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Cause No. 11-15646

BRIAN CAYCE BERTRAND,  
Plaintiff,

v.

JOHN DAVID BERTRAND, M.D.,  
Defendant.

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IN THE DISTRICT COURT  
OF DALLAS COUNTY, TEXAS  
162nd-1 JUDICIAL DISTRICT

FILED  
2011 DEC 15 PM 1:59  
GARY FITZSIMMONS  
DISTRICT CLERK  
DALLAS COUNTY, TEXAS  
GAY SMITH DEPUTY

PLAINTIFF'S ORIGINAL PETITION, REQUEST  
FOR EQUITABLE RELIEF & REQUEST FOR DISCLOSURE

A. Discovery-Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that he seeks monetary relief that aggregating more than \$50,000.

B. Parties

2. Plaintiff, Brian Cayce Bertrand, an individual, is a resident of Dallas County, Texas. He has waived his right to file this suit anonymously, e.g., as John Doe.

3. Defendant, John David Bertrand, M.D., an individual, may be served with process at defendant's usual place of business, Walnut Hill OB/GYN, 8305 Walnut Hill Lane, Suite 100, Dallas, Dallas County, Texas. 1ct latty

C. Jurisdiction

4. The court has jurisdiction over the lawsuit because the amount in controversy exceeds this court's minimum jurisdictional requirements.

D. Venue

5. Venue is proper in Dallas County under Texas Civil Practice & Remedies Code sections 15.002 and 15.017 because all or a substantial part of the events or omissions occurred in Dallas County, and both parties reside in Dallas County.

E. Facts

6. Brian Cayce Bertrand ("Brian") is one of ten children born to John David Bertrand, M.D. ("John") and John's former wife, Jana Cole Bertrand ("Jana").

7. When Brian was four years old, he already was showing signs of being gay. This became the motivation for a lifetime of various forms of abuse by his socially conservative parents.

8. John separated from Brian's mother, Jana, in December of 1992, and filed for divorce from Jana in February of 1993. The divorce was final in November of 1993.

9. As Brian was growing up, during the years prior to his parents' divorce, he was physically and psychologically abused by his father, John.

10. During the summer of 1993, Brian was sent to live with his father, John, and future step-mother, Andrea Robinson Bulloch, later Andrea Robinson Bertrand ("Andrea"). Brian turned

nine years of age in August of 1993.

11. Between August of 1993 and December of 1993, John sexually assaulted his son Brian repeatedly. The assaults ranged from genital fondling to forced oral sex to anal penetration.

12. John warned Brian that if Brian told anyone, John would kill Jana or kill Brian.

13. After months of pleading with his mother during telephone conversations, Jana agreed to take Brian back to live with her in December of 1993.

14. After Brian returned to live with Jana, Jana and John claimed that psychological therapists had told them that Brian needed to be kept away from his siblings to protect them from Brian. The claim was false.

15. In August of 1996, Jana sent Brian to live with John and Andrea. Brian was just turning twelve years of age. Soon after Brian arrived in John's house, John again began repeatedly sexually assaulting his son. Because Brian had grown physically in size and began to fight back, the sexual assaults became more violent, and typically involved anal penetration.

16. John again warned Brian that if Brian told anyone, John would kill Jana or kill Brian.

17. Brian was forced to live with John and Andrea, subjected to being repeatedly raped by his father, until April of 1997.

18. Brian recalls being sexually assaulted by his father between 30 and 40 times during the two periods that Brian lived with John and Andrea, the first when Brian was nine, the second when Brian was twelve.

19. Around April of 1997, Brian was sent to live with his grandmother for a time, then returned to live with Jana.

20. Brian attended the fall semester of 8th grade, from August 1997 until December of 1997, while living with his mother. During this time, Brian confronted his mother about his father's sexual assaults and asked why Jana did nothing to stop it. Brian was thirteen years old at the time.

21. In December of 1997, Brian was told by his parents that he was being sent to a military school in another part of the state. Brian spent the Spring 1998 semester and the 1998-1999 academic year at San Marcos Baptist Military Academy.

22. Brian was able to transfer to Blair Academy in Blairstown, New Jersey, where he remained until he graduated in May of 2002. Brian was the only child born to John and Jana who did not graduate from Lake Highlands High School, instead being sent away to graduate from an out of state high school.

23. During a telephone conversation with his mother Jana in November of 2001, Brian talked about his father's repeated sexual assaults and abuse. Brian was upset, complained about John's attacks, and asked why Jana never did anything to stop it.

24. In December of 2001, Brian returned to Dallas over holiday break and stayed at Jana's house. During his stay, Jana and John together accused Brian of molesting one of his siblings, then repeated the accusation to others in the family. The accusation was completely false. Brian denied the accusation and argued with his parents.

25. In April of 2002, after years of being called “faggot” and “queer” by his parents, Brian telephoned each of his parents to tell them he was gay. During those conversations, Brian made it clear that he was going to be open and honest to others about his orientation and his life.

26. In May of 2002, Brian was scheduled to graduate from Blair Academy *cum laude*, which were the top honors available at Blair.

27. During a telephone conversation a week before commencement, Brian again challenged John about the sexual assaults Brian endured as a child. Brian also restated that he was gay, and told his father he was going to be open with others about his sexual orientation and his childhood abuse.

28. John then telephoned Blair Academy officials, claimed Brian was suicidal, and claimed Brian needed to be locked up for his own protection. Brian was kept locked in Blair’s medical facilities for five days, when John arrived and took Brian back to Dallas.

29. The next day, John and Jana had Brian committed to a Dallas-area psychiatric facility, preventing Brian from attending his high school graduation ceremony at which Brian was to graduate with high honors. Based on these events, John would later claim that Brian was mentally unstable.

30. Several months later, during the fall of 2002 as the holidays were approaching, Jana told Brian that John had accused Brian of having molested another sibling. As a result, Brian would be excluded from celebrating Christmas with the family or attending any family functions. Brian had just turned eighteen years old.

31. Brian was accepted to Southern Methodist University and began college in the summer of 2007. Brian went on to earn the Bachelor of Arts degree in three years, graduating *Summa Cum Laude* from SMU in May of 2010. Brian was also awarded *Phi Beta Kappa*, the highest academic honor an undergraduate can receive. John failed to attend Brian’s *Phi Beta Kappa* ceremony.

32. Brian was then accepted into SMU’s Dedman School of Law and began classes toward his Juris Doctor degree.

33. However, during the Fall 2010 semester, certain events triggered a post traumatic stress disorder (“PTSD”) response in Brian. The PTSD had formed in Brian’s brain many years earlier during Brian’s childhood, and had developed as a result of the extreme trauma Brian had suffered from John’s sexual assaults on Brian. The PTSD lay dormant, silent and undiscovered until triggered in September of 2010.

34. During the Fall 2010 semester, the symptoms grew worse. Brian was unaware of what PTSD was, how it developed or how it emerged. Brian believed he simply was feeling extreme stress, and attempted to cope. However, Brian began to experience night terrors, anxiety attacks, insomnia, and a host of other symptoms that made it increasingly difficult to manage daily life. Despite this, Brian was able to continue attending classes, sit for final exams, and complete the semester.

35. During the Christmas break that followed, John banished Brian from spending any Christmas activities with his family, as he had done for a decade. A week after Christmas, Brian’s father contacted him and apologized in vague terms about what happened to Brian when he was a child.

36. By January of 2011, Brian's PTSD symptoms were in full force, leaving Brian disabled and unable to attend classes. Brian was forced to withdraw from law school. He found himself unable to work, and was forced to ask close friends to help him in some daily tasks.

37. On or about January 18, 2011, with no income and feeling isolated and desperate, Brian asked his father for financial assistance until he was able to work again. John offered no assistance. Instead, John threatened to commit Brian to a psychiatric facility.

38. As a method of therapy during this time, Brian attempted to work out regularly. Without an income, the one facility available to Brian at no cost was Royal Oaks Country Club, where John had a family membership. However, Brian discovered that his father had contacted Royal Oaks to ban Brian from working out there.

39. On or about February 10, 2011, Brian telephoned John to ask him to reconsider the ban from Royal Oaks so that Brian could exercise. The conversation became an argument. Brian then made reference to John's lack of support and brought up the prior abuse. Brian's step-mother, Andrea, then joined the discussion with John on speakerphone.

40. Brian handed the phone to his friend, Christina Hunt. Christina, who was acquainted with John and Andrea, pleaded with John to allow his son to work out at Royal Oaks because Brian was unable to work, and could not afford even his groceries or rent. John refused.

41. Andrea, with John present, then claimed to Christina that Brian had molested one of Andrea's children. It was the third such false accusation made against Brian, each of them following a confrontation in which Brian declared the abuse he had suffered at John's hand.

42. By March of 2011, Brian's PTSD symptoms had become so extreme that he was unable to function on his own. Brian still did not understand what was happening to him, knew he needed help, but was fearful of contacting a psychologist. Because Brian also needed to know what legal remedies were available to him, he contacted attorney Eric Gormly. Mr. Gormly's practice includes issues related to the LGBT community.

43. Mr. Gormly began to probe into Brian's situation, and eventually learned of the sexual abuse that Brian had endured as a child. Mr. Gormly recognized Brian's symptoms might be PTSD.

44. In late July of 2011, Mr. Gormly sent letters to John, Jana and Andrea stating that Brian desired to reach resolution and do so in private.

45. On August 11, 2011, John's attorney, Scott Aston, sent Mr. Gormly a letter in which Mr. Aston unleashed a series of accusations against Brian. Mr. Aston's letter repeated the unfounded claims that Brian had molested various siblings. The letter also asserted that Brian suffered from a variety of psychiatric disorders for which Brian has never been diagnosed and of which Brian has never exhibited symptoms, and one of which fails to appear in either the DSM-IV-TR or the proposed DSM-V. The letter ended with a threat of various sanctions against both Mr. Gormly and Brian if Brian filed a civil suit.

46. On or about August 16, 2011, Jana telephoned Mr. Gormly's offices. In the ensuing telephone conversation, Jana acknowledged having been physically abused by John during their marriage, and acknowledged that she was aware of John's sexual assaults on Brian, but stated she would not testify to that in court to protect herself from liability.

47. On August 19, 2011, Jana appeared at Mr. Aston's law offices and signed a sworn affidavit. In her affidavit, Jana claimed to know of no evidence that John ever sexually assaulted her son, and that she believed the sexual abuse never happened.

48. After considering the response, Brian contacted the University Park Police Department to file a criminal complaint against John for his ongoing sexual assaults against Brian when Brian was a child. The criminal investigation is underway as of the filing of this pleading.

49. In August of 2011, Brian initiated a search for a therapist who could evaluate his symptoms and recommend and provide a course of treatment. In October of 2011, a licensed therapist conducted a series of assessment tests over three sessions. The therapist tested for a range of disorders, and concluded that:

a. Brian meets the requirements for a diagnosis of PTSD and other disorders consistent with the multiple extreme trauma of ongoing childhood sexual abuse;

b. Brian showed strong avoidance behaviors and indications of possible dissociative disorder that are common precursors to the emergence of PTSD symptoms, in which confronting the sexual abuser outside the realm of the family and in a public forum would be unthinkable.

#### F. Assault – Infliction of Bodily Injury

50. Defendant made physical contact with plaintiff's person.

51. Defendant acted intentionally.

52. Defendant's actions caused injury to plaintiff, which resulted in the following damages:

a. Mental anguish and impairment in the past and future.

b. Physical impairment through disability in the past and future.

c. Medical expenses in the past and future.

d. Loss of earning capacity in the past and future.

53. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

54. Exemplary damages. Plaintiff's injury resulted from defendant's malice, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### G. Assault by Offensive Physical Contact

55. Plaintiff realleges paragraphs 6 through 54 and incorporates them by reference herein.

56. Defendant made offensive physical contact with plaintiff's person, and did so intentionally.

57. Defendant knew or reasonably should have believed that plaintiff would regard the physical contact as offensive.

58. Defendant's assault caused injury to plaintiff, which resulted in the following damages:

a. Mental anguish and impairment in the past and future.

b. Physical impairment through disability in the past and future.

- c. Medical expenses in the past and future.
- d. Loss of earning capacity in the past and future.

59. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

60. Exemplary damages. Plaintiff's injury resulted from defendant's malice, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### H. Threat of Bodily Injury

61. Plaintiff realleges paragraphs 6 through 60 and incorporates them by reference herein.

62. In addition to other counts, defendant threatened plaintiff with imminent bodily injury.

63. Defendant intentionally threatened plaintiff with additional beatings and death, and threatened plaintiff's mother with injury and death, to keep plaintiff from telling anyone of the sexual assaults.

64. Defendant's threat caused injury to plaintiff, which resulted in the following damages:

- a. Mental anguish and impairment in the past and future.
- b. Physical impairment through disability in the past and future.
- c. Medical expenses in the past and future.
- d. Loss of earning capacity in the past and future.

65. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

66. Exemplary damages. Plaintiff's injury resulted from defendant's malice, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### I. Breach of Fiduciary Duty

67. Plaintiff realleges paragraphs 6 through 66 and incorporates them by reference herein.

68. Plaintiff had a fiduciary relationship with defendant through the special relationship of parent to child.

69. Defendant breached defendant's fiduciary duty to plaintiff by physically abusing, psychologically abusing, and sexually assaulting plaintiff.

70. Defendant's breach of duty proximately caused injury to plaintiff, which resulted in the following damages:

- a. Mental anguish and impairment in the past and future.
- b. Physical impairment through disability in the past and future.
- c. Medical expenses in the past and future.
- d. Loss of earning capacity in the past and future.

71. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

72. Plaintiff's injury resulted from defendant's malice, which entitles plaintiff to exemplary

damages under Texas Civil Practice & Remedies Code section 41.003(a).

73. Exemplary damages. Plaintiff's injury resulted from defendant's intentional act, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### J. Participatory Liability – Conspiracy

74. Plaintiff realleges paragraphs 6 through 73 and incorporates them by reference herein.

75. Defendant, in concert with co-conspirators Jana Cole Bertrand and Andrea Robinson Bertrand, agreed to take actions to prevent plaintiff from taking legal action in response to the repeated sexual assaults carried out by defendant. These actions included, but are not limited to, securing agreements to send plaintiff to military school, accusing plaintiff of molesting plaintiff's siblings, committing plaintiff to a psychiatric institution under false pretenses, signing an affidavit claiming no sexual abuse ever occurred, and threatening to commit plaintiff to a psychiatric institution.

76. Defendant knew that the agreed acts would result in harm to plaintiff.

77. The agreement to carry out these acts proximately caused injury to plaintiff, which resulted in the following damages:

- a. Mental anguish and impairment in the past and future.
- b. Physical impairment through disability in the past and future.
- c. Medical expenses in the past and future.
- d. Loss of earning capacity in the past and future.

#### K. Defamation

78. Plaintiff realleges paragraphs 6 through 77 and incorporates them by reference herein.

79. Defendant published statements by oral communications that asserted, as fact, that Brian molested certain of his siblings.

80. These statements were orally published, at minimum, to all of Brian's siblings and step-siblings, Brian's mother, Brian's step-mother, and John's attorney.

81. Defendant's statement referred to plaintiff by name.

82. These statements were false.

83. Defendant was complicit in publishing a statement by oral communications that asserted, as fact, that Brian molested one of his step-siblings.

84. This statement was orally published, at minimum, to Brian's friend, Christina Hunt.

85. Defendant's statement referred to plaintiff by name.

86. This statement was false.

87. Defendant published a statement by written communications that asserted, as fact, via defendant's attorney, that Brian molested certain of his siblings.

88. Defendant's statement referred to plaintiff by name.

89. This statement was false.

90. Defendant published a statement by written communications that asserted, as fact, via defendant's attorney, that Brian was an extortionist, had a history of blackmailing others, and was engaging in a conspiracy to "shake down" John, Andrea and Jana.

91. Defendant's statement referred to plaintiff by name.

92. This statement was false.

93. Defendant published a statement by written communications that asserted, as fact, via his attorney, that Brian has been diagnosed with certain psychiatric disorders.

94. Defendant's statement referred to plaintiff by name.

95. This statement was false. Furthermore, one of the disorders attributed to Brian does not exist.

96. Defendant's statements were libel per se as defined by Texas Civ. Prac. & Rem. Code § 73.001. Defendant's statements impeached plaintiff's honesty, integrity, virtue, or reputation.

97. Defendant's statements were defamatory per se under the common law. Defendant's statements falsely charged plaintiff with a crime, and imputed sexual misconduct to plaintiff.

98. Defendant is strictly liable to plaintiff for the defamation because this is a private-figure plaintiff suing a non-media defendant about a private issue.

99. Defendant's false statement was defamatory per se, which entitles plaintiff to a presumption of general damages.

100. Defendant had specific intent to substantially injure or harm the plaintiff, and thus constitutes malice as defined by the Texas Damages Act and codified in Tex. Civ. Prac. & Rem. Code § 41.003(a)(2).

101. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

102. Exemplary damages. Plaintiff's injury resulted from defendant's malice, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### L. Intentional Infliction of Emotional Distress

103. Plaintiff realleges paragraphs 6 through 102 and incorporates them by reference herein.

104. In the alternative to all other counts, defendant intentionally caused plaintiff emotional distress.

105. Defendant's conduct was intentional.

106. Defendant's conduct was extreme and outrageous.

107. Defendant's conduct proximately caused severe emotional distress to plaintiff.

108. Plaintiff's severe emotional distress cannot be remedied by any other cause of action.

109. Defendant's wrongful conduct caused the following damages:

- a. Mental anguish and impairment in the past and future.
  - b. Physical impairment through disability in the past and future.
  - c. Medical expenses in the past and future.
  - d. Loss of earning capacity in the past and future.
110. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.
111. Exemplary damages. Plaintiff's injury resulted from defendant's malice, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

### I. Statement to the Court

112. Texas Supreme Court has held that the Discovery Rule, which would toll the statute of limitations, applies to cases of childhood sexual assault. *See SV v. RV*, 933 S.W.2d 1 (Tex. 1996).

113. The Texas Supreme Court has also addressed the purpose of a statute of limitations period.

“Limitations statutes afford plaintiffs what the legislature deems a reasonable time to present their claims and protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents or otherwise. The purpose of a statute of limitations is to establish a point of repose and to terminate stale claims.”

*Murray v. San Jacinto Agency, Inc.*, 800 S.W.2d 826, 828 (Tex.1990).

“The primary purpose of limitations, to prevent litigation of stale or fraudulent claims, must be kept in mind.

*Robinson v. Weaver*, 550 S.W.2d 18, 20 (Tex.1977).

114. In the instant case, there is little or no greater chance of loss of evidence or lack of witnesses at the time of this filing than there was five years after the plaintiff's 18th birthday.

115. Defendant is being investigated by a law enforcement agency in the state of Texas, and by the investigative arm of the Dallas County District Attorney.

116. The crimes alleged against defendant include, but are not limited to, those covered by Texas Penal Code §§ 21.02, 21.11, 22.11, 22.011, 22.021, 22.01, 22.02, 22.04, and 22.041.

117. Under the Code of Criminal Procedure, Art. 12.01, felony indictments for violations under Texas Penal Code §§ 22.011(a)(2), 22.021.(a)(1)(B), 22.02, and 22.11 may be presented without limits. Other crimes plaintiff alleges carry a ten-year statute of limitations.

118. Because of the extended statute of limitations controlling criminal indictments for the same acts committed by the defendant, there is no risk of a stale claim or a claim in which defendant would be surprised for lack of notice.

119. The discovery rule applies to those cases in which "the nature of the injury incurred is inherently undiscoverable and the evidence of injury is objectively verifiable." *Computer Associates International, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 456 (Tex.1996).

120. These two elements of inherent undiscoverability and objective verifiability “balance the conflicting policies in statutes of limitations: the benefits of precluding stale or spurious claims versus the risks of precluding meritorious claims that happen to fall outside an arbitrarily set period.” *SV v. RV*, 933 S.W.2d 1, 6 (Tex. 1996).

121. According to such organizations as the National Center for PTSD (Department of Veterans Affairs), Mental Health America (formerly the National Mental Health Association), and the National Institute of Mental Health, the symptoms and effects of PTSD can remain hidden for years before being triggered and emerging. Furthermore, the symptoms, which are typically debilitating, can be tested by using the PCL, CAPS, and MID, and assessing for DSM-IV requirements.

122. The injury plaintiff sustained was inherently undiscoverable, and the evidence of plaintiff’s injury is objectively verifiable.

123. The injury did not begin to appear to plaintiff until the fall of 2010, and the nature of the injury was not fully known and confirmed until October of 2011. Thus, the date of accrual occurred when the results of the tests were provided to the plaintiff on November 11, 2011, and could not be considered to have occurred any earlier than the period in which the symptoms first emerged in the fall of 2010.

124. Plaintiff pleads delayed discovery because the nature of plaintiff’s injury could not be discovered despite exercise of reasonable diligence, thus tolling the statute of limitations pursuant to Texas Civil Practices & Remedies Code §16.0045.

125. Plaintiff also alleges legal disability pursuant to Civil Practices and Remedies Code §§ 16.001(a)(2) and 16.001(a)(3). This is based on the insidious nature of predictable and extreme self-defense mechanisms, bolstered by diagnosed indications of dissociative disorder, which leave the victim psychologically incapable of confronting an abusing parent outside of the family, as would be the case in pursuing a legal cause of action against defendant. This creates a mental impairment constituting a legal disability that delayed the start of the running of the statute of limitations pursuant to Texas Civil Practices & Remedies Code §16.0045.

126. The Texas Supreme Court has applied the discovery rule because of a special relationship between the plaintiff and defendant. *E.g., Willis v. Maverick*, 760 S.W.2d 642, 645-46 (Tex.1988); *Slay v. Burnett Trust*, 143 Tex. 621, 187 S.W.2d 377, 388-393 (1945).

127. The nature of the special relationship between parent and child further increases a child’s incapacity to confront the abusive parent in a public forum.

128. Plaintiff also alleges duress based on the pattern of retribution by defendant and defendant’s co-conspirators whenever plaintiff directly confronted same with the sexual abuse of his childhood.

129. Combined, all these factors create such terror and anxiety over the very prospect of confronting the perpetrator via a public forum that filing a lawsuit against the parent for the childhood sexual assaults becomes a near impossibility.

130. For many victims of childhood sexual assault by a parent, it is only when the child suffers a nervous collapse from triggered PTSD symptoms, and the protective dissociative wall collapses along with it, that the child is willing to file a lawsuit. The child no longer has anything to lose. The terrifying reality he was able to avoid through self-protective mechanisms

now floods into each waking moment and becomes everyday life.

I. Jury Demand

131. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

J. Conditions Precedent

132. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

K. Request for Disclosure

133. Under Texas Rule of Civil Procedure 194, plaintiff requests that defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

L. Prayer

134. For these reasons, plaintiff asks that the court issue citation for defendant to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:

- a. Actual damages, including but not limited to mental anguish and impairment in the past and future, physical impairment through disability in the past and future, medical expenses in the past and future, and loss of earning capacity in the past and future.
- b. Exemplary damages.
- c. General damages.
- d. All other relief to which plaintiff is entitled.

Respectfully submitted,

The Gormly Law Firm, PLLC

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