



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** November 21, 2019

Staff Contact: Nancy Paulson, City Manager

Agenda Title: For Possible Action: Discussion and possible action regarding a proposed settlement agreement in the amount of \$1,250,000, with \$745,000 of that amount payable by Carson City's insurer and the remaining amount of \$505,000 payable by the City to Plaintiff Grace Doe on behalf of minor Jane Doe for certain state and federal claims arising from alleged injuries sustained by the minor as the result of her participation and enrollment in the City's Parks and Recreation Camp Carson Summer Camp, Wagoneers Group. (Nancy Paulson, npaulson@carson.org)

Staff Summary: This agenda item is for the Board of Supervisors to consider entering into a settlement agreement with Plaintiff Grace Doe, who brought an action against the City and a former City employee on behalf of minor Jane Doe, alleging a number of state and federal law violations arising from the minor's participation and enrollment in a summer recreational program overseen by the City's Parks and Recreation Department in 2016. The proposed settlement, if entered into, releases the City from any further obligations in this matter.

Agenda Action: Formal Action / Motion **Time Requested:** 30 mins

Proposed Motion

I move to authorize the City Manager to enter into the settlement agreement on behalf of the City as proposed and authorize counsel to proceed with all necessary action to finalize the settlement.

Board's Strategic Goal

Efficient Government

Previous Action

NA

Background/Issues & Analysis

The minor Plaintiff (Doe I) in this matter was a participant enrolled in the City's 2016 Camp Carson Summer Camp, overseen by the Parks and Recreation Department. During the minor's enrollment in the program, which was normally held at the City's Aquatic Center but also included group field trips to other locations in the City, she and other minor participants were allegedly inappropriately touched by a volunteer, also a minor, who interacted with the enrolled participants. As a result, Plaintiff's counsel brought an action against both the City and a former City employee who performed certain supervisory functions of the Summer Camp program. The First Amended Complaint, filed on September 27, 2018 alleged a number of state and federal law violations as well as municipal liability based on, among other things, negligent hiring and negligent training, supervision and retention. For compensatory damages, the Complaint sought an amount in excess of \$1,000,000. Subsequent settlement demands to the City have been in the range of \$6,000,000. The City subsequently retained defense 272 counsel with expertise in these types of lawsuits and the matter proceeded to discovery. Because this case

alleges both state and federal violations, the merits of which have not yet been adjudicated by the court, Nevada's statutory cap of \$100,000 on damages recoverable against a governmental entity pursuant to NRS 41.035 is not applicable.

In a separate action, three other minor Plaintiffs (Does II, III and IV) represented by a different attorney also made claims against the City alleging certain state law violations for the same or similar conduct and injuries sustained by the minors. The City engaged the same counsel to defend against municipal liability on these claims and the matter proceeded to the discovery phase of litigation. In this action relating to Does II, III and IV, compensation demands in excess of \$1,000,000 in the aggregate for all three minors were made against the City.

At all times, the City has carried general liability insurance and excess coverage under its insurance policies. Based on the insurer's interpretation of the City's policies, the City has a policy limit of not more than \$1,000,000 for all claims made by Doe I and Does II, III and IV.

On Friday, November 8, 2019 a non-binding settlement conference was held with a neutral mediator. Counsel for all Plaintiffs, the City's counsel, the City Manager and a representative of the Carson City District Attorney's Office were all in attendance. During the conference, the City's insurer authorized settlement with Plaintiff Does II, III and IV in the amount of \$255,000 in exchange for a release of all claims against the City, payable directly by the City's insurer. The remaining Plaintiff, Doe I, made a best and final settlement demand of \$1,250,000 in exchange for the release of all claims against the City, including claims against the City's former employee who is also represented by the City's counsel and subject to the City's insurance coverage for acts arising from the course and scope of his former employment with the City.

The City's insurer has authorized the maximum policy limit payment to settle this matter. However, because the settlement with Does II, III and IV in the amount of \$255,000 reduced the remaining coverage from \$1,000,000 to \$745,000, acceptance of the settlement demand would mean \$745,000 payable by the City's insurer and \$505,000 payable directly by the City. This settlement demand was tentatively agreed to by the City's representatives, subject to this Board's approval.

Based on a review of the merits of the case, the associated fees and costs to date, such fees and costs that will likely accrue if the matter does not settle and the possibility of a substantially higher monetary liability to be borne by the City if this matter proceeds to jury trial and verdict, it is the recommendation of the City's defense counsel, the City Manager and the District Attorney's Office that the Board approve the proposed settlement for the full demand in the amount of \$1,250,000, with \$505,000 of that amount directly payable by the City.

Applicable Statute, Code, Policy, Rule or Regulation

NA

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Insurance Fund / Claims Expense 5900745-500413

Is it currently budgeted? Yes

Explanation of Fiscal Impact: Of the negotiated settlement agreement of \$1,250,000, the City's direct contribution is \$505,000 after the insurer payment under the policy limit. The City will need to augment the budget for FY 20 as the current claims budget is \$500,000, with \$134,443 spent; staff will wait until May 2020 to assess what augmentation amount is necessary. Currently, available cash (as of November 13, 2019) is \$972,000, and year over year staff attempts to maintain at least a \$1,000,000 reserve in cash available in this fund. Most insurance premiums for FY 20 have been paid as of November 13th, and the City has one final transfer of cash (due from other funds) in the amount of \$725,000 for FY 20 to add to the insurance fund. The

City's \$1,000,000 reserve in this fund may be impacted, and as part of the FY 21 Budget preparation staff will determine if an increase in amounts due from other funds is necessary to ensure that the \$1,000,000 reserve is intact.

Alternatives

Do not authorize settlement as proposed and provide alternative direction to staff.

Attachments:

[DOE_I__Am_Compl \(1\)--2.pdf](#)

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

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Attorney for Plaintiffs Jane Doe

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JANE DOE, a minor, by and through her
natural parent, GRACE DOE;

CASE NO: 3:18-cv-428-LRH-WGC

Plaintiff,

FIRST AMENDED COMPLAINT

vs.

CARSON CITY, a consolidated municipality
and a political subdivision of the State of
Nevada; JAYE PHILLIPS, individually;
JACOBS ENTERTAINMENT, INC., a foreign
corporation,

Defendants.

COMES NOW Plaintiff, by and through her undersigned attorney, and hereby submits the
following Complaint.¹

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331,
which gives district courts jurisdiction over all civil actions arising under the Constitution, laws, and
treaties of the United States.

2. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1343, which
gives district courts original jurisdiction over (a) any civil action authorized by law to be brought by

¹ “Jane Doe” has been substituted for the minor Plaintiff’s name for all causes of action brought through this Complaint.
“Grace Doe” has been substituted for the name of the minor Plaintiff’s guardian and natural mother.

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any person to redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; and (b) any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of the civil rights.

3. Plaintiff brings this action to redress a hostile educational environment pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. §1681(a), as more fully set forth herein.

4. This is also an action to redress the deprivation of Plaintiff’s constitutional rights under the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. § 1983.

5. This Court has supplemental jurisdiction over the Plaintiff’s state law claims under 28 U.S.C. §1367.

6. Venue in this District is proper under 28 U.S.C. § 1391 because all facts pled and all acts and omissions giving rise to this Complaint occurred in Carson City, Nevada, within the District of Nevada, and all the parties reside in the District of Nevada.

PARTIES TO THIS ACTION

7. At all times relevant herein, Plaintiff Jane Doe (“Jane”) was a minor-aged participant enrolled in the Carson City Parks and Recreation, Camp Carson Summer Camp, Wagoneers Group (“Camp Carson”) at the Carson City Aquatic Center located at 841 North Roop Street, Carson City, Nevada 89701.

8. Grace Doe (“Plaintiff’s mother”) is Plaintiff’s natural parent and is legally permitted to maintain this action on Plaintiff’s behalf pursuant to NRS 12.080. Plaintiff and Plaintiff’s mother are citizens of the United States and residents of Carson City, Nevada.

9. At all times relevant herein, Defendant Carson City was a consolidated municipality and a political subdivision, organized and existing under the laws of the State of Nevada. Camp

1 Carson was, and is, a Carson City Parks and Recreation program located within Carson City,
2 Nevada. Defendant Carson City and its Camp is subject to Title IX of the Education Amendments of
3 1972.

4 10. Defendant Jaye Phillips is named in his official and individual capacity. Phillips was,
5 at all relevant times, a resident of Nevada. Phillips was a supervisory employee of Carson City who,
6 at all relevant times herein, was acting in said capacity.

7 11. Defendant Jacobs Entertainment, Inc. is a foreign corporation engaged in gaming,
8 hospitality, and entertainment business. Jacobs Entertainment, Inc. is based in Golden, Colorado.
9 Jacobs Entertainment, Inc. owns and operates the Gold Dust West Hotel and Casino located in
10 Carson City, Nevada.

12 **ALLEGATIONS COMMON TO ALL CLAIMS**

13 12. Paragraphs 1 through 11 are specifically included and incorporated as though fully
14 set forth herein.

15 13. In July 2016, Plaintiff was a minor-aged participant enrolled into the Carson City
16 Parks and Recreation, Camp Carson (Wagoneer’s Group) at the Carson City Aquatic Center located
17 at 841 North Roop Street, Carson City, Nevada 89701.

18 14. Camp Carson is an eight (8) week summer program for children put on by Carson
19 City Parks and Recreation. It includes one (1) local field trip, per week, with each summer camp
20 group.

21 15. On or about July 21, 2016, Plaintiff, along with other minor children enrolled at
22 Camp Carson, was on a field trip at the bowling alley located at The Gold Dust West Casino.

23 16. While at the bowling alley, Plaintiff and other minor children were sexually molested.
24 Prior to this occasion, other children were molested at Camp Carson. The perpetrator of these
25 heinous acts is being identified by the initials of K.H. because he was a minor at the time of the mass
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molestations.

17. Plaintiff and other minor children were sexually molested by K.H., a fifteen (15) year old Camp Carson volunteer who was assigned to supervise their group.

18. While Plaintiff was under the supervision of Defendant Carson City’s volunteers and employees, K.H. sexually molested Plaintiff and other minor children, at the bowling alley, repeatedly and for an extended period of time. The molestations were recorded via casino video surveillance.

19. Specifically, at approximately 3:22 p.m., K.H. inappropriately touched K.R., another minor child enrolled at Camp Carson, on the leg.

20. At approximately 3:23 p.m., K.H. put his hand on Plaintiff’s buttocks and sat Plaintiff on his lap.

21. At approximately 3:26 p.m., K.H. put his hand under Plaintiff’s buttocks while Plaintiff was still sitting on his lap.

22. At approximately 3:27 p.m., K.H. grabbed Plaintiff’s butt with his right hand and touched Plaintiff’s groin under a table.

23. At approximately 3:46 p.m., K.H. touched K.R.’s groin.

24. At approximately 3:47 p.m., Plaintiff stood next to K.H. while he grabbed Plaintiff’s butt and appeared to put his hands inside the backside of her pants. Then, K.H. put Plaintiff on his lap for approximately one (1) to two (2) minutes while pointing his right hand downward to Plaintiff’s groin area.

25. At approximately 3:50 p.m., K.H. grabbed Plaintiff’s butt and put his right hand in front of her groin while making a jerking motion.

26. At approximately 3:51 p.m., K.H. put his hand in the backside of Plaintiff’s pants and his other hand between Plaintiff’s legs.

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27. At approximately 3:53 p.m., K.H. grabbed Plaintiff's butt and sat Plaintiff on his lap while putting his hand on Plaintiff's leg. During this time, staff members from the bowling alley approached K.H. and he released his hand and turned Plaintiff away.

28. At approximately 3:54 p.m., the staff members from the bowling alley walked away and K.H. resumed groping the Plaintiff.

29. At approximately 3:58 p.m., K.H. went with Plaintiff and another minor child to the bathroom. K.H. brought Plaintiff to the bathroom divider and pulled up her shirt, exposing her abdomen and chest. Then, K.H. turned Plaintiff around and pulled down the backside of her pants, exposing her bare buttocks.

30. At approximately 4:23 p.m., K.H. vigorously rubbed Plaintiff's groin.

31. At approximately 4:24 p.m., K.H. rubbed Plaintiff's butt.

32. At approximately 4:28 p.m., K.H. tried to spread Plaintiff's legs apart and put his hand down Plaintiff's pants. Plaintiff pulled his hand away.

33. At approximately 4:40 p.m., K.H. put K.R.'s hand down his pants.

34. At approximately 4:57 p.m., K.H. put his own hand down K.R.'s pants.

35. While Plaintiff and other minor children were being repeatedly sexually molested by K.H. at the bowling alley, there were no other Camp Carson staff members or Gold Dust West Casino security officers around to stop the sexual abuse.

36. K.H. should not have been alone with Plaintiff, or the other minor children, as volunteers were supposed to be accompanied by other staff member at all times.

37. On or about August 3, 2016, K.H. put his hands down the pants of another minor child enrolled at Camp Carson. The child's parents reported the incident to the police, after the child told them about the incident.

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38. That same day, the police went to the Carson Community Center and spoke with Parks and Recreation Program Supervisor, Defendant Phillips. Phillips told police that, previously, a parent notified him that one of the children attending Camp Carson reported that K.H. had “checked” her pants to see if she had an accident at the bowling alley.

39. Following that parental report, Phillips merely counseled K.H. about his duties as a volunteer. Subsequently, K.H. simply wrote a statement about what his duties were as a volunteer. K.H. did not receive any formal training regarding these duties or appropriate interactions with Camp Carson attendees.

40. Since, and because of, the subject incidents on July 21, 2016, Plaintiff has continually had serious behavioral issues that were not previously present. Plaintiff was placed on a behavior contract at the Boys and Girls Club she attended, and was eventually kicked out. Her behavior in school has declined and she has tried to run away from both home and school. Plaintiff had to be admitted to the West Hills Mental Hospital due to her behavioral problems. She has also been treating with a therapist at I.C.A.N. Family Services, in Carson City, which offers individual psychotherapy to people in need of emotional and cognitive support.

41. At all times relevant herein, there has been a policy, practice, and custom at Defendant Carson City’s Camp Carson to allow K.H.’s molestation and abuse of minor children.

42. As a direct and proximate result of Defendants’ wrongful conduct, Plaintiff suffered, and continues to suffer, serious physical, mental, and emotional injuries to her person, all of which caused her physical and emotional pain and suffering.

43. As a direct and proximate result of the wrongful conduct of the Defendants, Plaintiff suffered, and continues to suffer, serious psychological injury.

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CARSON CITY’S INADEQUATE HIRING, TRAINING AND SUPERVISORY POLICIES FOR CAMP CARSON WERE DELIBERATELY INDIFFERENT TO THE RIGHTS OF PLAINTIFF AND OTHER PARTICIPANTS. THE POLICIES CAUSED PLAINTIFF TO BE SEXUALLY MOLESTED AND VIOLATED HER CONSTITUTIONAL RIGHTS.

44. At all times relevant herein, Defendant Carson City failed to have a policy of performing background checks on all Camp Carson volunteers to appropriately screen its volunteers and safeguard against inappropriate touching, groping, and molestation. Specifically, it did not perform a background check before hiring K.H. as a Camp Carson volunteer.

45. K.H. had a history of documented behavior problems that Defendant Carson City knew or should have known about. Since 2007, K.H. participated in the PowerSchool Program, in Carson City, where he had thirty-one (31) disciplinary referrals for acts such as: inappropriate behavior and touching, insubordination, forgery, and damaging property. He once made a threat which resulted in the school being put on lockdown. K.H. has also participated in individual counseling at Community Counseling Services in Carson City and received a psychological evaluation regarding his mental health. A Youth Level Service Inventory, which is a tool that identifies risk and need factors, scored K.H. at a moderate risk level prior to the recent incident. Approximately two (2) weeks prior to his arrest for the subject incident, K.H. was admitted into West Hills Hospital for making suicide threats.

46. At all times relevant herein, there was an obvious need for Defendant Carson City to perform background checks on all volunteers to properly screen volunteers before allowing them to volunteer around minor children.

47. Defendant Carson City failed to perform all of the necessary background checks on its employees, and as a result, K.H. sexually molested Plaintiff and other minor children enrolled at Camp Carson.

48. At all times relevant herein, Defendant Carson City failed to have and/or implement a policy of training its staff and volunteers to prevent inappropriate touching, groping, and sex

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conduct.

49. At all times relevant herein, there was an obvious need for Defendant Carson City to properly train its employees to prevent inappropriate touching, groping, and sexual conduct.

50. Defendant Carson City failed to implement proper training and, as a result, allowed K.H. to molest Plaintiff and other minor children enrolled at Camp Carson.

51. Under Nevada law, Defendant Carson City’s employees, including Defendant Phillips, were required to report any suspected child abuse/molestation directly to a social services or law enforcement agency within twenty-four (24) hours after that employee knew or had reason to believe abuse/molestation had occurred.

52. At all times relevant herein, Defendant Carson City’s employees failed to report any suspected child abuse/molestation directly to a social services or law enforcement agency within twenty-four (24) hours of obtaining knowledge or belief that abuse/molestation had occurred.

53. At all times relevant herein, Defendant Carson City failed to have a policy of properly training its employees on Nevada’s mandatory reporting laws.

54. At all times relevant herein, there was an obvious need for Defendant Carson City to train its employees on Nevada’s mandatory reporting laws, but did not do so.

55. As a result of Defendant Carson City’s failure to adequately hire and train all of its employees, Plaintiff and other minor children were left alone with K.H. Due to this failure, K.H. repeatedly molested Plaintiff and other minor children. This is a violation of Plaintiff’s, and other minor children’s, Fourth and Fourteenth Amendment Rights.

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1st CAUSE OF ACTION

VIOLATION OF 4TH AND 14TH AMENDMENT RIGHTS UNDER 42 U.S.C. § 1983

Monell Municipal Liability Against Defendant Carson City

56. Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through 55 as though fully set forth herein.

57. Plaintiff Jane Doe had a right to be free from unjustified intrusions on her personal security, including the liberty interest in her own bodily security.

58. At all times relevant herein, Defendant Carson City had a special relationship with Plaintiff Jane Doe as it voluntarily took responsibility for Plaintiff’s care, safety, and supervision while Plaintiff was in Camp Carson’s care. Therefore, Defendant Carson City owed Plaintiff Jane Doe a duty of reasonable care regarding risks that could foreseeably arise within the scope of that special relationship.

59. At all times relevant herein, K.H. was acting in his capacity as a Camp Carson volunteer overseer of children. K.H. was acting under the color of law, and was authorized by the State of Nevada and Defendant Carson City to act in his volunteer overseer capacity. Defendant Phillips violated Plaintiff’s constitutional rights pursuant to Defendant Carson City’s policy and practice of acquiescing to the sexual molestation of children. Defendant Phillips and other Carson City staff were contacted regarding K.H.’s abuse and molestation of the children enrolled at Camp Carson well prior to the bowling alley molestation incidents and failed to adequately follow up or take action to remedy the danger. Defendant Phillips, the Parks and Recreation Program Supervisor, allowed K.H. to remain as a volunteer at Camp Carson and therefore, allowed K.H.’s behavior to take place.

60. Through its conduct, Defendant Carson City created the opportunity for K.H. to abuse and molest Plaintiff and other minor children. But for Defendant Carson City’s conduct, the danger

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1 posed by K.H. to Plaintiff Jane Doe would not have existed. Defendant Phillips's inaction
2 demonstrates deliberate indifference to Plaintiff's rights. The need for a different course of action,
3 specifically removing K.H. from volunteering at Camp Carson, to prevent K.H. from abusing,
4 groping, and molesting children was obvious to Defendant Phillips. Yet, Defendant Phillips did
5 almost nothing after being notified of K.H.'s conduct. The inadequacy of the policy in allowing a
6 known sexual predator to remain as a volunteer in the program was very likely to, and did, result in
7 the violation of Plaintiffs' Fourth and Fourteenth Amendment rights.

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9 61. Defendant Carson City failed to adequately hire, train, and supervise K.H, a person
10 with severe behavioral and mental health issues. Defendant Carson City was deliberately indifferent
11 to the Plaintiff's exposure to sexual molestation by K.H. Not only did Defendant Carson City fail to
12 have any of its employees supervise K.H., it created an environment that allowed him to be with
13 Plaintiff and other children for an extended period time while he repeatedly sexually molested them.

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15 62. Defendant Carson City acquiesced to, and authorized, the hiring of K.H. as a
16 volunteer without performing a background check, despite K.H. being known to have severe
17 behavioral and mental health issues. This acquiescence and authorization allowed K.H. to sexually
18 molest minor children, including Plaintiff, at the bowling alley. This inadequate practice of allowing
19 a person with documented severe behavioral and mental health issues to volunteer and work with
20 minor children at Camp Carson demonstrated a deliberate indifference to Plaintiff's rights.

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22 63. Because of Defendant Carson City's deliberate indifference, Plaintiff was molested in
23 violation of her Fourth and Fourteenth Amendment Rights. Defendant is liable to Plaintiff for its
24 failure to train and supervise Defendant Phillips and other staff regarding the prevention of sexual
25 abuse. Carson City's training and supervision of its employees was grossly inadequate, amounted to
26 deliberate indifference by Defendant Carson City, and was the moving force causing the Fourth and
27 Fourteenth Amendment constitutional violations against Plaintiff.

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64. As a direct and proximate result of Defendant Carson City’s unconstitutional conduct, Plaintiff suffered, and continues to suffer, serious physical, mental, and emotional injuries to her person. Those injuries caused her physical, mental, and emotional pain and suffering. As a further direct and proximate result of Defendant’s unconstitutional conduct, Plaintiff suffered, and continues to suffer, serious psychological injuries. Plaintiff’s compensatory damages for these injuries and pain and suffering are in an amount that exceeds \$1,000,000.00.

65. Plaintiff is entitled to attorneys fees pursuant to 42 U.S.C. § 1988.

2nd CAUSE OF ACTION

NEGLIGENT HIRING

Against Defendant Carson City

66. Plaintiff repeats, re-alleges, and incorporates herein by reference Paragraph 1 through 65, as though fully set forth herein.

67. Defendant Carson City had a duty to conduct reasonable background checks on potential employees, including supervisors, managers, instructors, and volunteers, of Camp Carson to ensure that the employees were fit for their positions.

68. Defendant Carson City breached this duty when it hired K.H., even though Defendant Carson City knew, or should have known, of K.H.’s dangerous propensities, including his severe behavioral and mental health issues.

69. As a direct and proximate result of Defendant Carson City’s breaches, Plaintiff Jane Doe suffered, and continues to suffer, serious physical, mental, and emotional injuries to her person, all of which cause her physical, mental, and emotional pain and suffering. As a further direct and proximate result of Defendant Carson City’s breaches, Plaintiff Jane Doe suffered, and continues to suffer, serious psychological injuries.

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1 70. Plaintiff Jane Doe suffered compensatory damages for physical, mental, and
2 emotional pain and suffering in an amount well in excess of \$1,000,000.00.

3 71. Plaintiff Jane Doe has been required to retain an attorney to prosecute this matter and
4 is entitled to an award of reasonable attorneys fees and costs incurred herein.

5 **3rd CAUSE OF ACTION**

6 **NEGLIGENT TRAINING, SUPERVISION, AND RETENTION**

7 *Against Defendant Carson City*

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9 72. Plaintiff repeats, re-alleges, and incorporates herein by reference Paragraph 1 through
10 71, as though fully set forth herein.

11 73. Defendant Carson City had a duty in the training, supervision, and retention of its
12 employees, including supervisors, managers, instructors, and volunteers, of Camp Carson.

13 74. Defendant Carson City breached that duty by inadequately training, supervising, and
14 retaining its employees.

15 75. Defendant Carson City failed to train its employees in the proper supervision of its
16 Camp Carson volunteers. This failure enabled K.H. to be alone at a bowling alley with Plaintiff and
17 other minor children where he repeatedly sexually molested them for an extended period of time.

18 76. Defendant Carson City failed to have any employees properly supervising K.H. and
19 the children at the bowling alley at the time of the incident, thus, allowing K.H. to sexually molest
20 Plaintiff and other minor children.

21 77. Given K.H.'s severe behavioral and mental health issues, Defendant Carson City
22 knew, or had reason to know, that K.H. was an incompetent and unfit volunteer who could not be
23 trusted with overseeing the care of minor children.
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78. Defendant Carson City’s employees failed to do any combination of the following: properly train, supervise, oversee, and evaluate, Camp Carson volunteers to such an extent that Plaintiff and other minor children were victims of sexual molestation.

79. As a direct and proximate result of Defendant Carson City’s breaches, Plaintiff suffered, and continues to suffer, serious physical, mental, and emotional injuries to her persons, all of which cause her physical, mental, and emotional pain and suffering. As a further direct and proximate result of the Defendant Carson City’s breaches, Plaintiff Jane Doe suffered, and continues to suffer, serious psychological injuries.

80. Plaintiff suffered, and continues to suffer, compensatory damages for physical, mental, and emotional pain and suffering in an amount well in excess of \$1,000,000.00.

81. Plaintiff has been required to retain an attorney to prosecute this matter and is entitled to an award of reasonable attorneys fees and costs incurred herein.

4th CAUSE OF ACTION

VIOLATION OF 4TH AND 14TH AMENDMENT RIGHTS UNDER 42 U.S.C. § 1983

Supervisor Liability Against Defendant Phillips

82. Plaintiff hereby incorporates by reference paragraphs 1 through 81 of this Complaint as if fully set forth herein.

83. Plaintiff Jane Doe had the right to be free from unjustified intrusion on personal security, including the liberty interest in her own bodily security.

84. Defendant Phillips knowingly failed to adequately train, supervise, and control K.H. This failure resulted in Plaintiff’s Fourth and Fourteenth Amendment Rights being violated.

85. Defendant Phillips was acting in his capacity as Parks and Recreation Program Supervisor when he knowingly failed to effectively train, supervise, control, or remove K.H. Such failures constitute deliberate indifference to Plaintiff’s exposure to abuse and molestation.

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86. Defendant Phillips acquiesced and authorized K.H.’s continued involvement with Camp Carson. This acquiescence and authorization allowed K.H.’s abuse and molestation of Plaintiff and other minor children enrolled at Camp Carson. This acquiescence and authorization resulted in violations of Plaintiffs’ Fourth and Fourteenth Amendment rights.

87. As a direct and proximate result of Defendant Phillips’s unconstitutional conduct, Plaintiff suffered, and continues to suffer, serious physical, mental, emotional, and psychological injuries to her persons, all of which causes her pain and suffering. Plaintiff’s compensatory damages for these injuries are in an amount in excess of \$1,000,000.00.

88. Plaintiff is entitled to attorney fees under 42 U.S.C. § 1988.

5th CAUSE OF ACTION

20 U.S.C. § 1681. *et seq* - DELIBERATE INDIFFERENCE TO SEXUAL HARASSMENT

Against Defendant Carson City

89. Plaintiff incorporates by reference Paragraphs 1 through 88 of this Complaint as if fully set forth herein.

90. Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. § 1681 (a) provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

91. In *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1988), the United States Supreme Court recognized that a recipient of federal educational funds which intentionally violates Title IX, and is subject to a private damages action, where the recipient is “deliberately indifferent” to known acts of discrimination.

92. In *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), the United States Supreme Court held that a complainant may prevail in a private Title IX damages action

1 where the funding recipient is deliberately indifferent to sexual harassment of which the recipient
2 has actual knowledge and the harassment is so severe, pervasive and objectively offensive that it
3 can be said to deprive the victims of access to the educational opportunities or benefits provided by
4 the school.

5 93. Carson City and its recreational program was receiving federal funding as
6 contemplated by Title IX, 20 U.S.C. § 1681, *et seq.*

7 94. Carson City implemented and executed policies and customs in regard to K.H.'s
8 repeated molestation that resulted in the deprivation of Plaintiff's constitutional, statutory and
9 common-law rights.

10 95. Carson City is responsible for ensuring that all its employees are properly trained and
11 supervised to perform their jobs.

12 96. Despite their continuing duty to investigate and address known inappropriate
13 behavior by K.H after they were notified of the same, Carson City officials conducted virtually no
14 investigation of K.H.'s behavior.

15 97. Each time anyone reported K.H.'s ongoing inappropriate conduct to Carson City
16 officials, Carson City officials took no remedial measures, despite having notice that K.H. was
17 acting inappropriately.

18 98. The sex-based harassment articulated herein was so severe, pervasive and objectively
19 offensive that it deprived Plaintiff of access to educational opportunities or benefits provided by
20 Carson City.

21 99. Carson City created and/or subjected to Plaintiff to a hostile educational environment
22 in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (a) ("Title IX")
23 because Plaintiff was a member of a protected class, subjected to sexual harassment in the form of
24 multiple sexual assaults by K.H. based on her sex, and was subjected to a hostile educational
25 environment.

1 environment created by Carson City’s lack of policies and procedures and failure to properly
2 investigate and/or address K.H.’s inappropriate sexual conduct.

3 100. Defendant Carson City and its officials had actual knowledge of K.H.’s sexually
4 inappropriate conduct and resulting harassment created by its failure to investigate and discipline
5 K.H. in a timely manner and consistent with federal and state law.

6 101. Carson City’s failure to promptly and appropriately respond to K.H.’s prior
7 inappropriate sexual misconduct resulted in Plaintiff, on the basis of her sex, being excluded from
8 participation in, being denied the benefits of, and being subjected to discrimination in violation of
9 Title IX.

10 102. Carson City failed to take immediate, effective remedial steps to resolve the
11 complaints of sexual harassment and instead acted with deliberate indifference toward Plaintiff and
12 other minor-aged students. Carson City persisted in its actions and in actions even after it had actual
13 knowledge of the harm being inflicted by K.H. Carson City engaged in a pattern and practice of
14 behavior that allowed K.H. to continue to act out sexually with young children.

15 103. Carson City’s policy and/or practice constituted disparate treatment of females and
16 had a disparate impact on female camp participants.

17 104. Plaintiff has suffered emotional distress and psychological damage from the
18 harassment fostered as a direct and proximate result of Defendant Carson City’s deliberate
19 indifference to her rights under Title IX.

20 **6th CAUSE OF ACTION**

21 **NEGLIGENCE**

22 *Against Jacobs Entertainment, Inc.*

23 105. Plaintiff incorporates by reference Paragraphs 1 through 104 of this Complaint as if
24 fully set forth herein.

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106. For a period of time lasting longer than ninety (90) minutes, K.H. openly molested several small children in the common areas of the Gold Dust West bowling alley. K.H., a male, also took small girls into the restroom where he molested them.

107. Defendant Jacob Entertainment’s security cameras recorded the molestation. But no security officers intervened to prevent the children from being molested.

108. Defendant was under a duty to keep individuals on its premises safe from sexual assault or other threatening behavior constituting a foreseeable threat to Plaintiff.

109. Defendant breached that duty when it failed to take steps to reasonably protect Plaintiff from foreseeable harm from third persons on the premises.

110. As a direct, legal and proximate cause of Defendant’s breach of that duty, Plaintiff was physically injured and emotionally traumatized.

111. As a direct, legal and proximate cause of Defendant’s breaches, and each of them, Plaintiff has suffered past and future medical expenses and pain and suffering in excess of \$15,000.00.

112. The conduct of the Defendant was willful, intentional, oppressive, malicious (impliedly or expressly), and done in a wanton, conscious, and reckless disregard for the rights of the Plaintiff, thereby warranting the imposition of punitive damages in excess of \$15,000.00.

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PRAYER FOR RELIEF

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2 WHEREFORE, Plaintiff prays for a judgment in favor of Plaintiff and against Defendants as
3 follows:

4 1. For compensatory damages for injuries and pain and suffering, in excess of
5 \$1,000,000.00; and

6 2. For costs, interest, and attorneys fees incurred in prosecuting this action in
7 accordance with 42 U.S.C. § 1988 and § 1983, NRS 17.130, and NRS 18.110.
8

9 DATED this 27th day of September, 2018.

10 LAGOMARSINO LAW

11 
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