safety resources, trainings, practices and procedures to requiring that all local Clubs adhere to robust safety measures, Boys & Girls Clubs of America’s dedication to the safety and well-being of young people ensures that Clubs provide a safe haven for kids – a place where they are heard, supported and feel both physically and emotionally secure.”

4.5 The Club has more than 400,000 trained staff and volunteers that provide what the Club describes as “caring guidance to support millions of kids and teens across America in order to help them grow into confident, capable adults.”

4.6 The Club claims also to work continuously to enhance robust safety policies and actions to ensure young people remain safe in Clubs. Through its national Child & Club Safety Department Boys & Girls Club supposedly implements layers of safety policies and guidelines to keep kids safe including:

- **Background Checks:** Mandatory annual criminal background checks for staff and volunteers.
- **Mandatory Reporting:** Local Boys & Girls Clubs are required to immediately report any suspected abuse or victimization to the appropriate authorities and then to Boys & Girls Clubs of America.

- **Safety Committees:** Each Club has a Board- led Safety Committee elevating safety to the highest level of governance, and are required to fulfill the same responsibilities at every Club.
- **Mandatory Safety Assessments:** Clubs are required to complete a mandatory annual safety assessment.
- **3rd Party Experts:** BGCA and local Clubs engage leading 3rd party safety experts on training, policies and resources. Recently BGCA worked with RAINN, the nation's leading organization dedicated to abuse prevention, awareness, and response to conduct a safety review.
- **Reference Requirement:** Any employee looking to move to another Club, MUST have a reference from the previous Club to be eligible for rehire.
- **Continuous Enhancement:** Continual updates to Clubs sexual abuse prevention polices, practices, and trainings that align with best practices of healthcare and school-based settings.
- **Resources for Families and Staff:** Impactful training and resources for Club youth and families focused on mental health and social-emotional development.
- **Resources for Youth Members:** Clubs are required to prominently display key safety resources and information, including the Child Safety Helpline and Crisis Text Line.
- **Policy Communications:** Clubs must inform parents and guardians of safety policies when they receive a youth membership application.

4.7 Despite having these written rules and regulations, the Club and the Boys and Girls Clubs of Greater Houston (“Club Houston”) completely failed to provide a safe environment for Plaintiff – a young girl – for over three summers when she was repeatedly sexually assaulted, raped, and forced to give oral sex to a Club employee. Plaintiff’s date of birth is July 18, 2002 – she is twenty (20) years old currently. The first sexual assault occurred on Plaintiff’s 12th birthday in 2013. Defendant Eric Balderas took Plaintiff in a vehicle to drop off an older female camper to another campus or building. Defendant Eric Balderas was not Plaintiff’s camp counselor, yet he was allowed by Club

Houston to supervise Plaintiff anyway. After dropping off the adult passenger, Defendant Balderas raped Plaintiff by penetrating her vagina with one or more of his fingers. Additionally, on that day her mother arrived at camp to pick her up and Plaintiff was unexplainedly not there because she had not yet returned to the Houston Club. The second sexual assault occurred the following summer in 2014 on or about her 13th birthday. Defendant Balderas took Plaintiff to a room at the Royal ISD Boys and Girls Club that did not have a camera and raped the Plaintiff, this time penetrating her with his penis and having sexual intercourse with her. The third sexual assault occurred the following summer in 2015 at the Royal ISD Boys and Girls Club in the Teen Room. Defendant Balderas made her perform oral sex on him. From the time Plaintiff was 12 years old until she was 14, each summer, she was sexually assaulted and raped by Defendant Balderas — who acted with complete impunity and without any reasonable supervision — violating multiple Club rules in plain view and without any consequences to him until he was arrested, charged, and convicted of the sexual assault of a minor. Balderas is currently serving a 39-year sentence for his crimes. This suit is brought to force the Club and Club Houston to account for their own failures and breaches of their duties to the Plaintiff which have proximately caused permanent and significant damage to the Plaintiff.

4.8 The Plaintiff has had to learn, in the hardest way, that the written safety policies posted by the Club and Club Houston are simply lip service. Despite claiming to provide resources such as a Child Safety Helpline and a Crisis Text Line, these resources were not provided to the Plaintiff. Further, in a complete and abject failure of

the policy behind its rules — child safety — neither the Club nor Club Houston chose to communicate with the Plaintiff or her family or provide any help, assistance or resources even after they received actual knowledge that Plaintiff had been raped and sexually assaulted by its employee for over a three-year period. Even as this suit is filed, neither the Club nor Club Houston has even apologized to the Plaintiff and her family for allowing these tragic occurrences.

V.
CAUSES OF ACTION

A. *NEGLIGENCE*

5.1 The incident made the basis of this lawsuit resulted from the improper conduct of Defendants which proximately caused the injuries and damages to Plaintiff. Defendants owed Plaintiff a duty to conduct themselves as a person of ordinary prudence would have in similar circumstances. Defendants breached this duty of care by failing to act as a reasonably prudent business would have acted under the same or similar circumstance. Specifically, Defendants' following acts constituted negligence:

- a) Failing to create and implement policies and procedure to prevent the hiring or retention of unqualified employees;
- b) Failing to create and implement policies and procedures to provide for a proper and thorough pre-hire investigation of drivers;
- c) Failing to create, implement, and establish policies procedure to properly train employees to ensure the proper safe conduct of its invitees;
- d) Failing to create, implement, and establish policies and procedures to ensure the proper supervision of invitees;
- e) Failing to create, implement, and establish policies and procedures that prevent sexual misconduct and how to handle report involving

inappropriate situations involving employees;

- f) Failing to properly train employees on their duties as a professional, ethical staff;
- g) Failing to properly screen staff that are ill-equipped to operate as employees;
- h) Failing to protect invitees from sexual advances and inappropriate sexual contact at the hands of employees, and;
- i) Failing to provide a safe environment to its invitees.

5.2 The negligent conduct of Defendants on the occasion in question was a proximate cause of the occurrence in question and the injuries and damages to Plaintiff.

B. VICARIOUS LIABILITY AND RESPONDEAT SUPERIOR

5.3 At all times relevant to this suit, Defendant Boys & Girls Clubs of America and Defendant Girls Clubs of Greater Houston, Inc. employed Defendant Balderas. Defendant Boys & Girls Clubs of America and Defendant Boys and Girls Clubs of Greater Houston, Inc. are liable for the conduct of Defendant Balderas under the doctrine of respondeat superior because Defendant Balderas, at all relevant times, acted within the course and scope of his employment for Defendant Boys & Girls Clubs of America and for Defendant Boys and Girls Clubs of Greater Houston, Inc.

5.4 At the time of the incident, Defendant Balderas was working in the course and scope of his employment or agency for Defendant Boys & Girls Clubs of America and for Defendant Boys and Girls Clubs of Greater Houston, Inc.

5.5 The negligent conduct of Defendant Balderas on the occasion in question was a proximate cause of the occurrence in question and the injuries and damages to Plaintiff.

C. GROSS NEGLIGENCE

5.6 Plaintiff would further show that one or more Defendants' conduct, when viewed objectively from the standpoint of those specific Defendants at the time of the occurrences, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others. Further, Defendant(s) had actual subjective awareness of the risks involved, but nevertheless preceded with conscious indifference to the rights, safety, or welfare of others, including the Plaintiff. Accordingly, Plaintiff is entitled to recover exemplary or punitive damages in addition to actual damages.

**VI.
DAMAGES**

6.1 As a result of the occurrence made the basis of this lawsuit, as detailed above, and as a direct and proximate result of Defendants' negligence, Plaintiff has suffered severe injuries, will likely sustain additional damages in the future, and is entitled to recover:

- a. Past medical bills and expenses incurred as a proximate result of the accident that forms the basis of this lawsuit;
- b. Future medical bills and expenses that in all reasonable probability will be incurred as a proximate result of the accident that forms the basis of this lawsuit;
- c. Mental anguish, physical pain and suffering, and loss of enjoyment of life in the past and in the future;

- d. Pre-judgment interest;
- e. Post-judgment interest;
- f. Costs of court; and
- g. Such other and further items of damages as may be supplemented as a result of the discovery performed in this suit.

6.2 Pursuant to Texas Rule of Civil Procedure 47(c), Plaintiff seeks monetary relief in excess of \$1,000,000. Plaintiff reserves the right to amend this section as the course of the litigation progresses.

VII. JURY DEMAND

7.1 Plaintiff demands a jury for all issues presented here in. The requisite jury fee accompanies this request.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, that upon final trial and other hearing of this cause, that Plaintiff recovers damages from Defendants in accordance with the evidence, and as the jury deems them deserving, that Plaintiff recovers costs of court herein expended; that Plaintiff recovers interest to which Plaintiff is justly entitled under the law, both prejudgment and post judgment, and all other damages to which Plaintiff may be justly entitled.

Respectfully submitted,

ROBERTS MARKLAND LLP

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ATTORNEYS FOR PLAINTIFF

DESIGNATED E-SERVICE E-MAIL ADDRESS

The following is the designation of electronic service email address for the above attorney(s) for all electronically served documents and notices, filed and unfiled pursuant to Tex. R. Civ. P. 21(f)(2) and 21(a): eservice@robertsmarkland.com. This is the ONLY electronic service email address for the above attorney(s), and service through any other email address will be considered invalid.

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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