

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY,
STATE OF MISSOURI

JANET DOE, *et vir*,)
)
 Plaintiffs,)
)
 v.)
)
 FOREST LAKE TENNIS CLUB, INC.,)
)
 Serve: Eugene Ellis)
 1012 Woods Mill Road, North)
 Chesterfield, MO 63017)
)
 MILLER TENNIS ACADEMY, LLC,)
)
 Serve: Michael L. Miller)
 225 Eugenia Street)
 St. Louis, MO 63141)
)
 MIKE MILLER,)
)
 Serve: 225 Eugenia Street)
 St. Louis, MO 63141)
)
 JAVIER POZO,)
)
 Serve: 1506 Clayton Woods Ct.)
 Ballwin, MO 63011)
)
 TOM FLURI,)
)
 Serve: 1820 Gray Dr.)
 St. Louis, MO 63131)
)
 JORGE RAMIREZ)
)
 Serve: 13475 Coliseum Dr.)
 Chesterfield, MO 63017)
)
 Defendants.)

Cause No. _____

Division No. _____

PERSONAL INJURY –
JURY TRIAL DEMANDED

PETITION FOR DAMAGES

COME NOW, Plaintiffs, husband and wife, by and through their counsel, Daniel T. DeFeo, Erika Dopuch, and Timothy Engelmeyer for their causes of action against Defendants Forest Lake

Tennis Club, Inc. (“Forest Lake”), Miller Tennis Academy, LLC (“MTA”), Mike Miller (“Miller”), individually, Javier Pozo (“Pozo”), Tom Fluri and Jorge Ramirez (collectively, “Defendants”) state and allege as follows:

INTRODUCTION

1. This summer, parents will drop off their children for tennis lessons, clinics, and camps at Forest Lake Tennis Club, Inc. in Chesterfield. Forest Lake holds itself out as a safe place for children as young as 4 years old to learn the game of tennis. Its offerings for lessons and camps for children are the same this year as they were in 2005, when Janet Doe began working as a receptionist at Forest Lake.

2. In the summer of 2005, Janet Doe was a seventeen-year-old girl with no prior experience with tennis who was eager to greet visitors, campers, and club members who were learning the game of tennis. She trusted Forest Lake and Miller Tennis Academy, LLC (which operates under the auspices of Forest Lake) as a safe place to work and to later take tennis lessons, as Forest Lake's website advertises a “relaxed and friendly social setting.” See www.forestlaketennisclub.com.

3. In September of 2005, Mike Miller and MTA moved from a previous location to Forest Lake and has operated at Forest Lake since that time. At the time, Miller and MTA employed several tennis instructors, including Javier Pozo.

4. At the time, Forest Lake employed several tennis instructors, including Jorge Ramirez. Despite repeatedly hearing concerns that Pozo was "a creep," Forest Lake, Miller and MTA held out Pozo as one of the "best teaching professionals in the St. Louis area.” As members of the United States Tennis Association (USTA) and the United States Professional Tennis Association (USPTA), Forest Lake, MTA and Miller’s management are trained to prevent

grooming and sexual abuse of minor athletes and staff. Yet, like so many other clubs and athletic programs, the rules and guidelines that are in place to protect minor athletes and staff are mere window dressing.

5. What followed Forest Lake's, MTA's and Miller's decision to entrust the "creep" Pozo with working unsupervised around an innocent seventeen-year-old girl was yet another avoidable story of sexual abuse. The two years of sexual abuse that ensued, like so many prior cases, began with grooming a young girl's mind and evolved into frequent and repeated sodomy and sexual assault that continued for years. "Grooming" in the context of childhood sexual abuse is the process whereby a person engages in a course of conduct with a goal of engaging in sexual misconduct and earns the minor's trust, engages the minor in sexually inappropriate behavior and maintains control over her. Here, among other things Pozo used his sport celebrity status with the tennis world to give Janet Doe tennis lessons and instructions as a means to groom Janet Doe into trust, secrecy and other known control methods used by pedophiles to be able to sexually abuse minors.

6. Forest Lake, MTA and Miller knew the risk to minor athletes and staff. They had the clinics and teachings of both the USTA and the USPTA, yet they ignored the real risk to every child that walks onto its tennis courts and into its facilities that occurs when their legal duties and the rules are not followed and enforced. In fact, Forest Lake, MTA and Miller were so aware of the risk for sexual abuse of their minor athletes and staff that they purchased insurance protection for molestation and abuse.

7. Although they attempted to protect their financial assets by purchasing insurance that covers claims for sexual abuse and molestation, they did nothing to protect a minor tennis student and member of their staff. Their legal duties, along with the rules and guidelines of the

USTA and USPTA, were ignored. When they learned of Javier Pozo's creepy conduct, they turned a blind eye and dismissed all the red flags of grooming and manipulation of a minor tennis student and member of their staff.

8. Janet Doe knows all too well the pain and lifelong harm that her experience at Forest Lake will cause her and her family. She suffers from repressed memories regarding the sexual abuse and molestation by Pozo. Because she was sexually assaulted and experienced trauma, there is scientific proof that she changed as a result. Janet Doe's brain changed. Her brain took the trauma, put it in a box, filed it away, and shut it so she could survive the pain. Repressed memories can cause body pain, elevated anxiety, and complete avoidance. Only in May of 2018 when she was undergoing therapy was Janet Doe's memory triggered, and she began the process of opening the box of repressed memories. Through continued psychotherapy this process continues to review repressed memories.

Although she no longer works or takes tennis lessons at Forest Lake, she is still affected every day by her experience there. She has had to undergo heartbreaking therapy to treat her post-traumatic stress disorder (PTSD) with anxiety and severe depression. She brings this cause of action not only for the full measure of justice the law provides but also with the aid of the civil justice system to foster and encourage change so that other minor athletes and staff can truly safely learn and work without the fear of sexual abuse. It is only by Janet Doe and others like her bringing attention to this issue that the parents who drop off their kids for instruction at clubs like Forest Lake will know their children will be safe from creeps like Pozo.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the causes of action asserted herein and over the parties to this action. Plaintiffs assert claims under Missouri common and statutory law. This Court

has jurisdiction because the acts described herein first occurred at Forest Lake Tennis Club, Inc. in Chesterfield, Missouri which is located in St. Louis County, within the State of Missouri. Other acts described herein occurred at the Pozos' residence in St. Louis County, within the State of Missouri. There is no federal jurisdiction or venue, as all individual defendants are residents of Missouri and Forest Lake Tennis Club, Inc. and Miller Tennis Academy, LLC are Missouri organizations with their principle places of business in Missouri and registered agents for service of process in Missouri.

10. Venue is proper in this court under R.S.Mo. § 508.010, because Janet Doe was first injured in Chesterfield, Missouri which is located in St. Louis County, Missouri.

PARTIES

11. Plaintiff, Janet Doe, was a minor of the age of seventeen at the time the acts against her that are relevant to this petition began and was a resident of St. Louis County, Missouri. Plaintiff Janet Doe is referred to in this public filing by pseudonym to maintain confidentiality of her identity.

12. Defendant Forest Lake Tennis Club, Inc. is a corporation organized under the laws of the State of Missouri during all times herein stated. Defendant Forest Lake Tennis Club, Inc. is located in Chesterfield, St. Louis County, Missouri. The initial tortious acts of Defendant Forest Lake Tennis Club, Inc. against Plaintiff Janet Doe occurred in Chesterfield, St. Louis County, Missouri. Defendant Forest Lake Tennis Club, Inc., employed Janet Doe and Jorge Ramirez and had a duty to supervise them.

13. Defendant Forest Lake's employees, agents and representatives caused injury to Janet Doe while it was functioning as her protector, supervisor, and employer. Defendant Forest

Lake Tennis Club, Inc. has obtained the benefits of the laws of the State of Missouri and the benefits of its St. Louis County, Missouri location.

14. Defendant Tom Fluri is and was at all times relevant to this petition the manager of the Forest Lake facilities. Defendant Tom Fluri was in charge of all the daily operations of Forest Lake. Defendant Tom Fluri caused injury to Janet Doe. Defendant Tom Fluri had a duty to supervise Janet Doe, Javier Pozo and Jorge Ramirez and protect Janet Doe from harm. Defendant Tom Fluri had a personal duty of care to Janet Doe.

15. Defendant Miller Tennis Academy, LLC is a corporation doing business under the laws of the State of Missouri during all relevant events of this petition. Defendant Miller Tennis Academy, LLC has obtained the benefits of the laws of the State of Missouri and the benefits of its St. Louis County, Missouri location. Defendant Miller Tennis Academy, LLC employed Javier Pozo and had a duty to supervise him and protect Janet Doe from harm and breached that duty of care causing injury to Janet Doe while it was functioning as Pozo's supervisor and employer.

16. Defendant Mike Miller is the sole owner of Miller Tennis Academy, LLC and is a resident of Creve Coeur, St. Louis County, Missouri. Mike Miller at all times herein was an Elite Member of the United States Professional Tennis Association (Hereafter "USPTA") and the United States Tennis Association (Hereafter "USTA") and agreed to follow the guidelines, ethics and rules of these organizations relating to protection of students from sexual abuse and molestation. Defendant Mike Miller had a duty to supervise Pozo and protect Janet Doe from harm and caused injury to Plaintiff while he was functioning as Pozo's supervisor and employer. Defendant Mike Miller had a personal duty of care to Janet Doe.

17. Defendant Javier Pozo is a resident of Ballwin, St. Louis County, Missouri. During all times herein stated Defendant Javier Pozo was an employee, agent and tennis professional with

Defendants Forest Lake Tennis Club, Inc. and Miller Tennis Academy, LLC. Pozo committed tortious acts in the State of Missouri in that he engaged in an ongoing improper and criminal sexual relationship with Plaintiff Janet Doe while she was a minor during Pozo's tenure as a tennis professional with Defendants Forest Lake and MTA.

18. Defendant Jorge Ramirez is a resident of Chesterfield, St. Louis County, Missouri. During all times herein stated Defendant Jorge Ramirez was an employee, agent and tennis professional with Defendant Forest Lake. Ramirez had a personal duty of care to Janet Doe.

19. Plaintiff Janet Doe suffered injuries caused by Defendants at 1012 North Woods Mill Road, Chesterfield, St. Louis County, Missouri 63017 and the Pozos' residence in St. Louis County, Missouri. At all times relevant to this petition Defendants acted in a capacity as the minor Plaintiff's and Pozo's employers and supervisors, providing care and supervision to minors during times in which Janet Doe was an employee of Defendant Forest Lake.

BACKGROUND FACTS APPLICABLE TO ALL COUNTS

20. Starting in the summer of 2005, Plaintiff Janet Doe, a seventeen-year-old minor was entrusted to the care and supervision of Defendants Forest Lake, Tom Fluri and Ramirez during all times when she was employed by Defendant Forest Lake. Defendants Forest Lake, Tom Fluri and Ramirez accepted custody and control of Janet Doe and owed a duty of care to supervise and protect the minor. Defendants Tom Fluri and Jorge Ramirez owed a personal duty of care to Janet Doe. Forest Lake as a member of the USTA, held itself and its staff out as the professionals that Janet Doe wanted. Shortly after coming to Forest Lake Tennis Club Pozo began giving her tennis lessons and instructions, which in hindsight to Janet Doe, was a means to groom her for sexual abuse.

21. From September of 2005 until Janet Doe quit working at Forest Lake in the spring of 2007, Defendant Pozo was a tennis professional with Miller Tennis Academy and Forest Lake. Defendant Pozo was selected and approved by Miller Tennis Academy, Mike Miller, Forest Lake and Tom Fluri as a tennis professional. Defendant Pozo was expected and intended by Miller Tennis Academy, Mike Miller, Forest Lake and Tom Fluri to educate and train young minors in the sport of tennis, exclusively in the Forest Lake facilities, where Plaintiff worked. Defendants Mike Miller and Pozo owed a personal duty of care to Janet Doe.

22. In September of 2005, MTA and Forest Lake tennis professional Defendant Pozo began working in the same facilities as Plaintiff. Forest Lake scheduled Janet Doe's shifts, and Forest Lake would post Janet Doe's scheduled shifts by the front desk, where everyone, including Pozo, could see it. In turn MTA scheduled Pozo's lessons. Forest Lake would then compensate Javier Pozo through its payroll checks. As part of Janet Doe's job duties, she would provide receptionist services to MTA, Mike Miller and Pozo.

23. Defendants were in a close relationship with Plaintiff Janet Doe, as Defendants acted as a safe tennis facility, providing instruction, training and guidance to Janet Doe and maintained a position of influence, control, supervision and trust with minors, including Janet Doe. Defendants, as USTA and USPTA and youth sports caregivers, were aware of foreseeable risks to Janet Doe of sexual abuse by persons in contact with the minors. The practices, guidelines and policies of youth sport supervision including, but not limited to the USTA and USPTA, place Defendants on notice of risk of harm to Janet Doe and other minor athletes and staff members.

24. Beginning in the fall of 2005, when Plaintiff was seventeen years old, while working for Forest Lake, MTA and Miller, with the actual or apparent authority of Forest Lake, Tom Fluri, MTA and Mike Miller and for the purpose of furthering his authorized and assigned

duties as a tennis professional, Defendant Pozo groomed Plaintiff and initiated an improper sexual relationship with her. Pozo used his tennis skills to give tennis lessons and instructions to Janet Doe. Over the course of a two-year period from 2005-2007, Defendant Javier Pozo, an employee of MTA and Forest Lake, engaged in a series of improper acts with minor Plaintiff Janet Doe. This improper sexual relationship was facilitated by Defendant Pozo's role as a tennis professional with Miller, MTA and Forest Lake. That improper sexual relationship was "childhood sexual abuse" as defined by Revised Missouri Statute § 537.046.1(1) in that it included sexual abuse and sodomy of a minor. This series of acts and abuse were many times in plain view in the facilities at Forest Lake in conjunction with lessons and work duties authorized and/or required by Forest Lake, MTA and Miller.

25. Plaintiff's Janet Doe's claims are timely under § 516.120 because Plaintiff Janet Doe repressed her memories of sexual abuse and sodomy in 2005 at the age of seventeen while she was working at Forest Lake. Plaintiff Janet Doe repressed these memories until May of 2018, when she was 30. Plaintiff Janet Doe repressed her memories of the sexual misconduct before she became aware of her emotional and psychological damages, namely her diagnosis of PTSD and other damages set forth herein. Plaintiff Janet Doe did not recall the sexual abuse and sodomy by Defendant Pozo until May of 2018.

26. Beginning in the fall of 2005 through the spring of 2007, defendant Pozo, while acting in the course and scope of his agency and while using the authority and position as a tennis professional with Miller, MTA and Forest Lake, groomed Janet Doe and eventually induced and directed Plaintiff to engage in sexual acts with him. Defendant Pozo used the grooming process to accomplish his acts of sexual abuse of Plaintiff. This grooming was:

- a. committed in direct connection with Defendant Pozo's position, employment, agency and/or relationship with Forest Lake, MTA and Miller;
- b. committed within the course and scope of Defendant Pozo's work in his tennis professional role with Forest Lake, MTA and Miller;
- c. done directly in the performance of Defendant Pozo's duties and responsibilities in his role as a tennis professional; and
- d. was done at the direction of and pursuant to the power vested in Defendant Pozo by Forest Lake, Tom Fluri, MTA and Mike Miller.

27. Specifically, Defendant Javier Pozo and his employers engaged in acts that violated the United States Tennis Association's Safe Play Conduct Policies and Guidelines by first beginning with a grooming process of Janet Doe where he engaged in a pattern of improper conduct with a goal of engaging in sexual misconduct. This conduct was the sort that members of USTA, armed with the superior knowledge of grooming, including the management of Forest Lake, Tom Fluri, MTA and Mike Miller, would and should recognize and prevent. Janet Doe, an innocent seventeen-year-old, had no awareness of the danger she was being woven into. Like in many similar cases with minor athletes and employees everything seemed normal. Grooming was initiated through verbal comments and compliments designed to seek out a vulnerable minor. The acts were done to earn the minor's trust. The grooming continued through direct, in person contact and touching with Janet Doe. Mr. Pozo would touch Janet Doe on the arm, leg, back or shoulder. Thereafter, Mr. Pozo engaged in sexually inappropriate conduct, first by inappropriate commentary, touching and groping the minor's body through her clothes in open view in the Forest Lake facilities. Later, this expanded into groping minor Janet Doe's body under her clothes and undergarments, sodomy and exposing his genitals to Janet Doe. At times, Pozo would pin her

against the wall of Forest Lake with his body so that Janet Doe could not get away. Eventually, this conduct evolved to masturbation in Janet Doe's presence, rubbing his genitals against Janet Doe and encouraging and forcing Janet Doe to touch his genitals. Janet Doe would resist touching Pozo's genitals, and he would make statements such as, "Don't worry, I won't put it in." During the sexual assaults, groping, sodomy, sexual abuse and sexual misconduct, Pozo would tell Janet Doe "you want this" and "you like this."

28. After manipulating the minor's mind, Pozo expanded his exposure to Janet Doe for his improper sexual conduct by scheduling late evening tennis practices. Forest Lake and MTA provided Mr. Pozo with keys to gain before and after hour access to the club grounds and facilities. Forest Lake would post the front desk receptionists' schedule in plain view, and Pozo would use this posted schedule to be at Forest Lake on the same evenings as Janet Doe. In order to isolate the minor and enable his improper conduct, Mr. Pozo would corner Janet Doe in Forest Lake's facilities in the evenings, when other staff and instructors were rarely present. Both USTA and USPTA members know or should know that tennis coaches should never be alone with minors. The Rule of 3 is well known to youth athletic organizations to prevent one on one access to minors. Yet, Forest Lake and Miller with keys in hand allowed the practice of Mr. Pozo coming and going from the tennis club with one on one access to Janet Doe. During his one on one time with Janet Doe Mr. Pozo deepened the grooming process. For example, to maintain his control and to gain the loyalty of Janet Doe, he emotionally manipulated her, saying things to make her feel "special" to have this attention from him. Pozo even gave Janet Doe tennis lessons at Forest Lake to make her feel "special," using this time to gain even more exposure to Janet Doe to sexually abuse and sodomize her. Before working at Forest Lake, Janet Doe knew nothing about the sport of tennis. Pozo used his tennis lessons with her as a platform to wow her with his knowledge and skill. Over

the course of Janet Doe's time at Forest Lake, Pozo gave lessons on everything from the rules of tennis to demonstrations while standing close to Janet Doe on how to swing a racket for different volleys, forehands and backhands. Pozo continuously used these lessons with Janet Doe to deepen the grooming process.

29. After achieving this level of grooming, control and loyalty, Defendant Javier Pozo moved his behavior to direct sexual assault of Janet Doe at the age of seventeen. With the one-on-one access that Mr. Pozo's employers allowed, his sexual assaults evolved into frequent sodomy, sexual abuse and sexual misconduct, of Janet Doe that coincided with her presence at Forest Lake. These assaults continued frequently until Janet Doe left her employment at Forest Lake at age nineteen. The sexual assaults occurred on the premises in areas such as the laundry room, the nursery, behind steel columns that ran through the tennis court hallways, at the popcorn machine and at the front desk and off the premises, where over and over Forest Lake, MTA and Miller allowed their employee to have one on one access to a young girl's mind and body.

30. In the fall of 2006, Janet Doe began college but continued to work at Forest Lake on weekends when requested and on breaks. While Janet Doe was away at college, Pozo contacted her and travelled to meet her in her college town in furtherance of his grooming process. Due to Mr. Pozo's grooming and its lasting effects, Janet Doe has suffered many emotional difficulties and traumas including crippling fear, shame, and anxiety.

31. From 2009 to 2013, Defendant Javier Pozo continued his pattern of frequent sexual assaults on at least one other minor victim, as alleged in the case styled *Jane Doe v. Forest Lake Tennis Club, Inc., et al.*, Case No. 18SL-CC02848.

32. Defendants Forest Lake, MTA, Mike Miller, Tom Fluri and Jorge Ramirez knew, or should have known about Defendant Javier Pozo's deviate and dangerous exploitive

propensities and/or that he was unfit to provide proper care, access to, and supervision for Plaintiff Janet Doe. These propensities were publicly displayed to management of Forest Lake, Tom Fluri, Mike Miller, MTA and Ramirez, but the warning signs that are well documented, including, but not limited to the USTA's Safe Play Conduct and Guidelines were ignored by these Defendants. Defendant Mike Miller was notified and questioned about Javier Pozo being a "creep" with improper conduct towards minors. However, he failed to act and dismissed the improper conduct as being part of Mr. Pozo's "culture."

33. Defendants Forest Lake and MTA are members of the USTA, Mike Miller is a USTA and USPTA member and both had the responsibility of reporting and supervising the conduct of their employee, agent and representative, Javier Pozo as laid out in the USTA Safe Play Conduct, Policies and Guidelines.

34. Jorge Ramirez, while by the front desk at Forest Lake, saw Pozo inappropriately touching Janet Doe on at least one occasion. Thereafter, Ramirez repeatedly asked Janet Doe if she was okay. Ramirez is or has been a USTA and USPTA member and had the responsibility of reporting the conduct of his coworker, Javier Pozo as laid out in the USTA Safe Play Conduct, Policies and Guidelines. Ramirez never reported or raised his concerns with Forest Lake, Tom Fluri, MTA or Mike Miller.

35. At all times relevant, the sexual misconduct and injuries sustained by Plaintiff Janet Doe first occurred at the premises of Forest Lake where MTA operated.

36. Defendants Forest Lake, Tom Fluri, MTA and Mike Miller empowered Defendant Pozo to perform all duties of a tennis professional including educational and tutorial services and other duties. At all relevant times, Defendant Pozo was an agent and employee of Defendants

Forest Lake, Tom Fluri, MTA and Mike Miller and acted with the actual or apparent authority of Defendants Forest Lake, Tom Fluri, MTA and Mike Miller.

37. While working for MTA and Forest Lake, with the actual or apparent authority of Forest Lake, Tom Fluri, MTA and Mike Miller and for the purpose of furthering his authorized and assigned duties as a tennis professional, Defendant Pozo sought and gained the admiration and obedience of Plaintiff. Plaintiff was conditioned, brainwashed and “groomed” to trust Defendant Pozo, to comply with his direction and to respect Defendant Pozo as a person of authority.

38. In 2016, Javier Pozo was convicted, after pleading guilty, in St. Louis County, Missouri of the felony offenses of 2nd degree statutory sodomy and 2nd degree statutory rape with a minor.

39. After being caught Mr. Pozo’s employers fired him, took away his keys and banned him from being on the premises of Forest Lake and from giving tennis instruction from MTA. Mr. Pozo’s professional profile was removed from the defendant’s websites and other advertising mediums.

40. Since Mr. Pozo was caught, Forest Lake and MTA and/or their representatives have failed to reach out or contact Janet Doe or her parents to apologize for the years of sexual abuse Janet Doe endured between the ages of 17 to 19 years. Nor did they offer any comfort and aid to Janet Doe and her family.

41. Due to Janet Doe’s history with Javier Pozo, Janet Doe’s relationship with her husband has suffered.

42. As a direct result of Defendants’ wrongful conduct, Plaintiff Janet Doe has suffered and continues to suffer great pain of mind and body, shock, emotional distress, post-traumatic stress disorder (PTSD) with anxiety and severe depression, physical manifestations of emotional

distress, embarrassment, loss of self-esteem, disgrace, loss of reputation, humiliation, and loss of enjoyment of life; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. Her emotional injuries are real and have been professionally diagnosed.

43. Defendants Forest Lake, Tom Fluri, MTA, Mike Miller and Ramirez should be equitably estopped from claiming that any statute of limitation have expired in this case because they have concealed their institutional child abuse problem for the purpose and with the result of:

- a. preventing abuse survivors from understanding their own abuse at the hands of Pozo;
- b. keeping abuse survivors from understanding that the abuse was wrong and not their fault; and
- c. delaying or preventing abuse survivors like Plaintiff from bringing suit against Forest Lake and MTA.

44. Further, Forest Lake, Tom Fluri, MTA, Mike Miller and Ramirez should be equitably estopped from claiming that any applicable statutes of limitation have expired in this case because they assumed a duty to protect Plaintiff. *See* Restatement (Second) of Torts §§ 323 and 324(a). Specifically, Forest Lake undertook, for consideration, to render reasonably safe tennis facilities for tennis instructions, provided receptionist services, and purchased insurance protection covering molestation and abuse for MTA and Mike Miller, so Forest Lake assumed the duty to protect Plaintiff, knowing there was a risk for sexual abuse of their minor athletes and staff. Tom Fluri, Mike Miller and Ramirez assumed a personal duty of care to protect Plaintiff. Forest Lake, Tom Fluri, MTA, Mike Miller and Ramirez represent to the world that the protection of children is “very important.” Defendants Forest Lake, Tom Fluri, MTA, Mike Miller and Ramirez breached

their duty to protect Plaintiff and instead, defendants Forest Lake, Tom Fluri, MTA and Mike Miller vested Defendant Pozo with the authority and the opportunity to sexually abuse Plaintiff and others. These egregious facts justify the application of equitable tolling of any and all statutes of limitation.

COUNT I
SEXUAL ABUSE AND/OR BATTERY AGAINST FOREST LAKE, TOM FLURI,
MILLER TENNIS ACADEMY, MIKE MILLER AND JAVIER POZO

45. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

46. While acting in the course and scope of his agency and employment as a tennis professional with Forest Lake and MTA, during the times between September of 2005 to the spring of 2007, Defendant Javier Pozo engaged in illegal, unpermitted, harmful and improper sexual misconduct and contact upon the person of minor, specifically Janet Doe. Specifically, his misconduct included sexual assault, sodomy, sexual misconduct and/or sexual abuse. This abuse was facilitated and furthered by Pozo's seniority in age and rank among Forest Lake and MTA as compared to minor staff member Janet Doe.

47. Pozo's illegal physical contact with Plaintiff was and would have been offensive to a reasonable person.

48. The actions and omissions of Pozo caused or contributed to cause injury and damage to Plaintiff as more fully described *supra*.

49. Defendants Forest Lake, Tom Fluri, MTA and Mike Miller are vicariously liable or are liable under the doctrine of *respondeat superior* for the actions of Pozo set forth herein.

50. Defendants' actions were willful, wanton, and reckless for which punitive damages are appropriate.

51. As a result of the above-described acts, Plaintiff Janet Doe suffered and continues to suffer great pain of mind and body, shock, emotional distress, post-traumatic stress disorder (PTSD) with anxiety and severe depression, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, loss of reputation, humiliation, and loss of enjoyment of life; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff Janet Doe and her husband pray for judgment against Defendants Forest Lake, Tom Fluri, MTA, Mike Miller and Pozo for compensatory and punitive damages in an amount that is fair and reasonable in excess of twenty-five thousand dollars (\$25,000), for their costs herein and for such other further relief the Court deems just and equitable.

COUNT II
CHILDHOOD SEXUAL ABUSE AGAINST DEFENDANTS FOREST LAKE, TOM FLURI, MILLER TENNIS ACADEMY, MIKE MILLER, POZO AND RAMIREZ

52. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

53. Pursuant to Revised Missouri Statute § 537.046.2, individually and while acting in the course and scope of his employment and agency and while using the authority and position as a tennis professional of Forest Lake and MTA, Pozo engaged in “childhood sexual abuse” of Janet Doe. Specifically, his misconduct included sexual assault, sodomy, sexual misconduct, deviate sexual intercourse, and/or sexual abuse. Plaintiff Janet Doe did not consent to this abuse.

54. The actions and omissions of Pozo and the other defendants caused or contributed to cause injury and damage to plaintiff Janet Doe as more fully described *supra*.

55. Pozo is liable to Janet Doe under § 537.046.2 and related Missouri law.

56. Defendants Forest Lake, Tom Fluri, MTA and Mike Miller are vicariously liable or are liable under the doctrine of *respondeat superior* pursuant to § 537.046.2 and related Missouri law for the actions of Pozo set forth herein.

57. Defendants Forest Lake, Tom Fluri, MTA, Mike Miller and Ramirez are directly liable to Janet Doe under § 537.046.2 and related Missouri law in that they:

- d. Aided and abetted Pozo as contemplated by the Restatement (Second) of Torts § 876(b);
- e. Negligently failed to properly vet and perform a background check on Pozo before allowing him to be a tennis professional of Forest Lake and MTA; and/or
- f. Negligently failed to properly supervise and monitor Pozo's interactions with Janet Doe. Defendants Forest Lake, Tom Fluri, MTA and Mike Miller assumed a duty to Janet Doe to use all reasonable care to provide a safe workplace. Defendants Mike Miller, Javier Pozo, Tom Fluri and Jorge Ramirez owed a personal duty of care to Janet Doe. Defendants Forest Lake, Tom Fluri, Mike Miller and MTA negligently breached that duty by allowing Pozo to victimize Janet Doe and further, by putting him in a position to do so. Tom Fluri, Mike Miller and Ramirez negligently breached that personal duty of care by allowing Pozo to victimize Janet Doe and further, by putting him in a position to do so. This negligence caused or contributed to cause injury and damage to Janet Doe, resulting in direct liability under § 537.046.2.

58. The actions and omissions of Pozo and the defendants Forest Lake, Tom Fluri, MTA, Mike Miller and Ramirez justify significant punitive damage awards against each separate defendant.

WHEREFORE, Plaintiff Janet Doe and her husband pray for judgment against defendants Forest Lake, Tom Fluri, MTA, Mike Miller, Jorge Ramirez and Javier Pozo for compensatory and punitive damages in an amount that is fair and reasonable in excess of twenty-five thousand dollars (\$25,000), for their costs herein and for such other further relief the Court deems just and equitable.

COUNT III
NEGLIGENT FAILURE TO SUPERVISE AND PROTECT MINOR EMPLOYEES
AGAINST DEFENDANTS FOREST LAKE, TOM FLURI, MILLER TENNIS
ACADEMY, MIKE MILLER, AND JORGE RAMIREZ

59. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

60. At all times material, Defendants Forest Lake, MTA and Mike Miller held themselves out as institutions of training student athletes to be competitive tennis players. Defendants, as members of USTA and as supervisors of minors, accepted the care, custody and control of minor, Janet Doe, and owed a duty to protect Janet Doe from improper conduct and sexual abuse. Mike Miller, Tom Fluri and Jorge Ramirez owed Janet Doe a personal duty of care.

61. By his own admission, Tom Fluri, as manager of Forest Lake, had a duty to supervise the staff.

62. In the spring of 2006 and at least one other time, Ramirez caught Pozo touching Janet Doe behind the front desk, and Pozo walked away. Ramirez later asked Janet Doe when she was alone if she was okay. Ramirez recognized Pozo's improper touching as a red flag, but never reported it to anyone.

63. Defendants Forest Lake, Tom Fluri, MTA, Mike Miller, and Jorge Ramirez knew, or should have known about Javier Pozo's improper conduct but failed to remove or report him as a tennis pro and when having the opportunity, disregarded and inappropriately did not supervise Janet Doe from the dangerous proclivities of Javier Pozo.

64. Defendants Forest Lake, Tom Fluri, MTA, Mike Miller and Jorge Ramirez failed to exercise ordinary care in supervision of Janet Doe to protect her from foreseeable risk of sexual abuse.

65. Defendants' inaction proximately caused injury to Plaintiff Janet Doe.

66. Defendants Forest Lake, Tom Fluri, MTA, Mike Miller and Jorge Ramirez knew, or should have known that the improper conduct, inappropriate grooming, touching and improper contact of individuals such as Janet Doe by tennis pros they recommended for employment would cause or was substantially certain to cause harm to Janet Doe. Despite the risks posed, Defendants Forest Lake, Tom Fluri, MTA and Mike Miller continued to place Javier Pozo in positions in which he would have unsupervised contact with minor members of the staff for the Forest Lake facilities, including Janet Doe. Specifically, Defendants recommended Javier Pozo to be hired as a tennis pro to provide services on behalf of Forest Lake and MTA.

67. Defendant Jorge Ramirez failed to report any warning signs or red flags of improper conduct to anyone after witnessing and having suspicions of improper conduct by Javier Pozo directed towards Janet Doe.

68. Defendant Jorge Ramirez's daughters attended MTA. By Ramirez's own admission, defendants Mike Miller and Javier Pozo helped Ramirez's daughters a lot with tennis, and Pozo took extra time to give one of Ramirez's daughters extra lessons and practice. Ramirez attributes a lot of his daughter's improvement to Mike Miller and Pozo.

69. By Ramirez's own admission, it would be absolutely inappropriate to touch a receptionist of Forest Lake.

70. By Ramirez's own admission, a receptionist at Forest Lake is absolutely entitled to be protected and not sexually abused.

71. By Ramirez's own admission, it would be inappropriate for a coach to enter a room within Forest Lake's facilities with a receptionist already inside and close the door.

72. By Fluri's own admission, if he saw Pozo or any other coach by himself, going into a room at Forest Lake with a young kid and closing the door, Fluri would have a responsibility to confront them or call the police.

73. By engaging in these actions, Defendants Forest Lake, Tom Fluri, MTA, Mike Miller and Jorge Ramirez disregarded the risk posed by Javier Pozo to individuals who came to him for tennis instruction and to staff for the Forest Lake facilities, including minor Janet Doe.

74. Defendants Forest Lake and MTA breached their duty to Plaintiff. Tom Fluri, Mike Miller and Jorge Ramirez breached their personal duty of care to Plaintiff. Collectively, these defendants were negligent, by:

- a. Failing to have in effect and/or failing to enforce or follow effective policies and procedures and training prohibiting sexual contact including those recommended by the USTA Safe Play Policies and Guidelines and USPTA Guidelines in order to prevent harm to Janet Doe;
- b. Failing to have in effect and/or failing to enforce or follow effective policies and procedures and training instruction of staff on the signs of sexual abuse;
- c. Failing to have in effect and/or failing to enforce or follow effective policies and procedures and training instruction of staff about the steps to be followed if staff suspects a tennis pro is having inappropriate contact with a tennis club and tennis academy member or another staff member, including the minor Janet Doe;

- d. Failing to have in effect and/or failing to enforce or follow effective policies and procedures and training instruction of staff about the steps to be followed if a tennis pro is behaving in a sexually inappropriate manner;
- e. Failing to have in effect and/or failing to enforce or follow effective policies and procedures to inform players or staff members who to contact about potential allegations of inappropriate conduct;
- f. Failing to use reasonable care in supervising Javier Pozo;
- g. Failing to use reasonable care in conducting background checks on Javier Pozo as required by USTA and USPTA guidelines; and
- h. Failing to use reasonable care in reporting suspicions of sexually inappropriate behavior.

75. Defendants' actions or inactions were willful, wanton and reckless for which punitive damages are appropriate.

76. As a result of the above-described acts, Plaintiff Janet Doe has suffered and continues to suffer great pain of mind and body, shock, emotional distress, post-traumatic stress disorder (PTSD) with anxiety and severe depression, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, loss of reputation, humiliation, and loss of enjoyment of life; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff Janet Doe and her husband pray for judgment against Defendants for compensatory and punitive damages in an amount that is fair and reasonable and in excess of twenty-five thousand dollars (\$25,000), for their costs herein and such further relief the Court deems just and equitable.

**COUNT IV
ASSUMPTION OF DUTY
AGAINST FOREST LAKE**

77. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

78. Forest Lake assumed an obligation or intended to render services for the benefit of MTA when it provided facilities and receptionist services and purchased insurance protection for MTA.

79. Forest Lake undertook, for consideration, to render reasonably safe facilities and provide receptionist services, and gratuitously purchased insurance protection for MTA and Mike Miller's benefit.

80. Forest Lake's undertaking in purchasing insurance protection was unambiguously to benefit MTA and Mike Miller and would not have been performed primarily for Forest Lake.

81. The purpose of having reasonably safe facilities is to protect third persons like Plaintiff Janet Doe who may suffer serious injuries as a result of sexual abuse on Forest Lake's premises.

82. Forest Lake did not have security cameras, security guards, or any kind of supervision by other Forest Lake personnel at its facilities, thus creating a foreseeable risk that a minor like Janet Doe would be sexually abused on the premises at Forest Lake.

83. Security monitoring and supervision at Forest Lake's facilities were necessary for the protection of Plaintiff Janet Doe.

84. Forest Lake is subject to liability to Plaintiff Janet Doe for the harm resulting from Forest Lake's failure to exercise reasonable care to protect its undertaking of rendering reasonably safe facilities for tennis instructions to MTA, providing receptionist services to MTA and purchasing insurance protection for MTA because Forest Lake's failure to exercise reasonable care

in providing reasonably safe facilities to MTA and/or in supervising MTA's employee Pozo increased the risk of harm to Plaintiff Janet Doe.

85. Forest Lake's failure to exercise reasonable care increased the risk of harm to Janet Doe.

86. Forest Lake undertook to perform a duty owed by MTA to Janet Doe.

87. Plaintiff Janet Doe relied upon Forest Lake's undertaking to provide reasonably safe facilities.

88. Pozo's colleagues notified Defendants Tom Fluri and Forest Lake of Pozo's "creepy" conduct towards minors, and Forest Lake and Tom Fluri did nothing to heighten security or supervision at the Forest Lake facilities.

89. As a result of the above-described acts, Plaintiff Janet Doe has suffered and continues to suffer great pain of mind and body, shock, emotional distress, post-traumatic stress disorder (PTSD) with anxiety and severe depression, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, loss of reputation, humiliation, and loss of enjoyment of life; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff Janet Doe and her husband pray for judgment against Defendant Forest Lake for compensatory and punitive damages in an amount that is fair and reasonable and in excess of twenty-five thousand dollars (\$25,000), for their costs herein and such further relief the Court deems just and equitable.

COUNT V
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
AGAINST ALL DEFENDANTS

90. Plaintiffs incorporate all paragraphs of this Petition as though fully set forth herein.

91. The facts of the above described occurrence and the reasonable inferences therefrom demonstrate that such occurrence was directly caused by Defendants' failure to use a degree of care that an ordinarily careful person would use under the same or similar circumstances and Defendants were thereby negligent.

92. Such negligence involved an unreasonable risk of causing emotional distress to Plaintiff Janet Doe of which Defendants knew, or by using ordinary care should have known.

93. As a direct and proximate result of Defendants' negligence, Plaintiff Janet Doe has suffered and continues to suffer severe emotional distress as a result of the offensive grooming, control, and sexual contact that is professionally diagnosable and so significant as to require professional psychological attention.

94. Further, as a direct result of the aforesaid improper conduct, Plaintiff Janet Doe has and will in the future experience substantial pain, suffering, embarrassment, loss of enjoyment of life, past and future medical, psychological and counseling expenses, extreme emotional distress and mental anguish.

95. The aforesaid improper conduct of Defendants was outrageous, and in reckless indifference to the rights of Plaintiff Janet Doe, for which Plaintiff claims punitive damages in an amount sufficient to punish Defendants and deter them and others similarly situated from like conduct in the future.

WHEREFORE, Plaintiff Janet Doe and her husband pray for judgment against Defendants for compensatory and punitive damages in an amount that is fair and reasonable in excess of twenty-five thousand dollars (\$25,000), their costs herein and such further relief the Court deems just and equitable.

**COUNT VI
NEGLIGENCE PER SE**

96. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

97. Pozo's actions as alleged in this petition constitute violations of Revised Missouri Statute § 566.061, Sodomy in the second degree, which states in part: "1. A person commits the offense of sodomy in the second degree if he or she has deviate sexual intercourse with another person knowing that he or she does so without that person's consent."

98. Pozo's actions and omissions as alleged in this petition constitute violations of Revised Missouri Statute §566.093, Sexual misconduct, first degree, which states, in part: "1. A person commits the offense of sexual misconduct in the first degree if such person: (1) Exposes his or her genitals under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm."

99. Pozo's actions and omissions as alleged in this petition constitute violations of Revised Missouri Statute § 566.101, Sexual Abuse, second degree, which states, in part: "1. A person commits the offense of sexual abuse in the second degree if he or she purposely subjects another person to sexual contact without that person's consent."

100. The statutes of the State of Missouri as described in Paragraphs 92, 93 and 94 were intended to protect Plaintiff Janet Doe and all those similarly situated.

101. Plaintiff Janet Doe, seventeen years old at the time the grooming and abuse began, is within the class of persons the statutes, as described in Paragraphs 92, 93 and 94, are intended to protect.

102. As a direct and proximate result of Pozo's conduct, Plaintiff Janet Doe has and will in the future experience substantial pain, suffering, embarrassment, loss of enjoyment of life, past

and future medical, psychological and counseling expenses, extreme emotional distress and mental anguish.

103. The aforesaid conduct of Pozo was outrageous and in reckless indifference to the rights of Plaintiff Janet Doe, for which Plaintiff claims punitive damages in an amount sufficient to punish Pozo and deter him and others similarly situated from like conduct in the future.

WHEREFORE, Plaintiff Janet Doe and her husband pray for judgment against Defendant Pozo for compensatory and punitive damages in an amount that is fair and reasonable in excess of twenty-five thousand dollars (\$25,000), their costs herein and such further relief the Court deems just and equitable.

**COUNT VII
NEGLIGENCE AGAINST ALL DEFENDANTS**

104. Plaintiffs incorporate all paragraphs of this petition as if fully set forth herein.

105. Defendants Forest Lake, Tom Fluri, MTA, Mike Miller and Jorge Ramirez had a duty to protect minors employed by Defendant Forest Lake from sexual abuse and harassment by other employees of Defendants. Defendants Tom Fluri, Mike Miller and Jorge Ramirez had a personal duty of care to Janet Doe.

106. Upon information and belief, Defendants Forest Lake and MTA, by and through their agents, servants and employees, knew or reasonably should have known of Mr. Pozo's improper conduct, dangerous and exploitative propensities and/or that he was unfit to act as a tennis pro, coach and supervisor and despite such knowledge, Defendants Forest Lake and MTA breached their duty to protect Plaintiff Janet Doe when they failed to protect her from the sexual abuse described herein. Defendants Mike Miller, Tom Fluri and Jorge Ramirez breached their personal duty of care to Plaintiff Janet Doe when they failed to protect her from the sexual abuse described herein.

107. Defendants' actions and/or inactions were willful, wanton and reckless for which punitive damages are appropriate.

108. As a direct result of the acts or omissions described herein, Plaintiff Janet Doe has suffered, and continues to suffer great pain of mind and body, shock, emotional distress, post-traumatic stress disorder (PTSD) with anxiety and severe depression, physical manifestations of emotional distress that are medically diagnosable and significant, embarrassment, loss of self-esteem, disgrace, loss of reputation, humiliation, and loss of enjoyment of life; was prevented and will continue to be prevented from performing her daily activities and obtaining the full enjoyment of life; has sustained loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff Janet Doe and her husband pray for judgment against Defendants for compensatory and punitive damages in an amount that is fair and reasonable in excess of twenty-five thousand dollars (\$25,000), their costs herein and such further relief the Court deems just and equitable.

**COUNT VIII
NEGLIGENT HIRING AND RETENTION
AGAINST DEFENDANTS MILLER TENNIS ACADEMY AND MIKE MILLER**

109. Plaintiffs incorporate all paragraphs of this petition as if fully set forth herein.

110. In 2004, Defendants MTA and Mike Miller did not perform any type of skills test, criminal background check, professional reference check, character reference check, employment history verification, drug and alcohol screening, physical or medical check, credit check, online presence/social media check, or interview on Defendant Pozo. Defendants MTA and Mike Miller hired Defendant Pozo purely on Defendant Pozo's reputation as a "pretty good" tennis instructor at another local tennis club.

111. By Forest Lake's own admission, Defendant Pozo did not fill out an application before getting hired.

112. Defendant MTA and Mike Miller never asked Pozo about his arrest history or prior criminal convictions.

113. By Defendant MTA and Mike Miller's own admission, Mike Miller never made any inquiry about Defendant Pozo's history of criminal conduct or behavior around minors because Defendant Mike Miller made the assumption that since Defendant Pozo had his own children trying to play tennis at the collegiate level, Defendant Pozo would be a "pretty good guy."

114. By Defendant MTA and Mike Miller's own admission, Mike Miller's only inquiry into Defendant Pozo prior to hiring him was to address Pozo's professional ability, not personal proclivities.

115. Mike Miller and MTA could have performed due diligence in hiring Pozo. For example:

- a. criminal background screenings have been implemented by the USTA and
- b. the USPTA has a guide on "How to select a tennis professional in 10 steps."

116. Despite repeatedly hearing concerns from Pozo and Ramirez's colleagues that Pozo was "a creep," MTA and Mike Miller never investigated the basis for those concerns, discussed those concerns with Defendant Fluri or anyone from Forest Lake, brought those concerns up with Defendant Pozo or contacted the police.

117. Defendant Mike Miller had seen Pozo hug young girls and kiss them at Forest Lake.

118. A reasonably prudent person would have investigated the basis for those concerns, addressed the hugging and kissing with Pozo, terminated Pozo or contacted the police.

119. Defendant Pozo possessed dangerous proclivities contrary to the safe operation of a tennis academy.

120. Defendants MTA and Mike Miller knew or should have known of Defendant Pozo's deviate and dangerous exploitive proclivities in the presence of minors.

121. Defendants MTA and Mike Miller did not reasonably try to prevent and correct Pozo's behavior.

122. Defendants MTA and Mike Miller failed to supervise Pozo in the performance of his job.

123. Pozo proactively took advantage of the circumstances.

124. Despite the criminal history and proclivities, Defendants MTA and Mike Miller hired and retained Defendant Pozo to give tennis lessons to minors within the State of Missouri.

125. Defendant Pozo's conduct in causing the subject sexual assaults, sodomy, and deviate sexual intercourse and sexual misconduct of Plaintiff was consistent with his "creepy" reputation and prior deviate and dangerous exploitive propensities.

126. As a direct and proximate result of the negligent hiring and retention of Defendant Pozo, Plaintiff Janet Doe was injured.

127. The aforesaid fault of MTA and Mike Miller directly caused, directly contributed to cause, and/or combined to directly cause conscious pain and suffering, anxiety and other injuries of Plaintiff as previously stated herein.

128. Defendant MTA and Mike Miller's actions were willful, wanton, reckless and displayed a complete indifference to and conscious disregard for the safety of Plaintiff.

WHEREFORE, Plaintiff Janet Doe and her husband pray for judgment against Defendants Miller Tennis Academy, LLC and Mike Miller for compensatory and punitive damages in an

amount that is fair and reasonable in excess of twenty-five thousand dollars (\$25,000), their costs herein and such further relief the Court deems just and equitable.

**COUNT X
LOSS OF CONSORTIUM AGAINST ALL DEFENDANTS**

129. Plaintiff Janet Doe’s husband incorporates all paragraphs of this petition as if fully set forth herein.

130. Since 2015, Janet Doe’s husband has been her lawful spouse and is entitled thereby to her care, comfort, support, companionship, consortium, and services.

131. As a direct and proximate result of the negligence and/or affirmative acts of Defendants, all of them, as set forth in this Petition for Damages, and the injuries and damages sustained by Janet Doe as a result of such wrongful conduct, Janet Doe’s husband has been caused to suffer and will continue to suffer the loss of care, comfort, support, companionship, consortium and services of his spouse.

WHEREFORE, Plaintiffs request judgment be entered against all defendants in favor of Plaintiffs for the injuries and damages describe above, an award for damages that is fair and reasonable under the circumstances, for an award of prejudgment interest as provided under Missouri Revised Statute § 408.040, for costs herein and such further relief the Court deems just and equitable.

DEMAND FOR JURY TRIAL

132. The Plaintiffs demand a trial by jury on all issues triable in this case.

WHEREFORE, the plaintiffs ask that this court award judgment against Defendants as follows:

1. Award of compensatory and punitive damages in favor of the Plaintiffs against Defendants for damages sustained as a result of the wrongdoing of Defendants;

2. Award the Plaintiff Janet Doe her costs and expenses incurred in this action;
3. Grant such other and further relief as the Court deems appropriate and just.

Respectfully submitted,

THE DEFEO LAW FIRM

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