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----- CASE# CV2019-012679 CIVIL NEW COMPLAINT

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TOTAL AMOUNT

333.00

333.00

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Attorneys for Plaintiff Ian McIntosh

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

BY AND FOR THE COUNTY OF MARICOPA

IAN McINTOSH, an unmarried man,

Plaintiff.

YOUTH DEVELOPMENT INSTITUTE. an Arizona Nonprofit Corporation; LUZ MOGROVEJO AND JOHN DOE

MOGROVEJO, a married couple; JANE AND JOHN DÓES I-X; ABC

14 CORPORATIONS I-X; BLACK &

15 WHITE PARTNERSHIPS I-X.

Defendants.

Case No. CV 2019-012679

COMPLAINT

(Jury Trial Demanded)

Tier 1 (Ariz. R. Civ. P. 26.2(b)(1))

For his complaint against Defendants Youth Development Institute, Luz Mogrovejo and John Doe Mogrovejo, Plaintiff Ian McIntosh, through undersigned counsel, hereby alleges as follows:

#### PARTIES, JURISDICTION, AND VENUE

- Plaintiff Ian McIntosh is an unmarried man now residing in the State of 1. Washington.
- Upon information and belief, Defendant Youth Development Institute is an 2. Arizona nonprofit corporation, authorized to do business and doing business in Maricopa County, Arizona.

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- 3. Upon information and belief Defendants Luz Mogrovejo and John Doe Mogrovejo are a married couple, residing in Maricopa County, Arizona. At all times relevant to this Complaint Defendant Mogorvejo was acting for the benefit and in furtherance of her marital community.
- 4. Defendants John and Jane Does I-X, ABC Corporations I-X, and Black and White Partnerships I-X are individuals and entities whose identity is not currently known but who may become known during the course of litigation and who have liability for the harms and losses suffered by Plaintiff.
- Defendants, each and all of them, caused events to occur in Maricopa County,
   Arizona out of which this matter arises.
- The events that gave rise to Plaintiffs' claims occurred in Maricopa County,
   Arizona and venue is proper in this Court pursuant to A.R.S. § 12-401.
- The amount in controversy exceeds the Court's minimum jurisdictional amount.
- 8. The Court has jurisdiction of this action pursuant to Article VI, section 14 of the Arizona Constitution and A.R.S. § 12-123.

#### **GENERAL ALLEGATIONS**

#### Juvenile charges and Sentencing

- In December 2015, 15-year-old high school student Ian McIntosh exchanged a series of consensual text messages with a female classmate that her parents deemed inappropriate.
- 10. The classmate's parents made a formal complaint to the Tempe Police Department, which ultimately resulted in a juvenile prosecution against Mr. McIntosh in the Juvenile Court system in Maricopa County.
- After months of vigorously defending himself against the charges, on August
   Mr. McIntosh entered into a plea agreement under which he pled guilty to one count

of "attempted computer tampering."

- 12. Per the plea agreement, the court retained the discretion to designate the matter as a felony or a misdemeanor; determine whether Mr. McIntosh would be placed on "standard" or "intensive" probation; determine the length of probation; and determine whether Mr. McIntosh would be subject to sex-offender terms of probation.
- 13. Per the plea agreement, the Court's determination would be based on a "Psychosexual Evaluation" to be completed by a court-appointed psychologist before sentencing.
- 14. At Mr. McIntosh's change-of-plea hearing, the Court appointed Dr. Luz Mogrovejo, Ph.D. to complete the required Psychosexual evaluation.

#### The Psychosexual Evaluation

- 15. Mr. McIntosh met with Dr. Mogrovejo once, on August 18, 2016.
- 16. After that meeting, Dr. Mogrovejo prepared and issued a written report diagnosing him as "Sexual Abuse (Perpetrator)," identifying Mr. McIntosh's risk of reoffending as "moderate," and recommending that Mr. McIntosh be subject to a series of polygraph assessments to determine the extent of his issues, as well as 8-12 months of intensive outpatient sex offender therapy.
- 17. Dr. Mogrovejo's conclusions were based on a series of misstatements of fact; misinterpretations of the proper way to administer the Psychosexual Evaluation; mis-use of out-of-date assessments that were no longer acceptable for use; and mis-scorings of results.
  - 18. On September 7, 2016, Mr. McIntosh proceeded to sentencing.
- 19. Based on Dr. Mogrovejo's evaluation, the Court sentenced Ian to a 90-day sentence of juvenile detention, which it deferred upon completion of a lengthy probation term; imposed sex offender terms of Mr. McIntosh; and required Mr. McIntosh to complete a term of intensive sex offender treatment in order to avoid his sentence of incarceration.

- 20. The sentencing judge noted, among other things, that she was concerned with Dr. Mogrovejo's conclusion that Mr. McIntosh was "in the moderate risk category for reoffense" and "is in need of treatment beyond boundaries counseling."
- 21. To comply with his probation, Mr. McIntosh was required to remain confined to his home, permitted to leave only for school and treatment. He was forbidden from a range of activities, including and not limited to owning a cell phone, using the internet, playing sports, walking his dog, and attending holiday celebrations at family members' homes.
- 22. To satisfy his requirement to attend intensive sex-offender treatment, Mr. McIntosh was required to attend intensive counseling at Youth Development Institute ("YDI") five days a week, as well as one Saturday a month.

## "Treatment" at Youth Development Institute

- 23. YDI is a private nonprofit corporation that maintains a contract with the State of Arizona's Administrative Office of the Courts to provide intensive therapy services to juvenile offenders.
- 24. Upon information and belief, YDI provides multiple levels of therapeutic services, including an out-patient "Day" program (in which children participate in therapy during a portion of the day, typically after school ends and on weekends, and return to their homes at night to sleep), and an in-patient "Residential" program (in which children are required to live and remain at YDI's facility 24/7 until released from the program).
- 25. As an apparent effort to "treat" the condition that led him to send inappropriate text messages to a fellow classmate, Mr. McIntosh was required to participate in a course of intensive counseling at YDI's "Day" program.
- 26. Mr. McIntosh's "treatment" with YDI included, among other things, intensive individual therapy as well as group therapy with severe juvenile sex offenders in YDI's inpatient Residential program.

#### Re-Evaluation by Independent Expert

- 31. Concerned about Dr. Mogrovejo's conclusions in the Psychosexual Evaluation, Mr. McIntosh's family hired an independent expert, Dr. Alan Simpson, to review Dr. Mogrovejo's raw data and conclusions.
- 32. Dr. Simpson identified a series of misstatements of fact, misapplication of standards, and mis-scoring of results upon which Dr. Mogrovejo's conclusions were based.
- 33. Dr. Simpson also informed Mr. McIntosh's family that the administration of polygraph assessments to adolescents was contraindicated by the Association for the Treatment of Sexual Abusers ("ATSA") due to lack of reliability of results.

### Completion of Probation and Release from Program

34. Mr. McIntosh's family continually raised their concerns with YDI's program, including its ill-advised use of polygraph assessments to adolescents, both to YDI and to court representatives.

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1	35. Eventually, after completing the program, Mr. McIntosh was released from
2	probation and his offense was designated as a misdemeanor. This did not happen, though
3	before Mr. McIntosh was permanently and irreparably harmed by Mogrovejo, YDI, and the
4	State of Arizona.
5	FIRST CAUSE OF ACTION
6	(Negligence – Against Defendant YDI)
7	36. Plaintiff hereby incorporates all of the allegations contained in the foregoin
8	paragraphs as if they were fully set forth herein.
9	37. YDI owed Mr. McIntosh the duty to care for him as a reasonable provide
10	would under the circumstances.
11	38. YDI breached its duty to Mr. McIntosh when, among other things, it subjecte
12	Mr. McIntosh to polygraph examinations that were unapproved and contra-indicated.
13	39. As a direct and proximate result of the breaches of YDI, Mr. McIntosh ha
14	been damaged in an amount to be proven at trial.
15	SECOND CAUSE OF ACTION
16	(Negligence – Against Defendants Mogrovejo)
17	40. Plaintiff hereby incorporates all of the allegations contained in the foregoing
18	paragraphs as if they were fully set forth herein.
19	41. Mogrovejo owed Mr. McIntosh the duty to treat him as a reasonable provide
20	would under the circumstances.
21	42. Mogrovejo breached her duty to Mr. McIntosh in a number of ways
22	including, among other things, misrepresenting the facts of Mr. McIntosh's case; applying
23	improper and contra-indicated examinations in her battery of tests; and inaccurately scoring
24	Mr. McIntosh's evaluation.
25	43. As a direct and proximate result of the breaches of Mogrovejo, Mr. McIntosl
26	has been damaged in an amount to be proven at trial.

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#### THIRD CAUSE OF ACTION

#### (Aggravated Negligence - Against Defendants YDI and Mogrovejo)

- 44. Plaintiff hereby incorporates all of the allegations contained in the foregoing paragraphs as if they were fully set forth herein.
- 45. Upon information and belief, YDI has a contract with the State of Arizona under which it is compensated for treatment provided to court-ordered children and adolescents.
- 46. Upon information and belief, YDI is paid a higher rate for in-patient "Resident" treatment than for out-patient "Day" treatment.
- 47. Upon information and belief, YDI had a pattern and practice of moving subjects from the "Day" to "Resident" programs by relying on the inappropriately administered polygraph examinations.
- 48. Upon information and belief, YDI administered the inappropriate polygraph examination to Mr. McIntosh not in a good faith desire to actually treat him but in an effort to justify moving Mr. McIntosh to the more lucrative "Resident" program.
- 49. To justify its administration of the inappropriate polygraph examinations, YDI cited the factually inaccurate and recklessly created opinion of Mogrovejo.
- 50. YDI's and Mogrovejo's care for Mr. McIntosh fell so far below the care that a reasonable provider would be expected to provide for Mr. McIntosh that it evidenced its reckless indifference for Mr. McIntosh's well-being, thereby justifying an award of punitive damages.
- 51. To the extent YDI and/or Mogrovejo have a pattern and practice of profiting from inappropriate polygraph assessments administered to children and adolescents, this evidences a shocking prioritizing of profit over patient care and entitles Mr. McIntosh to an award of punitive damages to punish YDI and/or Mogrovejo and deter them from similar conduct in the future.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ian McIntosh hereby requests that the Court enter judgment against Defendants Youth Development Institute, Luz Mogrovejo, and John Doe Mogrovejo as as follows:

- A. For monetary damages in an amount sufficient to compensate Mr. McIntosh for the full measure of his losses, including but not limited to his medical expenses, lost wages, pain, suffering, mental and emotional anguish, and loss of enjoyment of life.
- B. For punitive damages, insofar as Defendants actions constituted aggravated negligence, in an amount sufficient to punish Defendants and deter them from similar conduct in the future;
- C. For taxable costs and pre- and post-judgment interest to the extent permitted by law;
  - For attorneys' fees as permitted by law; and
- E. For such other relief as the Court deems just and proper.

  DATED this 24th day of September, 2010.

DATED this 24<sup>th</sup> day of September, 2019.

THE PEOPLE'S LAW FIRM, PLC 645 North 4th Avenue, Suite A Phoenix, Arizona 85003

Stephen D. Benedetto Heather Hamel