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KEVIN STOCK
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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF PIERCE**

9 MISHALLA SIM AND REYNOLD
10 MINGMING, husband and wife and the
11 marital community comprised thereof;

12 Plaintiffs,

13 v.

14 ORTING SCHOOL DISTRICT NO 344,
15 PTARMIGAN RIDGE ELEMENTARY
16 SCHOOL, a subdivision of ORTING
17 SCHOOL DISTRICT NO 344, WILLIS
18 BATHUM, individually, and the marital
19 community of WILLIS and DOE
20 BATHUM, ALICIA JENSEN,
21 individually and the marital community of
22 ALICIA JENSEN and DOE JENSEN

23 Defendants.

NO.

COMPLAINT

COMES NOW, the Plaintiffs, MISHALLA SIM AND REYNOLD MINGMING, husband and wife and the marital community comprised thereof, (collectively referred to as "Plaintiffs"), by and through their attorney of record, Aric S. Bomsztyk and Tomlinson Bomsztyk Russ for their Complaint against Defendants, ORTING SCHOOL DISTRICT NO. 344, WILLIS BATHUM, individually, and the marital community of WILLIS and DOE BATHUM, ALICIA JENSEN, individually and the marital community of ALICIA JENSEN

1 and DOE JENSEN (collectively referred to as “Defendants”), state and allege as follows:

2 **I. PARTIES, JURISDICTION & VENUE**

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- 4 1. Plaintiffs, Mishalla Sim and Reynold Mingming, are husband and wife. Plaintiffs are the
- 5 parents and legal guardians of the minor Kai Mingming (Kai) who resides in Pierce County
- 6 Washington, Ms. Sim, Mr. Mingming, and Kai and have all resided in Pierce County at all
- 7 material times relevant to this lawsuit.
- 8 2. Orting School District No 344 (OSD) is a Washington public school district located in
- 9 Pierce County, Washington.
- 10 3. Ptarmigan Ridge Elementary School (Ptarmigan Ridge) is a subdivision of Orting School
- 11 District No 344 and is located in Pierce County Washington.
- 12 4. Defendant Willis Bathum (Mr. Bathum) is and was, at all times relevant to the injuries
- 13 complained of herein, an employee and/or agent of OSD, *i.e.*, a teacher at Ptarmigan Ridge,
- 14 acting under color of law and within the scope of his official duties. Mr. Bathum is sued
- 15 here both in his individual capacity and his official capacity. On information and belief, the
- 16 acts and omissions of Mr. Bathum were done on behalf, and benefitted, the Bathum marital
- 17 community.
- 18 5. Defendant Ms. Jensen (Ms. Jensen) is and was, at all times relevant to the injuries
- 19 complained of herein, an employee and/or agent, *i.e.*, a principal at Ptarmigan Ridge of
- 20 OSD, acting under color of law and within the scope of her official duties. Ms. Jensen is
- 21 sued here both in her individual capacity and her official capacity. On information and
- 22 belief, the acts and omissions of Ms. Jensen were done on behalf, and benefitted, the Jensen
- 23 marital community.
6. The causes of action arise under Washington State statutory and common law. Thus, this Court has subject matter jurisdiction over this matter.
7. Venue is properly lodged in Pierce County because all of the tortuous activities complained of occurred in Pierce County. RCW 4.12.020 / RCW 4.12.025.
8. On or about April 24, 2020, Kai presented his tort claim (Tort Claim) to OSD in person and in compliance with all statutes *inter alia* RCW 4.96. *et. seq.* Sixty (60) days have elapsed since presentation of the Tort Claim to OSD.

21 **II. FACTS**

- 22 9. Kai was a 5th Grade student at Ptarmigan Ridge during the 2016-2017 academic school
- 23 year (Academic Year). Throughout the Academic Year, “G.X.,” another 5th Grade student, was allowed to bully and harass his fellow classmates in his class, taught by teacher Willis Bathum as well as throughout Ptarmigan Ridge.

- 1
- 2 10. G.X. was well known to Kai and his classmates as a classic bully and harasser. For
- 3 instance, Plaintiff Mishalla Sim, Kai's mother, was told by other parents about G.X.'s
- 4 reputation before and after this incident. Kai, amongst others, was a target of G.X.'s
- 5 actions.
- 6
- 7 11. Through official policy, OSD, and by extension Ptarmigan Ridge, purport to be committed
- 8 to "to a safe and civil educational environment for all students, employees, parents/legal
- 9 guardians, volunteers and patrons that is free from harassment, intimidation or bullying."
- 10 *Orting School District, Board Policy 3207BP* The 3207BP Policy notes that bullying and
- 11 harassing "can take many forms including, but not limited to, slurs, rumors, jokes,
- 12 innuendos, demeaning comments, drawings, cartoons, pranks, gestures, physical attacks,
- 13 threats or other written, oral, physical or electronically transmitted messages or images."
- 14 The 3207BP Policy states that "Retaliation is prohibited and will result in appropriate
- 15 corrective action. It is a violation of this policy to threaten or harm someone for reporting
- 16 harassment, intimidation, or bullying." Indeed, this entire 3207BP Policy acknowledges
- 17 that it is a "component of the district's responsibility to create and maintain a safe, civil,
- 18 respectful and inclusive learning community."
- 19
- 20 12. In addition to 3207BP Policy, a companion policy OSD Policy-3207P, was adopted. Policy
- 21 3207P states, "All staff members shall intervene when witnessing or receiving reports of
- 22 harassment, intimidation or bullying." *Orting School District, Board Policy 3207P*
- 23
13. On information and belief, Policy-3207BP, and Policy-3207P, were adopted in response to
- RCW 28A.300.285's mandate.
14. Despite the legal prohibitions and official policies in place to prevent bullying, Ptarmigan
- Ridge, Ms. Jensen and Mr. Bathum knowingly allowed G.X.'s bullying to continue during
- the Academic Year. More concerning, Ptarmigan Ridge, Ms. Jensen and Mr. Bathum
- created and fostered* this environment, through a "no tattling policy."
15. To that point, Ptarmigan Ridge also adopted and enforced a "no tattling rule" for older
- students (i.e. 5th Graders) Teachers told students that "tattling" was not permitted. Students
- were told, *inter alia*, "not to tell on people" because "[teachers] do not want to hear about
- it." Students were told, essentially, "You're "5th Graders" and "You can deal with it." On
- information and belief, Ptarmigan Ridge never formally reconciled its "no tattling rule"
- with OSD's, Ptarmigan Ridge and legal requirements to address bullying. Apparently,
- without more, Ptarmigan Ridge's "no tattling rule" was supposed to co-exist with the
- legally mandated "anti-bullying" requirements. However, this "no tattling policy" is in
- direct contravention to Orting School District Board Policy 3207, 3207BP and RCW
- 28A.300.285.
16. In addition to the above policies, Ptarmigan Ridge also has a bathroom policy (Bathroom
- Policy) which is enforced schoolwide. The Bathroom Policy is very simple, no more than
- "1 Boy and 1 Girl" can be let out of class to use the bathroom at any one time. At this time,

1 it is unknown whether this Bathroom Policy is formally written, or simply known, by all
2 administrators, teachers and students, to be the rule.

3 17. Thus, while there were specific anti-bullying policies nominally stated, *to wit*, RCW
4 28A.300.285, Policy-3207BP, and Policy-3207P, G.X. could easily bully and harass
5 because Ptarmigan Ridge and Mr. Bathum created and enforced this “no tattling policy,”
6 which instructed students not to “tattle.”

7 18. On or about April 25, 2017, G.X. had his sights set on Kai. Starting at lunch, G.X. was
8 kicking the back of Kai’s legs in while they were in lunch line. Kai repeatedly asked him
9 to stop, but G.X. would not. Kai did not tell any teacher or adult about the kicking *because*
10 *of* Ptarmigan Ridge’s “no tattling policy.” Kai simply asked to move to the back of the
11 line.

12 19. After lunch, back in Mr. Bathum’s class, G.X. kept on bullying and harassing Kai. This
13 time, G.X. intentionally threw a pen at Kai’s genitals. This upset Kai so much that he asked
14 Mr. Bathum if he could go to the bathroom. On information and belief, Mr. Bathum knew
15 that G.X. threw the pen at Kai. Regardless, Kai was visibly shaken with tears in his eyes.
16 Additionally, Kai did *not* tell Mr. Bathum what had happened *because of* the “no tattling
17 policy.” Mr. Bathum excused Kai to go to the bathroom.

18 20. For unknown reasons, and in contravention of Ptarmigan Ridge’s policy, after Kai left the
19 classroom to the bathroom, G.X. was allowed to go to the bathroom as well. G.X. then
20 sought out Kai, teasing him for leaving the classroom, and began kicking him again,
21 although Kai asked him to stop. G.X.’s final kick broke Kai’s hand. Kai escaped back to
22 the classroom, showed Mr. Bathum his hand, and was allowed to go to the school nurse.
23 The nurse called Kai’s mother, Plaintiff Mishalla Sim, who recommended that Ms. Sim
take him to the hospital. Kai then went to Urgent Care and was treated for his broken hand.

24 21. Needless to say, Kai’s mother, Plaintiff Ms. Sim, was very upset by what occurred.
25 Plaintiff Ms. Sim called Ms. Jensen, Ptarmigan Ridge’s principal. Ms. Jensen was not
aware of the incident. When Ms. Sim did not hear from Ms. Jensen after 2-3 days she
called again. Ms. Jensen nonchalantly stated that she had not followed up on the incident,
had talked to none of the students or conducted any interviews. Apparently, in response to
this call, Ms. Jensen brought Kai, G.X. and another boy to get their version of events.

26 22. During these interviews, G.X. claimed that that they “were playing.” Kai denied that they
27 were “playing” and that he told G.X. to stop. Ms. Jensen response to Kai was that “[he]
28 needed to stand up for [himself]” and that “Stop was not good enough.” Despite the
29 interviews, Ms. Jensen never followed up with Plaintiff Ms. Sim.

30 23. Incredibly frustrated and upset, Ms. Sim demanded an in-person meeting. At first, Ms.
31 Jensen would not return Plaintiff Ms. Sim’s calls. However, eventually, Plaintiff Ms. Sim
32 was able to get this meeting. However, it left her feeling even worse, and that Ms. Jensen
33 was making light of the entire situation. Indeed, Ms. Jensen acted as if what happened was

1 not even a serious situation. Ms. Jensen would not acknowledge that Kai's hand was
2 broken, let alone acknowledge that the school's lack of training, supervision and/or other
policies could have caused this.

3 24. OSD and Ptarmigan Ridge launched an investigation conducted by Christopher Willis.
4 The conclusions of Mr. Willis' investigation on behalf of OSD and Ptarmigan Ridge on
5 June 2, 2017 confirms Plaintiff Ms. Sim's concerns over the situation at Ptarmigan Ridge—
6 and this specific incident, *inter alia*, allowing more than one student of the same gender to
7 go to the bathroom at the same time and the "no tattling rule" which could inhibit students
8 from notifying a teacher of any "harassment, intimidation, and bullying."

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III. FIRST CAUSE OF ACTION
NEGLIGENCE
(Against OSD, Ptarmigan Ridge, Ms. Jensen & Mr. Bathum)

25. Plaintiffs re-allege Paragraphs 1 through 24 as though fully stated herein.

26. School districts have both a duty and "an enhanced and solemn duty" of reasonable care to protect their students.

27. This includes the duty to protect their students from the foreseeable risk of harm their students may inflict on each other.

28. OSD and Ptarmigan Ridge failed to exercise the duty of care they owed to Kai and to all students at Ptarmigan Ridge. This duty of care extends to Kai's parents, the Plaintiffs, and to all parents of all students at Ptarmigan Ridge.

29. OSD's, Ptarmigan Ridge's, Mr. Bathum and Ms. Jensen's breaches of the duty of care included, *inter alia*:

- a. failure to implement, administer, and train upon Orting School District Board Policy 3207, 3207BP and RCW 28A.300.285
- b. Instituting, allowing and/or condoning a "no tattling policy" at Ptarmigan Ridge.
- c. Failing to implement, administer, or train upon the Bathroom Policy.
- d. Generally failing to monitor, supervise and/or correct the bullying behavior of G.X., and other known bullies, and/or otherwise failing to address the threat G.X., and other known bullies, caused to the students of Ptarmigan Ridge.
- e. Generally creating, fostering and/or acquiescing to an environment which bullying was allowed and/or ignored.

1 f. Once bullying was reported, minimizing complaints of those bullied and/or
2 failing to investigate or take concerns regarding bullying seriously, including,
specifically in the case of Kai set forth herein.

3 30. Kai's injury occurred as a result OSD's, Ptarmigan Ridge's, Ms. Jensen, and Mr.
4 Bathum's failures of their respective duty of care.

5 31. The breaches of the duties caused the Plaintiffs damages in the form of, *inter alia*,
6 mental pain, emotional distress, medical bills, lost time from work, loss of consortium,
7 lost income and other general and special damages in an amount to be proven at trial
8 which will include claims for prejudgment and post-judgment interest, costs, expenses
9 and attorney's fees.

10 **IV. SECOND CAUSE OF ACTION**
11 **NEGLIGENT SUPERVISION & TRAINING**
12 **(Against OSD & Ptarmigan Ridge)**

13 32. Plaintiff reassert and incorporates Paragraphs 1 through 31 as though fully set forth herein.

14 33. As an educational institution for minors, where all of the students are entrusted to the
15 counselors, advisors, mentors, coaches, faculty members, administrators and teachers,
16 OSD and Ptarmigan Ridge expressly and implicitly represented that children attending
17 Ptarmigan Ridge, including Kai, were not in danger when under the control, direction,
18 guidance and influence of Mr. Bathum and Ms. Jensen and other employees and agents of
OSD and/or Ptarmigan Ridge.

19 34. On information and belief, at no time during the periods of time alleged did Defendants
20 have in place a system or procedure to reasonably investigate, supervise and/or monitor
21 teachers, administrators or staff, including Ms. Jensen and Mr. Bathum, to ensure that (i)
22 Orting School District Board Policy 3207, 3207BP and RCW 28A.300.285 were
23 implemented, followed and sustained (ii) there were not contrary policies in place at
Ptarmigan Ridge which would undermine or delegitimize the Orting School District Board
Policy 3207, 3207BP and RCW 28A.300.285 (iii) safe and reasonable policies regarding
allowing students out of the classroom were implemented, trained upon, and supervised
and/or (iv) bullying complaints were investigated and treated seriously.

35. Defendants were or should have been aware that Orting School District Board Policy 3207,
3207BP and RCW 28A.300.285 were not being implemented, followed and sustained (ii)
there were contrary policies in place at Ptarmigan Ridge which would undermine or
delegitimize the Orting School District Board Policy 3207, 3207BP and RCW
28A.300.285 and/or (iii) that safe and reasonable policies regarding allowing students out
of the classroom were implemented, trained upon, and supervised and/or (iv) bullying
complaints were investigated and treated seriously.

1 36. OSD and/or Ptarmigan Ridge negligently failed to supervise Mr. Bathum and Ms. Jensen
2 in their position of trust and authority when Mr. Bathum and Ms. Jensen, *inter alia*:

- 3 a. failed to implement, administer, and train upon Orting School District Board
Policy 3207, 3207BP and RCW 28A.300.285
- 4 b. Instituted, allowed and/or condoned a “no tattling policy” at Ptarmigan Ridge.
- 5 c. Failed to implement, administer, or train upon the Bathroom Policy.
- 6 d. Generally failed to monitor, supervise and/or correct the bullying behavior of
7 G.X., and other known bullies, and or otherwise failed to address the threat
G.X., and other known bullies, caused to the students of Ptarmigan Ridge.
- 8 e. Generally created, fostered and/or acquiesced to an environment which bullying
9 was allowed and/or ignored.
- 10 f. Once bullying was reported, minimized complaints of those bullied and/or
11 failed to investigate or take concerns regarding bullying seriously, including,
specifically in the case of Kai set forth herein.

12 37. These failures to supervise Mr. Bathum, Ms. Jensen and Ptarmigan Ridge allowed G.X.
and other bullies to grow as a threat to students at Ptarmigan Ridge which ultimately lead
13 to the injuries and damages to Plaintiff as set forth in this Complaint.

14 38. OSD’s and Ptarmigan Ridge’s acts and omissions were a breach of their duties to all
students, and, particularly, Kai, and all the parents of students, particularly the Plaintiffs.

15 39. The breaches of the duties caused the Plaintiffs damages in the form of, *inter alia*, mental
16 pain, emotional distress, medical bills, lost time from work, lost income and other general
and special damages in an amount to be proven at trial which will include claims for
17 prejudgment and post-judgment interest, costs, expenses and attorney’s fees.

18 **V. THIRD CAUSE OF ACTION**
LOSS OF CONSORTIUM AND ECONOMIC DAMAGES
TO PARENTS DUE TO INJURY OF CHILD
19 **(Against OSD, Ptarmigan Ridge, Ms. Jensen & Mr. Bathum)**

20 40. Plaintiffs re-allege Paragraphs 1 through 39 as though fully stated herein.

21 41. OSD’s, Ptarmigan Ridge’s, Ms. Jensen, and Mr. Bathum’s failures of their respective duty
22 of care, and acts and omissions (i) caused Mishalla Sim and Reynold Mingming to have
their child’s love, care, services and companionship towards them be diminished and
23 negatively impacted as well as (ii) denigrated the “parent-child” relationship.

1 42. OSD's, Ptarmigan Ridge's, Ms. Jensen, and Mr. Bathum's failures of their respective duty
2 of care, and acts and omissions caused Mishalla Sim and Reynold Mingming to incur
3 expenses and damages such as medical bills, transportation costs, and other associated
4 extra costs and expenses to take care of Kai due to his injury.

4 43. OSD's, Ptarmigan Ridge's, Ms. Jensen, and Mr. Bathum's failures of their respective duty
5 of care, and acts and omissions caused Mishalla Sim and Reynold Mingming to lose
6 income, and forgo economic opportunity, in order to take care of Kai due to his injury.

6 44. As a result of the aforementioned acts and omissions, Plaintiffs suffered general and special
7 damages in an amount to be proven at trial which will include claims for prejudgment and
8 post-judgment interest, costs, expenses and attorney's fees.

8 **VI. FOURTH CAUSE OF ACTION**
9 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
10 **(Against OSD, Ptarmigan Ridge, Ms. Jensen & Mr. Bathum)**

10 45. Plaintiffs reassert and incorporates Paragraphs 1 through 44 as though fully set forth herein.

11 46. Plaintiffs experienced emotional injury and distress from the acts and omissions of OSD,
12 Ptarmigan Ridge, Ms. Jensen and Mr. Bathum, *inter alia*

- 13 a. Failing to implement, administer, and train upon Orting School District Board
14 Policy 3207, 3207BP and RCW 28A.300.285
- 15 b. Instituting, allowing and/or condoning a "no tattling policy" at Ptarmigan
16 Ridge.
- 17 c. Failing to implement, administer, or train upon the Bathroom Policy.
- 18 d. Generally failing to monitor, supervise and/or correct the bullying behavior of
19 G.X., and other known bullies, and or otherwise failing to address the threat
20 G.X., and other known bullies, caused to the students of Ptarmigan Ridge.
- 21 e. Generally creating, fostering and/or acquiescing to an environment which
22 bullying was allowed and/or ignored.
- 23 f. Once bullying was reported, minimizing complaints of those bullied and/or
failing to investigate or take concerns regarding bullying seriously, including,
specifically in the case of Kai set forth herein.

22 47. Plaintiffs' emotional injury and distress was within the scope of foreseeable harm of OSD,
23 Ptarmigan Ridge, Ms. Jensen and/or Mr. Bathum's conduct

23 48. Plaintiffs' emotional distress was a reasonable reaction given the circumstances.

1 49. Plaintiffs' emotional distress was manifested by objective symptomatology.

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3 50. As a result of the aforementioned acts and omissions, Plaintiffs suffered general and special
4 damages in an amount to be proven at trial which will include claims for prejudgment and
5 post-judgment interest, costs, expenses and attorney's fees.

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VII. FIFTH CAUSE OF ACTION
OUTRAGE/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against OSD, Ptarmigan Ridge, Ms. Jensen & Mr. Bathum)

51. Plaintiffs reassert and incorporate Paragraphs 1 through 50 as though fully set forth herein.

52. OSD, Ptarmigan Ridge Ms. Jensen and Mr. Bathum intentionally and/or recklessly engaged in extreme and outrageous conduct by, *inter alia*,

- a. failure to implement, administer, and train upon Orting School District Board Policy 3207, 3207BP and RCW 28A.300.285
- b. Instituting, allowing and/or condoning a "no tattling policy" at Ptarmigan Ridge.
- c. Failing to implement, administer, or train upon the Bathroom Policy.
- d. Generally failing to monitor, supervise and/or correct the bullying behavior of G.X., and other known bullies, and or otherwise failing to address the threat G.X., and other known bullies, caused to the students of Ptarmigan Ridge.
- e. Generally creating, fostering and/or acquiescing to an environment which bullying was allowed and/or ignored.
- f. Once bullying was reported, minimizing complaints of those bullied and/or failing to investigate or take concerns regarding bullying seriously, including, specifically in the case of Kai set forth herein.

53. This intentional conduct caused Plaintiffs severe emotional distress and Plaintiffs suffered, and are entitled to general and special damages in an amount to be proven at trial which will include claims for prejudgment and post-judgment interest, costs, expenses and attorney's fees.

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