

STATE OF NEW MEXICO
COUNTY OF COLFAX
EIGHTH JUDICIAL DISTRICT

K.A.

Plaintiff,

v.

No. D-809-CV-2016-00173

BOY SCOUTS OF AMERICA; SAGAMORE
COUNCIL, BOY SCOUTS
OF AMERICA; and THE PHILMONT
STAFF ASSOCIATION, INC.,
BOY SCOUTS OF AMERICA,

Defendants.

COMPLAINT FOR PERSONAL INJURIES

COMES NOW, Plaintiff K.A., by and through his counsel of record MARTINEZ, HART,
THOMPSON & SANCHEZ, P.C. (F. Michael Hart & Kelly Stout Sanchez) and CREW JANCI
LLP (Stephen F. Crew & Peter B. Janci), and hereby files the following cause of action against
Defendants:

**Jurisdiction and
Venue**

1. K.A. is an adult resident of the state of Oregon. Plaintiff uses the pseudonym
“K.A.” because he was the victim of childhood sexual abuse and disclosure of his identity to the
public would further victimize him and cause emotional injury. Plaintiff will provide his identify
to Defendants under separate cover.

2. At all times relevant to the tortious conduct alleged in this Complaint, Plaintiff
was an unemancipated minor who was invited to participate in meetings, events, and activities run
and sponsored by Defendants.

3. Defendant Boy Scouts of America (“BSA”) is a congressionally-chartered not-for-profit corporation registered with the New Mexico Secretary of State, with its principal place of business in New Mexico listed as the Philmont Scout Ranch, 17 Deer Run Road, Cimarron, New Mexico, 87714. BSA’s foreign registered office address, principal place of business outside of New Mexico, corporate mailing address and its agent for service is located at 1325 W. Walnut Hill Lane, Irving, Texas, 75038.

4. Defendant Sagamore Council, Boy Scouts of America (“Sagamore”) is a not-for-profit corporation organized under the laws of Indiana and with its principal place of business and its agent for service located at P.O. Box 865, Kokomo, Indiana, 46903.

5. Defendant Philmont Staff Association, Inc. is a not-for-profit corporation organized under the laws of New Mexico and with its principal place of business and agent for service located at Philmont Scout Ranch, 17 Deer Run Road, Cimarron, New Mexico, 87714.

6. The injuries to Plaintiff occurred in many places, including the Philmont Scout Ranch in Colfax County, New Mexico.

7. Jurisdiction and venue is proper with this Court.

General Allegations

8. Defendants selected or accepted Randall Shafer as Scout Leader for Plaintiff’s Boy Scout Troop 512 chartered out of Kokomo, Indiana. Troop 512 was chartered out of Beamer United Methodist Church in Kokomo, Indiana.

9. Defendants authorized and empowered Shafer to perform all duties of a Scout Leader including the authority and power: to provide instruction, counseling, moral guidance, and physical supervision of boys participating in Boy Scout programs and activities; to enforce the rules governing the boys’ participation; and to undertake other duties. Defendants knew that as

part of his duties as a Scout Leader, Shafer would be in a position of trust, confidence, and authority over the boys involved in the Scout Program, including Plaintiff. Defendants retained the right to control the means and methods used by Scout Leaders, including Shafer, in fulfilling these duties for Defendants.

10. As a Scout Leader, Shafer befriended Plaintiff; gained the trust and confidence of Plaintiff and his family as an instructor, guide, mentor, counselor, and authority figure; and gained the permission and support of Plaintiff's family to spend substantial periods of time alone with Plaintiff.

11. Thereafter, Shafer acted as a Scout Leader toward Plaintiff, supervised him during Scouting outings and activities, and exercised authority *in loco parentis* over Plaintiff during scouting events.

12. Many of the Scouting outings and activities were conducted in geographically remote areas without any means of communication between Plaintiff and his parents. The circumstances surrounding the Scouting outings and activities deprived Plaintiff of normal opportunities of self-protection.

13. As a result of Shafer's authorized conduct as a Scout Leader, Plaintiff was conditioned to trust Shafer, to comply with his directions, and to respect him as a person of authority, including in moral and ethical matters.

14. Using the power, authority and trust of his position within the BSA, Sagamore Council and Philmont Scout Ranch, and availing himself of Defendants' representations that the Boy Scouts were moral and safe places for boys, Shafer induced and directed Plaintiff to engage in various sexual acts with him while Plaintiff was a minor (hereinafter "the sexual abuse"). The sexual abuse consisted of fondling, groping, masturbation, and oral sex.

15. Scout Leader Shafer sexually abused Plaintiff on multiple occasions during the approximate time period of 1974 to 1977, when Plaintiff was approximately 10 to 14 years old. The sexual abuse occurred during Scouting-related meetings, events, and outings. Among other locations, Shafer sexually abused Plaintiff in Arizona; Colorado; Indiana; Illinois; Michigan; Ohio; Utah; and New Mexico.

16. During the summer of 1976, when Plaintiff was approximately 12 years old, Shafer took Troop 512 – including Plaintiff – on a month-long camping trip in the Southwest, during which time Plaintiff spent approximately one week with Shafer and Troop 512 at the Philmont Scout Ranch. During this week long period in 1976, Shafer sexually abused Plaintiff on more than half a dozen occasions.

17. The sexual abuse occurred while Shafer was acting as a Scout Leader and within the scope of employment with Defendants.

18. The methods used by Shafer to accomplish his sexual abuse of Plaintiff were substantially similar to methods known to Defendants to have been used previously by numerous other Scout Leaders to accomplish sexual abuse of other boys.

19. Shafer also sexually abused at least one other minor Boy Scout in addition to Plaintiff. In 1987, Shafer was convicted of criminal charges for his sexual contact with this minor boy.

20. During the Scouting outings and activities, Shafer displayed inappropriate physical contact with Plaintiff that was readily observable by other adults who were supposed to supervise the outings and activities.

21. During the Scouting outings and activities, Shafer showed inappropriate affection toward Plaintiff that was readily observable by other adults who were supposed to supervise the outings and activities.

22. K.A. suffered serious injuries and damages as a result of the pervasive sexual abuse perpetrated against him by Shafer.

23. K.A.'s discovery of the connection between the abuse and the injuries he suffered was a process that prevented him from knowing or having reason to know that his injuries were caused by the sexual abuse.

24. K. A. did not know or have reason to know of the sexual abuse and that the abuse resulted in injury to him until a time within the past three (3) years.

COUNT I
Negligence/Respondeat Superior – All Defendants

25. All previous paragraphs are incorporated by reference.

26. At all times material to the allegations set forth in this Complaint, Defendants owed a duty of ordinary care to K.A. as they encouraged and fostered the relationship of trust and authority between K.A. and Shafer.

27. Defendants voluntarily took responsibility for Plaintiff under circumstances such as to deprive the Plaintiff of his normal opportunities for protection, isolating and separating Plaintiff from adults who could and would act to protect him.

28. Defendants owed K.A. a duty of care to ensure his safety while he participated in Boy Scout activities led by Boy Scout chosen adults.

29. Defendants knew or reasonably should have known that Shafer posed a threat of harm to the boys in Troop 512, including K.A.

30. By 1976, Defendants already knew of the serious concerns of childhood sexual abuse and the use of the Boy Scouts organization as a method to perpetrate such harms to the children in the troops, as reflected in thousands of internal secret files kept at Boy Scout headquarters.

31. Despite this knowledge, Defendants failed to protect K.A. and the other children in the troop from Shafer, whose conduct was observably inappropriate.

32. Defendants breached their duty to K.A. as a result of:

- (a) Failing to exclude Shafer as a Scout Leader;
- (b) Failing to restrict Shafer's activities with Scouts, including K.A.;
- (c) Failing to notify parents of Scouts, including K.A.'s parents, about Shafer and about the risk and dangers of sexual abuse;
- (d) Failing to train Scout Leaders, parents, and Scouts in how to recognize, report and prevent child abuse; and
- (e) Failing to implement reasonable child abuse prevention policies.

33. As a result of Defendants' negligence, K.A. suffered serious injuries and damages.

34. At all times material to the allegations set forth in this Complaint, Defendants had agents and employees acting on their behalf.

35. Defendants' employees acted within the course and scope of their employment with Defendants.

36. Defendants are vicariously liable for the negligence of its agents and employees.

COUNT II
Premises Liability – All Defendants

37. All previous paragraphs are incorporated by reference.

38. At all times material to the allegations set forth in this Complaint, K.A. was a Boy Scout and was permitted to be on the Philmont Scout Ranch premises.

39. The only reason that K.A. came to New Mexico and went to the Philmont Scout Ranch was because of his involvement and participation in Defendants' organization.

40. At all times material to the allegations set forth in this Complaint, Defendants owed K.A. a duty to use ordinary care to keep him safe while he was on the Philmont Scout Ranch premises.

41. Defendants' premises was unreasonably dangerous for K.A. when he was put into a situation in which he was isolated from his parents and left to rely upon the adults of Defendants' choosing to care for and protect him. Instead of ensuring K.A.'s safety by keeping him with adults who are not child molesters and placing more than one adult with the troop, Defendants' actions and omissions created an environment which facilitated and allowed Shafer to isolate and perpetrate continuous and pervasive sexual abuse against K.A.

42. Defendants breached its duty to K.A. when its premises posed an unreasonable threat of harm and was dangerous for K.A.

43. As a result of Defendants' failure to operate their premises with reasonable care, K.A. suffered serious injuries and damages.

44. At all times material to the allegations set forth in this Complaint, Defendants had agents and employees acting on their behalf.

45. Defendants' employees acted within the course and scope of their employment with Defendants.

46. Defendants are vicariously liable for the negligence of its agents and employees.

COUNT III
Sexual Battery of a Child/Respondeat Superior – All Defendants

47. All previous paragraphs are incorporated by reference.

48. At all times material to the allegations set forth in the Complaint, Shafer intentionally caused K.A. to engage in sexual contact and sexual penetration against his will.

49. At all times material to the allegations set forth in the Complaint, K.A., as a young child, did not have the ability to consent to the intentional sexual touching.

50. Shafer's intentional conduct constituted a sexual battery on K.A.

51. As a direct result of Shafer's intentional sexual batteries of K.A., K.A. suffered physical, psychological and emotional damages.

52. At all times material to the allegations set forth in the Complaint, Shafer was able to accomplish the sexual battery of K.A. by virtue of his extraordinary or substantial power or authority over K.A. as a Scout Leader.

53. Shafer's power and authority over K.A. was conferred upon him by Defendants as a result of his agency and status as a Scout Leader for Boy Scouts of America.

54. At all times material to the allegations set forth in this Complaint, Shafer was aided in accomplishing the sexual battery of K.A. as a result of his agency with Defendants.

55. Defendants are vicariously liable for the sexual batteries that Shafer committed against K.A. and all injuries and damages arising therefrom.

COUNT IV
Intentional Infliction of Emotional Distress/Respondeat Superior – All
Defendants

56. All previous paragraphs are incorporated by reference.

57. At all times material to the allegations in the Complaint, Shafer's conduct, including but not limited to the following, was extreme and outrageous under the circumstances:

- a. Shafer's grooming of K.A.;
- b. Shafer's abuse of his position of authority to aid him in commission of sexual batteries against K.A.; and
- c. Shafer's sexual batteries of K.A.

58. Shafer's conduct toward K.A. occurred over the course of several years.

59. At all times material to the allegations in the Complaint, Shafer acted intentionally and/or recklessly in grooming K.A., in abusing his position of authority as a Scout Leader, and in committing sexual batteries against K.A.

60. At all times material to the allegations in the Complaint, Shafer's grooming and sexual battery of a young boy by abusing his position of authority, was beyond the bounds of common decency, was atrocious and intolerable to the ordinary person.

61. As a result of Shafer's conduct, K.A. has experienced, and continues to experience, severe emotional distress.

62. At all times material to the allegations set forth in the Complaint, Shafer was able to accomplish the sexual battery of M.A. by virtue of his extraordinary or substantial power or authority over K.A. as a Scout Leader.

63. Shafer's power and authority over K.A. was conferred upon him by Defendants as a result of his agency and status as a Scout Leader for Boy Scouts of America.

64. At all times material to the allegations set forth in this Complaint, Shafer was aided in accomplishing the sexual battery of K.A. as a result of his agency with Defendants.

65. Defendants are vicariously liable for the sexual batteries that Shafer committed against K.A. and all injuries and damages arising therefrom.

WHEREFORE, Plaintiff requests this Court enter a judgment in his favor and against Defendants for the following:

1. Compensatory damages in an amount to be determined at trial;
2. Punitive damages in an amount sufficient to punish and deter Defendants;
3. All costs;

4. Pre and post judgment interest; and
5. Other relief as the Court deems just and proper.

Respectfully submitted,

**MARTINEZ, HART, THOMPSON &
SANCHEZ, P.C.**

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