



to requests that it accept service. Accordingly, Wackenhut may be served through its registered agent, Prentice-Hall Corp., 800 Brazos, Austin, TX 78701.

3. Jerry Diaz may be served with process at Runnels County Jail, 108 South 6th Street, Ballinger, Texas 76821.

#### Jurisdiction and Venue

4. Plaintiff's claims arise, in part, under 28 U.S.C. §§ 1331, 1343, 1983 and 1985 and pursuant to the United States Constitution. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1332 and 1343 and under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to this lawsuit occurred near San Angelo.

#### Facts

5. In 1994, Defendant Wackenhut, touting itself as the innovator of managing facilities for troubled youth and other in-house residential programs, and after making a number of representations regarding its services and the quality of its care and expertise, was awarded a contract with the State of Texas to build and manage a facility to treat troubled female youth. WCC's proposal to the Texas Youth Commission ("TYC") was extensive. Wackenhut represented that the facility would be staffed with "highly trained professionals who will obtain order and control of the facility to insure the health and safety of its occupants." Wackenhut promised to fulfill its "legal and moral responsibility to operate a facility having environmental characteristics that will insure proper health, safety and basic human rights for

residents.” Wackenhut repeatedly represented that its most important objective was the safety and welfare of the girls. Based upon such representations and based upon the fact that a former high ranking official of TYC was retained by Wackenhut on a “consultant” basis, Wackenhut received the contract to operate the Coke County Juvenile Justice Center (“CCJJC”).

6. Wackenhut did not live up to these promises, nor to numerous other such promises, warranties and representations made to the State of Texas and its citizens. Instead, Wackenhut created an environment wherein young girls were subjected to sexual abuse, received no or inadequate counseling or treatment, and were placed in a “levels” or “phase” program in which the length of the time of the juveniles’ detention at the Bronte facility could be unilaterally changed, lengthened or shortened depending on the whims of Wackenhut’s untrained staff members. The residents were made to live in an environment in which offensive sexual contact, deviate sexual intercourse and rape were frequent, and which resulted in a hostile, sexual environment.
7. Victoria Doe became a resident of CCJJC in December 1995 and resided there until mid-February 1996 and again from May of 1996 through September 28, 1998. Victoria was thirteen years old when she first came to CCJJC.
8. Victoria was statutorily raped by Diaz, an employee of Wackenhut, on the premises of CCJJC on February 17, 1998, when she was fifteen years old. Diaz was 35 years old at that time. Victoria, who had been in the TYC system since she was 12, was a

virgin at the time she was raped. Diaz was indicted and pleaded guilty to such charges. His punishment consists of 180 days in jail and 10 years probation.

9. The sexual assault committed against Victoria Doe by Diaz was blatant and reprehensible. The acts of sexual abuse were not limited to Victoria. Victoria and other young girls were forced to live in an environment where sexual promiscuity and lesbianism was pervasive. Male and female staff members had sexual relationships with residents. Lesbian behavior among the residents was rampant, to the point where group sex among residents was condoned by staff. More often than not, the subject of "group" sessions which the residents attended was which residents were having sexual relationships with other residents and/or staff members.
10. The vulgarity of the statutory rape of Victoria by a man more than twice her age is compounded by Wackenhut's knowledge of prior instances of sexual abuse and misconduct and Wackenhut's failure to take adequate steps to eliminate such conduct by its employees. Upon information and belief, Wackenhut's first knowledge of such improper sexual conduct occurred at least as early as February, 1995 when another employee committed acts of sexual indecency with a minor child. That employee pled guilty to four counts of indecency with a child. Multiple statutory rapes and acts of sexual indecency with the resident children by adults occurred in 1995, 1996, 1997 and 1998. At least four residents were statutorily raped by staff members in 1998. Many other residents were fondled, ogled by male staff members and humiliated. There are documented, chronicled instances of indecency with children, rape, deviate sexual intercourse, voyeurism, group sex and exhibitionism.

11. Despite such knowledge, Wackenhut undertook no or inadequate steps to improve, adapt or extend the training or supervision of its employees to avoid the improper sexual activity.
12. Throughout the period of Wackenhut's operation of this facility, many staff and administrative positions remained vacant for long periods of time. Employees were recruited in a "cattle call" fashion, were not effectively trained, were not extensively interviewed and many were not competent to fill the positions in which they had been placed. Employee's backgrounds were not checked to the extent that would have notified Wackenhut of previous criminal conduct. In fact, Diaz had a previous criminal charge and conviction which should have precluded him from working for Defendants in a juvenile facility.
13. Most of the line employees who had daily supervisory contact with the young girls had no experience in this type of environment. Some of these employees had come from manual labor jobs, had little, if any, education past the high school level, and were entrusted with the care and counseling of the troubled, young girls sent to CCJJC. Wackenhut failed to fill some key staff positions, *i.e.*, those staff positions required to be filled with persons having significant and appropriate education and experienced backgrounds. These key positions remained vacant for several months at a time. There was a high turnover rate of employees, including those who were supposed to have daily or at least consistent contact with the residents to counsel them. In addition, Wackenhut did not implement a system to periodically evaluate its staff to identify persons who might constitute a threat to the juveniles.

14. Wackenhut attempted to institute a “levels” or “phase” system through which each girl was required to progress in order to be released. This program was constantly revised or a new program was adopted leaving the girls and staff with little, if any, understanding of the system. This program was applied in an arbitrary and capricious manner. These young girls were made to suffer uncertainties as to when or if they would gain increased privileges on the whims of uneducated and untrained individuals who had no business or experience making such decisions. TYC repeatedly faulted Wackenhut for this program’s failure; however, Wackenhut did not correct the problems. Wackenhut’s staff members were able to manipulate the “levels” or “phase” system and the girls by giving extra privileges and elevating the levels of the girls who were forced to participate in improper sexual conduct. The “levels” or “phase” system did not have any type of due process or equal protection guidelines and rules in place so that the juveniles were subjected to the whims and manipulations of Wackenhut’s staff members.
15. Pursuant to the contract between Wackenhut and TYC, Wackenhut agreed and was required to provide complete educational and vocational programs. Wackenhut also agreed to assess the residents and determine their education level and whether a resident needed special education. Wackenhut failed to provide and was not equipped to provide educational assessments. Wackenhut wholly failed to determine whether Victoria should have been placed in special education, as she had been prior to her being adjudged delinquent. The educational program was inadequate and, despite its representations to the contrary, Wackenhut did not provide or oversee effective

educational services for girls. Wackenhut permitted the educational system to consist principally of “modules” wherein the girls had ready access to the answers to test questions thereby allowing the girls to obtain passing grades without putting forth any effort.

16. The girls were repeatedly berated by the staff members. They were made to participate in “groups” wherein the girls discussed the sexual relations among residents and between residents and staff members rather than learning how to become better members of society and how to avoid problems once they were released.
17. On many occasions, many residents or all residents on a dorm were punished for the actions of only one, two or a handful of residents. The “punishments” imposed included loss of basic privileges and rights which was an unnecessary and cruel imposition of punishment upon innocent residents. Residents, including Victoria Doe, were subjected to a three month “lock down” in 1997, during which the residents were confined to their room and received no schooling or counseling.
18. Residents, including but not limited to Victoria Doe, were degraded, humiliated, assaulted, harassed and emotionally abused. These young girls, many of whom were just reaching puberty, were denied an opportunity to maintain proper hygiene. They were denied use of products such as tampons or sanitary napkins, toothpaste, soap and shampoo.
19. Officers in the hierarchy of Wackenhut’s corporate office were made aware of the reprehensible conditions at CCJJC but took no effective steps to correct the situation.

20. Wackenhut operated the CCJJC in the manner of a prison camp in which the residents, including but not limited to Victoria Doe's, needs and constitutional rights were ignored and abused for the sole purpose of increasing Wackenhut's profit margin.

### **COUNT ONE**

#### **VIOLATION OF CONSTITUTIONAL RIGHTS**

21. The preceding paragraphs are incorporated herein as if set forth in their entirety.
22. At all times material herein, Wackenhut was acting under color of law. TYC placed Wackenhut in its stead to perform the duty to care for and protect this State's minor children as is required by the Texas Constitution and statutory provisions. TYC provided Wackenhut and through Wackenhut, Jerry Diaz, with the State's authority and gave them the power to incarcerate these youths. Thus, Defendants are the agents, servants and employees of the State of Texas. Wackenhut established policies and procedures or failed to establish policies and procedures which led to the injuries and damages inflicted on Victoria.
23. Victoria Doe was subjected, because of the above recited acts, to the deprivation by Defendants, under color of law, and of the customs and usages of the State of Texas, of rights, privileges and immunities secured to them by the Constitution and Laws of the United States and particularly, their right to be protected against interference with their familial relationship and substantial deprivation of their liberty and property which is protected under the Fourteenth Amendment.



24. Victoria Doe, as an incarcerated juvenile, is entitled to a multitude of privileges and immunities secured to her by the Constitution and Laws of the United States including, but not limited to, the First, Fourth, Fifth, Eighth and Fourteenth Amendments, and of this State. A special relationship exists between Defendants and Victoria Doe in that Defendants, acting as the State, deprived Victoria of her liberty. This special relationship further exists because Victoria Doe is a minor and Defendants were entrusted with her care, guidance and rehabilitation. Due to such special relationship, Defendants owed an even higher degree of care to Victoria Doe and were required to not only refrain from violating Victoria's constitutional rights but protect her from any such violations. Victoria has been subjected to the deprivation by Defendants, under color of law, and of the customs and usages of the State of Texas, of rights, privileges and immunities extended to her by the Constitution and Laws of the United States and of this State including, but not limited to, the constitutional right to treatment guaranteed by the Fourteenth Amendment. Such right to treatment, includes but is not limited to;

- a) proper assessment and placement which, at a minimum, requires that every child committed to TYC must have an individual assessment to serve as the basis for her treatment plan by a person with the required degree and training;
- b) daily contact between a caseworker and the child;
- c) utilization of appropriate testing of intelligence and educational level;
- d) utilization of qualified teachers, certified by the state, at a proper ratio;
- e) properly educated educational diagnosticians;

- f) adequately re-examine each such child on a periodic basis;
- g) implement an adequate review board or process by which each child may be assessed on an individual basis;
- h) implementation of an effective “levels system” which complies with all constitutional due process and equal protection rights; and
- i) failure to maintain, update, or document case files and master files of each resident.

25. Victoria Doe was also deprived of her right to treatment including counseling regarding career options and development of employability plans. In addition, she was deprived of her constitutional and statutory right to an adequate special treatment plan including adequate case work services by individuals trained and experienced in the treatment of adolescents; a physical plant designed to maximize the child’s security, privacy and dignity; and freedom from unnecessary or arbitrary invasions of privacy. Wackenhut denied, in responses to requests for admission in a previous case, that minor children are entitled to those constitutional guarantees. In fact, Wackenhut’s administrator of the facility and the corporate liaison admitted under oath that they do not know what constitutional rights are afforded to the juveniles.

26. Victoria Doe was subjected to the deprivation by Defendants, under color of law, and of the customs and usages of the State of Texas, of rights, privileges and immunities extended to her by the Constitution and Laws of the United States and of this State including, but not limited to, the constitutional right to an adequate professional

treatment plan guaranteed by the Fourteenth Amendment, including but not limited to, such protections as an adequate, well-prepared and well-served diet; opportunity for free communication with persons outside the institution by mail and telephone; and an environment that allows a juvenile to express the emotions that she may feel.

27. Victoria was deprived by Defendants, under color of law, and of the customs and usages of the State of Texas, of rights, privileges and immunities extended to her by the Constitution and Laws of the United States and of this State including the constitutional and statutory right to psychiatric care guaranteed by the Eighth and Fourteenth Amendments, including but not limited to, psychiatric care; a psychiatric staff consisting of board certified psychiatrists qualified in the field of child psychiatry in a sufficient number to assure treatment of individual children; a psychological staff consisting of psychologists holding appropriate degrees and having appropriate experience in sufficient numbers to meet the needs of the children; sufficient psychiatric nursing assistance; and proper oversight and administration of psychotropic drugs.
28. Victoria has been deprived by Defendants, under color of law, and of the customs and usages of the State of Texas, of rights, privileges and immunities extended to her by the Constitution and Laws of the United States and of this State including the constitutional and statutory right to medical and psychiatric care guaranteed by the Eighth and Fourteenth Amendments, including but not limited to, the proscription against cruel and unusual punishment in connection with such practices that degrade human dignity and are unacceptable to society, including but not limited to, being

placed in an environment created by Wackenhut wherein child molesters could thrive with impunity; exposing the juveniles to grossly inappropriate sexual conduct perpetrated by Defendants; exposing Victoria to an environment wherein she and other residents were raped, fondled, sexually molested, humiliated and assaulted, and permitting an environment of permissiveness wherein Wackenhut's employees could perpetrate their vile, malicious conduct upon Victoria and other residents without redress or retribution.

29. Section 39.04 of the Texas Penal Code specifically provides that an official or employee of a correctional facility violates the civil rights of a person in custody by engaging in sexual intercourse or deviate sexual intercourse with an individual in custody.
30. Plaintiff further alleges that in doing the acts and things above complained of Defendants were conspirators engaged in a scheme and conspiracy designed and intended to deny and deprive Victoria Doe of her rights guaranteed under the Constitution and laws of the United States and particularly those hereinabove enumerated.
31. The deprivation of Victoria Doe's constitutional rights resulted in actual damages to her in an amount far in excess of the minimum jurisdictional limits of this Court for which amount Plaintiff sues.
32. The aforementioned acts of Defendants were committed knowingly and maliciously and constitute conduct for which the law allows and demands the imposition of exemplary damages. Accordingly, Doe requests that exemplary damages be awarded

against Defendants in an amount far in excess of the minimum jurisdictional limits of this Court.

## COUNT TWO

### NEGLIGENCE AND NEGLIGENCE PER SE

33. The preceding paragraphs are incorporated herein as if fully set forth.
34. Jerry Diaz's statutory rape, negligence and breach of fiduciary duties owed to Victoria Doe were performed in the course and scope of his employment of Wackenhut. Thus, Wackenhut is liable to Plaintiff under the doctrine of *respondeat superior*.
35. Defendants owed a fiduciary duty to Plaintiffs. Also, and in the alternative, these Defendants had a duty to exercise the highest degree of care in the employment, retention and supervision of Jerry Diaz and other employees who had daily exposure to the juveniles. In the alternative, these Defendants had a duty to exercise ordinary care. Defendants failed to exercise even ordinary care, much less a high degree of care, and were negligent, grossly negligent and breached the fiduciary duties owed to Victoria Doe in one or more of the following manners:
  - a) Wackenhut failed to properly investigate their employees;
  - b) Wackenhut failed to properly staff the facility;
  - c) Wackenhut failed to properly counsel or provide proper treatment teams and case plans. To the extent any such counseling was undertaken or an attempt to devise case plans, such actions were grossly inefficient and unorganized;
  - d) Wackenhut failed to properly train its employees;

- e) Wackenhut failed to insure the confidentiality of Victoria Doe's records, as required by the Texas Family Code;
- f) Wackenhut failed to implement additional training of employees despite knowledge that employees were engaging in improper sexual contact, including sexual intercourse, with the residents;
- g) Wackenhut failed to properly supervise and/or monitor the staff;
- h) Wackenhut failed to properly, adequately or timely make competent and professional efforts to prevent sexual actions and conduct of its employees to the juveniles;
- i) Wackenhut failed to properly and adequately inquire about and investigate the nature and extent of the conduct engaged in by Jerry Diaz and other Wackenhut employees;
- j) Wackenhut failed to properly counsel Victoria;
- k) Wackenhut failed to properly educate Victoria;
- l) Wackenhut attempted to implement a "levels system" pertaining to privileges and release dates which could be and was readily manipulated by Wackenhut's employees and which was imposed upon the juveniles in a manner such that the juveniles' constitutional right to due process and equal protection was denied;
- m) Wackenhut created a dangerous environment and allowed it to continue after it knew or should have known of repeated acts of sexual contact between staff employees and under-age residents;

- n) Wackenhut failed to implement a capital offenders program; and
  - o) Wackenhut released confidential information regarding Victoria in violation of provisions of the Texas Family Code regarding confidentiality of juvenile records and information.
36. Defendants' conduct constitutes negligence *per se* because it violated Texas Penal Codes § 22.01, 22.011, 22.02, 22.04, 39.05 and related statutes and § 261.001 of the Texas Family Code. Defendants' negligence also constitutes negligence *per se* due to their violation of Texas Human Resource Code §§ 61.034, 61.045, 61.071, 61.072, 61.073, 61.075 and 61.0761.
37. Defendants' failure to exercise due care and ordinary care to protect minor troubled children was a foreseeable cause of damages to Victoria. Defendants' negligence and negligence *per se* were a proximate and/or producing cause of Victoria's damages as set forth below for which Plaintiff is entitled to and hereby seeks to recover.

### **COUNT THREE**

#### **VIOLATION OF CHAPTER 81 OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE**

38. The preceding paragraphs are incorporated the same as if fully set forth herein.
39. Wackenhut is strictly liable to Plaintiff based upon its violation of Chapter 81 of the Texas Civil Practice & Remedies Code which places strict liability upon a mental health services provider such as Wackenhut, if a patient suffers, directly or indirectly, a physical, mental or emotional injury caused by, resulting from, or arising out of sexual

contact between the patient and the mental health services provider or sexual exploitation of the patient by the mental health services provider.

40. Pursuant to section 81.004 of the statute, Doe hereby seeks and is entitled to recover actual damages and mental anguish damages, even if no injury other than mental anguish is shown. Doe also seeks and is entitled to an award of exemplary damages and attorneys' fees pursuant to this statute.

#### **COUNT FOUR**

#### **VIOLATION OF DTPA**

41. The preceding paragraphs are incorporated the same as if fully set forth herein.
42. Plaintiff brings this cause of action against Wackenhut pursuant to the Texas Deceptive Trade Practices - Consumer Protection Act, Tex. Bus. & Com. Code § 17.41 *et seq* ("DTPA").
43. Victoria Doe is a consumer as that term is set forth and defined in the DTPA § 17.45(4).
44. Wackenhut's acts and omissions as set forth herein violate the DTPA § 17.46 in that:
- a) Wackenhut represented that goods or service have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
  - b) Wackenhut represented that its services were of a particular standard, quality or grade when they were of another;
  - c) Wackenhut advertised goods or services with intent not to sell them as advertised;
  - d) Wackenhut represented that an agreement confers or involves rights, remedies, or obligation which it does not have or involve, or which are prohibited by law; and



- e) Wackenhut failed to disclose information concerning goods or services which was known at the time of the transaction and such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.
45. Wackenhut's acts and omissions as set forth herein constitute breach of express warranties which are actionable pursuant to § 17.50(a)(2). Wackenhut made numerous express warranties in its proposal submitted to the TYC, in the contract between TYC and Wackenhut and to the residents of CCJJC and the parents of the residents of the CCJJC. This violation is a producing cause of Plaintiffs' damages for which Wackenhut is responsible.
46. Wackenhut's acts and omissions as set forth herein constitute breach of implied warranties which are actionable pursuant to § 17.50(a)(2). This violation is a producing cause of Plaintiff's damages for which Wackenhut is responsible.
47. Wackenhut's acts and omissions constitute an unconscionable action or course of action which is actionable pursuant to § 17.50(a)(1)(3). Wackenhut's conduct is a producing cause of Plaintiff's damages for which Wackenhut is responsible.
48. Based upon Wackenhut's violations of the DTPA, Plaintiff is entitled to recover her economic and actual damages. Plaintiff is also entitled to recover damages for Victoria's mental anguish because Wackenhut knowingly committed these acts.
49. Wackenhut's violation of these provisions resulted in damages to Victoria Doe in excess of the minimum jurisdictional limit of this court; which amount Plaintiff seeks herein. Moreover, Wackenhut engaged in such conduct knowingly, willfully and intentionally. Therefore, Victoria is entitled to recover damages for her mental

anguish and economic damages as well as treble damages as set forth in section 17.50(b)(1).

50. Plaintiff gave notice to Wackenhut of Victoria's claim more than sixty (60) days prior to instituting this cause of action against Wackenhut. Despite said notice, Wackenhut, in keeping with its attitude that the residents of CCJJC are not to be treated with any humane deference, refused to discuss any compensation to Plaintiff.
51. It was necessary for Plaintiff to retain the undersigned attorneys to represent her in this case. Plaintiff agreed to pay her attorneys their necessary and reasonable attorneys' fees in this case. Accordingly, Plaintiff is entitled to recover attorneys' fees in the trial court and in all appellate courts in an amount to be determined by the trier of fact pursuant to DTPA § 17.50(d).

## **COUNT FIVE**

### **BREACH OF CONTRACT**

52. The preceding paragraphs are incorporated the same as if fully set forth herein.
53. On or about June 28, 1994, Wackenhut and TYC entered into a contract in which Wackenhut agreed to construct and operate a youth correctional facility in Bronte, Texas. In consideration thereof, on behalf of the residents of the State of Texas, TYC agreed to compensate Wackenhut at varying per diem rates depending on the classification of services provided to the female residents of the Bronte facility. For the first year, however, Wackenhut was "guaranteed" monthly payments in the amount of at least \$297,558.03 for an annual contract price of \$3,570,696.40. For the second year, Wackenhut was guaranteed monthly payments in the amount of at least

\$269,643.75 for an annual contract price of \$3,235,725.00. There have been several amendments and addendums to such contract, but the primary responsibilities assumed by Wackenhut remained similar until October 1998, when the female residents were removed from the facility and the facility began to house male juveniles.

54. Wackenhut breached its contract, and misrepresented its services, in the following, but not limited to, particulars:

- a) Wackenhut failed to perform even the most cursory investigation of its employees;
- b) Wackenhut failed to properly staff the facility;
- c) Wackenhut failed to provide a full time treatment coordinator;
- d) Wackenhut failed to maintain a minimum of four case managers and a full time treatment coordinator with credentials and clinical experience;
- e) Wackenhut's treatment teams and case plans were grossly inefficient and disorganized;
- f) Wackenhut failed to train its employees;
- g) Wackenhut failed to comply with proper staff to resident ratios;
- h) Wackenhut failed to develop a diagnostic, assessment plan for each child;
- i) Wackenhut failed to properly operate a "level" system;
- j) Wackenhut failed to establish an adequate educational program;
- k) Wackenhut failed to provide insurance as required by the State of Texas; instead, Wackenhut participated in a subterfuge and, to the extent there is any insurance, such insurance is carried by the corporate parent, Wackenhut Corporation and is not the valid and enforceable insurance required and contemplated by the contract; and
- l) Wackenhut failed to implement a capital offenders program.

55. Victoria Doe is a third party beneficiary of the contract and is a person for whom the contract was intended to be performed. Since said Plaintiff is a third party beneficiary of the contract, Plaintiff has standing to bring this cause of action against Wackenhut.
56. Wackenhut's breach of contract resulted in actual damages as further set forth hereinbelow. Plaintiff demanded that Wackenhut address their damages but Wackenhut at all material times, failed and refused to abide by the terms of its contract. As such, Plaintiff was damaged by Wackenhut's breach of contract in an amount in excess of the minimum jurisdictional limits of this Court for which amount Plaintiff herein sues.
57. All conditions precedent to contract formation and execution and said Plaintiff's right to recover under the contract were performed or waived by Wackenhut.
58. It was necessary for Plaintiff to retain the services of the undersigned attorney to pursue her rights and remedies in the case at bar. As such, Plaintiff is entitled to recover all necessary and reasonable attorney's fees in an amount in excess of the minimum jurisdictional limits of this Court for which amount Plaintiff herein sues.

## **COUNT SIX**

### **BREACH OF FIDUCIARY DUTY**

59. The preceding paragraphs are incorporated the same as if fully set forth herein.
60. Defendants owed the highest degree of care to Victoria Doe. Victoria was placed under Defendants' care and should have been given the same degree of protection and care that parents would give a child. Rather than being cared for to even a minimum

standard, Victoria was mentally, physically and sexually abused, was deprived of an education, was forced to live within the unsafe conditions without the ability to report the conditions for fear of retribution, was given no or inadequate counseling, was given no or inadequate psychiatric or psychological counseling and was subjected to an abusive and manipulative “levels system.” Instead of receiving proper care, she was “counseled” by persons who had not been trained to properly counsel troubled children and who were not able to maintain that degree of professional separation which is required by one who counsels troubled persons, much less troubled children.

61. Defendants’ breach of their fiduciary duties constitutes intentional, or in the alternative, negligent infliction of emotional distress. Defendants’ breach of their fiduciary duty also constitutes an invasion of Victoria Doe’s privacy, which is a legally protected and compensable cause of action. Such breach was a producing cause and/or proximate cause of her damages which are within the jurisdictional limits of this court.

#### **COUNT SIX**

##### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

62. The preceding paragraphs are incorporated the same as if fully set forth herein.
63. The conduct of Defendants as described above also constitutes intentional infliction of emotional distress in that Defendants acted intentionally or recklessly and their conduct was extreme and outrageous. Victoria suffered emotional distress as a result of Defendants’ acts and her distress is severe. Defendants’ tortious conduct has resulted in Victoria’s injuries and damages, including but not limited to mental

suffering, mental anguish and pain and suffering, hedonic damages and other damages.

## **COUNT SEVEN**

### **ASSAULT**

64. The preceding paragraphs are incorporated the same as if fully set forth herein.
65. In engaging Victoria, a minor child, in sexual intercourse and in sexually touching, fondling and having intimate sexual contact with her on numerous occasions while he was 35 years of age and she was 15 years of age, Defendant Diaz sexually assaulted Victoria.
66. On other occasions, Victoria, who is very small in stature, was “restrained” by five or more of Wackenhut’s employees. Such conduct was wholly improper and unnecessary.
67. Such conduct of the part of Wackenhut’s employees constitutes tortious assault and battery as those terms are known in Texas common law, and further constitutes repeated violations of the Texas Penal Code, including, with respect to Diaz, the provision outlawing what is commonly known as statutory rape. The acts and omissions of Wackenhut’s employees, taken together or separately, were a proximate and/or producing cause of the injuries and damages to Victoria.

## **COUNT EIGHT**

### **DAMAGES**

68. Victoria requires extensive counseling to assist her in dealing with the mental pain and anguish she has suffered. Her self-esteem is almost non-existent. She is

despondent about the future. She has no degree of trust or respect for anyone who might attempt to counsel her inasmuch as the very people, i.e., Wackenhut and its employees, who promised to counsel her and care for her did nothing but cause her misery.

69. The lack of education provided by Wackenhut damaged Victoria. She will not be able to function in society upon her release given the “education” she received at CCJJC. Victoria should have been tested and assessed and, most likely, placed in special education classes. As such, Victoria has suffered a substantial loss of earning capacity. In addition, Victoria has been damaged in an amount equal to the cost of private tutoring for each class supposedly “taught” to Victoria at CCJJC.
70. Due to the sexual assault and the reprehensible environment to which Victoria was subjected on a daily basis, Victoria requires extensive and intensive psychiatric and psychological counseling. She suffered a gross amount of mental anguish, in the past and, inevitably, will continue to so suffer in the future.
71. Victoria is entitled to recover punitive damages from Defendants. TYC’s documentation verifies multiple instances of mental, physical and sexual abuse by Wackenhut employees. Although TYC repeatedly warned and threatened Wackenhut that it must remedy the multitude of problems, Wackenhut utterly failed to properly address the problem. The citizens of this State and the parents of these children trusted Wackenhut to provide guidance and counseling and release children back into society who were adjusted and could cope with problems. Wackenhut’s behavior resulted in the exact opposite effect. Wackenhut created an environment which fostered distrust

and hatred toward authority figures and who instead instilled a sense of hopelessness, dread and loathing in the children whom were entrusted to Wackenhut.

72. Not only did Wackenhut ruin lives, they profited greatly by doing so. Even with the more than \$7,000,000.00 paid to Wackenhut by the State of Texas in the first two years of the contract, Wackenhut refused to hire any personnel to provide proper counseling to the residents or anyone to oversee the conduct of the staff members. Wackenhut should not profit from abusing the trust placed in them by running this facility and others in a gross and reckless manner. Wackenhut has done nothing more than line its pockets while ignoring the fact that they are entrusted with the care, guidance and rehabilitation of our children.
73. By agreeing to act in the place of TYC in operating the CCJJC, one of Wackenhut's statutory duties was to "restore and increase the self-respect and self-reliance of the youth under the authority of the commission and to qualify them for good citizenship and honorable employment." Tex. Human Resources Code § 61.034 (Vernon 1990). Another such stated statutory duty was to "establish relationships and to organize a way of life that will meet the spiritual, moral, physical, emotional, intellectual, and social needs of the children under its care as those needs would be met in an adequate home." Tex. Human Resources Code § 61.045. Despite this express goal, Wackenhut operated CCJJC without proper staffing, without proper case implementation, without proper controls, and without proper psychological treatment and education for the girls, just to name a few of the deficiencies.



74. The actions of Defendants were done intentionally to injure Victoria and other former residents of CCJJC and with malice in that Wackenhut specifically intended to cause substantial injury or acted with flagrant disregard for the rights of others and with actual awareness on the part of Defendants that their acts would, in reasonable probability, result in great harm to Victoria. Due to such intentional and malicious conduct, Plaintiff is entitled to and hereby seeks exemplary damages from Defendants in an amount to be determined by the trier of fact.
75. The actions set forth above were the producing and/or proximate cause of Victoria's damages and Plaintiff seeks and is entitled to recover damages within the jurisdictional limits of this court.

**REQUEST FOR TRIAL BY JURY**

76. Plaintiff hereby requests a trial by jury.

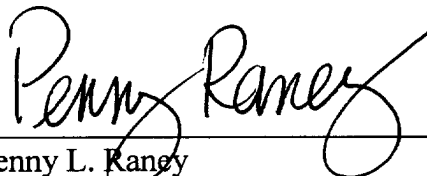
WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that Defendants appear and answer herein and that the Court:

1. Assume jurisdiction over this case;
2. Issue a declaratory judgment pursuant to 28 U.S.C. § 2201 that the acts and omissions of Defendants deprived Victoria Doe of her constitutional rights;
3. Award to Plaintiff judgment against Defendants, jointly and severally, for the damages set forth hereinabove, including exemplary damages;
4. Award the costs of prosecution of this action to Plaintiff;

5. Award to Plaintiff from Defendants reasonable attorney's fees for the prosecution of this action; and

6. Award to Plaintiff such other and further relief, at law or in equity, to which she may be justly entitled.

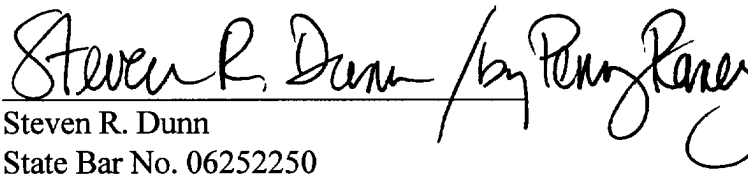
Respectfully submitted,



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