

DC-14-10061

Gay Smith

CAUSE NO. \_\_\_\_\_

JANA WECKERLY	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs	§	_____ JUDICIAL DISTRICT
	§	
JERRY JONES, AND DALLAS	§	
COWBOYS FOOTBALL CLUB LTD.	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION, REQUEST FOR JURY TRIAL AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE DISTRICT COURT JUDGE:

COMES NOW, Plaintiff, JANA WECKERLY, and files her Original Petition, Request for Jury Trial, and request for Disclosure, complaining of Defendants, JERRY JONES and DALLAS COWBOYS FOOTBALL CLUB LTD, and would show the Court the following:

**I.**

**DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Procedure 190.4, and be controlled by a scheduling order to be agreed upon by the parties and the Court.

**II.**

**PARTIES**

2. Plaintiff JANA WECKERLY is an individual who resides in Ardmore, Carter County, Oklahoma.

3. Defendant JERRY JONES is an individual who resides in Dallas, Dallas County, Texas, and service of process may be perfected on him individually at his home or place of employment at 1 Cowboys Parkway, Irving, Texas 75063.

4. Defendant DALLAS COWBOYS FOOTBALL CLUB LTD (hereinafter referred to as "COWBOYS") is a business operating in the State of Texas and service of process may be perfected by serving its registered agent for service C T Corporation System, 1999 Bryan Street, Ste. 900, Dallas Texas 75201-3136.

### **III.**

#### **JURISDICTION**

5. The court has jurisdiction over this action because the facts giving rise to this action occurred in whole or in part within Dallas County, Texas and the damages sought by Plaintiff are well in excess of the minimum jurisdictional limits of this Court.

### **IV.**

#### **VENUE**

6. Venue is proper in Dallas County, Texas pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1) because all or a substantial part of the events or omissions occurred in Dallas County, Texas.

### **V.**

#### **SEXUAL ASSAULT**

7. Sometime in May or June 2009, Defendant JERRY JONES intentionally and knowingly sexually assaulted Plaintiff without her consent. JERRY JONES'S misconduct was known, or with the exercise of reasonable care, should have been known by Defendant COWBOYS.

8. Defendant JERRY JONES intentionally, knowingly, and forcibly rubbed and/or grabbed Plaintiff's buttocks multiple times. Defendant JERRY JONES performed these acts without the consent of Plaintiff.

9. Defendant JERRY JONES intentionally, knowingly, and forcibly rubbed and/or grabbed Plaintiff's breasts multiple times. Defendant JERRY JONES performed these acts without the consent of Plaintiff.

10. Defendant JERRY JONES intentionally and knowingly forced Plaintiff to touch and/or rub on his penis multiple times. Defendant JERRY JONES forced Plaintiff to perform these acts without the consent of Plaintiff.

11. Defendant JERRY JONES intentionally, knowingly, and forcibly kissed Plaintiff on her neck multiple times without the consent of Plaintiff.

12. Defendant JERRY JONES intentionally, knowingly, and forcibly kissed Plaintiff on her shoulder multiple times without the consent of Plaintiff.

13. Defendant JERRY JONES intentionally, knowingly, and forcibly kissed Plaintiff on her lips multiple times without the consent of Plaintiff.

14. Defendant JERRY JONES intentionally, knowingly, forcibly penetrated Plaintiff's vagina with his fingers without the consent of Plaintiff.

15. Defendant JERRY JONES intentionally and knowingly received oral sex from another female while in the presence of Plaintiff. When Defendant JERRY JONES intentionally and knowingly received oral sex from the female, he knew that Plaintiff was present and intentionally and knowingly wanted Plaintiff to see said oral sex act.

Plaintiff did not want to see Defendant JERRY JONES receive oral sex from the female.

16. The conduct of Defendant JERRY JONES was in violation of state and federal criminal statutes regarding sexual abuse including, but not limited to, Texas Penal Code §22.011 and §43.05.

17. The acts of Defendant JERRY JONES pled in Paragraphs 7-16 herein proximately caused injuries to Plaintiff.

## **VI.**

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

18. Defendant JERRY JONES'S sexual assault of Plaintiff constitutes extreme and outrageous conduct. For the COWBOYS to facilitate its president in his sexual predations constitutes extreme and outrageous conduct. Defendants JERRY JONES and COWBOYS intentionally caused severe emotional distress to Plaintiff, and Plaintiff suffered severe injuries as a direct and proximate result.

## **VII.**

### **NEGLIGENCE**

19. Defendant COWBOYS committed acts of omission and commission, which collectively and severally, constituted negligence and gross negligence, which was the proximate cause of the injuries and damages to Plaintiff.

20. Defendant COWBOYS failed to use reasonable care to prevent the negligent and grossly negligent acts from occurring. Specifically, Defendant COWBOYS, through their employees and officers, were negligent and grossly negligent in the following (but not limited to) respects:

- a. Supervising, assigning, and retaining JERRY JONES;
- b. Failing to provide adequate monitoring of JERRY JONES;

- c. Failing to institute and implement policies for the protection of females;
- d. Failing to investigate allegations of inappropriate conduct;
- e. Failing to report crimes against Plaintiff and others to law enforcement;
- f. Tampering with criminal evidence;
- g. Threatening victims and witnesses to deter criminal complaints;
- h. Making decisions which reflected that the reputation of JERRY JONES and COWBOYS and the desire to avoid scandal were vastly superior and more important to the COWBOYS than the welfare of the Plaintiff and other victims who had been sexually abused by JERRY JONES;
- i. Fostering an environment and culture where abuse of females could flourish and in which it was clearly understood that there was no accountability for such criminal acts toward females.
- j. Failing to warn Plaintiff or the public of the dangerous sexual propensities of JERRY JONES toward females;
- k. Retaining JERRY JONES in a position of trust, confidence and authority as president in direct contact with females when it knew or should have known of his dangerous sexual propensities.

21. Defendant COWBOYS bears vicarious liability for the acts and omissions of its agents, employees and officers under theories of respondeat superior and/or apparent authority. In particular, Defendant COWBOYS bears vicarious liability for the acts and omissions of JERRY JONES.

22. The conduct of Defendant COWBOYS was in violation of state and federal criminal statutes regarding sexual abuse which constitutes negligence per se, including, but not limited to, Texas Penal Code §22.011 and §43.05.

23. The acts of Defendant JERRY JONES and COWBOYS pled in Paragraphs 19-22 herein proximately caused injuries to Plaintiff.

### **VIII.**

#### **CONSPIRACY TO COVER UP SEXUAL ASSAULT**

24. Defendants JERRY JONES and COWBOYS conspired to cover up the sexual assault against Plaintiff.

25. Instead of reporting JERRY JONES'S crimes, Defendant JERRY JONES, COWBOYS and other actors entered into an agreement to conceal this sexual assault of Plaintiff and keep it secret at the expense of Plaintiff.

26. Defendants JERRY JONES and COWBOYS threatened Plaintiff so that she would not tell the police.

27. Defendants JERRY JONES and COWBOYS intimidated Plaintiff and told her to keep quiet and not tell anyone else "or else".

28. Defendants JERRY JONES and COWBOYS bullied Plaintiff into believing that she would somehow be in trouble if she told anyone about the sexual assault.

29. Defendants JERRY JONES and COWBOYS intimidated her into signing documents against her will, without giving her a copies, or access to legal counsel.

30. Defendants JERRY JONES and COWBOYS actions above placed Plaintiff in imminent fear of her life, safety and well being.

31. But for the actions of Defendants JERRY JONES and COWBOYS, Plaintiff would have immediately told the police.

32. The acts of Defendants JERRY JONES and COWBOYS pled in Paragraphs 24-30 herein proximately caused injuries to Plaintiff.

### **IX.**

**THE COWBOYS WERE CRIMINALLY COMPLICIT WITHIN THE MEANING  
OF TEX. CIV. PRAC. & REM. CODE ANN. §41.005(b), THEREFORE  
PUNITIVE DAMAGES APPLY**

33. Tex. Civ. Prac. Rem. Code § 41.005(a) does not apply to bar punitive damages in this matter because Defendants were criminally complicit. Tex. Civ. Prac. & Rem. Code § 41.005(b)(2) provides an exception when a defendant is criminally responsible as a party to the criminal act. Under Chapter 7 of the Texas Penal Code, specifically § 7.02(a), a person is criminally responsible for an offense committed by the conduct of another if:

- (2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or
- (3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

34. Tex. Pen. Code. Ann. § 7.02(a)(2). The provisions of this statute are met because Defendant COWBOYS assisted and aided JERRY JONES in the commission of the sexual assault on Plaintiff by failing to report JERRY JONES to law enforcement,

conspiring to cover up the sexual assault against Plaintiff, and retaining him in a position of trust, confidence and authority as president in direct contact with females when it knew or should have known of his dangerous sexual propensities.

35. Further, Tex. Pen. Code. Ann. § 7.02(a)(3) is met because Defendants had a duty to prevent the sexual assault of Plaintiff. Instead, Defendants conspired to cover up the sexual assault of Plaintiff, knew of his problems with womanizing and proclivity with alcoholic beverages, yet he was still retained in a position of trust, confidence and authority as president in direct contact with females when it knew or should have known of his dangerous sexual propensities.

36. Additionally, Tex. Pen. Code Ann. §7.21 -7.23 encompasses the criminal responsibility of corporations or associations and provides that a corporation or association is criminally responsible for the conduct of its agent if it was authorized, performed or recklessly tolerated by a high managerial agent. The Defendant COWBOYS not only tolerated Defendant JERRY JONES'S conduct, they aided and abetted JERRY JONES in covering up the sexual assault against Plaintiff. Plaintiff would show that Defendants recklessly tolerated and allowed the conduct of Defendant JERRY JONES and are therefore, subject to punitive damages in this matter.

## **X.**

### **STATEMENTS TO THE COURT**

37. Plaintiff asserts that the statute of limitations has not run on these causes of action pursuant to TCPRC § 16.0045.

38. Plaintiff asserts that the statute of limitations as to these causes of action has been suspended at various times pursuant to TCPRC § 16.063.



## **XI.**

### **DAMAGES**

39. Defendants' egregiously wrongful conduct resulted in and proximately caused injury to the Plaintiff. Plaintiff seeks damages allowed in the State of Texas in an amount within the jurisdictional limits of the Court. The damages include past and future physical pain and mental anguish, past and future severe psychological pain and suffering, past and future emotional distress, and past and future medical expenses.

40. As a result of the conduct and incidents described herein, Plaintiff has suffered many other damages, including loss of self esteem, loss of trust, depression, substance abuse, and suicide attempts. In all reasonable probability, her social and professional adjustment in the past has been affected and in all probability her future social professional life will be adversely impacted as well.

41. Plaintiff has suffered lost wages in the past and will suffer diminished wage-earning capacity in the future.

42. The Texas Rules of Civil Procedure require that Plaintiff choose among several statements regarding the amount Plaintiff seeks. Plaintiff is suing for the amount determined to be fair and reasonable by the jury. Because the jury could potentially determine that fair and reasonable damages are in excess of \$1,000,000 in this case, Plaintiff must state that she seeks monetary relief of over \$1,000,000 so as to not limit what the jury may award in this case. Accordingly, pursuant to Tex. R. Civ. P. 47, Plaintiff states that she seeks monetary relief of more than \$1,000,000.

## **XII.**

### **GROSS NEGLIGENCE PUNITIVE DAMAGES**

43. Plaintiff also seeks punitive and exemplary damages in order to punish and deter the outrageous conduct of all of the Defendants herein. Facts as alleged above will be proven by Plaintiff's clear and convincing evidence that Defendants acted fraudulently and maliciously and were grossly negligent in that, either by act or omission, they exposed Plaintiff to an extreme degree of risk of harm, considering the probability, magnitude and extent of the harm that would likely impact them and which ultimately did. Further, Defendants had real, subjective awareness of the risks involved, but nevertheless proceeded with callous indifference to the rights, safety, and welfare of Plaintiff, physically and psychologically. These damages, in concert with the conduct of JERRY JONES are described as felonies where applicable, specifically, but not limited to Tex. Pen. Code §22.011 (sexual assault), and §43.05 (compelling prostitution). They were committed knowingly, in consequence of which the punitive damages cap does not apply. *See* Tex. Civ. Prac. & Rem. Code §41.008( c).

44. To the extent that this case arises out of criminal conduct committed by JERRY JONES, an unfit employee or agent of Defendant COWBOYS, Defendant COWBOYS is liable for exemplary damages because the agent was notably unfit; COWBOYS acted with malice in employing or retaining him and in failing to supervise him; the employee or agent was employed in a managerial capacity and was acting in the scope of employment; and/or COWBOYS effectively ratified or approved his acts.

### **XIII.**

#### **PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

45. Plaintiff herein claims interest in accordance with Texas Finance Code §304.001, et seq. and any other applicable law.

**XIV.**

**DEMAND FOR JURY TRIAL**

46. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

**XV.**

**REQUEST FOR DISCLOSURE**

47. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of service of this request, the information or material described in Rule 194.2 to be produced to Thomas Bowers, attorney for Plaintiff, 2331 West Northwest Highway, 2<sup>nd</sup> Floor, Dallas, Texas 75220 during normal business hours.

**XVI.**

**PRAYER**

48. For these reasons, Plaintiff asks that the Court issue citations for Defendants to appear and answer, and that Plaintiff be awarded a judgment against Defendants, jointly and severally, for all damages described herein, including actual damages, punitive damages, attorney's fees, cost of suit, interest as allowable by law and for such other relief, in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

By:     /s/ Thomas D Bowers      
Thomas D. Bowers III  
State Bar No. 24006881  
2331 West Northwest Highway  
Dallas, Texas 75220  
Tel: 214-237-9001  
Fax: 214-237-9002  
bowersfirm@gmail.com  
**ATTORNEY FOR PLAINTIFF**