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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**Jane Doe, individually and on behalf
of a class of similarly situated individuals,**

Plaintiff,

v.

Civil Action No.: 19-C-363-P

**RALEIGH GENERAL HOSPITAL, LLC,
DR. ZOUHAIR KABBARA; and John Doe,
Individuals and/or corporations,**

Defendants.

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RALEIGH COUNTY
RECEIVED AND FILED
AUG 22 2019
PAUL H FLANAGAN
CIRCUIT CLERK

CLASS ACTION COMPLAINT

COMES NOW Plaintiff Jane Doe, individually and on behalf of a class of similarly situated individuals, for Plaintiff's Class Action Complaint, states as follows:

PARTIES, VENUE, AND JURISDICTION

1. Plaintiff is and was at all times alleged herein a resident of Raleigh County, West Virginia.
2. Defendant Raleigh General Hospital, LLC, [hereinafter "RGH"] is a foreign limited liability company that at all times relevant hereto was conducting business as a medical facility located at 1710 Harper Road, Beckley, WV 25801.
3. Defendant Zouhair Babbara ["Dr. Kabarra"] is a resident of Raleigh County, West Virginia.
4. At all times relevant hereto, RGH employed Dr. Kabarra and/or permitted him to have privileges to practice medicine at its Beckley, West Virginia medical facility.

5. Under the doctrines of *respondent superior* and vicarious liability Defendant RGH was and is responsible for all the actions of Defendant Kabarra done while employed by RGH, granted privileges by RGH, or knowingly allowed on hospital property by RGH.

FACTS

6. Plaintiff incorporates all preceding paragraphs of the Complaint as if fully restated herein.

7. Plaintiff Jane Doe is a female and former patient of Defendant Kabarra.

8. In May of 2019, Jane Doe began seeing Defendant Kabarra for health issues.

9. In June of 2019, Defendant Kabarra hospitalized Jane Doe at Raleigh General Hospital.

10. Prior to her hospitalization, Defendant Kabarra relayed to Jane Doe that he would try to get her in a "private room."

11. As a part of his employment with or at RGH, Defendant Kabarra was given access to volunteers, employees, and patients at RGH.

12. During Jane Doe's hospitalization, Defendant Kabarra entered her room and sexually assaulted her.

13. Specifically, Defendant Kabarra inserted his fingers into Jane Doe's vagina and continued to assault her for several minutes.

14. Thereafter, Defendant Kabarra stood over her bed and forced the same fingers into Jane Doe's mouth.

15. When he placed his fingers in her mouth, Defendant Kabarra stated "that's you, taste yourself."

16. Prior to this incident, Dr. Kabarra was forced to resign from Beckley Appalachian Regional Hospital ["BARH"] for allegations of misconduct and/or sexual harassment.

17. RGH was or should have been aware of the circumstances under which Defendant Kabarra was forced out of his employment with BARH.

18. Nevertheless, Defendant Kabarra has been permitted to continue to enter RGH for the purpose of treating patients.

19. Defendant Kabarra has conducted himself in a similar manner with numerous other volunteers, hospital employees, and/or patients.

20. As a proximate result of Dr. Kabarra's sexual harassment, Plaintiff Jane Doe has suffered and continues to suffer irreparable harm.

21. Plaintiff has no fully adequate remedy at law for the actions of Defendants alleged herein.

22. There is a strong public interest in preventing sexual harassment of hospital volunteers, employees, and patients.

23. Plaintiff is likely to succeed on the merits with regard to the claims set forth herein.

24. Defendants will suffer no harm if they are restrained from permitting Defendant Kabarra on hospital premises.

CLASS ACTION ALLEGATIONS

25. The plaintiff re-alleges and incorporates herein all previous allegations of the Complaint.

26. Plaintiff seeks to bring these claims below as a class action pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, on behalf of all others similarly situated.

27. The Class is defined as:

Any volunteer, employee, or patient RGH that was sexually harassed or assaulted by Defendant Kabarra.

28. Plaintiff reserves the right to re-define the class.

29. Numerosity: The number of persons who are members of the Class, as described above, is so numerous that joinder of all members in one action is impracticable.

30. Predominance: Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendants complained of herein were generally applicable to the entire class. These legal and factual questions include, but are not limited to:

- a. Whether Plaintiff and Class members' were sexually harassed or assaulted by Dr. Kabarra.
- b. Whether Defendant RGH knowingly permitted Dr. Kabarra's behavior, thereby placing Plaintiff and Class members at risk.
- c. Whether Defendants are legally responsible for damages incurred by Plaintiff and the Class members; and
- d. Whether Plaintiff and the Class members are entitled to punitive damages.

31. Commonality: All questions, actions, and inactions by Defendants at issue are similarly common. A determination of Dr. Kabarra's pattern and practice of sexual harassment and sexual assault will apply to all members of the Class, as will a determination of whether RGH knowingly permitted Dr. Kabarra's ongoing sexually inappropriate behavior. Further, whether Defendants acted in a manner that gives rise to damages, punitive damages, and a right to injunctive relief are questions common to the Class.

32. Typicality: Plaintiff's claims are typical of the members of the Class. Plaintiff was a patient at RGH. Plaintiff, like all members of the proposed Class, suffered damages as a result

of the unwanted, unwelcome, inappropriate, sexual misconduct of Dr. Kabarra, and RGH's knowing permission of this continuing behavior at its facility.

33. Adequacy of Representation: Plaintiff will fully and adequately represent and protect the interest of the Class because of the common injuries and interest of the members of the Class and the singular conduct of Defendants that is or was applicable to all members of the Class. Plaintiff has retained counsel who are competent and experienced in the prosecution of class action litigation. Plaintiff has no interest that is contrary to or in conflict with those of the Class she seeks to represent.

34. The claims of the Class maybe certified under Rule 23.

35. The members of the Class seek sizeable monetary relief.

**COUNT I: INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS OR TORT OF OUTRAGE**

36. The plaintiff re-alleges and incorporates herein all previous allegations of the Complaint.

37. The Defendants' conduct was atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency.

38. To wit: Defendant Kabarra sexually harassed or assaulted patients, employees, or volunteers of RGH.

39. To wit: Defendant RGH knowingly and willingly permitted Kabarra to have access to volunteers, employees, and patients despite being aware of Dr. Kabarra's propensity for sexually inappropriate behavior toward girls and women.

40. Defendants acted with the intent to inflict emotional distress, or acted recklessly when it was certain or substantially certain emotional distress would result from their conduct.

41. These wrongful actions of the defendants have been done maliciously, willfully, wantonly, recklessly, and with utter disregard of the plaintiff and Class members' legal rights.

42. As a direct and proximate result of such wrongful conduct, Plaintiff and Class members have suffered and continues to suffer severe emotional distress.

43. As a direct and proximate result of such wrongful and unlawful conduct Plaintiff and Class members have sustained and are thereby entitled to recover such damages as are more fully set forth below.

COUNT II: NEGLIGENCE; SUPERVISION; and RETENTION

44. Plaintiff incorporates herein by reference all preceding paragraphs of the complaint as if fully set forth herein.

45. Upon information and belief, Defendant RGH failed to investigate or adequately investigate the history of Defendant Kabarra.

46. Prior to hiring or extending privileges to Defendant Kabarra, RGH failed to train or adequately train Defendant Kamara and/or failed to adequately supervise Defendant Kabarra.

47. Defendant RGH knew, or in the exercise of ordinary care, should have known of Defendant Kabarra's unfitness prior to the occurrences set forth herein or during the course of his employment or holding privileges.

48. Accordingly, RGH was negligent in the hiring, selection, supervision, training, and retention of Defendant Kabarra.

49. As a direct and proximate result of the negligent hiring, supervision, training, and/or retention of Defendant Kabarra by Defendant RGH, Plaintiff and Class members have been damaged and is entitled to recover such damages as more fully set forth below.

COUNT III – INJUNCTIVE RELIEF

50. Plaintiff incorporates herein all previous allegations of the Complaint.

51. Plaintiff and the Class members bring this count pursuant to Rule 65 of the West Virginia Rules of Civil Procedure.

52. Plaintiff and the Class Members are likely to succeed on the merits on their claims against Defendants.

53. Plaintiff and Class Members are likely to suffer additional irreparable harm if Defendant Kabarra is permitted to continue the practice of medicine either with or on the premises of RGH.

54. The balance of the equities weighs in favor of awarding injunctive relief, as RGH should not be permitted to profit from Defendant Kabarra's continuing access to employees, volunteers, or patients for the purpose of carrying out sexually inappropriate behaviors.

55. The economic benefit to either RGH or Dr. Kabarra must not be permitted to outweigh the danger that his continued presence at RGH poses to minor girls and women.

56. It is indisputably in the public interest to prohibit improper conduct and sexual harassment directed by an adult male authority figure toward minor girls and women.

DAMAGES

57. The plaintiff re-alleges and fully incorporates herein all previous allegation of this Complaint.

58. As a direct and proximate result of the defendants' wrongful conduct, as more fully described above, the plaintiff and Class members are entitled to recover the following damages:

- a. Preliminary and temporary injunctive relief;
- b. Compensatory damages;

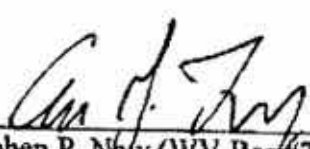
- c. Damages for embarrassment, humiliation, annoyance, inconvenience, aggravation, loss of dignity, and emotional distress;
- d. Punitive damages;
- e. All attorneys fees and costs incurred in prosecuting these claims; and,
- f. Prejudgment and post judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jane Doe, individually and on behalf of a class of similarly situated individuals, requests temporary, preliminary and permanent injunctive relief and further demands judgment against the defendants in such damages as will fully and sufficiently compensate her for all of his injuries and losses together with punitive damages, reasonable attorney's fees, pre and post-judgment interest, costs, and any and all other and further relief as this Court deems just and proper.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

**Jane Doe, individually and on behalf of a
class of similarly situated individuals
By Counsel,**



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