

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF BUNCOMBE


2011 JUN -2 PM 12:02

SUPERIOR COURT DIVISION

11-CVS **11CV 02901**

BUNCOMBE CO., C.S.C.

JANE DOE,

BY _____) 

Plaintiff,

vs.

MICHAEL R. CARTER, ANGELA P. CARTER; and PATRICIA A. CARTER and BURNETTE R. CARTER, individually and as former owners d/b/a RAINBOW CHILD CARE,

Defendants.

COMPLAINT
(Jury Trial Requested)

NOW COMES the Plaintiff and, upon knowledge, information, and belief, says and alleges as follows:

1. The Plaintiff Jane Doe is a resident of Wake County, North Carolina and is filing this action as a "Jane Doe" complaint because she is the victim of childhood sexual abuse. Her identity has previously been made known to the Defendants.

2. The Plaintiff is a victim of childhood sexual molestation and abuse caused by the actions and inactions of the Defendants. The Plaintiff is 25 years old at the time of filing of this lawsuit and was a minor during the entire time of the sexual misconduct alleged herein.

3. The Defendants, Michael R. Carter (hereinafter "Michael Carter") and Angela P. Carter (hereinafter "Angela Carter"), are residents of Buncombe County, NC and were married to each other at all times relevant to this Complaint.

4. The Defendants Patricia A. Carter (hereinafter "Patricia Carter") and Burnette R. Carter (hereinafter "Burnette Carter") are residents of Buncombe County, NC; are the parents of Defendant Michael Carter; and were married to each other at all times relevant to this Complaint.

5. Defendants Patricia Carter and Burnette Carter were joint owners of Rainbow Child Care (hereinafter "Rainbow"), a child care facility which was located in Buncombe County, NC and licensed by the State of North Carolina.

6. When the Plaintiff was approximately three (3) years old, her parents attempted to enroll the Plaintiff in a Head Start program. Because of the Plaintiff's shyness, the Plaintiff's parents were advised to enroll her in a daycare facility to develop better social skills before enrollment to Head Start or a school system.

7. Plaintiff's mother contacted local daycare centers to locate a facility in which to enroll the Plaintiff. Plaintiff's parents enrolled the Plaintiff at Rainbow only after Defendant Patricia Carter informed Plaintiff's mother that she had special training in taking care of children and represented that Rainbow would be a safe and proper place for her.

8. At the time that the Plaintiff was enrolled at Rainbow, Defendants Michael Carter and Angela Carter were employed by Rainbow and were actively involved in working with the children at the daycare.

9. At the time that the Plaintiff was enrolled at Rainbow, Defendant Patricia Carter was the operator of the daycare and was responsible for supervising all employees and activities relating to children enrolled at Rainbow.

10. Defendant Burnette Carter was frequently at Rainbow as he would take care of the maintenance and upkeep of the facility.

11. After her enrollment at Rainbow, Defendant Michael Carter paid special attention to the Plaintiff by playing and working with her.

12. The Defendant Patricia Carter was aware of and approved of the close relationship between Defendant Michael Carter and the Plaintiff as she informed Plaintiff's mother that Defendant Michael Carter was spending extra time with the Plaintiff to help her overcome her shyness and learn skills, such as the alphabet.

13. Although the primary purpose for Plaintiff's enrollment at a daycare facility was to develop better social skills with other children, Plaintiff considered Michael Carter to be her only friend and was basically the only person she talked to or interacted with at Rainbow.

14. After the Plaintiff began enrollment at Rainbow, Defendant Michael Carter began escorting Plaintiff to the bathroom and remaining inside with her for unusual amounts of time. While in the bathroom with the Plaintiff, he initially wiped her genitalia and her bottom. After a short period of time, Defendant Michael Carter increased his sexual abuse of the Plaintiff. He would take the then three-year-old Plaintiff into the bathroom, fondle her genitalia, perform oral sex on the Plaintiff and have her perform oral sex on him.

15. Although the Plaintiff had been "potty trained" prior to her enrollment at Rainbow, she began wetting her clothes while at the daycare facility. Defendant Patricia Carter asked Plaintiff's mother to bring extra clothes because the Plaintiff was having "accidents" instead of going to the bathroom facilities, probably due to her shyness. This problem with wetting began after the Plaintiff was first sexually abused by the Defendant Michael Carter.

16. After Rainbow moved to a new location, the Defendant Michael Carter continued his sexual abuse of the Plaintiff as he would take the Plaintiff into the bathroom and fondle her genitalia, perform oral sex on the Plaintiff and have her perform oral sex on him.

17. The Defendants, as well as other employees of Rainbow, knew or should have known through the exercise of reasonable supervision that Defendant Michael Carter was inappropriately taking the Plaintiff to the bathroom and spending an inordinate amount of time with her there.

18. Shortly after the Plaintiff was enrolled at Rainbow, Defendants Michael Carter and Angela Carter began telling Plaintiff's mother how special the Plaintiff was to them. These Defendants told Plaintiff's mother that they could not have children of their own and that the Plaintiff was like their own child. They asked the Plaintiff's mother if they could take the Plaintiff to play putt-putt and to do other special activities with her, for which they paid. They also asked the Plaintiff's mother if she would let the Plaintiff sleep over at their residence.

19. The Defendants Michael Carter and Angela Carter made these statements to Plaintiff's mother so that she would have complete trust and confidence in them and would allow them to be alone with the Plaintiff.

20. At all relevant times, the Plaintiff and her parents reposed a special trust and confidence in the Defendants as a result of their actions described herein.

21. The Defendants Patricia Carter and Burnette Carter, and their respective employees, agents, apparent agents and/or representatives, including but not limited to the Defendant Michael Carter, acted in the capacity of *in loco parentis* to the Plaintiff at all relevant times, except for those times when the natural parents of the Plaintiff were actually present.

22. The Defendants owed a special duty to the Plaintiff as the Defendants Michael Carter and Angela Carter acted as her surrogate parents and expressly represented that they considered her as if she was their own daughter and helped support the Plaintiff financially, when they paid for numerous activities on her behalf. The Defendants Patricia Carter and

Burnette Carter knew or should have know of such acts by the Defendants Michael and Angela Carter.

23. By sanctioning and encouraging the entrustment of the physical, mental and emotional safety of the Plaintiff to the Defendants, the Defendants actually and/or impliedly accepted, assumed and ratified their fiduciary duty to protect the Plaintiff because she was unable to protect herself.

24. The Defendants were entrusted with the well-being, care and safety of the Plaintiff and under the fiduciary relationship that resulted and existed, the Defendants assumed a duty to act in the best interest of the Plaintiff.

25. The Defendants had a fiduciary responsibility with the Plaintiff and Plaintiff's parents grounded upon the duty of good faith and fair dealing, and a duty to act with the highest degree of trust and confidence.

26. The fiduciary duty of the Defendants included the duty to warn and protect the Plaintiff from sexual abuse and exploitation by persons who were represented and promoted to the public as being morally right, prudent and suitable to be entrusted with the care of preschool and young children.

27. Further, the fiduciary duty of the Defendants included the duty to report suspected or known sexual abuse to DSS in accordance with N.C.G.S. § 7B-301 and/or to law enforcement.

28. The Plaintiff and Plaintiff's parents had the right to rely and did rely on representations of the Defendants that they and/or personnel employed by Rainbow would not tolerate criminal and immoral conduct that represented a known threat to children. Such reliance on the part of the Plaintiff and the Plaintiff's parents was at all times reasonable and actively encouraged, promoted and inculcated by the Defendants.

29. The Defendants made these representations and acted *in loco parentis* and/or as her surrogate parents in order to create the opportunity for the Defendant Michael Carter to be able to abuse and rape the Plaintiff for nearly ten (10) years.

30. At the time that Defendants Michael Carter and Angela Carter made the aforementioned statements and representations to Plaintiff's parents, all Defendants, as well as other employees at Rainbow, knew or should have known that Defendant Michael Carter was sexually abusing the Plaintiff at the daycare.

31. All Defendants, as well as other employees at Rainbow, knew or should have known that Defendant Michael Carter had also sexually abused one or more other children who attended the daycare.

32. All Defendants, as well as other employees at Rainbow, were required to report the conduct of the Defendant Michael Carter to the Department of Social Services (hereinafter "DSS") in accordance with N.C.G.S. § 7B-301 but failed to do so.

33. When the Plaintiff slept over at the home of Defendants Michael Carter and Angela Carter, the Plaintiff and Defendant Michael Carter would start the night sleeping on a mattress on the living room floor or in the same bedroom (after these defendants moved to a two-bedroom home). He would remain there for hours, all the while sexually abusing the Plaintiff. In addition to fondling the Plaintiff, performing oral sex on the Plaintiff and having the Plaintiff perform oral sex on him, Defendant Michael Carter would show the Plaintiff pornographic movies.

34. Defendant Angela Carter knew or should have known that her husband was not occupying the marital bed and was spending time with the Plaintiff to molest her but made no effort to stop him or to tell Plaintiff's parents or anyone else. Defendant Angela Carter was

required to report the conduct of her husband to DSS in accordance with N.C.G.S. § 7B-301 but failed to do so.

35. After the Plaintiff became enrolled in kindergarten and was no longer attending Rainbow, Defendants Michael Carter and Angela Carter continued to maintain close involvement with the Plaintiff as they would ask the Plaintiff's mother if she could spend the night or weekend with them at least every other weekend and would pick up the Plaintiff from her home.

36. Plaintiff's mother acceded to their requests because of the trust and confidence she had in the Defendants.

37. Beginning when the Plaintiff was approximately 4 years old and continuing through her middle school years while he was sexually abusing her, the Defendant Michael Carter would tell Plaintiff how much he loved her, that her parents were "bad", that she could not tell anyone about what he and the Plaintiff were doing because then she would never be able to see him again, and demanded the Plaintiff to tell him that she loved him.

38. When the Plaintiff was approximately 6 or 7 years old and had entered elementary school, Defendant Michael Carter told the Plaintiff that his wife, Defendant Angela Carter, had said that the Plaintiff would leave him soon and he would ask the young Plaintiff if that was true. The Defendant Michael Carter began telling the Plaintiff that he feared she would leave him some day and he would often cry when he confessed these fears to the Plaintiff in person or on the phone. The Defendant Michael Carter would also tell the Plaintiff that he felt like killing himself because he knew that she would grow up and abandon him someday, thereby forcing the young Plaintiff to continually promise that she would stay with him forever.

39. In 1992 or 1993, the parent of another child reported to DSS an allegation that Defendant Michael Carter had sexually abused at least one other child who was attending Rainbow. All Defendants were aware of this fact as they knew that DSS conducted an investigation, that the allegation was substantiated by DSS and that Rainbow lost its licensure and closed shortly after the substantiation of the allegation by DSS.

40. When the Defendant Michael Carter learned about the allegations against him, he told the Plaintiff, who was then approximately 6 years old, that someone might call or talk with her and that she should not let anyone know about the things that she and the Defendant Michael Carter did at the day care because both of them would get in trouble and she would not be able to see him again.

41. Following the Defendant's Michael Carter's instructions and as a result of the control the Carters exercised over her, and the psychological and physical damage she had suffered, the Plaintiff did not tell anyone of the ongoing abuse.

42. None of the Defendants ever told the Plaintiff's parents or any other parent of a child who attended Rainbow the reason why Rainbow was closed. The Defendants kept silent about the substantiated allegations of child abuse because they feared the financial impact this would have on them and because they wanted to keep the Defendant Michael Carter from ever being prosecuted. They knew that if they told the parents of the children attending Rainbow about the substantiated allegations, the parents would closely question their children and other abuse by the Defendant Michael Carter was likely to be revealed. This would not only have led to criminal charges against the Defendant Michael Carter but also would have exposed the Defendants to lawsuits for substantial damages.

43. The Defendants conspired and acted in concert to conceal the Defendant Michael Carter's abuse from the Plaintiff's parents, law enforcement agencies and the Department of Social Services.

44. By failing to tell the Plaintiff's parents or the other parents the reason why Rainbow was closed, the Defendants enabled the Defendant Michael Carter to continue to horribly abuse the Plaintiff. Their silence also prevented the Plaintiff from getting the treatment she so desperately needed, which would have greatly reduced the damages she has sustained from her abuse.

45. Defendants Michael Carter and Angela Carter continued the close relationship with Plaintiff through her years at elementary and middle school as they would take Plaintiff to dinner, putt putt and other places of interest for young children; would buy gifts for the Plaintiff such as clothes and toys; would take the Plaintiff to have her hair styled at a hair salon; and would have photographs made of the Plaintiff at studios such as Wal-mart.

46. After the Plaintiff became enrolled in school, Defendant Michael Carter insisted that they speak on the telephone multiple times per day and would telephone the Plaintiff or have the Plaintiff call him to talk for extended periods of time. When the Plaintiff's mother would tell the Plaintiff to get off the telephone, the Plaintiff would respond that Defendant Michael Carter was helping her with homework assignments.

47. Throughout the time that the Plaintiff was spending nights and going places with the Defendants Michael and Angela Carter, Defendant Angela Carter would become angry with and scold the Plaintiff if Defendant Michael Carter appeared unhappy. Defendant Angela Carter instilled in the young Plaintiff the belief that it was her duty and responsibility to obey the Defendant Michael Carter and keep him happy.

48. When the Plaintiff was approximately 11 years old and spending the night with the Defendants Michael and Angela Carter, Defendant Michael Carter began having sexual intercourse with the Plaintiff, telling her that he "had not done this in a long time." Defendant Michael Carter would instruct the young Plaintiff on how to "talk dirty" to him, and compare his sexual experiences with the Plaintiff with those he had with his wife, Defendant Angela Carter.

49. The Plaintiff had a limited number of friends because of her involvement with the Defendants Michael and Angela Carter, and the psychological and physical damage she had suffered. When the Plaintiff was approximately 14 years old, the Plaintiff became friends with a male classmate at school and worked together with him part-time during the summer, mowing lawns.

50. While shopping with the Defendants Michael and Angela Carter, the Plaintiff saw and spoke to her male classmate. Defendant Michael Carter immediately appeared agitated and refused to speak to either the Plaintiff or Defendant Angela Carter. When they returned to the Defendants' home, Defendant Michael Carter expressed his anger at the teenage Plaintiff and accused her of having a sexual relationship with her classmate.

51. The Plaintiff was extremely distraught because she had not done anything to enrage the Defendant Michael Carter. She then decided that she wanted to stop seeing Defendants Michael and Angela Carter so that she could develop and enjoy friendships and relationships with other students and friends.

52. During 2001, the Defendant Michael Carter continued to harass the Plaintiff by sending e-mails, which caused the Plaintiff much mental anguish, depression and emotional distress as it brought to the forefront all of the abuse she had suffered, made her fearful that he would abuse her again, made her feel like he was stalking her and created the fear that she would

never be safe from the Defendant Michael Carter. One of the e-mails which he sent to the minor Plaintiff, who was then 15 years old, read as follows:

Val, It's been a long time and I hope you are doing well, but unfortunately I'm not. I need your help, please I need to talk to you to ask you a favor I've never asked you for anything before but this is important. I will do this anyway you want to, either you can call me or give me a time and I'll call you, or I'll meet you, or we could talk on instant messenger. I still love you more than anything, and I would do anything to make it up to you, these last 9 month's have been the worst of my life. I know in your heart you still care but I don't understand why we can't talk. I still have all my same #'s. Please contact me, I sold the RS, I've got a different car, I'm all alone, I miss you so bad, when you call , call after 5 , Please Val after all we've been through I think I deserve this, I,m begging you please call Wednesday night 4/4/01 between 6 & 9 or if you would rather talk on instant messenger e-mail me with a time, 667-3290. if you get this e-mail after wednesday please call as soon as you can, I promise you that you will not be sorry when you call, I've never broke a promise to you, and i never will. please don't wait till it's to late. I will be waiting for you patiently,
Your's forever Mike

53. During the Fall of 2001 when the Plaintiff was approximately 16 years old, the Defendant Patricia Carter discovered where the Plaintiff worked, came to the Plaintiff's workplace in Asheville and told the Plaintiff that the Defendant Michael Carter wanted to speak with her. This request caused the Plaintiff great emotional distress and mental anguish as it brought to the forefront all of the abuse she had suffered, made her fearful that he would abuse her again and created the fear that she would never be safe from the Defendant Michael Carter.

54. At the time that the Defendant Patricia Carter spoke with the Plaintiff, she knew that her son had sexually abused the Plaintiff. She went to speak with the Plaintiff because she knew that her son Michael Carter wanted to speak with the Plaintiff to try to ensure that the Plaintiff would not tell anyone of his abuse.

55. Very shortly after his mother, the Defendant Patricia Carter, spoke with the Plaintiff, the Defendant Michael Carter began calling the Plaintiff at her place of work. He called multiple times in succession. When the Plaintiff finally returned a call, the Defendant

Michael Carter told her that he had health issues and wanted to meet with her. The Plaintiff told him to leave her alone and not to stalk her. The Defendant Michael Carter then began calling the Plaintiff's house but the Plaintiff would not answer the phone. The phone calls made by the Defendant Michael Carter were made in an attempt to make sure that the Plaintiff would never reveal his abuse of her.

56. The confrontation with the Plaintiff by the Defendant Patricia Carter and the telephone calls described above by the Defendant Michael Carter caused the Plaintiff additional mental anguish, depression and emotional distress, as the Plaintiff continued to be reminded about the horrific abuse and made her feel as if she could never escape from the Defendants Carters.

57. When the Plaintiff graduated from high school and enrolled in college, she refused to have her college e-mail, telephone or other information available in the college directory or other sources because she was fearful that Defendant Michael Carter or a member of his family would attempt to contact her and/or would stalk her.

58. In February 2007, the Defendant Angela Carter called the Plaintiff's mother and told her that her husband, the Defendant Michael Carter, wanted to speak with the Plaintiff. When the Plaintiff's mother told the Plaintiff about her conversation with the Defendant Angela Carter, the Plaintiff became extremely distraught. The Plaintiff felt like she was still being stalked, that she could not escape from her abuser, and was reminded of the horrific abuse.

59. The phone call by the Defendant Angela Carter described above was made in an attempt to make sure that the Plaintiff had not, and would not, tell anyone about the horrific abuse that had been inflicted on her by the Defendant Michael Carter.

60. The attempts by the Defendants Michael and Angela Carter to contact the Plaintiff caused the Plaintiff additional mental anguish, depression and emotional distress.

61. In September 2008, after undergoing extensive therapy and treatment to deal with the damage caused by the near decade of sexual abuse by the Defendant Michael Carter, the Plaintiff reported the abuse to the Asheville Police Department.

62. The Plaintiff did not learn why Rainbow had closed until after she retained private counsel in August 2010 to represent her in connection with this matter. Only then did the Plaintiff learn that Rainbow had been closed after a claim of child sexual abuse by the Defendant Michael Carter at Rainbow had been made and was substantiated during the 1990's.

63. The conduct of the Defendants Patricia Carter, Burnette Carter and Angela Carter constituted ratification and condonation of the acts of the Defendant Michael Carter and of each other.

64. The acts of the Defendants were done with malice.

Damages

65. As a result of the actions of each Defendant, the Plaintiff sustained physical injuries, great emotional distress and tremendous permanent psychological harm. She suffers from Post-Traumatic Stress Disorder and depression, has frequent nightmares about the Defendant Michael Carter and recurring intrusive thoughts about being raped by Michael Carter for nearly a decade. She also has recurrent thoughts and ongoing tremendous emotional distress about how all of the Defendants had to know about her abuse and how they could have and should have protected her. She has difficulty trusting people and forming meaningful relationships. She has incurred and will continue to incur medical expenses for the damages that resulted from the conduct described in this complaint.

66. The Plaintiff is entitled to punitive damages for the conduct of the Defendants as described in this Complaint.

CLAIMS FOR RELIEF

Negligent Supervision and Retention

67. The Plaintiff realleges and incorporates herein all previous allegations of this Complaint.

68. The Defendants Patricia Carter and Burnette Carter, as owners of Rainbow and employers of the Defendants Michael Carter, Angela Carter and other employees, had a duty to provide a reasonably safe environment for preschool and young children, including the Plaintiff, who had been entrusted to their care.

69. The Defendants Patricia Carter and Burnette Carter, as owners of Rainbow and employers of the Defendant Michael Carter, had a duty to provide ordinary, prudent and reasonable supervision of their employees, including the Defendant Michael Carter. The Defendants Patricia Carter and Burnette Carter specifically had a duty to take all reasonable and necessary steps to protect preschool and young children who had been entrusted to their care from sexual abuse and exploitation by their employees and agents, including the Defendant Michael Carter, and to take steps to remedy any harm that might have occurred under their watch or as a result of their acts or failure to act.

70. The Defendants Patricia Carter and Burnette Carter were negligent and/or grossly negligent in their supervision and retention of the Defendant Michael Carter when he worked at Rainbow and was allowed to take the Plaintiff, and other little girls, into the bathroom for extended periods of time. They were grossly negligent in allowing Michael Carter to be around

the Plaintiff and other children after there was a substantiated allegation of child sexual abuse against him.

71. In spite of this knowledge, the Defendants Patricia Carter and Burnette Carter failed to take any steps to change their supervision of the Defendant Michael Carter and failed to keep him from spending time alone with preschool and young children, including the Plaintiff. The Defendants Patricia Carter and Burnette Carter continued to employ the Defendant Michael Carter despite their knowledge of his sexually abusing the Plaintiff and other young children.

72. As a direct and proximate result of the negligent supervision and retention by the Defendants Patricia Carter and Burnette Carter, the Plaintiff has sustained substantial injuries, damages, harms and losses for which she is entitled to awards of damages. Accordingly, Plaintiff is entitled to compensatory damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

73. The negligent supervision and retention by the Defendants Patricia Carter and Burnette Carter as described herein constituted gross negligence as it was reckless and showed a complete disregard of the rights and safety of the Plaintiff. Accordingly, the Plaintiff is entitled to recover punitive damages of these Defendants in excess of Ten Thousand Dollars (\$10,000.00).

Negligent Infliction of Emotional Distress

74. The Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

75. The conduct described herein established that all of the Defendants negligently engaged in conduct that would foreseeably cause the Plaintiff tremendous emotional distress and that such conduct did, in fact, cause the Plaintiff severe and permanent emotional distress.

76. As a direct and proximate result of the negligent infliction of emotional distress by the Defendants, the Plaintiff has sustained substantial injuries, damages, harms and losses for which she is entitled to awards of damages. Accordingly, the Plaintiff is entitled to an amount in excess of Ten Thousand Dollars (\$10,000.00)

Intentional Infliction of Emotional Distress

77. The Plaintiff realleges and incorporates herein all previous allegations of this Complaint.

78. The facts as set forth herein constitute the intentional infliction of emotional distress. They evidence extreme and outrageous conduct which was intended to cause severe emotional distress to the Plaintiff and which caused the Plaintiff severe emotional distress. Accordingly, the Plaintiff is entitled to compensatory damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

79. The conduct of the Defendants as described herein was willful, aggravated, malicious and of a wanton nature. Accordingly, the Plaintiff is entitled to recover punitive damages of these Defendants in excess of Ten Thousand Dollars (\$10,000.00).

Fraud, Constructive Fraud and Fraudulent Concealment

80. The Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

81. The facts set forth herein constitute fraud, constructive fraud and fraudulent concealment on the part of each Defendant. They all knew of the substantiated allegations of child abuse against the Defendant Michael Carter in the early 1990's, knew that it was not safe to allow him to be around children or to be alone with children and knew that he was sexually

abusing the Plaintiff for many years. Each Defendant took steps to conceal this information from the Plaintiff and her parents.

82. All of the Defendants knew that by concealing this information from the Plaintiff and her parents, the Plaintiff would likely be sexually abused or in the alternative, would continue to be sexually abused.

83. All of the phone calls, personal visits and e-mails to the Plaintiff or her mother were part of the Defendants' efforts to keep the Plaintiff from knowing that they had been knowledgeable about the Defendant Michael Carter's sexual abuse of her and/or other children in the early 1990's. They were all trying to conceal from the Plaintiff or her parents, that the Defendant Michael Carter was a serial child molester.

84. If these Defendants had reported to the Department of Social Services that the Defendant Michael Carter was a child molester, as they were required to do under N.C.G.S. § 7B-301, when they first knew it, or after both DSS and criminal investigations were initiated in approximately 1992 by another alleged victim, it would have prevented most, if not all of the horrendous abuse inflicted upon the Plaintiff by the Defendant Michael Carter for almost a decade. The Plaintiff would have received much needed treatment when she was young, which would have greatly reduced her damages.

85. The Plaintiff had no reasonable way of knowing of the fraud, constructive fraud and fraudulent concealment by these Defendants until August 2010.

86. The constructive fraud and fraudulent concealment were willful, wanton, reckless, malicious and intentional.

87. As a direct and proximate result of the fraud, constructive fraud and fraudulent concealment by the Defendants, the Plaintiff has sustained substantial injuries, damages, harms

and losses for which she is entitled to awards of damages. Accordingly, Plaintiff is entitled to compensatory damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

88. The Plaintiff is entitled to an award of punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

Breach of Fiduciary Duty

89. The Plaintiff realleges and incorporates herein all previous allegations of this Complaint.

90. At all relevant times, the Plaintiff and her parents reposed a special trust and confidence in the Defendants.

91. The Defendants Patricia Carter and Burnette Carter, and their respective employees, agents, apparent agents and/or representatives, including but not limited to the Defendant Michael Carter, acted in the capacity of *in loco parentis* to the Plaintiff at all relevant times, except for those times when the natural parents of the Plaintiff were actually present.

92. The Defendants owed a special duty to the Plaintiff as the Defendants Michael Carter and Angela Carter acted as her surrogate parents and expressly represented that they considered her as if she was their own daughter and helped support the Plaintiff financially, when they paid for numerous activities on her behalf, and the Defendants Patricia Carter and Burnette Carter knew or should have know of such acts by the Defendants Michael and Angela Carter.

93. By sanctioning and encouraging the entrustment of the physical, mental and emotional safety of the Plaintiff to the Defendants, the Defendants actually and/or impliedly accepted, assumed and ratified their fiduciary duty to protect the Plaintiff because she was unable to protect herself.

94. The Defendants were entrusted with the well-being, care and safety of the Plaintiff and under the fiduciary relationship that resulted and existed, the Defendants assumed a duty to act in the best interest of the Plaintiff.

95. The Defendants had a fiduciary responsibility with the Plaintiff and Plaintiff's parents grounded upon the duty of good faith and fair dealing, and a duty to act with the highest degree of trust and confidence.

96. The fiduciary duty of the Defendants included the duty to warn and protect the Plaintiff from sexual abuse and exploitation by persons who were represented and promoted to the public as being morally right, prudent and suitable to be entrusted with the care of preschool and young children.

97. Further, the fiduciary duty of the Defendants included the duty to report suspected or known sexual abuse to DSS in accordance with N.C.G.S. § 7B-301 and/or to law enforcement.

98. The Plaintiff and Plaintiff's parents had the right to rely and did rely on representations of the Defendants that they and/or personnel employed by Rainbow would not tolerate criminal and immoral conduct that represented a known threat to children. Such reliance on the part of the Plaintiff and the Plaintiff's parents was at all times reasonable and actively encouraged, promoted and inculcated by the Defendants.

99. The Defendants made these representations and acted *in loco parentis* and/or as her surrogate parents in order to create the opportunity for the Defendant Michael Carter to be able to abuse and rape the Plaintiff for nearly ten (10) years.

100. The Defendants breached their fiduciary duties to the Plaintiff and Plaintiff's parents through inaction, manipulation, intimidation, evasion, intended deception and concealment, undue influence, duress and/or otherwise, as set forth herein, and, further, to be

identified through discovery and proven at trial, resulting in injury to the welfare and well-being of the Plaintiff.

101. As a direct and proximate result of the breach of fiduciary duty by the Defendants, the Plaintiff has sustained substantial injuries, damages, harms and losses for which she is entitled to awards of damages. Accordingly, the Plaintiff is entitled to compensatory damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

102. The breach of fiduciary duty by the Defendants as described herein was willful, wanton, reckless and intentional. Accordingly, Plaintiff is entitled to recover punitive damages of these Defendants in an amount in excess of Ten Thousand Dollars (\$10,000.00).

Conspiracy

103. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

104. As described herein, the Defendants conspired to allow the Defendant Michael Carter to sexually abuse and rape the Plaintiff, to cover up the fact that he was a known serial child abuser, to cover up the fact that he had raped the Plaintiff for nearly ten (10) years, and to contact or attempt to contact the Plaintiff after her actual sexual abuse had ended in order to make it more difficult, if not impossible, to ever report these matters to the police.

105. As a direct and proximate result of the conspiracy by the Defendants, the Plaintiff has sustained substantial injuries, damages, harm and losses for which she is entitled to awards of damages. Accordingly, the Plaintiff is entitled to compensatory damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

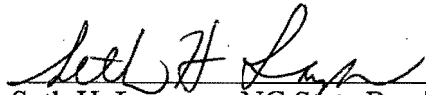
106. The conspiracy by the Defendants as described herein was willful, wanton, reckless, malicious and intentional. Accordingly, the Plaintiff is entitled to recover punitive damages of these Defendants in an amount in excess of Ten Thousand Dollars (\$10,000.00).

Equitable Estoppel

107. The Defendants are equitably estopped from relying on any claims pertaining to the Statute of Limitations due to their conduct described in this Complaint.

WHEREFORE, the Plaintiff prays that this Court:

- A. Grant her a trial by jury;
- B. Hold the Defendants jointly and severally liable;
- C. Award her compensatory damages in an amount in excess of \$10,000.00;
- D. Award her punitive damages in an amount in excess of \$10,000.00;
- E. Award such other and further relief as the Court deems fair and just.


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