

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE**

<b>MARCY HILLIS and EVAN TRU MOORE,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>Case No.:</b>
<b>vs.</b>	)	
	)	<b>JURY DEMAND</b>
<b>RUTHERFORD COUNTY SCHOOL BOARD,</b>	)	
<b>RUTHERFORD COUNTY, TENNESSEE,</b>	)	
<b>RUTHERFORD COUNTY SHERIFF’S DEPARTMENT,</b>	)	
<b>RUTHERFORD COUNTY SCHOOL RESOURCE</b>	)	
<b>OFFICER ASSOCIATION, and JOHN HEATH,</b>	)	
	)	
<b>Defendants.</b>	)	

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**COMPLAINT**

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Comes now Plaintiffs Marcy Hillis and Evan Tru Moore (“Tru”), by and through counsel, and would respectfully state as follows to the Court:

**PARTIES**

1. Plaintiffs are citizens and residents of Murfreesboro, Tennessee.
2. Defendant Rutherford County School Board, is a municipal school board operating under the laws of Tennessee, with its principal place of business in the State of Tennessee, Rutherford County, and may be served with process through Don Odom, in his official capacity as Director of Schools at 2240 Southpark Boulevard, Murfreesboro, Tennessee, 37128.
3. Defendant Rutherford County is a political subdivision of the State of Tennessee and service of process may be issued upon Ernest Burgess, Mayor of Rutherford County, Tennessee at County Courthouse, Room 101, Murfreesboro, TN 37128.

4. Defendant Rutherford County Sheriff's Department is a political subdivision under Rutherford County and service of process may be issued and served through the interim Sheriff, in his/her official capacity at 940 New Salem Highway, Murfreesboro, TN 37129.

5. Defendant Rutherford County School Resource Officer Association is a non-profit corporation operating under the laws of Tennessee, with its principal place of business in the State of Tennessee, Rutherford County, and may be served through its registered agent Mark Meshotto at 940 New Salem Highway, Murfreesboro, TN 37129.

6. Defendant John Heath is a defendant in his individual capacity and may be served with process at 12817 Lascassas Pike, Milton, TN 37118.

7. Plaintiffs' causes of action arise as a result of damages and injuries sustained due to the actions and inactions of the Defendants over a course of time as outlined below.

8. At the time of the incidents, which are the subject of this lawsuit, Plaintiff Tru Moore was a student and wrestler at Blackman Middle School. Plaintiff Marcy Hillis is Tru's biological mother.

### **JURISDICTION & VENUE**

9. All events, which form the basis of this Complaint, occurred in Rutherford County, Tennessee.

10. Venue is properly situated in Rutherford County pursuant to Tenn. Code Ann. 20-4-101(a) and (b).

11. This Court has jurisdiction of this matter pursuant to Tenn. Code Ann. 16-10-101.

### **GENERAL ALLEGATIONS AND FACTS**

12. Plaintiffs Tru Moore and his mother, Marcy Hillis moved to Rutherford County prior to the 2015-2016 school year.

13. The move was made in-part because Tru greatly enjoyed wrestling, and the county where previously lived did not have much, if any, of a wrestling program.

14. Tru enrolled at Blackman Middle School.

15. Defendant John Heath is the School Resource Officer (“SRO”) at Blackman Middle School.

16. Soon after starting 7<sup>th</sup> grade at Blackman Middle School in the fall of 2015, Plaintiff Tru Moore joins the wrestling team.

17. His wrestling coach is Defendant John Heath.

18. Officer Heath requires each wrestler on his team to give him their cell phone number.

19. Since Tru does not have a cell phone, Officer Heath states that he needs Plaintiff Marcy Hillis’s cell phone number in order to contact her about wrestling.

20. When wrestling season in starts September, Officer Heath initially is kind to Tru and treats him respectfully.

21. At some point Officer Heath develops lustful feelings towards Marcy.

22. This is evident through text messages Officer Heath sends Marcy.

23. On October 15, 2015, Officer Heath tells Marcy “U are gonna have to change your mind on that pic.” When Marcy responds “What pic?” Officer Heath states, “U know.”

24. This exchange, attached as **Exhibit 1**, continues with Officer Heath stating that he won’t tell anyone. Feeling tremendously uncomfortable and in an effort to thwart the unwanted requests, Marcy sends of photo of her face covered in a mud wrap. Officer Heath becomes agitated to the point where he states “U better send the correct one. U freaking owe me big time.”

25. Further deflections by Marcy are met with angry responses from Officer Heath, “U know what the hell I am talking about.” When Marcy says she does not have those types of photos, Officer Heath orders her to “Take one now.” At this point Marcy sends a photo of her dog in hopes that Officer Heath will stop the unwelcomed demands. He does not.

26. Officer Heath then begins pleading with Marcy to “Send me one. Before I go to bed” and states “Come on” twice more in an effort to get Marcy to send him a “Topless” photo. Marcy explicitly states “No way! You’ve lost your mind. I don’t send that mess.” Undeterred, Officer Heath states, “Yes you can.”

27. Officer Heath continues his pleading and encouragement indicating that he deserves a topless photo “after all [he’s] done and will do for [her]. U can do it.”

28. Upon receiving no response from Marcy, Officer Heath writes back “What ever” (sic) and “Thanks”. In a continued effort to get a photo from Marcy, Officer Heath states that sending an explicit photo is “good clean fun...When it’s between 2 consenting adults.”

29. Marcy was neither consenting nor desiring to be involved in such a conversation.

30. When Marcy confronts Officer Heath about being married, Officer Heath states “So” and “Not happy”.

31. When Marcy again informs Officer Heath that she does not have any photos, he instructs her to “Go take one”.

32. Since the forceful route was getting him nowhere, Officer Heath changes direction in order to obtain a topless photo by acting pitiful and declaring, “I guess I am to (sic) ugly to share that stuff with”.

33. After two hours of convincing Marcy to send topless photos, Officer Heath concedes for the time being that he will not harass her again, “Ok forget it. I won’t bother u again with it. Just think u are sexy that’s all. I will stop”.

34. Officer Heath finally ends this text conversation by telling Marcy that he “didn’t think it was that big of a deal.”

35. In another text between October 15, 2015 and November 2, 2015, Officer Heath tells Marcy, “maybe he doesn’t like you...As much as I do.”

36. On November 2, 2015, Officer Heath resumes his pursuit of Marcy by sending a text message that states, “You know I tease you cause I love.” Annoyed by his unwanted advances, Marcy responds “No!”

37. Undeterred by the explicit response, Officer Heath replies “Yes” and “I just tease u.”

38. Knowing that all Officer Heath is only interested in receiving naked photos, Marcy tries to tell him that he does not like her. Officer Heath initially agrees, “You are right I don’t” before saying “I love you”.

39. Officer Heath goes on to call Marcy “one of [his] smoking ass hot mommas.”

40. Based on this message, it is believed that Marcy is not the only woman Officer Heath harasses and intimidates.

41. In order change the uncomfortable subject that Officer Heath continues to broach, Marcy asks if Officer Heath has watched Tru’s video.

42. When Marcy asks Officer Heath for help with Tru during another text conversation, the unrelenting Officer Heath responds “I will help you with him...Maybe... For a small fee”. Based on repeated past requests, it is assumed that the “small fee” is a sexual request.

43. Between November 2, 2015 and November 5, 2015, Officer Heath continues his assault on obtaining naked photographs from Marcy by stating, “R u ever gonna send me a pic” and “Don’t you think I have earned one.”

44. Marcy yet again changes the subject to leasing property and injuries to Tru.

45. At a point in this text conversation, Officer Heath informs Marcy that “Sex can be fun by to (sic) consenting adults” and then proceeds to ask “U have any fantasies.”

46. Officer Heath goes on to state that “I have a strange one that I really want to do before I die”. Before Officer Heath can describe his fantasy, Marcy quickly changes the subject.

47. Similar to the October 15, 2015 text chain, Officer Heath becomes dejected by Marcy’s failure to send him naked photos and writes “Ok I can take the hint. I ain’t getting a pic and I ain’t your type. I will stop texting u”.

48. When Marcy calls him a “baby” and exclaims “You’re a married man!” Officer Heath restates that he is “Not happy” and says “I don’t to want marry u”.

49. Officer Heath’s next message declares his true intent, “I just want you to fulfill my fantasy”. Marcy does not respond and the conversation ends before Officer Heath can describe his fantasy.

50. On Monday, November 9, 2015, Officer Heath is coaching at a wrestling match when he begins yelling, cursing, and verbally abusing his wrestlers and the referees.

51. The outbursts are so egregious that the referees ejected Officer Heath from the match and both the school board and sheriff’s department make him apologize.

52. On November 11, 2015, Officer Heath sends an e-mail, attached as **Exhibit 2**, to parents with a half-hearted apology acknowledging that sometimes he does “take it too far.”

53. Neither the sheriff's department nor the school board suspends Officer Heath from coaching as a result of the incident.

54. This incident alone provides the school board and sheriff's department with knowledge of Officer Heath's behavior.

55. At a wrestling tournament in November, a wrestler on the high school wrestling team cannot pin a wrestler on the Coffee County team. Officer Heath screams at his wrestler "Break! Break! Break!" The Blackman wrestler looks over at Officer Heath and proceeds to break the collarbone of the Coffee County wrestler.

56. Officer Heath routinely brings his daughter into the boy's locker room while they are changing into and out of their wrestling gear.

57. In another incident at practice around November 2015, Tru is getting ready for practice on the wrestling mat when he sees Officer Heath place his genitals on a team member's face.

58. While the continued harassment is unwelcome, Marcy is scared to say anything to the school or sheriff's department for fear of retaliation against Tru both at school and on the wrestling team.

59. This fear is validated by Officer Heath's actions to Tru and Marcy once he realizes that Marcy will not be sending naked photos nor engaging in any sexual behavior.

60. The nature of Officer Heath's texts to Marcy changes from being nice in hopes of getting naked photos to angry and retaliatory.

61. Officer Heath wants cell phones numbers of students and/or their parents, so he can be informed if they are going to miss practices, matches, and tournaments.

62. In a particular exchange between Officer Heath and Marcy, Officer Heath states “So why did you text me and tell me he was at the dentist”. Marcy responds “In case you didn’t see him and wondered. I try to have respect about wrestling and let you know. It seems I get attitude. Not sure why but I can figure. None the less (sic)...he will be at practice.” This exchange illustrates how the seeds of resentment from Officer Heath are sprouting.

63. Once Officer Heath realizes that Marcy’s feelings were not mutual, he starts holding Tru out of wrestling matches.

64. In another incident, Tru does not go to practice because he has a stomach virus. Rather than Tru informing Officer Heath while at school, Marcy texts the coach to let him know.

65. Tru hates missing practice because he learns a new technique at each one. If he misses multiple practices, he will fall behind his teammates.

66. As such, Tru returns the next day to practice at 75% health. Upon arriving at practice, Officer Heath demands that Tru perform 25 bear crawls as punishment for his mother informing Officer Heath of him not being at practice, rather than Tru.

67. Starting in December 2015, Officer Heath makes it his priority to call out Tru in front of his teammates, peers, and faculty members.

68. In one incident, Tru is not able to attend practice and asks Marcy to text Officer Heath that he will not be there.

69. At the next practice, Officer Heath calls out Tru in front of the entire team and asked “How come your mommy texts me and not you?” Tru simply responds “Because I don’t have a cell phone.”

70. Officer Heath repeatedly mocks, mimics, and harasses Tru in front of his teammates. Officer Heath does not engage Tru’s teammates in the same manner.

71. Officer Heath does not act this way towards Tru when he believes that Marcy would possibly send him naked photographs or engage with him sexually. It is only after he realizes that will not occur when he begins treating Tru this way. Further, he does not treat other wrestlers in the same manner.

72. On January 25, 2016, Tru quits the wrestling team.

73. This is due in part to him not getting to wrestle and because of how he is ridiculed by Officer Heath.

74. After Tru quits the wrestling team, Officer Heath begins sending disparaging messages to Marcy about Tru.

75. Between January 26, 2016 and February 3, 2016 after Tru quits the wrestling team, Officer Heath humiliates Tru in front of student office workers, a parent checking out a student, and faculty members.

76. Tru enters the main office of Blackman Middle School to get Tylenol where Officer Heath is sitting. Officer Heath approaches Tru and loudly states “your mom said that you’re scared of me. Is that true?” When Officer Heath says this, everyone in the office turned around and looked at Tru and Officer Heath.

77. Even though Tru is frightened by the school resource officer, he responds that he is not because he believes wrestlers have to present an image of toughness. Officer Heath says loudly in response, “that’s not what your momma said” in front of multiple faculty members.

78. Another incident that occurred between January 26, 2016 and February 3, 2016 involves yearbook photos being taken after the wrestling season has concluded.

79. After Tru has been in the team photo, he is walking down the hall with his other teammates when Officer Heath stops and questions Tru in front of his teammates as to why he is

in the wrestling team photo. Tru states that he is in the photo because he wrestled for the entire season.

80. Later on Officer Heath pulls Tru into his office and informed Tru that he should not have been in the photo because he is a quitter.

81. When Tru replies that another student, who quit during the season, is in the photo, Officer Heath again states that did not matter and that Tru and is a quitter and should not have been in the photo.

82. On or about Thursday, February 4, 2016, Tru is in a classroom at Blackman Middle School when another student gives him an electronic cigarette to hide because the student is about to be searched.

83. After the student is searched, Tru gives the electronic cigarette back to the other student. A school official is informed that Tru possessed the electronic cigarette while the search occurred and gives him an in-school suspension of 2 days for not informing a school official of the electronic cigarette.

84. On Friday, February 5, 2016, Tru is serving his in-school suspension with the other student involved in the incident when Officer Heath walks into the classroom. The monitor for in-school suspension, Mr. Matikke, and another school employee, who is making copies, are also in the classroom.

85. Officer Heath in front of other student, the monitor, and the school employee says to Tru that he is glad Tru quit the wrestling team because he is a liar and trash and that he [Officer Heath] does not want “trash like that” on his wrestling team.

86. Officer Heath’s actions and attitude towards Tru leads to another altercation with a student on the Blackman High School wrestling team.

87. Both high school and middle school practices are combined, so high school students are familiar with middle school students on the wrestling team. Furthermore, high school students are aware of and witnessed the disparaging treatment Officer Heath shows towards Tru.

88. A student on the high school wrestling team is visiting Tru's neighborhood with another student when the wrestler intentionally breaks Tru's nose. The broken nose requires surgery.

89. Tru never previously has an issue with or has spoken to this person. It is alleged that the high school student's action against Tru stemmed from Officer Heath's behavior, such as the time when he told a wrestler on his team to break the collarbone of a rival team's wrestler.

90. As a result of the actions of Officer Heath and inactions of the remaining Defendants, Tru transferred from Blackman Middle School after only one year.

91. As a result of the actions of Officer Heath and inactions of the remaining Defendants, both Plaintiffs have undergone psychiatric therapy.

92. Upon information and belief, Defendant John Heath, as SRO, is an employee of one or more of the following entities Defendants Rutherford County School Board, Rutherford County, Tennessee, Rutherford County Sheriff's Department, and/or Rutherford County School Resource Officer Association.

93. Upon information and belief, Defendant John Heath, as the middle school wrestling coach, is an employee of one or more of the following entities Defendants Rutherford County School Board, Rutherford County, Tennessee, Rutherford County Sheriff's Department, and/or Rutherford County School Resource Officer Association.

94. Upon information and belief, one or more of the following entities Defendants Rutherford County School Board, Rutherford County, Tennessee, Rutherford County Sheriff's Department, and/or Rutherford County School Resource Officer Association was tasked with supervising Defendant John Heath in his capacity as SRO.

95. Upon information and belief, one or more of the following entities Defendants Rutherford County School Board, Rutherford County, Tennessee, Rutherford County Sheriff's Department, and/or Rutherford County School Resource Officer Association was tasked with supervising Defendant John Heath in his capacity as the middle school wrestling coach.

### **COUNT ONE**

#### **Deprivation of Life and Liberty without Due Process of Law in Violation of the Fourteenth Amendment to the United States Constitution**

96. At all relevant times, Defendants Rutherford County School Board, Rutherford County, Tennessee, Rutherford County Sheriff's Department, and/or Rutherford County School Resource Officer Association were state entities acting under of color of state law as defined 42 U.S.C. § 1983, et seq.

97. Defendants' training of their sheriff deputies was clearly for the tasks that sheriff deputies were expected to perform, including reasonable responsibility for the care, custody, and control of students as a school resource officer. To wit, Defendants failed to equip it sheriff deputies with the requisite knowledge, information, and training to take reasonable steps to minimize the risk that a student would be 1) bullied and 2) verbally abused and 3) mentally abused.

98. Defendants failed to apprise Plaintiffs of the dangers Officer Heath posed by being a school resource officer and coach of the wrestling team. Said failure constituted deliberate indifference toward Plaintiffs' safety, well-being, and constitutional rights.

99. Defendants disregarded the known and obvious consequences of the failures heretofore delineated.

100. Defendants' failure to adequately train its deputies was closely related to or actually caused Plaintiffs' injuries. There is a direct causal link between Defendant's inadequate training and Plaintiffs' constitutional deprivation.

101. Defendants' aforementioned inadequate training was caused Plaintiffs to be deprived of their constitutional interest in life, personal security, and mental integrity. Said deprivation as imposed without due process of law, in violation of the Fourteenth Amendment to the United States Constitution and is therefore actionable under 42 U.S.C. § 1983.

### **DAMAGES**

102. As a result of the above-described actions and omissions, Plaintiffs suffered the following damages:

- a. Medical Bills;
- b. Loss of Consortium;
- c. Great Mental and Suffering;
- d. Physical Pain and Suffering (Tru Moore only).

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs demand the following:

1. That proper process issue and be served upon the Defendant, and that the Defendant be required to appear and answer this Complaint within the time required by law;
2. Additional compensatory damages from the Defendants under 42 U.S.C § 1983 in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00), or the maximum allowed under the law;

3. Attorney's fees as provided by 42 U.S.C. § 1988, post-judgment interest as provided by 28 U.S.C. § 1961, and costs as provided by 28 U.S.C. § 1920.

4. Any other relief to which Plaintiffs may be deserving under the common laws and statutory authorities which govern this cause of action;

5. That the costs of this action be taxed to the Defendants;

6. That Plaintiffs have such other and further relief as the Court deems appropriate in the circumstances including, but not limited to, pre-judgment interest and post judgment interest;

7. The Plaintiffs demand that jury be impaneled to try this case

Respectfully submitted,

**WILLIAM B. HICKY, ATTORNEY AT LAW**

*/s/ William B. Hicky*

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