

that they, like other major sports organizations, are willing to tolerate abhorrent conduct on the part of athletes and sacrifice loyal employees, so long as the athlete is successful on the court. Dr. Cauthen files this case advancing the opposite message—basic human decency and doing the right thing is more important than successfully throwing a ball through a hoop. Primo's conduct was obviously disturbing, wrong and actionable; the Spurs' conduct, in the way its people handled the matter, is egregious, alarming, and damning.

Defendant Joshua Primo is a Canadian professional basketball player who was selected with the 12th pick in the 2021 National Basketball Association (NBA) draft by the San Antonio Spurs. He was later selected in the 2021 NBA Summer League roster of the Spurs. On August 11, 2021, the Spurs announced that they had signed Primo. At 19 years old, Primo is currently the youngest player in the NBA.

Dr. Hillary Cauthen is an extremely successful and highly credentialed licensed clinical sports psychologist who contracted with the Spurs organization in September 2021 to provide services to the organization. Primo repeatedly exposed his genitals (nine times in total) to Dr. Cauthen during individual private sessions, despite her numerous complaints about Primo's improper sexual conduct to the organization's leadership.

Without disclosing any communications with Defendant Primo or any other athlete within the Spurs organization, generally Plaintiff is a performance psychologist, whose job duties were to develop integrated mental performance models and wellness programming and resources for players, staff and their family members. Dr. Cauthen's objectives were to develop educational programs to aid players and basketball operations staff on the topics of mental health, mental performance, life skills, leadership and general wellness strategies.

Dr. Cauthen began working with Joshua Primo individually after he joined the team in August 2021. The sessions typically took place in private medical training rooms at the AT&T Center in San Antonio as well as various sports arenas during away games, as part of Primo's standard pre-game routine. Primo first exposed his genitals to Dr. Cauthen during an individual private session in December 2021. Unfortunately, despite Dr. Cauthen's reports, such exposures happened on numerous occasions and grew progressively more extreme. Primo's behavior went unchecked by the organization's leadership for many months, even after it was reported by Dr. Cauthen.

As a result of Primo's steadily escalating conduct, Dr. Cauthen requested a meeting with General Manager Brian Wright in January 2022. Dr. Cauthen made clear the purpose of the meeting. The meeting, when finally scheduled, was postponed multiple times. It was clear that Wright was avoiding the meeting, or that the issues to be discussed were not important to him. Dr. Cauthen was finally able to meet with General Manager Wright on March 21, 2022. In that meeting, she voiced her concerns about Defendant Primo's conduct, again without disclosing any communications in her sessions or any other information other than the offensive conduct. Dr. Cauthen expressed to Wright that she was uncomfortable meeting with Primo alone and she expressed feelings of confusion, embarrassment and fear. General Manager Wright promised to develop a plan with regard to Primo for the remainder of the season and said he would explore "how to navigate" the situation in general. The two also discussed the possibility of meeting with Primo and his agent to address his concerning behavior.

Despite Dr. Cauthen's report, nothing was done about Primo's behavior. Instead, Dr. Cauthen was called upon to meet with Primo again. This time Dr. Cauthen met with Primo in a public setting, but unfortunately this was no deterrent. Primo again exposed his penis. Dr.

Cauthen ended the session early. Defendant Primo requested at least one other session with Dr. Cauthen; she found a way to avoid the session.

After nothing was done to address the problem as promised, Dr. Cauthen returned to work during the post-season on April 13, 2022, in preparation for the next season and draft. That same month, Dr. Cauthen met with the GM Brian Wright again. Dr. Cauthen expressed her frustration and concern with GM Wright that no action was taken since their last conversation on March 21. Rather than taking immediate and long past due action, Mr. Wright instead asked Dr. Cauthen “what consequence” she wanted to occur. Dr. Cauthen felt she was not the proper person to decide a course of action, rather that it was the responsibility of the team to address the situation and come up with a proper protocol. Wright concluded the meeting by letting her know that the organization’s legal team would be in contact with her.

Thereafter, in May, Dr. Cauthen met multiple times with various lawyers from the Spurs organization, including its Deputy General Counsel and as well as the Chief Legal Officer and General Counsel. After Dr. Cauthen relayed what she had experienced, they promised that an investigation would occur. Dr. Cauthen was also instructed to avoid contact with Primo, both at Spurs’s facilities and otherwise. Dr. Cauthen was later informed that the team was preparing a “write up.” A week or more later, Dr. Cauthen requested an update on the status of the investigation, and a copy of the mentioned write up. She also inquired about the status of Primo, and whether he would be participating in team activities. Later that day, Dr. Cauthen met with Deputy General Counsel Brandon James and Head of Human Resources Kara Allen. They informed Dr. Cauthen that, despite her complaints, Primo would continue to participate in team activities. They also told her that she should not feel uncomfortable because she had seen him repeatedly in the past. Rather than protect Dr. Cauthen and take immediate steps to prevent any

further interaction with Primo or to discipline his behavior, the Spurs instead suggested that Dr. Cauthen work from home--if that would make her more comfortable. They also told her they would understand if she decided not to come to the Spurs' facilities. Dr. Cauthen expressed dissatisfaction with the team's failure to act. At that point it was clear to Dr. Cauthen that the Spurs organization was indirectly punishing Dr. Cauthen, rather than Primo—despite his acts of repeated sexual misconduct.

The next month, Dr. Cauthen met with James and Allen again. In this meeting they disclosed that they had spoken with Primo. As a result of that discussion, James and Allen thought it would be productive for Dr. Cauthen to have what they called a “facilitated conversation” with Primo to address his behavior, because they felt this might shed some light on the reasoning behind his repeatedly exposing himself to her. Dr. Cauthen refused. A week later the group met again. In that meeting, James and Allen told Dr. Cauthen that, in response to her suggestions and complaints, they were considering putting into place a corrective process for the timely reporting of incidents. They also informed Dr. Cauthen that Coach Gregg Popovich was aware of her complaints and accusations and that he “wanted to do right by her.” They pair also asked her, as they had in the past, whether she had legal counsel. Dr. Cauthen was then advised to refrain from having any communication with Primo until further notice.

By June 2022, it was apparent to Dr. Cauthen that there would be no accountability on behalf of the player or the organization. To make matters worse, on June 16th, Dr. Cauthen attended a “Respect In The Workplace” training for all Spurs staff. The training seminar began with a lecture lauding the Spurs' culture. The stated purpose of conducting the class was to “remain better.” Staff members joked throughout the seminar about the topics discussed, and clearly did not take the matters seriously. In response to some of the laughing reactions of the audience to

important issues, Dr. Cauthen had to take a walk outside to gather herself as she began to experience anxiety and feelings of helplessness throughout.

In July, Dr. Cauthen met one more time with the Spurs legal team. She told them again that she was frustrated by the team's inaction. She made clear that she wanted changes, and consequences. They in turn informed her that she would not be attending the 2022 Summer League season, which was to take place July 7-17, 2022 in Las Vegas. They told her that they now felt she was unable to do her job in a professional manner due to what was now a lack of trust between her and the team. They thus suggested she "sit out." Again, they asked Dr. Cauthen whether she had retained legal representation and requested that she inform them immediately when she had done so.

Dr. Cauthen's contract came up for renewal in August 31, 2022. It was not renewed by the Spurs.

II. DISCOVERY PLAN

Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

III. PARTIES

Plaintiff Hillary Cauthen is an individual residing in Texas.

Defendant Joshua Primo is an individual residing in Texas. Defendant may be served at his place of residence, 17151 Turin Ridge, San Antonio, Texas 78255, or wherever he may be found.

Defendant San Antonio Spurs, L.L.C. is a domestic limited liability company with its principal place of business in Bexar County, Texas. It may be served with process through its registered agent, Lori Warren, One AT&T Center Parkway, San Antonio, Texas 78219-3604.

IV. VENUE AND JURISDICTION

Venue and jurisdiction are proper. The relief requested is within the minimal jurisdictional limits of this Court. Pursuant to the Texas Civil Practice and Remedies Code, venue is proper in Bexar County, Texas. The acts, events, transactions and omissions made the basis of this lawsuit occurred in whole or in part in Bexar County, Texas.

V. CAUSES OF ACTION

A. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS: JOSHUA PRIMO AND THE SAN ANTONIO SPURS AS PRINCIPAL OF AGENT JOSHUA PRIMO

Plaintiff re-alleges each aforementioned allegation as if fully incorporated below.

Primo was employed by the San Antonio Spurs. During the course and scope of his employment, Primo engaged in conduct toward Plaintiff that was extreme and outrageous so as to exceed the bounds of decency in a civilized society, namely, he caused Plaintiff to experience mental suffering by exposing his penis to her.

Primo engaged in this conduct intentionally, knowingly, and willfully.

Primo's conduct proximately caused injury to Plaintiff. Plaintiff has sustained and will sustain pain and suffering and psychological and emotional distress, mental anguish, embarrassment, and humiliation.

Accordingly, Plaintiff is entitled to recovery against Defendants for the damages proximately caused by Defendant Primo's conduct in an amount to be determined at trial. Further, because Plaintiff's harm arises as a result of conduct that violates several sections of the Texas Penal Code, including:

- (1) Section 21.08, Penal Code (indecent exposure); and
- (2) Section 42.07, Penal Code (harassment).

Thus, in addition to actual damages, Plaintiff seeks punitive damages, and such damages are not subject to capping.

B. NEGLIGENCE AND GROSS NEGLIGENCE: JOSHUA PRIMO AND THE SAN ANTONIO SPURS AS PRINCIPAL AGENT OF JOSHUA PRIMO

Plaintiff hereby incorporates by reference the paragraphs above as if fully set forth herein.

Plaintiff firmly believes and has pled that Primo's conduct as described was intentional. Plaintiff alleges that Primo's conduct, while employed by the Spurs and during the course and scope of that employment, was unreasonable and thus negligent and grossly negligent. Primo, individually and as agent of the San Antonio Spurs, owed Plaintiff the duty of reasonable care. Primo breached that duty in at least the following ways:

- a. Scheduling appointments to be alone with Plaintiff knowing of his own sexual proclivities;
- b. Failing to warn Plaintiff of his proclivities and his past conduct;
- c. Exposing himself to the Plaintiff;
- d. Failing to obtain Plaintiff's actual consent before attempting to engage in sexual misconduct;
- e. Engaging in sexual misconduct even though Plaintiff did not consent; and
- f. Failing to take affirmative steps during the appointments to control his unusual sexual proclivities.

Defendant Primo's negligence, individually and as agent for the Spurs, was a proximate and producing cause of damage to Plaintiff. Defendant's conduct was malicious and grossly negligent. Thus, in addition to actual damages, Plaintiff seeks punitive damages.

In addition to being vicariously liable for Primo's conduct, the Spurs are liable for their own actions and inactions. Defendant had a duty to Plaintiff and breached that duty. The negligence of Defendant was a proximate cause of Plaintiff's injuries and damages.

Defendant breached the duty of reasonable care in one or more of the following ways, among others:

- a. Failing to prevent Primo from harassing Plaintiff;
- b. Negligently hiring, supervising and retaining Primo;
- c. Negligently controlling Primo;
- d. Failing to properly supervise and control Primo;
- e. Failing to create or enforce policies to prevent misconduct;
- f. Failing to take precautions prior to the appointments to prevent a reoccurrence of Primo's known prior conduct;
- g. Failing to warn Plaintiff of Primo's proclivities and his past conduct;
- h. Failing to take affirmative steps during the appointments to control his unusual sexual proclivities;
- i. Providing Primo a safe haven so that he could continue his conduct;
- j. Providing Primo a room where he engaged in illicit behavior;
- k. Failing to investigate Primo's unusual behavior;
- l. Turning a blind eye to indications that Primo was seeking sex rather than legitimate therapy.
- m. Failing to investigate complaints relating to Primo; and
- n. Creating an atmosphere where it was acceptable for Primo to seek sexual conduct with staff.

Each of these acts and omissions, singularly or in combination with others, constitute negligence, which was the proximate cause of this incident and the injuries and damages sustained by Plaintiff.

Plaintiff will further show that the acts and/or omissions of Defendants as described above, when viewed objectively from their standpoint, involve an extreme degree of risk considering the probability and magnitude of the potential harm to others. Defendants had actual subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety and/or welfare of others, including Plaintiff. As such, these acts and omissions constitute gross negligence and malice as those terms are understood by law.

D. VICARIOUS LIABILITY: SAN ANTONIO SPURS

Plaintiff re-alleges each aforementioned allegation as if incorporated below.

Defendant the San Antonio Spurs is responsible for the conduct of its agents due to the relationship that existed, among other acts and omissions of negligence which may be shown during the trial of this cause.

VI. DAMAGES

As a direct and proximate result of Defendants' acts and omissions described above, Plaintiff has incurred the following damages:

- a. Conscious physical and mental pain and suffering, and anguish, past and future;
- b. Physical impairment, past and future;
- c. Loss of enjoyment of life and peace of mind, past and future;
- d. Reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; and
- e. Such other damages that will be shown at trial.

Plaintiff seeks any and all damages to which she may be entitled. As stated, Plaintiff also seeks exemplary damages to deter such conduct going forward, and to make an example of Defendants.

VII. NOTICE OF INTENT TO USE DISCOVERY AT TRIAL

Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiff hereby gives notice that she intends to use all discovery instruments produced in this case at trial. Such discovery instruments include, but are not limited to, all documents Defendants will produce, or have produced, in response to Plaintiff's written discovery requests.

VIII. REQUEST FOR JURY TRIAL

Plaintiff respectfully demands a jury trial and hereby tenders the appropriate fee.

IX. PRESERVATION OF EVIDENCE

Plaintiff hereby requests and demands that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit, including but not limited to communications, electronic data, mapping data, and location data.

X. PRAYER

By reason of all the above and foregoing, Plaintiff is entitled to recover from Defendants the damages set forth in this petition, within the jurisdictional limits of this Court. As required by Rule 47, Plaintiff seeks damages consistent with Tex. R. Civ. Proc. 47(c)(3), because that, as set forth above, Plaintiff also seeks punitive damages. Plaintiff also seeks pre-and post-judgment interest at the maximum legal rate, costs of court, punitive damages, and any other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

THE BUZBEE LAW FIRM

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