

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

JOHN DOE (minor child) by and)
)
through his Guardian,)
)
JANE DOE,)

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

PLAINTIFF,)

SUMMONS

VS.)

2013-CP-01-104

NIKKI HALEY, SOUTH CAROLINA)
)
DEPARTMENT OF SOCIAL SERVICES,)
)
LILLIAN KOLLER, KATHLEEN HAYES,)
)
ISABEL BLANCO, ROBIN KUBLER,)
)
MERRY EVE POOLE, URSULA BEST,)
)
CASSANDRA DANIELS, PATRICIA)
)
BOSWELL, DEBRA WISE, CHARLENE)
)
ROBINSON, DONNA OUTEN, ROBERT)
)
SEEPERSAUD, BOYS HOME OF THE)
)
SOUTH, INC., VERNON HAYES,)
)
NICOLE LINDSEY, CYNTHIA BROCK,)
)
RICHELLE OWENS and JOHNNY JONES)

(JURY TRIAL DEMANDED)

DEFENDANTS.)

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2013 MAY 30 PM 4:46
EMILY V MCMAHAN
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you and to serve a copy of your Answer on the subscribed at her office, 100 East Pickens Street, P. O. Box 805, Abbeville, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for relief demanded in the Complaint.

SIGNATURE PAGE TO FOLLOW

HITE & STONE

BY:


THOMAS E. HITE, JR.

P.O. BOX 805

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ATTORNEY FOR THE PLAINTIFF

ABBEVILLE, SOUTH CAROLINA
MAY 30, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

JOHN DOE (minor child) by and)
through his Guardian,)
JANE DOE,)

TRUE COPY
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ABBEVILLE COUNTY CLERK OF COURT

PLAINTIFF,

AMENDED COMPLAINT

VS.

2013-CP-01-104

NIKKI HALEY, SOUTH CAROLINA)
DEPARTMENT OF SOCIAL SERVICES,)
LILLIAN KOLLER, KATHLEEN HAYES,)
ISABEL BLANCO, ROBIN KUBLER,)
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(JURY TRIAL DEMANDED)

DEFENDANTS.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2013 MAY 20 PM 4:46
EMILY MCMAHAN
CLERK OF COURT

The Plaintiff complaining of the Defendants herein would respectfully show unto
this Honorable Court:

Introduction

1. That Plaintiff John Doe (Doe), by and through his Guardian Jane Doe,
sues to recover compensatory and punitive damages for injuries caused by Defendants'
tortious conduct and violations of his federal civil rights.

2. That on March 28, 2011, Doe, an eleven-year-old boy from Abbeville
County in foster care in the custody of the South Carolina Department of Social Services

(SCDSS), was attacked and sexually assaulted on two separate occurrences by AR, an older boy, also in foster care in SCDSS custody. Doe and AR were housed in the same cottage at the Boys Home of the South (BHOTS), a child care institution licensed and supervised by SCDSS.

3. That at the time of the attacks and sexual assaults on Doe, SCDSS and BHOTS employees had notice of numerous prior incidents of child-on-child maltreatment at BHOTS. AR in particular had a history—known to SCDSS and BHOTS employees—of sexually inappropriate behavior with other boys at the facility. Yet just days before the attacks and sexual assaults, Doe’s SCDSS caseworker visited Doe at BHOTS and noted “there are no safety issues or concerns noted in the cottage where [Doe] is currently residing.”

4. That despite AR’s prior inappropriate sexual behavior and Doe’s young age, at the time of the attacks and sexual assaults both boys were placed in Greer Cottage, part of BHOTS’ Low Management Group Care Housing. These Low Management Group Care Houses were among the institution-style group facilities frequently used in 2010 and 2011 by SCDSS to house foster children, especially younger children like Doe. Because of a gross lack of foster family homes for children in foster care in SCDSS custody, SCDSS had a policy, custom, pattern, or practice of utilizing and inadequately supervising group homes generally and Low Management Group Care Housing specifically. As one 2010 SCDSS publication admits, “[SCDSS] overrelies on congregate care facilities for our children, when research shows that children have better outcomes when placed in families.” According to data maintained by the Federal Administration for Children and Families (ACF) of the Department of Health and Human Services

(HHS), in 2010 and 2011 South Carolina was ranked 50th among states in both the percentage of children in foster care age 12 or younger housed in group homes and the percentage of children in foster care age 12 or younger placed in institutions.

5. That because of the absence of suitable family-based foster homes for children in South Carolina in 2010 and 2011, SCDSS policies permitted SCDSS to warehouse 10 or more children of all ages per “cottage” in Low Management Group Care Housing. SCDSS’s policies did not prohibit these placements from mixing children who were victims of child abuse or neglect with children who had engaged in sexually inappropriate behavior with other children. SCDSS allowed these facilities to have staff to child ratios as high as 1 adult for every 10 children during the day and 1 adult for every 14 children at night. Further, while one adult staff was required to be physically present at night, SCDSS did not require they be on duty or even awake.

6. That Greer Cottage at BHOTS was no exception. BHOTS’ policies governing Doe’s placement required Greer Cottage at all times to have a staff-to-child ratio of 1 adult for every 10 children. Doe was “to be provided with 24 hour supervision,” only “16 hours of which [was] awake.” On the evening of March 28, 2011, when Doe was attacked and sexually assaulted by AR, 6 boys were residing at Greer Cottage. Only one staff member was present in the cottage even though SCDSS and BHOTS were both aware of the risk that AR presented to Doe.

7. That in 2010 and 2011, SCDSS and BHOTS had a policy, custom, pattern, or practice of failing to require caretakers in residential facilities to remain awake at night, which violated accepted professional child welfare standards.

8. That in 2010 and 2011, SCDSS and BHOTS had a policy, custom, pattern, or practice of failing to track child-on-child maltreatment, failing to consider such incidents in the oversight and monitoring of group homes such as BHOTS, and failing to consider such incidents prior to decisions to place children in specific group home housing such as BHOTS.

9. That after the attacks and sexual assaults on Doe, SCDSS and BHOTS failed to adequately investigate the incident. SCDSS failed to complete forensic interviews for months after the attacks and sexual assaults. SCDSS's initial investigation into the attacks and sexual assaults on Doe, completed in May 2011, found no negligent supervision because BHOTS was not required to have awake staff at the time of the incident. A second investigation conducted by SCDSS into the same incident, completed in July 2011, reversed course and found negligent supervision on the part of the BHOTS "house parent" on duty but made no findings against BHOTS.

10. That the failure to adequately investigate the attacks and sexual assaults on Doe was part of a policy, custom, pattern, or practice at SCDSS and BHOTS of failing to conduct adequate investigations into incidents of child-on-child maltreatment. In the 2010 Child and Family Service Review (CFSR) of SCDSS conducted by ACF, the federal reviewers determined SCDSS failed to make "diligent efforts to assess and address the risk of harm to the child" in more than 40 percent of the cases reviewed.

11. That after the attacks and sexual assaults on Doe, SCDSS and BHOTS failed to provide Doe with desperately needed mental health treatment for months, even though the event so traumatized Doe that he attempted to cut his wrist with a razor blade a week after the incident. A June 2011 psychiatric assessment lists "Depression,"

“Irritability,” “Oppositional,” and “Sleep/appetite disturbance” under “Target Symptoms for Treatment.” Yet Doe received no treatment for the trauma he suffered until mid-July 2011, and the little treatment SCDSS did ultimately provide to Doe, before discharging him from state custody in March 2012, was grossly inadequate.

12. That the failure to provide Doe with necessary mental health treatment was part of a policy, custom, pattern, or practice at BHOTS and SCDSS of denying children needed mental health care. BHOTS and other Low Management Group Care facilities routinely housed children with mental health needs who were not receiving necessary treatment. In its 2010 Annual Progress and Services Report, SCDSS stated that the agency was not adequately monitoring the medical needs of children in its custody and that, as a result, children often did not receive appropriate follow-up treatment. In its 2010 CFSR of SCDSS, ACF found a “scarcity of key services, such as psychological evaluations and mental health . . . treatment services.”

13. That Plaintiff John Doe, by and through his guardian Jane Doe, sues to recover damages caused by these shocking failures in placement, supervision, treatment, and investigation by BHOTS and SCDSS and their employees. These failures caused Doe to suffer severe injuries and harm. Defendant individuals were employees at SCDSS and BHOTS who were directly responsible for Doe’s care. Each of Defendants had notice that housing Doe at BHOTS exposed him to dangers and a risk of harms, yet they ignored them. This gross negligence and deliberate indifference directly resulted in his injuries. Defendant Haley, as the chief public official in the state, had notice of the patterns, practices, policies, and customs alleged in this complaint yet ignored them.

The Parties

Plaintiff

14. That Plaintiff **John Doe (Doe)** was born in 1999. He is a minor child and a citizen and resident of the County of Abbeville, South Carolina. He was a foster child in the legal custody of SCDSS from May 2010 to March 2012. SCDSS placed Plaintiff in the care and physical custody of BHOTS, where he resided between May 2010 and June 2011.

15. That Plaintiff's guardian **Jane Doe** brings this suit on Plaintiff's behalf. She is also a citizen and resident of Abbeville County, South Carolina. Jane Doe was given legal guardianship of John Doe upon his discharge from SCDSS custody.

Defendants

16. That Defendant **Nikki Haley** is the Governor of South Carolina. Defendant Haley was elected Governor on November 2, 2010. Defendant Haley is a resident of South Carolina. Defendant Haley is the supreme executive authority of South Carolina, responsible for ensuring that all state agencies act in compliance with all state and federal laws and the United States Constitution. Defendant Haley appoints the Director of SCDSS, with the advice and consent of the State Senate. Defendant Haley also has the power to remove the Director of SCDSS at her discretion.

SCDSS Defendants

17. That Defendant **South Carolina Department of Social Services (SCDSS)** is an agency of the State of South Carolina created by the General Assembly of

the State of South Carolina. SCDSS is responsible for ensuring that the children in its custody are safe and are receiving adequate care and treatment in accordance with applicable legal standards.

18. That Defendant **Lillian Koller** is the Director of SCDSS and a resident of South Carolina. Defendant Koller became Director in 2011 and has held the position since. Defendant Koller is responsible for overseeing, managing, and controlling the operation, administration, and organization of SCDSS in accordance with applicable legal standards. This includes providing safe and adequately supervised placements and treatment for children in foster care in SCDSS custody.

19. That Defendant **Kathleen Hayes** was Defendant Koller's predecessor as Director of SCDSS. Defendant Kathleen Hayes served as Director of SCDSS from 2007 to 2011. As Director she was responsible for overseeing, managing, and controlling the operation, administration, and organization of SCDSS in accordance with applicable legal standards. This included providing safe and adequately supervised placements and treatment for children in foster care in SCDSS custody.

20. That Defendant **Isabel Blanco** was the Deputy Director for Human Services at SCDSS during the times alleged herein, with responsibility for providing safe and adequately supervised placements and treatment, in accordance with applicable legal standards, for children in foster care in SCDSS custody.

21. That Defendant **Robin Kubler** was the Director of SCDSS for Region I and a resident of South Carolina during the times alleged herein. Region I is the region that encompasses Abbeville and Greenville Counties. Defendant Kubler is also a resident of South Carolina. Defendant Kubler supervised SCDSS operations in Region I, and her

responsibilities included ensuring that all Region I staff were adequately trained and supervised and met the requirements of the law and SCDSS policy.

22. That Defendant **Merry Eve Poole** was the Director of SCDSS for Abbeville County and a resident of South Carolina during the times alleged herein and is a resident of South Carolina. Defendant Poole supervised SCDSS operations for Abbeville County while Doe was in SCDSS custody. Defendant Poole was responsible for ensuring that Abbeville County staff were adequately trained and supervised and met the requirements of the law and SCDSS policy.

23. That Defendant **Ursula Best** was an SCDSS employee in Abbeville County and a resident of South Carolina during the times alleged herein. Defendant Best was Defendant Daniels' supervisor while Doe was in SCDSS custody. She was responsible for supervising her caseworkers as well as the safety and well-being of their clients in accordance with applicable legal standards.

24. That Defendant **Cassandra Daniels** was an SCDSS employee in Abbeville County and a resident of South Carolina during the times alleged herein. She was the assigned caseworker for both Doe and AR during Doe's time in SCDSS custody. As Doe's caseworker she was responsible for monitoring his safety and well-being while he was in SCDSS custody in accordance with applicable legal standards.

25. That Defendant **Patricia Boswell** was an SCDSS Licensing Supervisor and a resident of South Carolina during the times alleged herein. Defendant Boswell supervised Defendants Wise and Robinson. Defendant Boswell was also responsible for ensuring that SCDSS licensing staff were adequately trained and for ensuring that BHOTS and other private providers under contract with SCDSS were providing safe and

adequately supervised placements, in accordance with applicable legal standards, for children in SCDSS custody.

26. That Defendant **Debra Wise** was an SCDSS Licensing Representative and a resident of South Carolina during the times alleged herein. Defendant Wise was responsible for ensuring that BHOTS and its staff provided a safe and adequately supervised placement, in accordance with applicable legal standards, for children in SCDSS custody.

27. That Defendant **Charlene Robinson** was an SCDSS Licensing Representative and a resident of South Carolina during the times alleged herein. Defendant Robinson was responsible for ensuring that BHOTS and its staff provided a safe and adequately supervised placement, in accordance with applicable legal standards, for children in SCDSS custody.

28. That Defendant **Donna Outen** was the Supervisor of the Out of Home Abuse and Neglect Unit (OHAN), a subdivision of SCDSS, and a resident of South Carolina during the times alleged herein. Defendant Outen was responsible for ensuring OHAN adequately investigated abuse and neglect allegations in out-of-home placements, like BHOTS, and for ensuring that children in these placements were safe and were receiving adequate care and supervision in accordance with applicable legal standards. Defendant Outen supervised multiple SCDSS investigations into abuse and neglect at BHOTS.

29. That Defendant **Robert Seepersaud** was an OHAN investigator and a resident of South Carolina during the times alleged herein. Defendant Seepersaud was responsible for adequately investigating abuse and neglect allegations in out-of-home

placements, like BHOTS, and for ensuring that children in these placements were receiving adequate care and supervision in accordance with applicable legal standards. Defendant Seepersaud was in charge of the SCDSS investigation that began on March 30, 2011 into whether Doe was abused and neglected while at BHOTS.

BHOTS Defendants

30. That Defendant **Boys Home of the South, Inc. (BHOTS)** is a non-profit domestic corporation located in South Carolina. During the times alleged herein, SCDSS licensed BHOTS to provide housing and services to children in SCDSS's custody. Its facility was and is located at 10612 Augusta Road, Belton, SC 29627. BHOTS and its employees are heavily regulated performers of a traditionally and exclusively public function. Although SCDSS retained a non-delegable constitutional duty to ensure that children in SCDSS custody were safe and receiving adequate care, SCDSS entrusted BHOTS and its employees with implementing the concomitant constitutional duty to ensure that children placed in the facility were safe and receiving adequate treatment on a day-to-day basis.

31. That Defendant **Vernon Hayes** was the Executive Director of BHOTS and a resident of South Carolina during the times alleged herein. Defendant Vernon Hayes was responsible for ensuring that staff were adequately trained; clients were adequately supervised; the facility was safe and secure; and BHOTS complied with the law, SCDSS policy, and accepted professional standards.

32. That Defendant **Nicole Lindsey** was an employee and the Treatment Coordinator at BHOTS as well as a resident of South Carolina during the times alleged herein. Defendant Lindsey was responsible for ensuring that each housing facility at

BHOTS was adequately staffed and safe in accordance with applicable legal standards. Defendant Lindsey was also responsible for ensuring BHOTS' clients were provided with adequate care, supervision, and treatment in accordance with applicable legal standards.

33. That Defendant **Cynthia Brock** was an employee and the Quality Assurance and Training Manager at BHOTS as well as a resident of South Carolina during the times alleged herein. Defendant Brock was responsible for ensuring that BHOTS provided adequate care for children in residence and for ensuring that staff had adequate training in accordance with applicable legal standards.

34. That Defendant **Richelle Owens** was an employee and the Acting Treatment Coordinator at BHOTS during the months leading up to the attacks and sexual assaults on Doe. Defendant Owens was also a resident of South Carolina during the times alleged herein. Defendant Owens was also responsible for ensuring BHOTS' clients were provided with adequate care, supervision, and treatment in accordance with applicable legal standards.

35. That Defendant **Johnny Jones** was an employee of BHOTS, a House Parent in BHOTS' Greer Cottage, and a resident of South Carolina during the times alleged herein. Defendant Jones was the only staff present in the Cottage on the night of the attacks and sexual assaults on Doe. He was responsible for ensuring that the residents of BHOTS, including Doe, were safe and receiving adequate care and supervision in accordance with applicable legal standards.

Jurisdiction and Venue

36. That this Court has jurisdiction over the subject matter of this action under Article V Section 11 of the Constitution of South Carolina; Sections 14-1-80, 15-78-100,

and 33-56-180 of the Code of Laws of South Carolina 1976, as amended; and the Common Law of South Carolina.

37. That venue is proper in this Court under Sections 15-78-100 and 15-7-30 of the Code of Laws of South Carolina 1976, as amended. Because Plaintiff minor child was in the custody of the Abbeville Department of Social Services, the acts and omissions alleged herein occurred in Abbeville County, South Carolina.

SCDSS Inappropriately Used Low Management Group Homes in 2010 and 2011

38. That in 2010 and 2011, SCDSS engaged in a policy, custom, pattern, or practice of housing children in foster care in dangerous and inappropriate placements that neither provided them with adequate protection nor met their needs. Due to a drastic shortage of foster family homes, SCDSS unnecessarily institutionalized foster children, including young children like Doe. Defendants were aware of these dangers but failed to remedy them. This dangerous and inappropriate placement practice was contrary to law and reasonable professional standards, was a substantial departure from accepted professional judgment, and was performed with deliberate indifference to known harms.

39. That in its 2009 Statewide Assessment to ACF, SCDSS recognized that it faced a drastic shortage of foster home placements throughout the state. Between June 2009 and June 2011, the total number of foster home licenses dropped even further.

40. That the 2010 CFSR performed by ACF found that the shortage of foster homes affected SCDSS's "overuse of institutional placements, such as emergency shelters and group homes."

41. That in a 2010 publication, SCDSS admitted that it “overrelies on congregate care facilities for our children, when research shows that children have better outcomes when placed in families.”

42. That Defendants Nikki Haley, Kathleen Hayes and Lillian Koller had notice and knowledge of the 2009 Statewide Assessment, the State’s placement shortage and over use of institutional group care placements, the results of the 2010 CFSR, and the 2010 SCDSS publication referenced in Paragraph 41.

43. That according to federal data maintained by ACF, in 2010 and 2011 South Carolina was ranked 50th among states in both the percentage of children in foster care age 12 or younger housed in group homes and the percentage of children in foster care age 12 or younger placed in institutions.

44. That Defendants Nikki Haley, Kathleen Hayes, and Lillian Koller had notice and knowledge of South Carolina’s performance in ACF data.

45. That SCDSS described the Low Management Group Care Program as “24 hour long term care to children” with a preference “for the service to be provided in single gender cottages or group care settings for 6 to 10 children.” SCDSS policies allowed Low Management Group Care Programs to house children of any age. SCDSS policies also did not prohibit mixing young children, such as Doe, with children up to ages 15 or 16 years old. These policies further did not prohibit mixing child victims of abuse and neglect with children who had acted out sexually with other children.

46. That in 2010 and 2011, the BHOTS Defendants, with the SCDSS Defendants’ approval, designated Greer Cottage as Low Management Group Care

Housing. BHOTS and SCDSS allowed there to be as many as 10 children for each staff member. SCDSS and BHOTS did not require BHOTS staff to be awake overnight.

47. That failing to require caretakers to remain awake at night violated accepted professional child welfare standards.

Defendants Had Notice that Placing Doe in Greer Cottage Presented an Unreasonable Risk to Doe's Safety

48. That prior to the attacks and sexual assaults, Defendants had notice of prior incidents of inappropriate sexual behavior by AR involving other child residents at BHOTS, which presented notice of and a known danger to Doe.

49. That OHAN was responsible for investigating allegations of abuse and neglect concerning children, like Doe, in out-of-home placements. Between January 1, 2009 and the night of the attacks and sexual assaults, the BHOTS Defendants and SCDSS Licensing and OHAN staff received at least eight reports of inappropriate sexual activity between residents at BHOTS. SCDSS Licensing staff visited BHOTS at least four times to follow up on complaints. Only one visit resulted in a Corrective Action Plan, and that was related to BHOTS' failure to perform required background checks on staff. No corrective actions were taken as a result of the instances of inappropriate sexual activity between residents. On August 2, 2010, Defendants Patricia Boswell, Debra Wise, and Charlene Robinson participated in a licensing case staffing "to review recent Regulatory actions regarding [BHOTS]." They determined there were "no general program issues . . . identified out of all the OHAN reports."

50. That not only did Defendants fail to take action, they increased the level of BHOTS' responsibility. Defendant Wise reports that on February 23, 2011 SCDSS

Licensing staff granted Executive Director of BHOTS, Defendant Vernon Hayes' request to change the maximum total number of children BHOTS was licensed to house on its grounds from 50 to 67.

51. That in 2010 and 2011 AR was in the custody of SCDSS and placed by Defendants in BHOTS' Greer Cottage.

52. That before the attacks and sexual assaults, the BHOTS Defendants and Defendant Cassandra Daniels were aware of AR's history of sexually inappropriate behavior with other boys at the facility.

53. That no regulatory or administrative changes were made at BHOTS after AR's earlier inappropriate sexual activity came to light.

54. That AR remained in Greer Cottage after the earlier incidents even though the Cottage had no nighttime supervision.

55. That on January 19, 2011, about two months before the attacks and sexual assaults on Doe, an OHAN investigation into inappropriate sexual activity at BHOTS was returned "Unfounded." Although neither the investigator nor Defendant Outen (the OHAN supervisor who signed off on the investigation) questioned whether inappropriate sexual activity had occurred, OHAN decided against finding abuse and neglect because the "[f]acility policy allows for house parents to sleep at night and [the] incident occurred during bed hours and staff was asleep."

56. That in 2010 and 2011, the SCDSS and BHOTS Defendants maintained a policy, custom, pattern, or practice of failing to adequately track incidences of child-on-child maltreatment.

57. That in 2010 and 2011, the SCDSS Defendants maintained a policy, custom, pattern, or practice of specifically failing to utilize information about child-on-child maltreatment in its monitoring and oversight of group home and institutional care providers, including Low Management Group Housing providers like BHOTS, and failing to utilize such information in making specific placement decisions for children in foster care.

58. That in 2010 and 2011, the BHOTS Defendants maintained a policy, custom, pattern, or practice of failing to adequately track and utilize information about child-on-child maltreatment in its care and supervision of children residing at their facility.

59. That on the night of the attacks and sexual assaults on Doe, Johnny Jones was the only BHOTS staff present in Greer Cottage. He was there alone even though he had been disciplined in the past for watching without intervening while 10 boys beat up another—an event reported to SCDSS licensing and OHAN staff (including Defendants Seepersaud and Outen). Jones later told OHAN Investigator Richard Williams that Jones was “allowed to sleep in the cottage at night and [was] not responsible for what happen[s] after bedtime.” “[A]t night,” he said, “anything can happen . . . with the kids.”

60. That on March 22, 2011, just days before the attacks and sexual assaults, Defendant Cassandra Daniels visited Doe at BHOTS. Her notes from the visit state “there are no safety issues or concerns noted in the cottage where [Doe] is currently residing.”

Defendants Placed Doe at BHOTS Where He Was Attacked and Sexually Assaulted

61. That Doe was removed from his home and taken into foster care in the custody of SCDSS in Abbeville County in May 2010. He remained in SCDSS custody through March 2012.

62. That SCDSS removed Doe from his home where he lived with his grandparents. When SCDSS removed him from his home, Doe was only 10 years old and did not present with any severe treatment needs that would require placement in a facility or institution.

63. That SCDSS failed to find a relative or a family foster home for Doe and instead, because of a lack of foster family homes, SCDSS first placed him in the Bowers Rogers Home (an emergency shelter) from May 5, 2010 to May 7, 2010. After that placement, again without finding that Doe had any special needs that would require placement in a facility or institution, SCDSS moved Doe to BHOTS.

64. That Defendants placed Doe in Greer Cottage, part of BHOTS' Low Management Group Care Housing, on May 7, 2010. He resided there until March 29, 2011 when Defendants transferred him to CARE Cottage, another residence at BHOTS.

65. That on or about March 28, 2011 after 9:00 P.M., Defendant Johnny Jones was the only staff member in Greer Cottage. While Defendant Jones was at the front of the building talking with residents from another cottage, AR attacked and sexually assaulted Doe in the bedroom area at the back of the cottage. Later that night, after all the other residents and Jones had gone to bed, AR climbed into Doe's bed while Doe was sleeping and sexually assaulted him again.

66. That the next afternoon Doe reported the attacks and sexual assaults to BHOTS staff.

67. That Defendants were deliberately indifferent and grossly negligent so as to shock the conscience in placing Doe in Greer Cottage, part of BHOTS' Low Management Group Care Housing. Defendants had notice of the danger and the risk to Doe's safety in placing Doe in a placement alongside AR without adequate supervision.

Defendants Failed to Adequately Respond Even After Doe Was Attacked and Sexually Assaulted

68. That following the attacks and sexual assaults, Defendants left Doe at BHOTS, moving him only from Greer Cottage to CARE Cottage, another residence at BHOTS' facility. Doe remained placed at BHOTS until June 28, 2011.

69. That on April 5, 2011, just days after the attacks and sexual assaults, Defendant Wise again visited BHOTS to conduct a licensing review. In her report, under "Out of Home Abuse and Neglect reports" she writes "N/A." Under "Major behavior incidents" she again writes "N/A." And the space for "Recommendations/Follow-up issues"—that space she left blank.

70. That on the same day, April 5, 2011, Defendant Seepersaud, the SCDSS investigator assigned to Doe's case, emailed Defendants Patricia Boswell, Debra Wise, and Charlene Robinson saying:

There are concerns about the appropriate staffing of the Greer cottage where there is a "Sleep Staff" situation that lends itself to in appropriate [sic] supervision of activities after staff is gone to bed. The lay out [sic] of the cottage hinders supervision or "a line of sight" if residents go to the back area where the bathrooms and bed rooms [sic] are located while staff remain in the living room area. What corrective action can regulatory bring to bear on these concerns?

71. That SCDSS Licensing's answer to Defendant Seepersaud was contained in an email sent by Defendant Robinson on May 2, 2011: "Night staff is allowed to sleep and no bed checks are req'd per Regs."

72. That on May 3, 2011, OHAN's first investigation into the attacks and sexual assaults on Doe was returned unfounded. Again OHAN reasoned that there was no abuse or neglect because "staff is not held responsible to do bed checks throughout the night and for activities after bedtime and lights out."

73. That OHAN began a second investigation on June 17, 2011. This time the OHAN investigator was Richard Williams.

74. That on June 19, 2011, Williams emailed Defendants Robinson, Outen, Boswell, and SCDSS Deputy Director Isabel Blanco stating "I'm sure you are aware [this] is [the] third report that OHAN has received in the last six months of allegations of sexual abuse between residents at the Boys of the South Group Home."

75. That these failures were part of a policy, custom, pattern, or practice at SCDSS of failing to adequately monitor the safety and supervision of placements housing children in foster care, particularly group care placements such as BHOTS.

76. That the failure to adequately investigate the attacks and sexual assaults on Doe was part of a custom, policy, pattern, or practice at SCDSS and BHOTS of failing to conduct adequate investigations into incidents of child-on-child maltreatment.

77. That according to the 2010 CFSR of SCDSS conducted by ACF, in almost a quarter of the cases reviewed, the frequency and quality of visits by SCDSS caseworkers were "insufficient to ensure adequate monitoring [of] the child's well-being and promote attainment of case goals." The federal reviewers also determined SCDSS

failed to make “diligent efforts to assess and address the risk of harm to the child” in more than 40 percent of the cases reviewed.

78. That Defendants Nikki Haley, Kathleen Hayes, and Lillian Koller had notice and knowledge of the 2010 CFSR conducted by ACF and its findings.

79. That Defendants also failed to adequately investigate the attacks and sexual assaults.

80. That although the attacks and sexual assaults occurred on or about March 28, 2011, SCDSS did not complete a forensic interview of Doe until May 31, 2011.

81. That although Doe was taken to the hospital several days after the attacks and sexual assaults, SCDSS did not perform a forensic medical exam until July 14, 2011.

82. That SCDSS never performed a forensic interview on Doe’s assailant AR.

83. That SCDSS did not complete its forensic interviews of witnesses until months after the attacks and sexual assaults.

84. That when the second investigation returned a finding of abuse and neglect on July 28, 2011, the finding only implicated Johnny Jones for neglectful supervision. There was no finding against BHOTS.

Defendants Failed to Provide Doe with Adequate Treatment After the Attacks and Sexual Assaults

85. That Defendants were deliberately indifferent and grossly negligent so as to shock the conscience in failing to provide Doe with adequate mental health treatment after the attacks and sexual assaults. Defendants had notice of Doe’s need for mental health treatment after the attacks and sexual assaults and they had notice of the danger in

failing to provide him with these services, yet they chose to ignore these dangers notwithstanding their notice.

86. That immediately after the attacks and sexual assaults, Doe's mental health began to deteriorate.

87. That on April 5, 2011 Doe slit one of his wrists with a razor he removed from a pencil sharpener and had to be taken to the hospital.

88. That according to Defendant Daniels, after the attacks and sexual assaults Doe also began to display "behaviors that have warranted staff to call law enforcement to the campus due to the 'acting out' behavior presented by [Doe]."

89. That BHOTS Treatment Coordinator Lindsey was on maternity leave from BHOTS the night Doe was attacked and sexually assaulted. When she returned she told Defendant Daniels that "[Doe's] behaviors changed within the last couple of weeks," and that "since her return to work [Doe] has acted like a different individual."

90. That a psychiatric medical assessment undergone at the behest of SCDSS and dated June 2, 2011 lists "Depression," "Irritability," "Oppositional," and "Sleep/appetite disturbance" under "Target Symptoms for Treatment." The document also says "[Doe] continues to have severe difficulties with temper outbursts, irritability and property destruction. . . . [He has had] chronic behavioral difficulties in school and likely will repeat 6th grade."

91. That Doe's "Discharge Summary/Aftercare Plan," dated June 28, 2011, states "[Doe] was also involved in a sexual incident in March of 2011 and his behaviors seemed to deteriorate after this."

92. That Defendants left Doe languishing at BHOTS for months after the attacks and sexual assaults without desperately needed treatment before finding him another placement.

93. That Defendants Lillian Koller and Isabel Blanco were aware of the attacks and sexual assaults and Doe's need for mental health treatment at least a month before Doe began receiving treatment. Isabel Blanco attended a staffing in June 2011 in which the attacks and sexual assaults on Doe were discussed. OHAN investigator Williams' case notes show that Koller was aware of his investigation when it began and had "concerns."

94. That every BHOTS Weekly Summary for Doe following the attacks and sexual assaults in March through his discharge from the facility in June 2011 states that Doe needs to be in long-term therapy. Yet Doe did not even have his first bi-weekly appointment with a treating therapist until July 18, 2011.

95. That the inadequate treatment provided to Doe was part of a policy, custom, pattern, or practice in which SCDSS routinely failed to meet the mental health needs of children in SCDSS custody.

96. That in its 2010 Annual Progress and Services Report, SCDSS stated that it often failed to monitor the medical needs of children in its custody and that those children often did not receive appropriate follow-up and treatment.

97. That the 2010 federal CFSR of SCDSS conducted by ACF found "a scarcity of key services, such as psychological evaluations and mental health . . . treatment services." In its 2003 CFSR of SCDSS, ACF found the same problem: "[t]he

State had service gaps in key areas (particularly . . . quality mental health services) that affected the achievement of safety and permanency for children.”

98. That Defendants Nikki Haley, Kathleen Hayes and Lillian Koller had notice and knowledge of the SCDSS 2010 Annual Progress and Services Report and its findings, and the 2010 and 2003 CFSR reports and findings.

Doe's Injuries

99. That as a direct and proximate result of Defendants' acts, John Doe suffered the following injuries: violation of his constitutional right under the Fourteenth Amendment to the United States Constitution to a safe and secure placement, violation of his constitutional right under the Fourteenth Amendment to the United States Constitution to safety and adequate care, great and permanent mental harm and injury, physical pain from the battery, emotional distress, alteration of his lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, and a loss of enjoyment of life, all resulting from the abuse he suffered, which has and will in the future cause him to spend money for mental health treatment services.

First Cause of Action

Grossly Negligent Supervision Under the South Carolina Tort Claims Act (Against SCDSS)

100. That Plaintiff incorporates the allegations set forth in each of the foregoing paragraphs as if they were fully set forth here.

101. That under the South Carolina Tort Claims Act, § 15-78-10 *et seq.* of the Code of Laws of South Carolina 1976, as amended, and the Common Law of South

Carolina, SCDSS is liable for its tortious acts and the tortious acts of its employees and agents performed in the scope of their employment.

102. That SCDSS and its employees and agents, acting within the scope of their employment, were willful, wanton, careless, grossly negligent, and failed to exercise even slight care in:

- a. Placing Doe in BHOTS without adequate supervision along with a child they knew to be dangerous and a risk to Doe's safety;
- b. Failing to adequately supervise Doe and the child that assaulted him;
- c. Placing Doe in the physical custody of BHOTS instead of with family members or a private family foster home;
- d. Placing Doe in the physical custody of BHOTS knowing that BHOTS lacked adequate supervision;
- e. Failing to require nighttime supervision in the cottages at BHOTS;
- f. Failing to adequately supervise BHOTS;
- g. Failing to adequately supervise Doe at BHOTS after he was attacked and sexually assaulted;
- h. Failing to institute adequate licensing policies and practices with respect to BHOTS; and
- i. Failing to adequately regulate and supervise low management group care facilities including BHOTS.

103. That Doe suffered the attacks and sexual assaults and the injuries set out in this Complaint as the direct and proximate result of SCDSS's and its employees' and agents' tortious acts.

Second Cause of Action
Gross Negligence in Failing to Provide Treatment Under the South Carolina Tort Claims Act
(Against SCDSS)

104. That Plaintiff incorporates the allegations set forth in each of the foregoing paragraphs as if they were fully set forth here.

105. That under the South Carolina Tort Claims Act, § 15-78-10 *et seq.* of the Code of Laws of South Carolina 1976, as amended, and the Common Law of South Carolina, SCDSS is liable for its tortious acts and the tortious acts of its employees and agents performed in the scope of their employment.

106. That SCDSS and its employees and agents, acting in the scope of their employment, were willful, wanton, careless, grossly negligent, and failed to exercise even slight care in failing to provide Doe with proper and prompt mental health treatment after he was attacked and sexually assaulted.

107. That Doe suffered the injuries set out in this Complaint as the direct and proximate result of SCDSS's and its employees' and agents' tortious acts.

108. That Doe's losses under this Second Cause of Action proximately flow from acts of gross negligence different (as defined by Section 15-78-30(g) of the Code of Laws of South Carolina 1976, as amended) from the acts giving rise to Doe's First and Fifth Causes of Action.

Third Cause of Action
Violation of Fourteenth Amendment Right to a Safe and Secure Placement
(Against SCDSS Employees)

109. That Plaintiff incorporates the allegations set forth in the foregoing paragraphs as if they were fully set forth here.

110. That the Fourteenth Amendment to the United States Constitution guarantees the right of all children in custody to a safe and secure placement.

111. That under 42 U.S.C. § 1983, persons acting under color of state law are liable for violating constitutional rights.

112. That SCDSS's Defendant employees (Cassandra Daniels, Ursula Best, Merry Eve Poole, Robin Kubler, Robert Seepersaud, Donna Outen, Debra Wise, Charlene Robinson, Patricia Boswell, Isabel Blanco, Kathleen Hayes, and Lillian Koller), acting in their personal capacities under color of South Carolina Law, were deliberately indifferent to Doe's constitutional right to a safe and secure foster care placement so as to shock the conscience. They had notice of the danger in:

- a. Placing Doe in BHOTS without adequate supervision along with a child they knew to be dangerous and a risk to Doe's safety;
- b. Failing to adequately supervise Doe and the child that assaulted him;
- c. Placing Doe in the physical custody of BHOTS instead of with family members or a private family foster home;
- d. Placing Doe in the physical custody of BHOTS knowing that BHOTS lacked adequate supervision;
- e. Failing to require nighttime supervision in the cottages at BHOTS;
- f. Failing to adequately supervise BHOTS;

g. Failing to ensure that Doe was adequately supervised at BHOTS after he was attacked and sexually assaulted;

h. Failing to institute adequate licensing policies and practices with respect to BHOTS; and

i. Failing to adequately regulate and supervise low management group care facilities, including BHOTS.

113. That each of SCDSS's Defendant employees ignored these dangers notwithstanding their notice of them.

114. That these failures were part of these Defendants' policy, custom, pattern, or practice of violating the constitutional rights of children in their care.

115. That Defendants Nikki Haley, Kathleen Hayes, and Lillian Koller, acting in their personal capacities under color of state law, were deliberately indifferent to Doe's constitutional right to a safe and secure foster care placement so as to shock the conscience. They had notice and knowledge of the dangers created by SCDSS's policy, custom, pattern, or practice of improperly using and failing to adequately supervise group facilities, including Low Management Group Care Housing and BHOTS, yet they chose to ignore these dangers notwithstanding the notice.

116. That Doe suffered the attacks and sexual assaults and the injuries set out in this Complaint as the direct and proximate result of Nikki Haley's and SCDSS's Defendant employees' constitutional violations.

Fourth Cause of Action
Violation of Fourteenth Amendment Right to Adequate Care
(Against SCDSS Employees)

117. That Plaintiff incorporates the allegations set forth in the foregoing paragraphs as if they were fully set forth here.

118. That the Fourteenth Amendment to the United States Constitution guarantees the right of all children in custody to safety and general well-being.

119. That under 42 U.S.C. § 1983, persons acting under color of state law are liable for violating constitutional rights.

120. That SCDSS's Defendant employees (Cassandra Daniels, Ursula Best, Merry Eve Poole, Robin Kubler, Robert Seepersaud, Donna Outen, Debra Wise, Charlene Robinson, Patricia Boswell, Isabel Blanco, and Lillian Koller), acting in their personal capacities under color of South Carolina Law, were deliberately indifferent to Doe's constitutional right to safety and general well-being so as to shock the conscience. They had notice of Doe's need for mental health treatment after the attacks and sexual assaults and they had notice of the danger in failing to provide these services to him, yet they chose to ignore these dangers notwithstanding their notice of them.

121. That these failures were part of these Defendants' policy, custom, pattern, or practice of violating the constitutional rights of children in their care.

122. That Defendants Nikki Haley, Kathleen Hayes, and Lillian Koller were deliberately indifferent to Doe's constitutional right to safety and general well-being so as to shock the conscience. They had notice and knowledge of the dangers created by SCDSS's policy, custom, pattern, or practice of failing to provide adequate mental health treatment to children in SCDSS custody, including children like Doe who were victims of

attacks and sexual assaults, yet they chose to ignore these dangers notwithstanding the notice.

123. That Doe suffered the injuries set out in this Complaint as the direct and proximate result of Nikki Haley's and SCDSS's Defendant employees' constitutional violations.

Fifth Cause of Action
Grossly Negligent Supervision Under the South Carolina Solicitation of Charitable Funds Act
(Against BHOTS Defendants)

124. That Plaintiff incorporates the allegations set forth in the foregoing paragraphs as if fully set forth here.

125. That under the South Carolina Solicitation of Charitable Funds Act, § 33-56-10 *et seq.* of the Code of Law of South Carolina 1976, as amended, and the Common Law of South Carolina, BHOTS is liable for its tortious acts and the tortious acts of its employees acting in the scope of their employment. BHOTS' employees are also liable for their own tortious actions.

126. That Defendant BHOTS and the other BHOTS Defendants (Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones), acting within the scope of their employment, were negligent, willful, wanton, careless, grossly negligent, and failed to exercise even slight care in:

- a. Placing Doe in a cottage at BHOTS without adequate supervision along with a child they knew to be dangerous and a risk to Doe's safety;
- b. Failing to adequately supervise Doe and the child that assaulted him;

c. Failing to provide adequate 24-hour supervision of the cottages at BHOTS; and

d. Failing to provide adequate supervision of Doe after he was attacked and sexually assaulted.

127. That Doe suffered the attacks and sexual assaults and the injuries set out in this Complaint as the direct and proximate result of the BHOTS Defendants' tortious acts.

Sixth Cause of Action
Gross Negligence in Failing to Provide Treatment Under the South Carolina Solicitation of Charitable Funds Act
(Against BHOTS Defendants)

128. That Plaintiff incorporates the allegations set forth in the foregoing paragraphs as if they were fully set forth here.

129. That under the South Carolina Solicitation of Charitable Funds Act, § 33-56-10 *et seq.* of the Code of Law of South Carolina 1976, as amended, and the Common Law of South Carolina, BHOTS is liable for its tortious acts and the tortious acts of its employees and agents performed in the scope of their employment. BHOTS' employees are also liable for their own tortious acts.

130. That Defendant BHOTS and the other BHOTS Defendants (Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones), acting in the scope of their employment, were negligent, willful, wanton, careless, grossly negligent, and failed to exercise even slight care in failing to provide Doe with proper and prompt mental health treatment after he was attacked and sexually assaulted.

131. That Doe suffered the injuries set out in this Complaint as the direct and proximate result of the BHOTS Defendants' tortious acts.

132. That Doe's losses under this Sixth Cause of Action proximately flow from acts of gross negligence different (as defined by Section 15-78-30(g) of the Code of Laws of South Carolina 1976, as amended) from the acts giving rise to Doe's First and Fifth Causes of Action.

Seventh Cause of Action
Violation of Fourteenth Amendment Right to a Safe and Secure Placement
(Against BHOTS Defendants)

133. That Plaintiff incorporates the allegations set forth in the foregoing paragraphs as if they were fully set forth here.

134. That the Fourteenth Amendment to the United States Constitution guarantees the right of all children in custody to a safe and secure placement.

135. That under 42 U.S.C. § 1983, persons (including corporations) acting under color of state law are liable for violating constitutional rights.

136. That the BHOTS Defendants (BHOTS, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones), state actors acting under color of South Carolina Law, were deliberately indifferent to Doe's constitutional right to a safe and secure foster care placement so as to shock the conscience. The BHOTS Defendants had notice of the danger in:

- a. Placing Doe in a cottage at BHOTS without adequate supervision along with a child they knew to be dangerous and a risk to Doe's safety;
- b. Failing to adequately supervise Doe and the child that assaulted him;

c. Failing to provide adequate 24-hour supervision of the cottages at BHOTS; and

d. Failing to provide adequate supervision of Doe after he was attacked and sexually assaulted.

137. That the BHOTS Defendants ignored these dangers notwithstanding their notice of them.

138. That these failures were part of the BHOTS Defendants' policy, custom, pattern, or practice of violating the Fourteenth Amendment rights of children in their care.

139. That Doe suffered the attacks and sexual assaults and the injuries set out in this Complaint as the direct and proximate result of the BHOTS Defendants' constitutional violations.

Eighth Cause of Action
Violation of Fourteenth Amendment Right to Adequate Care
(Against BHOTS Defendants)

140. That Plaintiff incorporates the allegations set forth in the foregoing paragraphs as if they were fully set forth here.

141. That the Fourteenth Amendment to the United States Constitution guarantees the right of all children in custody to safety and general well-being.

142. That under 42 U.S.C. § 1983, persons (including corporations) acting under color of state law are liable for violating constitutional rights.

143. That the BHOTS Defendants (BHOTS, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones), state actors acting under color of South Carolina Law, were deliberately indifferent to Doe's constitutional right to safety

and general well-being so as to shock the conscience. The BHOTS Defendants had notice of Doe's need for mental health treatment after the attacks and sexual assaults and they had notice of the danger in failing to provide these services to him, yet the BHOTS Defendants chose to ignore these dangers notwithstanding their notice of them.

144. That these failures were part of the BHOTS Defendants' policy, custom, pattern, or practice of violating the constitutional rights of children in their care.

145. That Doe suffered the injuries set out in this Complaint as the direct and proximate result of the BHOTS Defendants' constitutional violations.

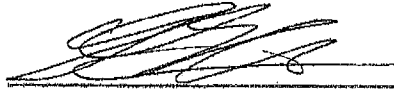
WHEREFORE, Plaintiff requests the Court enter judgment in his favor for:

- A. Damages in the appropriate amount;
- B. Punitive damages as are appropriate;
- C. Attorneys' fees, costs, expenses, and disbursements of this action;
- D. Interest; and
- E. Such other and further relief as is just and proper.

Dated: Abbeville, South Carolina

May 30, 2013

By:



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STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

JOHN DOE (minor child) by and through his
Guardian JANE DOE,

Plaintiff,

v.

NIKKI HALEY, SOUTH CAROLINA
DEPATMENT OF SOCIAL SERVICES,
LILLIAN KOLLER, KATHLEEN HAYES,
ISABEL BLANCO, ROBIN KUBLER, MERRY
EVE POOLE, URSULA BEST, CASSANDRA
DANIELS, PATRICIA BOSWELL, DEBRA
WISE, CHARLENE ROBINSON, DONNA
OUTEN, ROBERT SEEPERSAUD, BOYS
HOME OF THE SOUTH, INC., VERNON
HAYES, NICOLE LINDSEY, CYNTHIA
BROCK, RICHELLE OWENS, AND JOHNNY
JONES,

Defendant.

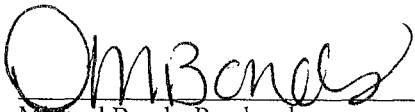
IN THE COURT OF COMMON PLEAS

Case No.: 2013-CP-01-104

AFFIDAVIT OF SERVICE

PERSONALLY APPEARED before me Micheal Bonds who, being duly sworn, deposes and says that she is not a party to these proceedings and has no interest therein; that on the 14th day of June, 2013, she served, via U.S. Mail, a copy of the **Summons and Amended Complaint** in the above case by causing the same to be deposited in an authorized United States mailbox; that the envelopes containing said document were properly addressed, securely wrapped and sealed, and bore the proper postage; and the said envelopes were addressed to the following addresses:

James W. Logan, Jr.
Logan, Jolly, & Smith, LLP
Post Office Box 259
Anderson, South Carolina 29622


Micheal Bonds, Paralegal

SWORN to and subscribed before me this
14th day of June, 2013.

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: *4 Dec 13*