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**IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH**

TABITHA BELL,

Plaintiff,

vs.

**WATERFORD SCHOOL, LLC, D/B/A
WATERFORD SCHOOL and
WATERFORD SCHOOL HOLDING
CORPORATION**

Defendant.

**COMPLAINT FOR PERSONAL
INJURIES ALLEGING NEGLIGENCE
AND RELATED TORT CLAIMS**

JURY DEMAND

Case No:

Judge:

(Tier 3)

NOW COMES Plaintiff TABITHA BELL (“Plaintiff” or “Tabitha”) by and through her attorneys Sanford Heisler Sharp, LLP and Ferbrache Law and for her Complaint against Waterford

School, LLC and Waterford School Holding Corporation (collectively “Defendant” or “Waterford” or “Defendant Waterford” or “the school”), and alleges that at all relevant times herein upon information and belief as follows:

INTRODUCTION

1. This suit arises out of the appalling and inhumane manner in which an elite well-heeled Utah school treated its student, Tabitha Bell. Tabitha attended Waterford from eighth grade through her high school graduation. Tabitha suffers from a rare form of muscular dystrophy that affects her mobility, balance, strength and stability. Although the school promotes itself as a “caring, safe & inclusive community,” and made such promises to Tabitha’s parents, in fact, its faculty, students and staff mocked Tabitha, questioned whether she was faking her disease and refused her basic accommodations resulting in, among other things, two severe concussions.

2. Waterford’s conduct went from bad to worse after Tabitha reported that she had been raped by a Waterford classmate in November of her senior year. Among other horrors, Tabitha was forced to watch as her classmates re-enacted her rape on stage in a school-wide assembly, while everyone laughed. Not only did the school condone this campaign of bullying by both students and faculty, but the school also encouraged Tabitha’s ostracization by telling students not to talk to Tabitha. In fact, the school, which cared more about protecting its reputation than protecting Tabitha, asked her not to return to campus to finish her senior year because her status as a sexual assault survivor made her classmates, staff and administrators “uncomfortable.”

3. Waterford takes the position that it owed Tabitha absolutely no duties to ensure a safe and harassment-free education because the wealthy institution neither needs nor accepts

federal funding. That position is fatally undermined by the bedrock principles of Utah law that form the basis for the causes of action asserted below.

PARTIES, JURISDICTION & VENUE

4. Plaintiff, Tabitha Bell, was a full-time student at Waterford School at all times relevant to the allegations herein. Tabitha is currently a resident of California.

5. Defendant Waterford School, LLC is a limited liability corporation domiciled in, organized and existing under the laws of Utah with its principal place of business in Salt Lake County, Utah.

6. Defendant, Waterford School Holding Corporation, is a corporation domiciled in and organized under the laws of the State of Utah.

7. This Court has subject matter jurisdiction pursuant to Utah Code §78A-5-102.

8. This Court has personal jurisdiction over Defendant because it was incorporated in Utah and maintains its principal place of business in Utah.

9. Venue is proper in this court pursuant to Utah Code Ann. § 78B-3-205 and -307 because the causes of action asserted herein arose in and Defendant's principal place of business is located within this judicial district.

10. This case is properly classified under Tier 3 because the amount in controversy exceeds \$300,000.

COMMON ALLEGATIONS

I. The Waterford School Falsely Promotes Itself as Inclusive and Willing to Accommodate Tabitha's Disability.

11. Tabitha Bell was a student at Waterford from 2014 through 2018, beginning as an eighth grader and continuing until her high school graduation.

12. Tabitha has a rare form of chronic muscular dystrophy called Charcot Marie Tooth Disease (“CMT”) which affects her balance and limits her mobility and physical functioning. As a result of her disease, Tabitha has undergone eleven invasive surgeries, ranging from triple fusions on her feet to a spinal fusion. Tabitha underwent her first surgery when she was six. Due to these medical interventions, Tabitha has months-long periods where she relies on a wheelchair or leg braces. Even at her strongest, Tabitha must rely on a support dog to assist with her locomotion.

13. Waterford is an elite private institution located on 41-acres in the mountain town of Sandy, Utah. Waterford markets its student community as “vibrant and welcoming” with a curriculum that supports “core values” of “integrity, curiosity, excellence, responsibility and caring.” The school also advertises its openness to working in partnership with parents to support students’ needs.

14. When Tabitha and her parents visited Waterford prior to Tabitha enrolling, Tabitha was wearing large leg braces and walking with the help of a service dog. The Bells made it clear to Waterford that Tabitha was particularly vulnerable to physical injury due to her CMT.

15. From the outset, Waterford was well aware of Tabitha’s disability but, nonetheless, assured the Bells that it would safely accommodate Tabitha as a student.

16. The Bell family chose Waterford because of the school’s repeated assurances both that it would accommodate Tabitha’s disability and take reasonable measures to keep her safe, and that the school community as a whole would be supportive. These representations proved to be

false. Waterford made the representations knowing they were false or with a reckless disregard for the truth of the representations. Furthermore, Waterford failed to use reasonable care to determine if the representations were true. Waterford intended that the Bells would rely on its false representations and enroll Tabitha at the school. Waterford had a financial interest in Tabitha enrolling at the school and paying the hefty \$25,000 yearly tuition.

17. In selecting Waterford, the Bells also relied on Waterford's representations on its website that the school was a "safe, caring and inclusive community" and that the school strives to teach students to have "healthy relationships with their peers" and to make "socially responsible decisions." The Bells would later learn that these representations were also false.

18. The Bells reasonably relied on Waterford's promise of a school environment where Tabitha could thrive unhindered by her physical limitations and be kept safe. In reliance on Waterford's representations, the Bells moved to Sandy, Utah so Tabitha could attend the school. The family made significant financial and personal sacrifices because they believed Tabitha, a gifted student, would have the support she needed to succeed at Waterford. The Bells would not have moved to Utah and enrolled Tabitha at Waterford but for the school's false representations that it could and would accommodate Tabitha's disability and make reasonable efforts to keep her safe.

19. In her time at Waterford, Tabitha underwent a number of highly experimental surgeries for her CMT. In her junior and senior years, she had three of these surgeries, which required her to use a wheelchair for a minimum of eight weeks during her recovery. For most of junior high and high school, Tabitha was unable to walk significant distances without her service

dog. At certain times, she would need the support of both her service dog and a peer to be able to walk between classes.

20. Despite the demands of her chronic illness, Tabitha became an academic star at Waterford, as well as a leader in a number of extracurricular activities. In the eighth grade, Tabitha started a foundation dedicated to buying service dogs for disabled individuals in need, raising over \$150,000.00 and organizing on-campus speakers. In 2017, Tabitha continued her leadership by founding the school's first bipartisan political club, Raven PAC. As the leader of Raven PAC, Tabitha created a 9/11 tribute video and invited members of the local fire department to come view the video at a Waterford assembly.

21. Waterford capitalized on Tabitha's achievements, making her a posterchild for the school. In 2017, the school posted a press release on its website entitled "Future Olympian Tabitha Bell Wins Scholarship and Awards." The press release boasts about Tabitha's status as the only student in the state of Utah to receive the prestigious AXA Achievement Award. The post includes a picture of Tabitha in her wheelchair, with her service dog at her side. Waterford used Tabitha to promote its image as inclusive and disability-friendly, all the while failing to reasonably accommodate Tabitha's physical limitations or take measures to keep her safe.

II. Waterford Fails to Provide Tabitha with Promised Reasonable Accommodations or Security.

22. Despite Waterford's promises that it would accommodate Tabitha's disability, almost from the outset, the school breached its duties to keep Tabitha safe and protected.

23. Notably, although the school has an elevator shaft, Waterford refused to install an

elevator, despite Tabitha’s inability to climb stairs on her own. Rather than providing basic accessibility measures, Waterford regularly relied on the physical strength of other students to carry Tabitha in and out of hard-to-access spots. Such an approach was contrary to the assurances Waterford made to the Bells about accommodating Tabitha’s disability, and deprived Tabitha of her independence and dignity.

24. For example, Tabitha was involved in Waterford’s choir for five years. For every performance during her first three years, Tabitha had to be carried on and off the stage by fellow choir members, despite there being a more accessible entrance at the back of the stage. The choir director believed that allowing Tabitha to enter separately from the other choir members would “ruin the look” of the performance. On one occasion, the choir director refused to even allow Tabitha to have her support dog on stage to assist her because, again, it “ruined” the look of the choir.

25. In the eighth grade, Tabitha was required by Waterford to take a photography class. Tabitha had no ability to opt out of the class. The photo lab was located in the basement of the school. Because there was no elevator, Waterford relied on other students to carry Tabitha up and down the stairs so she could access the lab.

26. During Tabitha’s senior year, Waterford scheduled the class retreat at Snowbird ski resort. Even at her most mobile, Tabitha would have struggled to access the facility. At the time, Tabitha was even more restricted than usual given that she was in a wheelchair after her August 2017 surgery. John Doe—who would later go on to rape Tabitha—and another male student had to carry Tabitha onto the bus and up the trail to some of the venues.

III. Waterford Creates an Unsafe Environment for Tabitha.

27. Not only did Waterford make false representations to the Bells about its willingness to accommodate Tabitha's disability and breach its duty to Tabitha by failing to provide adequate accommodations, but it also repeatedly created an unsafe environment that put Tabitha's health and safety at risk. There are multiple examples of Waterford's failure to keep Tabitha safe despite its responsibility for her care and its full understanding of her unique needs. Because she was its student, Waterford owed Tabitha a duty of care to take reasonable measures to keep her safe; however, Waterford repeatedly breached that duty, leading Tabitha to suffer injuries and trauma.

28. For example, in September of 2014, Tabitha was instructed by her Waterford English teacher to help move desks in the classroom. The English Teacher was fully aware that Tabitha's physical limitations made it unsafe for her to engage in such an undertaking. Nonetheless, despite her physical limitations, Tabitha attempted to comply. While moving a desk, Tabitha fell to the floor, hit her head, and was knocked unconscious. Rather than immediately sending Tabitha to the school's concussion specialist, the English Teacher made Tabitha sit alone on a wooden bench outside the classroom, without adequate monitoring. Waterford was aware that Tabitha was at particular risk for these types of injuries; however, school faculty did not adequately address Tabitha's injury. The Bells, concerned that Tabitha could have lasting complications as a result of her fall, took her to multiple follow-up appointments with neurologists and concussion experts.

29. In addition, on December 12, 2015, Waterford sponsored a winter dance at the Salt Lake Public Library. Prior to the event, Waterford confirmed that there would be security at the

school dance. However, the night of the dance there was no security present and no one checking students as they entered the dance. As a result of Waterford's negligent supervision of the dance, several severely and obviously intoxicated students entered the dance. The students reeked of alcohol and marijuana. One of the students was so drunk that he stumbled around the dance, knocking Tabitha to the ground. The fall was so hard that Tabitha was knocked unconscious and sustained a severe concussion. Tabitha being injured by a rowdy and intoxicated student was a foreseeable result of the school's failure to provide adequate security or supervision. Furthermore, the lack of security presented an unreasonable risk of harm, that Tabitha had no way of knowing about in advance of the dance.

30. A number of the school administrators' and faculty's children attended Waterford, including the children of the Principal and the Associate Head of School. Thus, the school was well aware that students drinking before and at school social events was an ongoing problem. Thus, it was foreseeable that drunk students would attempt to enter the dance. Had security been stationed at the entrance of the dance, they would have observed the inebriated students and been able to prevent them from entering the dance. If Waterford had taken reasonable precautions and used reasonable supervision, Tabitha would not have been injured.

31. After the dance, Tabitha's parents reached out to the school to complain about the lack of supervision and security at the dance. Initially, the Principal insisted that there had been security at the dance, indicating that security was standard protocol at school dances. However, later that day, the Principal contacted the Bells and admitted that due to logistical challenges there was no security present at the dance. The Principal apologized for what happened to Tabitha. The

school knew that security was necessary and prudent at school dances to avoid problems, nonetheless, it failed to ensure security was present.

32. When Tabitha's parents confronted the school about the lack of security, the Associate Head of School threatened the Bells telling them it would be "very bad for Tabitha" if they contacted a lawyer. Worried for Tabitha's future at the school, the Bells were afraid to continue to push their complaint. The school cared more about shielding itself from potential liability than protecting its students.

33. As a result of the concussion Tabitha suffered at the school dance, she developed complications, including severe pneumonia, leading her to be transported from the Emergency Room at Alta View Hospital to Primary Children's Hospital in Salt Lake City. Tabitha spent eight days in the respiratory care unit. Tabitha's traumatic brain injury caused ongoing cognitive defects, requiring protracted medical care and therapy.

34. Unfortunately, the school dance was not the final instance of the school's negligence placing Tabitha at risk. On December 13, 2016, during Tabitha's AP Calculus class Tabitha's classmates locked the Math Teacher out of the classroom and closed the window blinds. Several students were completely out of control and unruly. Rather than address the situation and put a stop to the behavior before it became dangerous, the Math Teacher simply abandoned her class, saying that she would not return. The Math Teacher knew that her class was unruly but rather than adequately supervise the students, she simply left the students to their own devices.

35. Tabitha was so frightened by the incident that she texted her mother to alert her of the situation. Finally, fearing for her personal safety, Tabitha exited the classroom with her service

dog and her mother picked her up.

36. When Tabitha and her mother reported the behavior to the Associate Head of School, he asked her to identify the individuals involved. Despite Tabitha naming the offenders, the Associate Head of School took no action to remedy the situation or prevent it from happening again in the future.

37. When the Math Teacher finally returned to the classroom and noticed that Tabitha was gone, she emailed Mrs. Bell to apologize. In her email, the Math Teacher acknowledged that she understood why Tabitha would be scared in the situation. As a result of this incident, and due to her concerns for her personal well-being, Tabitha later transferred to a different calculus class.

IV. Waterford's Students and Faculty Bully Tabitha and Accuse Her of Faking Her Disability.

38. In addition to failing to provide Tabitha with a reasonably safe campus, Waterford breached its duty to Tabitha by allowing students and faculty to bully her because of her disability.

39. For example, in spring 2016, after her concussion at the school dance resulted in the punishment of some of her popular classmates, students began mercilessly bullying Tabitha. The bullying began with students saying bad things about Tabitha. Tabitha then received targeted notes left on her desk. And the situation culminated in Tabitha being shunned and excluded from the school community. The Bells made several complaints to Waterford about the bullying and ostracization to which Tabitha was subjected. The school acknowledged in writing that Tabitha was being ostracized, but took no action to mitigate or stop it.

40. Further, in February 2017, Tabitha's physics teacher, asked her to hold a blow torch

even though he was aware of her physical limitations. When Tabitha said she was unable to do so, the teacher humiliated her by accusing her of “faking it” and not really having CMT. When Mrs. Bell later spoke to the Physics Teacher, he stated that Tabitha did not have a “real problem” and she “did not need a dog.”

41. A few days later Tabitha fell when entering the Physics Teacher’s classroom and was bleeding from the knees, requiring her to miss class to seek medical attention. When Tabitha asked to take the quiz she had missed due to her fall, the Physics Teacher refused. Even though Mrs. Bell alerted the School Psychologist, of the situation, the Physics Teacher continued to treat Tabitha in an aggressive and angry manner.

42. The school, which was well aware of the Physics Teacher’s temper, advised Tabitha not to return to the Physics Teacher’s class and thus, she could not take the final exam. The School Psychologist stated that the Physics Teacher needed time to “cool down” before he could interact with Tabitha.

43. The Bells later learned that the Physics Teacher had demonstrated anger issues previously and had been forced to take anger management classes. Although the school knew about the Physics Teacher’s anger problems, it did nothing to prevent his outbursts towards students like Tabitha. In fact, rather than adequately supervising the Physics Teacher, the school gave him free reign, which led, a year later, to the Physics Teacher sexually assaulting a 19-year-old graduate of the school, who served as his assistant coach on the crew team.

V. Tabitha’s Sexual Assault by Waterford Classmate John Doe.

44. On November 17, 2017, Tabitha arranged to meet at her home with her classmate,

John Doe, in connection with the Raven PAC club. Waterford faculty members were well aware that John Doe and Tabitha co-chaired the Raven PAC committee and as a result were required to spend significant time together, sometimes outside of school on club business. Although Waterford knew that John Doe had a violent history and that Tabitha would sometimes be required to interact with him outside of school on school business, Waterford never warned the Bells.

45. That day was hectic for the Bell family; they were preparing to leave that evening for a trip to Hawaii to give Tabitha a brief vacation between three scheduled surgeries necessitated by her CMT. Tabitha and her parents trusted John Doe, as he had helped Tabitha in the past and was one of the few students at Waterford who treated Tabitha as a friend despite her disability. For that reason, Tabitha's mother felt comfortable leaving Tabitha at home with Doe while she left to take Tabitha's service dog to the kennel to be cared for while the family was on vacation.

46. John Doe waited for Tabitha's mother to leave and, once Tabitha was alone, led her to her basement and placed her on a sofa, face down. He held her down and forcibly penetrated her from behind.

47. Tabitha was frozen with fear, shocked and mortified. John Doe is 5'11", weighs 175 pounds, and has the build of the dominant lacrosse player that he is. Tabitha, already vulnerable due to her physical limitations, was alone with John Doe and physically outmatched.

48. Although Tabitha told her mother that something had happened with John Doe, like many sexual assault survivors, she did not immediately disclose the assault to her mother or anyone else. For the next two weeks, on top of the anxiety she was already experiencing in anticipation of her upcoming surgery and final exams, Tabitha grappled with the assault by herself.

VI. Waterford Shelters Tabitha's Rapist and Refuses to Implement Security Measures.

49. On November 30, 2017, Tabitha informed her parents about the assault. Her parents immediately informed the police and Tabitha cooperated in the police investigation.

50. Tabitha's father officially notified Waterford of the assault on December 2, 2017. Rather than providing support to Tabitha, the school repeatedly retaliated against Tabitha in an effort to keep the incident quiet. First, Waterford responded to the sexual assault report by refusing Dr. Bell's request that, given the recent trauma, Tabitha be given extra time to complete a calculus exam. Instead, the school insisted that Tabitha drop the course she had substantially completed. Rather than accommodating a reasonable request by a student in severe emotional trauma, Waterford punished her for coming forward. Waterford was more concerned with its reputation than with Tabitha's well-being.

51. Waterford was well aware that John Doe had a troubled history. Specifically, John Doe was suspended during his middle school years for fighting. In addition, other students complained about him when he dressed up in an inappropriate and intentionally offensive Halloween costume of an illegal immigrant.

52. John Doe also had a history of harassing and assaulting women. After Tabitha's assault was revealed, other Waterford students divulged that John Doe had also harassed them by demanding sex from them.

53. Well in advance of Tabitha's rape, a Waterford faculty member was aware of John Doe's history. That faculty member took Mrs. Bell to meet a sophomore girl who revealed that John Doe had also attempted to assault her, but she managed to escape. The sophomore girl

revealed to Mrs. Bell that Tabitha should be scared of John Doe because he tried to rape her, and then proceeded to demand sex over the phone and “threatened violence” when she refused.

54. Although school faculty members knew of John Doe’s violent past and his propensity to harass women, and that Tabitha was required to see him outside of school on occasion on Raven PAC club business, the school never warned the Bells about John Doe. Had the Bells known of John Doe’s history, they never would have left Tabitha alone with him.

55. The school had a history of looking the other way with regard to sexual harassment. For example, during Tabitha’s sophomore years, she overheard a boy bragging to his friends in the library about how he forced his date to have sex. In light of the subject of the conversation, Tabitha was frightened to walk past the group of boys. Tabitha reported the incident to her mother. Mrs. Bell later notified the English Teacher—who was also the Waterford librarian—about what the boy had disclosed. However, the school did nothing to address the situation.

56. After she was assaulted by John Doe, Tabitha lived in fear of encountering her rapist on campus. However, Waterford refused to take any steps to safeguard Tabitha from her rapist. After repeated refusals by Waterford to keep John Doe away from Tabitha on campus, the Bells were forced to retain counsel and to obtain a civil protective order to force John Doe to stay away from Tabitha.

57. Even with this order, Waterford refused to restrict John Doe’s access to campus, even after he graduated early in December 2017. The school continued to allow John Doe unfettered access to school grounds.

58. For example, in January 2018, Tabitha saw John Doe’s truck parked in the school

parking lot and later saw John Doe freely roaming around Waterford’s campus. Tabitha reasonably feared for her safety and had an emotional breakdown. When Mrs. Bell confronted the School Psychologist about John Doe’s unfettered access to campus—despite the protective order—her response was: “[the Associate Head of School] and I have discussed the circumstance of the parking lot. My understanding is that the determination was made through legal counsel, and the issue is closed.”

59. In mid-January 2018, the Bells met with the school and their lawyers for a status update on John Doe’s ability to access the campus, but the school refused to provide the Bells with any information, asserting that the issue was “none of their business.” Accordingly, Tabitha was forced to remain on a campus where she reasonably feared that she might be confronted by her rapist at any moment.

60. The school both refused to act to prevent an accused rapist from roaming freely around campus and refused to institute any broader security measures to protect Tabitha or to assure her she was safe. Instead, Waterford administrators insisted that the school had no security issue and thus that a security plan was unnecessary.

61. After Tabitha graduated, Waterford hired a security firm that instituted strict security measures. The school installed locks on the doors and all students are now required to carry electronic keys to gain access to school facilities. According to one of the new Waterford security officers, the new security practices were instituted in “direct response” to what happened to Tabitha. Waterford’s subsequent changes serve as a tacit acknowledgement that its safety procedures were lacking when Tabitha was a student. Had these security measures been in place

at the time, Tabitha would not have lived in constant fear of encountering John Doe at school after he graduated early.

VII. The Waterford Community Shuns and Bullies Tabitha for Reporting Her Sexual Assault.

62. After Tabitha reported her sexual assault and decided to pursue legal action against her rapist, the bullying by Waterford's students, faculty, and community at large intensified.

63. For example, on December 15, 2017, during a school-wide assembly, several of John Doe's friends reenacted the rape scene on stage by mimicking the way John Doe shoved Tabitha's head into the couch and forcibly penetrated her. Tabitha was horrified as students laughed at the vicious display. Although the Principal stopped the skit, Tabitha was devastated both that the details of this deeply personal and horrific event were made public and that the majority of the Waterford community found them humorous. The school did not adequately supervise the students to prevent or curtail this sort of bullying directed at Tabitha.

64. Instead, the school increased its efforts to silence Tabitha before she could tarnish the school's reputation with her story of sexual assault by a fellow student. In January 2018, just weeks after the school learned of Tabitha's rape, the Associate Head of School approached the Bells and offered Tabitha an early graduation plan that would rob Tabitha of the final months of her senior year in high school. He stated that removing Tabitha from campus would make the other students "more comfortable," suggesting that Tabitha deserved to be punished for reporting a brutal rape perpetrated by a student who was permitted to graduate with no adverse consequences.

65. The school continued its campaign of bullying and retaliation against Tabitha. For

example, in February 2018, just a few months after Tabitha was brutally raped, the Associate Head of School asked Tabitha to read a line from a T.S. Elliot poem aloud to the whole class about rape. He was well aware of the trauma Tabitha had experienced. Tabitha was humiliated and upset by the incident.

66. In mid-February 2018, in response to the Bell family's repeated complaints about bullying by students and faculty, Waterford administrators called a senior class meeting to which Tabitha was not invited. Private details of Tabitha's sexual assault were openly discussed at that meeting, with no regard for her privacy. There was no legitimate reason for the school community at-large to be told the details of Tabitha's rape.

67. During the meeting, school administrators directed the students not to speak to Tabitha. As a result of the school's directives, students began snubbing and ignoring Tabitha. A number of students dropped out of the fundraiser that Tabitha was organizing. Even Tabitha's closest friends stopped sitting with her in class. Tabitha's ostracization was a direct result of the school's actions.

68. On February 15, 2018, a representative of the school sent a letter in response to the Bell's complaints about Tabitha being ostracized. The letter acknowledged that Tabitha was being isolated but claimed that it was in the interest of protecting the school. Again, the school placed its own reputation over the well-being of Tabitha.

69. The school allowed the bullying to continue unfettered. For example, on March 14, 2018, Tabitha was watching a movie with her classmates about lynching during class, while her classmates intentionally shunned her. Tabitha felt so uncomfortable that she walked out of class

with her dog, collapsed to the ground, and rocked back and forth crying. The school never even bothered to check on Tabitha, despite knowing of the trauma she had experienced.

70. Additionally, in May of 2018, Prudential reached out to Waterford to make arrangements to present Tabitha with the Prudential Spirit of Community Award at school. However, Waterford explicitly stated that they did not want to honor Tabitha, and copied Tabitha on the communication, further intentionally demoralizing and humiliating her.

71. On May 30, 2018, the two boys who simulated Tabitha's rape in front of the entire school, as well as the boys who knocked her down at the school dance, were singled out for awards. In addition, the boys were inducted into the Cum Laude Honor society, Waterford's highest honor.

72. In contrast, the school refused to acknowledge any of Tabitha's accomplishments. In fact, on June 1, 2018, Waterford released a list of schools its graduates would be attending in the fall but refused to list the University of California Berkeley, the institution Tabitha was planning on attending.

73. In summer 2018, the wife of a Waterford Board of Trustees member organized a sexual assault awareness program that included self-defense classes for women. When Tabitha asked if she could attend, the organizer declined her request and the Board upheld the decision. The parents involved in planning the event gave the pretextual excuse that Tabitha is either always holding onto a dog or another person for support, so therefore a self-defense class would be of no use to her. In reality, the decision was one more attempt to ostracize Tabitha.

74. In contrast with the way Tabitha was treated after she reported her assault, her rapist, John Doe, was given ample accommodations that allowed him to finish his education at

Waterford unencumbered.

75. The Bells were contacted by a couple of select Waterford teachers to express their concern at the bullying Tabitha experienced and the school's unwillingness to address it. One of Tabitha's teachers even stated that the Bells should stop bringing Tabitha to school because it was difficult to see Tabitha being so severely bullied and traumatized.

76. As a result of the rape and the subsequent bullying, Tabitha experienced severe emotional distress, including sleeplessness, depression, and severe anxiety that directly manifested in physical symptoms including stomach issues, headaches, hyperventilation, and worsening of symptoms related to her CMT.

77. In spring 2018, the Bells contacted the School Psychologist on multiple occasions regarding Tabitha's mental distress over the bullying. However, the Bells received little assistance in return from the School Psychologist or the school at large. The school was well aware of the emotional toll caused by the bullying and the school's actions and inactions, nonetheless, the school did nothing to stop the repeated bullying that Tabitha experienced at the hands of students and faculty.

78. Despite the relentless school-condoned bullying and ostracization Tabitha faced during her senior year at Waterford, Tabitha finished her high school education and participated in her graduation, all while being actively coerced to leave by Waterford's leadership.

FIRST CAUSE OF ACTION
Negligence and Breach of Duty of Care

79. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.

80. As an educational institution entrusted with the care of children, Defendant Waterford was *in loco parentis* to Tabitha at all relevant times. Waterford therefore owed duties to Tabitha, including but not limited to: (i) warning or protecting her from the numerous incidents of bullying and reckless behavior perpetrated against her by Waterford students, administrators, faculty and staff throughout her five years at the school; (ii) failing to warn or protect her from a known violent and abusive student; (iii) taking reasonable measures to keep Tabitha safe on campus; (iv) making reasonable efforts to protect Tabitha from continued contact with and exposure to her rapist on campus; (v) taking reasonable measures to keep Tabitha's private facts private.

81. Additionally, Waterford owed statutory, common law, and assumed duties to Tabitha to warn or protect her from the rape she suffered on November 17, 2017 at the hands of a fellow Waterford student.

82. Waterford breached its duties to Tabitha by engaging in, among other things, the following negligent conduct:

- a. refusing to provide effective supervision and control over Waterford students during school hours or at school-sponsored events;
- b. failing to provide security or adequate supervision at a school dance;

- c. refusing to implement basic changes to ensure Waterford's grounds and off-campus events were accessible to students with physical disabilities, such as Plaintiff;
- d. refusing to implement reasonable security measures to ensure Tabitha's safety given her disability, which Waterford knew put her at greater risk of physical injury than her peers;
- e. failing to grant Tabitha access to school medical resources after she sustained foreseeable physical injury as the result of Waterford's negligence;
- f. upon information and belief, failing to establish effective policies and/or to effectively enforce those policies, including but not limited to, policies regarding safety measures at school and school events, policies on anti-bullying, policies for handling no contact between students, and policies for preventing and addressing sexual assault.
- g. failing to warn Tabitha, her parents, or the school community at large of John Doe's history of violence and sexual harassment against his fellow students;
- h. failing to adequately supervise and control John Doe, despite knowing that he had a history of violence and disruption and had been accused of sexually harassing other girls;
- i. refusing to discipline students and faculty members who bullied Tabitha, both before and after her rape;
- j. allowing Tabitha's rapist on campus grounds while Tabitha was still a student and failing to institute any security measures to keep Tabitha safe from her perpetrator, and

- to prevent Tabitha's continued exposure to her rapist, despite a court-instituted protective order and pending criminal case;
- k. Negligently disseminating Tabitha's private information regarding the rape to the school community at large, and
 - l. other outrageous and negligent conduct.

83. As a direct and proximate result of Waterford's negligence and outrageous conduct, Tabitha sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. past, present, and future emotional pain and suffering;
- b. past, present, and future psychological trauma and impairment;
- c. medical bills and other expenses for past and future treatment related to Defendant's acts;
- d. interference with continuing education and lost educational time;
- e. lost tuition;
- f. impaired educational capacity; and
- g. punitive damages.

WHEREFORE, Plaintiff, Tabitha Bell respectfully requests that judgment be entered in her favor and against Defendant plus interest, delay damages, punitive damages, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

SECOND CAUSE OF ACTION
Premises Liability

84. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.

85. Defendant Waterford was the renter, occupant and/or party in control of the 41-acre property at 1480 East 9400, South Sandy, Utah at all times relevant to this complaint.

86. Waterford owed duties to business invitees to the property at 1480 East 9400, South Sandy, Utah, including students, to exercise reasonable care to guard against foreseeable dangers arising from the use of the property.

87. Waterford knew or had reason to foresee that Tabitha, in the course of her education at Waterford, would sustain injuries due to Waterford's negligent use and maintenance of the property at 1480 East 9400, South Sandy, Utah.

88. The dangers presented to Tabitha by Waterford's negligent use of the property were not known by Tabitha or her parents, nor could they have reasonably discovered these dangers on their own. In fact, Waterford specifically concealed a number of safety concerns from Tabitha and her parents when they were recruiting Tabitha as a student. Instead, they advertised the school as accessible, disability-friendly, and inclusive. Therefore, Waterford knew or should have known that Tabitha would not discover the risks of attending Waterford.

89. Waterford failed to use reasonable care to protect Tabitha from the dangers inherent to attending Waterford through a variety of negligent acts and omissions, including (without limitation):

- a. failing to maintain school property in a manner accessible to a disabled person with significant physical limitations, despite abundant assurances that the property was so maintained;
- b. relying on teenage students to lift and carry Tabitha from place to place on school property in lieu of investing in safe, up-to-date facilities;
- c. failing to ensure that classroom activities and school events were accessible to Tabitha and would not put her at additional risk;
- d. failing to provide security for high risk school events, such as dances, that Waterford knew would put Tabitha at particular risk of harm due to her physical disabilities and the events' rowdy nature;
- e. failing to provide medical services to Tabitha after she was foreseeably injured by Waterford's negligent use of the property;
- f. allowing Tabitha's rapist to wander school grounds with impunity, despite the fact that he was no longer a Waterford student;
- g. failing to take basic measures to secure the Waterford campus following Tabitha's rape.
- h. using the property in other ways that posed a foreseeable risk of harm to students; and
- i. other negligent acts and omissions.

90. As a direct and proximate result of Waterford's negligent use and maintenance of the property at 1480 East 9400, South Sandy, Utah, Tabitha sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. past, present, and future emotional pain and suffering;

- b. past, present, and future psychological trauma and impairment;
- c. medical bills and other expenses for past and future treatment related to Defendant's acts;
- d. interference with continuing education and lost educational time;
- e. lost tuition; and
- f. impaired educational capacity.

WHEREFORE, Plaintiff, Tabitha Bell respectfully requests that judgment be entered in her favor and against Defendant plus interest, delay damages, punitive damages, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

THIRD CAUSE OF ACTION
Negligent Supervision

91. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.

92. All Waterford faculty and staff are the agents of Waterford and as such Waterford has a duty to adequately supervise them.

93. Likewise, Waterford has an affirmative duty to supervise students when they are on school grounds or attending school-sponsored events or conducting school business.

94. At all times relevant herein, every named Waterford teacher and staff member was acting within the scope of their employment at Waterford.

95. Waterford breached its duties to Tabitha by, among other things, negligently supervising the activities of its teachers and students in the following ways:

- a. failing to respond to a years-long pattern of bullying against Tabitha by both teachers and students that both preceded and followed her rape and failing to adequately supervise students and faculty to prevent the ongoing bullying;
- b. failing to supervise Waterford students both in class and at school events, leading to out-of-control and dangerous behavior, which resulted in Tabitha sustaining severe injuries;
- c. failing to meaningfully discipline the boys who knocked Tabitha to the ground at a school dance, an incident which resulted in her hospitalization for a concussion, thereby allowing the boys to continue their pattern of dangerous behavior;
- d. failing to adequately supervise a teacher with a known history of anger management problems and violent outbursts, and allowing him to continue teaching high school students, including Tabitha;
- e. failing to adequately supervise and control John Doe, despite knowing that he had a history of violence and disruption and had been accused of sexually harassing other girls and despite knowing that he visited Tabitha's house on school club business;
- f. failing to discipline or expel or adequately supervise John Doe after he engaged in sexual harassment against a fellow student prior to his rape of Tabitha, thereby allowing him to continue his dangerous conduct, culminating in Tabitha's rape;
- g. failing to adequately supervise students during assemblies, despite knowing the students were engaged in a campaign of bullying Tabitha, thereby leading to the students publicly reenacting Tabitha's rape on stage at a school assembly;

96. As a direct and proximate result of Waterford's negligent supervision of its teachers and students, Tabitha Bell sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. past, present, and future emotional pain and suffering;
- b. past, present, and future psychological trauma and impairment;
- c. medical bills and other expenses for past and future treatment related to Defendant's acts;
- d. interference with continuing education and lost educational time;
- e. lost tuition;
- f. impaired educational capacity; and
- g. impaired earning capacity.

WHEREFORE, Plaintiff, Tabitha Bell respectfully requests that judgment be entered in her favor and against Defendant plus interest, delay damages, punitive damages, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

FOURTH CAUSE OF ACTION

Invasion of Privacy

97. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.

98. Defendant Waterford made a public disclosure of the private facts of Tabitha's rape to the entire Waterford senior class and much of the faculty in a class meeting to which Tabitha was not invited.

99. The details of Tabitha's rape by John Doe were private facts.

100. The details of Tabitha's violent rape at the hands of a young man she trusted and considered one of her few friends would be highly offensive and objectionable to a reasonable person of ordinary sensibilities.

101. As a result of Waterford's invasion of Tabitha's privacy, Tabitha has sustained severe emotional distress for which she is entitled to be compensated, including but not limited to:

- a. past, present, and future emotional pain and suffering;
- b. past, present, and future psychological trauma and impairment;
- c. medical bills and other expenses for past and future treatment related to Defendant's acts;
- d. interference with continuing education and lost educational time;
- e. lost tuition;
- f. impaired educational capacity; and
- g. impaired earning capacity.

WHEREFORE, Plaintiff, Tabitha Bell respectfully requests that judgment be entered in her favor and against Defendant plus interest, delay damages, punitive damages, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

FIFTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress

102. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.

103. Waterford engaged in conduct that it should have realized involved an unreasonable risk of causing emotional distress to others, including (without limitation):

- a. sharing the details of a 17-year-old Tabitha's rape with her entire class year and the school's faculty;
- b. instructing Waterford's students to ignore, exclude, and ostracize Tabitha in the wake of her rape;
- c. refusing to take adequate security measures to keep Tabitha's rapist away from her while she was at school or to exclude him from school grounds after his graduation;
- d. refusing to facilitate the enforcement of Tabitha's judicially granted protective order; and
- e. attempting to coerce Tabitha into ending her senior year early.

104. Waterford should have realized that its conduct could cause the sort of emotional distress that might result in illness or bodily harm.

105. Waterford's conduct caused Tabitha to sustain severe emotional distress, characterized by illness or bodily harm, for which she is entitled to be compensated, including but not limited to:

- a. past, present, and future emotional pain and suffering;
- b. past, present, and future psychological trauma and impairment;
- c. medical bills and other expenses for past and future treatment related to Defendant's acts;
- d. interference with continuing education and lost educational time;

- e. lost tuition;
- f. impaired educational capacity; and
- g. impaired earning capacity.

WHEREFORE, Plaintiff, Tabitha Bell respectfully requests that judgment be entered in her favor and against Defendant plus interest, delay damages, punitive damages, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

SIXTH CAUSE OF ACTION
Fraud

106. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.

107. Defendant Waterford made a number of false statements to Plaintiff Tabitha Bell about important facts, including but not limited to:

- a. representing that Waterford could and would take safety measures to protect Tabitha from injury.
- b. representing that medical care would be available to Tabitha on-campus should she sustain an injury while at school.
- c. representing that Waterford could and would accommodate Tabitha's disability.
- d. representing that school activities and events would be accessible and safe for Tabitha to participate in.
- e. representing that Waterford would take affirmative measures to integrate Tabitha into the school community, regardless of her disability.

- f. representing that Waterford's faculty and staff were willing and prepared to make appropriate accommodations for Tabitha's disability.

108. Waterford made these representations to Tabitha and the Bells either knowing they were false, or recklessly and without regard for their truth.

109. Waterford intended that Tabitha would rely on the statement when choosing whether or not Tabitha would enroll at Waterford.

110. Tabitha reasonably relied on representations by Waterford that the school was safe, accommodating, and inclusive and would take reasonable measures to keep her safe.

111. Waterford's fraud caused Tabitha Bell to sustain severe emotional distress, characterized by illness or bodily harm, for which she is entitled to be compensated, including but not limited to:

- a. past, present, and future emotional pain and suffering;
- b. past, present, and future psychological trauma and impairment;
- c. medical bills and other expenses for past and future treatment related to Defendant's acts;
- d. interference with continuing education and lost educational time;
- e. lost tuition;
- f. impaired educational capacity; and
- g. impaired earning capacity.

WHEREFORE, Plaintiff, Tabitha Bell respectfully requests that judgment be entered in her favor and against Defendant plus interest, delay damages, punitive damages, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

SEVENTH CAUSE OF ACTION
Negligent Misrepresentation

112. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.

113. Waterford represented to Plaintiff that several important facts were true, including:

- a. representing that Waterford could and would take safety measures to protect Tabitha from injury while at school or school-sponsored events.
- b. representing that medical care would be available to Tabitha on-campus should she sustain an injury while at school.
- c. representing that Waterford could and would accommodate Tabitha's disability.
- d. representing that school activities and events would be accessible and safe for Tabitha to participate in.
- e. representing that Waterford would take affirmative measures to integrate Tabitha into the school community, regardless of her disability.
- f. representing that Waterford's faculty and staff were willing and prepared to make appropriate accommodations for Tabitha's disability.

114. Waterford's representations of the school as safe, accommodating, and inclusive were false.

115. Waterford failed to use reasonable care to determine whether their representations of the school as safe, accommodating, and inclusive were true.

116. Waterford was in a better position than Tabitha or her parents to know the true facts.

117. Waterford had a financial interest in representing their institution as safe, accommodating, and inclusive. Waterford's misrepresentations earned them \$25,000.00 a year in tuition payments from Tabitha's family, totaling \$125,000 over the course of five years. Waterford also benefitted financially from using Tabitha, an accomplished student and leader, as a posterchild for school marketing materials.

118. Tabitha and her parents reasonably relied on the representations made by Waterford that the school was safe, accommodating, and inclusive and would take reasonable measures to keep her safe.

119. Waterford's negligent misrepresentations caused Tabitha Bell to sustain severe emotional distress, characterized by illness or bodily harm, for which she is entitled to be compensated, including but not limited to:

- a. past, present, and future emotional pain and suffering;
- b. past, present, and future psychological trauma and impairment;
- c. medical bills and other expenses for past and future treatment related to Defendant's acts;

- d. interference with continuing education and lost educational time;
- e. lost tuition;
- f. impaired educational capacity; and
- g. impaired earning capacity.

WHEREFORE, Plaintiff, Tabitha Bell respectfully requests that judgment be entered in her favor and against Defendant plus interest, delay damages, punitive damages, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

EIGHTH CAUSE OF ACTION

Violation of the Utah Consumer Sales Practices Act, Utah Code Ann. §§ 13-11-1, et seq.

120. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.

121. Defendant Waterford is a supplier within the meaning of Utah Code Ann. §§ 13-11-3.

122. The enrollment agreement entered into on behalf of Tabitha with Waterford was a consumer transaction within the meaning of Utah Code Ann. §§ 13-11-3.

123. Waterford's conduct was unfair, unconscionable, or deceptive within the conduct of commerce within the State of Utah.

124. Waterford's conduct and/or practices were unconscionable and were undertaken in connection with consumer transactions.

125. Waterford knew or had reason to know that its conduct was unconscionable and engaged in such conduct intentionally.

126. In violation of Utah Code Ann. §§ 13-11-4, Waterford falsely indicated that the educational experience offered to Tabitha had several characteristics and benefits which it did not, in reality, have, including:

- a. the ability to accommodate and ensure safety to students, such as Tabitha, who have disabilities that impact mobility, balance, strength, and stability.
- b. an inclusive, welcoming educational environment where bullying based on disability status is not condoned or tolerated.
- c. an educational environment where threats, violence, and sexual abuse of students by their peers is not tolerated and is met with meaningful disciplinary action.
- d. faculty and staff who would be willing and prepared to make appropriate accommodations for a student with mobility-related disabilities.
- e. accessible, safe, and inclusive extracurricular activities and school-sponsored events.
- f. that accessible on-campus medical care would be provided in the event that a student, such as Tabitha, sustained an injury while at school.

127. Tabitha and her parents reasonably relied on the representations made by Waterford that the school was safe, accommodating, and inclusive and would take reasonable measures to keep her safe.

128. As a direct and proximate cause of Waterford's unlawful conduct, Tabitha Bell has been injured and is threatened with further injury. In particular, Waterford's unfair, unconscionable, and deceptive conduct caused Tabitha Bell to sustain severe emotional distress,

characterized by illness or bodily harm, for which she is entitled to be compensated, including but not limited to:

- a. past, present, and future emotional pain and suffering;
- b. past, present, and future psychological trauma and impairment;
- c. medical bills and other expenses for past and future treatment related to Defendant's acts;
- d. interference with continuing education and lost educational time;
- e. lost tuition;
- f. impaired educational capacity; and
- g. impaired earning capacity.

WHEREFORE, Plaintiff, Tabitha Bell respectfully requests that judgment be entered in her favor and against Defendant plus interest, delay damages, punitive damages, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

ELECTION OF DISCOVERY TIER

Pursuant to Rule 8(a) of the Utah Rules of Civil Procedure, Plaintiff states that her claims for relief involve a request for damage greater than \$300,000, and therefore qualifies for Tier 3 discovery as defined in Rule 26(c)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

1. For compensatory and punitive damages not less than \$10 million;

2. For costs incurred in this lawsuit;
3. For prejudgment and post-judgment interest as permitted by law; and
4. For such other and further relief as this court may deem just and proper.

JURY DEMAND

Plaintiff demands trial by jury of each and every cause of action contained in Plaintiff's Complaint and tenders herewith the statutory jury fee.

Dated this 31st day of July, 2020.

FERBRACHE LAW, P.L.L.C.

/s/ Gregory Ferbrache

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**(Pro Hac Vice application forthcoming)*

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