

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO.: \_\_\_\_\_

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SARAH VILLA,  
by her Guardians Marie  
and Johnny Villa;  
JOHNNY VILLA; AND  
MARIE VILLA,  
  
Plaintiffs,  
  
v.  
  
THE JUDGE ROTENBERG  
EDUCATIONAL CENTER, INC. AND  
DEVON MARTINEZ,  
  
Defendants.

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**COMPLAINT AND DEMAND  
FOR TRIAL BY JURY**

**PARTIES**

1. Sarah Villa is an 18-year old woman with multiple disabilities and a resident of South Lake Tahoe, California. She is currently placed in the psychiatric unit of College Hospital in Cerritos, California. At the time of the events described in this complaint, she was a minor.
2. Johnny Villa and Marie Villa are Sarah Villa’s parents and temporary conservators.<sup>1</sup> They have filed a petition with the Superior Court of El Dorado County, California, for permanent conservatorship over her. They live at 3002 Springwood Drive in South Lake Tahoe, California.
3. The Judge Rotenberg Educational Center, Inc. (“Judge Rotenberg Center”) is a residential school for children and adults with intellectual, developmental and psychosocial disabilities located at 250 Turnpike Street in Canton, Massachusetts.
4. Devon Martinez is an employee of the Judge Rotenberg Center and a resident of Dorchester, Massachusetts.

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<sup>1</sup> While in Massachusetts, conservatorship refers only to guardians of a minor or disabled adult’s property, conservatorship in California can include guardianship of the person as well. *See* Cal. Prob. Code § 1850 *et seq.*

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction to hear this civil action under Mass. Gen. Laws ch. 212 § 4.
6. This Court is the proper venue for this action under Mass. Gen. Laws ch. 223 § 1 because the Judge Rotenberg Center has its principal place of business in Norfolk County.

## **STATEMENT OF FACTS**

7. Sarah Villa has multiple disabilities that affect her development, health, emotional regulation, and behavior. These include:
  - A. Fetal alcohol syndrome, which has resulted in an intellectual disability and limited impulse control, as well heart problems that necessitated the placement of a shunt;
  - B. Autism Spectrum Disorder, which causes her to experience sensory overload in crowded spaces and in response to certain types of physical touch; and
  - C. Schizophrenia, which causes her to experience both audio command and visual hallucinations.
8. As a student with disabilities, Ms. Villa has received special educational services from the Lake Tahoe Unified School District. The school district has relied on federal funding to provide these services.
9. After determining that it could not meet her special educational needs, the school district decided to place Ms. Villa at a private out-of-state residential school for the 2017-2018 school year.
10. In searching for and deciding on an appropriate program, the school district received a program description from the Judge Rotenberg Center, which represented that:
  - A. Its educational and vocational program is “totally individualized based on each student’s needs,” and teaches skills through “individually tailored instruction”;
  - B. It would only use corporal and other forms of punishment, which it referred to as “aversive procedures,” with approval from both a student’s parents and a Massachusetts Probate Court; and
  - C. Its employees are “carefully selected, highly trained, and thoroughly supervised.”
11. Based on the Judge Rotenberg Center’s decision to admit Ms. Villa and its representations about its program and qualifications, the school district decided to place her at its facility.

12. Because the school district assured them that the Judge Rotenberg Center was able to meet Ms. Villa's needs, her parents Johnny and Marie Villa agreed to the placement.
13. The Judge Rotenberg Center and the school district entered into a written Nonpublic, Nonsectarian School/Agency Services Master Contract ("Master Contract") for the 2017-2018 school year. The Master Contract included the following terms, among others:
  - A. The Judge Rotenberg Center's employees were only permitted to use emergency interventions such as physical restraint on Ms. Villa to control "unpredictable, spontaneous" behavior that posed clear and present danger of serious physical harm and could not be immediately prevented by a less restrictive response.
  - B. The Judge Rotenberg Center was forbidden from authorizing, ordering, consenting to, or paying for any intervention that is designed to, or likely to cause physical pain to Ms. Villa.
  - C. The Judge Rotenberg Center was forbidden from authorizing, ordering, consenting to, or paying for an intervention that was designed to subject, used to subject, or likely to subject, Ms. Villa to verbal abuse, ridicule or humiliation, or that can be expected to cause her excessive emotional trauma.
  - D. The Judge Rotenberg Center was required to review and revise its restraint practices if these practices had an adverse effect and were used repeatedly on Ms. Villa within the same classroom or by the same employee.
  - E. The Judge Rotenberg Center's employees, subcontractors and volunteers were required to adhere to customary professional and ethical standards when providing services, including those established in the district's publicly-available school board policies. The district's Professional Standards policy prohibits "Physically abusing, sexually abusing, neglecting, or otherwise willfully harming or injuring a child."
  - F. The school district would pay the Judge Rotenberg Center \$749 a day for its services.
14. Prior to Ms. Villa's enrollment, the Judge Rotenberg Center and its administration received Ms. Villa's special educational and mental health treatment records. Among other things, these records indicated that that she experienced psychosis and that she required special transportation to and from school separate from the regular school bus. The Judge Rotenberg Center's clinical staff reviewed these records and received collateral information about Ms. Villa before she arrived.
15. Ms. Villa arrived at the Judge Rotenberg Center on 28 November 2017 and left on 19 February 2018.
16. The Judge Rotenberg Center failed to accommodate Ms. Villa's documented disability-related need for separate transportation to and from school. Instead, it listed refusing daily transportation in her behavior plan as a target behavior for which its employees

were authorized to punish her. This failure to provide a reasonable accommodation led her to experience stress to the extent that she kicked through the bus window on 8 January 2018, sustaining a cut that required ten stitches.

17. The Judge Rotenberg Center and its employees knowingly failed to accommodate and in fact punished Ms. Villa for her disabilities by:
  - A. Classifying Ms. Villa’s symptoms of schizophrenia, including bizarre speech and having hallucinations, as “major disruptive behaviors” for which it authorized its employees to punish her.
  - B. Requiring Ms. Villa to handle her concerns and frustrations by writing a “student business letter” to her treatment team to avoid punishment, despite her known intellectual disability and struggles with impulse control.
  - C. Removing and excluding Ms. Villa from the classroom as a punishment for engaging in target behavior.
18. Judge Rotenberg Center employees routinely made intentional nonconsensual physical contact with Ms. Villa, referred to as “physical prompts” and “supportive guides,” in response to target behavior such as noncompliance with staff directions. These interventions caused Ms. Villa to fight back, resulting in frequent physical restraint procedures.
19. During her 84-day stay at the Judge Rotenberg Center, Ms. Villa suffered 46 documented physical restraint procedures at the hands of its employees. She experienced as many as five restraint procedures in a single day. These restraint procedures resulted in physical bruises. On multiple occasions, Judge Rotenberg Center employees used pain compliance techniques to control Ms. Villa’s behavior during these restraint procedures by putting pressure on sensitive parts of her body, including the skin covering her shunt.
20. In response to Ms. Villa’s making what it claimed to be false allegations of abuse against its employees and threatening to harm herself, the Judge Rotenberg Center authorized its staff to punish her in response to these behaviors. In particular, its employees began monitoring her conversations with her parents. They instructed Mr. and Mrs. Villa to dismiss her concerns or hang up on her when she made these statements to discourage her from doing so. Believing that it was in their daughter’s best interest to follow their instructions, Mr. and Mrs. Villa complied.
21. Judge Rotenberg Center employees verbally and emotionally abused Ms. Villa, telling her that her parents had “dumped” her there and that the program “owned” her; threatening to make her disappear into a nearby “lake of bones”; and on one occasion punishing her by ripping the arm off her teddy bear and throwing the stuffed animal into the trash.

22. On 15 February 2018, Devon Martinez, a Residential Coordinator employed by the Judge Rotenberg Center, struck Ms. Villa in the eye with his fist during a restraint procedure on the school bus.
23. The blow to the face caused Ms. Villa to suffer a concussion and bruising to her left eye, as well as persistent headaches and nausea for days afterward. She received treatment for her injuries at Good Samaritan Hospital on two separate visits in the week that followed. It is at present unknown if the blow caused a traumatic brain injury or permanent eye injury.
24. Upon hearing that the defendants had injured their daughter, Mr. and Mrs. Villa booked a roundtrip flight to Boston to withdraw Ms. Villa from the Judge Rotenberg Center immediately. They spent a week in Massachusetts while participating in interviews with law enforcement and investigators with the Department of Children and Families, and while Ms. Villa received medical treatment. The total travel costs, including the cost of roundtrip flights, seven nights in a hotel, a rental car, gas, tolls, and feeding themselves and Ms. Villa, amounted to approximately \$5,000.
25. The trip to Boston resulted in Mr. and Mrs. Villa losing income in the amount of \$1,140.
26. The Massachusetts Department of Children and Families (DCF); the Massachusetts Department of Early Education and Care (DEEC); and the Canton Police Department all investigated the incident. DCF found that the abuse allegation against Mr. Martinez was substantiated, and DEEC cited the Judge Rotenberg Center for noncompliance with state regulations based on this finding. The Canton Police Department has filed a civil complaint against Mr. Martinez, and a magistrate's hearing is scheduled for 8 November 2018 in Stoughton District Court.
27. While at the Judge Rotenberg Center, Ms. Villa began to bang her head against hard surfaces in response to stress, which she had never done before. She also resumed eating inedible objects, which she had not done for many years.
28. Ms. Villa became depressed and suicidal, expressing her intent to harm or kill herself on multiple occasions while at the Judge Rotenberg Center. She also began to suffer from flashbacks, hypervigilance, nightmares, agoraphobia, and extreme anxiety around separation from her mother. She became afraid of other people seeing her through windows. These symptoms continued after she returned to California. Immediately following her return to California, Ms. Villa's psychiatrist diagnosed her with posttraumatic stress disorder and prescribed psychotropic medications to manage her symptoms.
29. Ms. Villa was unable to attend school after returning from Massachusetts, and instead had to receive intensive behavioral therapy at home.
30. On 29 April 2018, Ms. Villa had a flashback upon hearing the sound of approaching footsteps, believing that Judge Rotenberg Center employees were coming for her. Out of

fear, she attempted to strangle Mrs. Villa with a belt. As a result, Ms. Villa was arrested and held at a forensic juvenile treatment facility until the court found her incompetent to stand trial. While in the juvenile treatment facility, she attempted suicide.

31. Because of the increased level of danger Ms. Villa now poses to her parents and siblings, El Dorado County authorities have forbidden the family from bringing her back into their home. As a result, Ms. Villa has been held in a psychiatric treatment facility in Cerritos, California, nearly five hundred miles from her family, since 16 July 2018.
32. The placement at the Cerritos facility has resulted in travel expenses incurred by Mr. and Mrs. Villa, which have amounted to approximately \$1,500 so far.
33. The placement at the Cerritos facility has resulted in further lost income to Mr. and Mrs. Villa, which has amounted to approximately \$5,700 so far.
34. Because of the increased cost of Ms. Villa's care and treatment since her time at the Judge Rotenberg Center, her parents could no longer afford their home. Thus, Mr. and Mrs. Villa, along with their other four children, have had to move to a smaller house.
35. Ms. Villa has required extensive medical and mental health treatment for the injuries she suffered at the Judge Rotenberg Center, which has cost her family approximately \$125,000 so far. She will continue requiring psychiatric and behavioral treatment because of these injuries for the foreseeable future.

## **COUNT I**

### *Civil Battery – Strike to the Face*

36. Plaintiffs hereby reassert and incorporate the allegations of Paragraphs 1 through 35.
37. Devon Martinez intentionally made physical contact with Ms. Villa by striking her face with his fist.
38. This physical contact was harmful and offensive.
39. Mr. Martinez's punching Ms. Villa caused her serious injury and emotional distress. Additionally, Mr. and Mrs. Villa have suffered economic losses including medical expenses, travel expenses, and loss of income because of his actions.
40. Under the doctrine of respondeat superior, the Judge Rotenberg Center is vicariously, jointly and severally liable for any and all damages caused by its employee's actions within the scope of his employment.
41. At the time he struck Ms. Villa, Mr. Martinez was employed by the Judge Rotenberg Center as a Residential Coordinator, and was acting within the scope of his employment.

42. Mr. Martinez is personally responsible, and therefore jointly and severally liable, for any and all damages he caused through his actions.

## **COUNT II**

### *Civil Battery – Physical Prompts, Supported Guides, and Physical Restraint Procedures*

43. Plaintiffs hereby reassert and incorporate the allegations of Paragraphs 1 through 35.

44. On an unknown number of occasions, various Judge Rotenberg Center employees intentionally made physical contact with Ms. Villa to control her behavior as part of a “physical prompt” or “supported guide.”

45. Judge Rotenberg Center employees responded to Ms. Villa’s attempts to physically resist or defend herself from this unwanted physical contact by restraining her.

46. In restraining Ms. Villa, Judge Rotenberg Center employees intentionally made physical contact with her on numerous occasions.

47. The physical prompts, supported guides, and restraint procedures were harmful and offensive.

48. The cumulative effect of these repeated instances of harmful and offensive physical contact was that Ms. Villa suffered physical injury and severe emotional distress. This in turn caused Mr. and Mrs. Villa to suffer economic losses including medical expenses, travel expenses, and loss of income.

49. Under the doctrine of respondeat superior, the Judge Rotenberg Center is vicariously liable for any and all damages caused by its employees’ actions within the scope of their employment.

50. The employees in question were acting within the scope of their employment in carrying out physical prompts, supported guides, and physical restraint procedures.

## **COUNT III**

### *Intentional or Reckless Infliction of Emotional Distress*

51. Plaintiffs hereby reassert and incorporate the allegations of Paragraphs 1 through 35.

52. Various Judge Rotenberg Center employees intended to inflict emotional distress on Ms. Villa through their conduct, or they knew or should have known this conduct would likely result in emotional distress.

53. The conduct of the Judge Rotenberg Center’s employees toward Ms. Villa was extreme, outrageous, intolerable, and outside the bounds of decency within a civilized society.

54. This conduct caused Ms. Villa severe emotional distress in the form of posttraumatic stress disorder, suicidality, self-injury, and increased levels of aggression. In turn, Mr. and Mrs. Villa have suffered economic losses including medical expenses, travel expenses, and loss of income.
55. Under the doctrine of respondeat superior, the Judge Rotenberg Center is vicariously liable for any and all damages caused by its employees' actions within the scope of their employment.
56. The employees in question were acting within the scope of their employment when they engaged in the conduct that caused emotional distress.

#### **COUNT IV**

##### *Negligent Hiring and Supervision*

57. Plaintiffs hereby reassert and incorporate the allegations of Paragraphs 1 through 35.
58. At the time that he struck Ms. Villa to the face, Devon Martinez was employed by the Judge Rotenberg Center as a Residential Coordinator.
59. The people responsible for other acts of physical, verbal, and emotional abuse against Ms. Villa were employees of the Judge Rotenberg Center at the time these incidents occurred.
60. By having agreed to provide residential services to Ms. Villa, the Judge Rotenberg Center owed her a duty of care that included hiring, training, and supervising employees in such a way as to ensure her safety and minimize the possibility of abuse.
61. The Judge Rotenberg Center breached its duty to Ms. Villa by failing to train employees to treat its residents in a humane and respectful way and discipline those who did otherwise. On the contrary, it created and perpetuated an institutional culture in which using heavy-handed methods of behavioral control was tolerated if not condoned.
62. As a direct and proximate result of the Judge Rotenberg Center's negligent hiring and supervision of Mr. Martinez and other employees who engaged in this conduct, Ms. Villa suffered serious physical injury and emotional distress. In turn, Mr. and Mrs. Villa have suffered economic loss in the form of medical expenses, travel expenses, and lost income.

#### **COUNT V**

##### *Negligence*

63. Plaintiffs hereby reassert and incorporate the allegations of Paragraphs 1 through 35.

64. By having agreed to provide residential services to Ms. Villa, the Judge Rotenberg Center owed her a duty of care that included ensuring her safety while transporting her to and from school in its vehicles.
65. The Judge Rotenberg Center had notice of Ms. Villa's need for specialized transportation to and from school, as well as the range of dangerous behavior she was likely to engage in otherwise.
66. The Judge Rotenberg Center breached its duty of care to Ms. Villa by failing to provide her with alternate transportation and instead forcing her to take the regular school bus.
67. As a direct and proximate result of the Judge Rotenberg Center's negligence, Ms. Villa suffered serious physical injury and emotional distress. In turn, Mr. and Mrs. Villa have suffered economic loss in the form of medical expenses.

#### **COUNT VI**

*Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794  
& the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.*

68. Plaintiffs hereby reassert and incorporate the allegations of Paragraphs 1 through 35.
69. Both Section 504 of the Rehabilitation Act and Title III of the Americans with Disabilities Act prohibit discrimination on the basis of disability. They require covered entities to afford full and equal access to, participation in, and benefits of their services, facilities, privileges, advantages, and accommodations.
70. As a recipient of federal financial assistance, the Judge Rotenberg Center is subject to Section 504 of the Rehabilitation Act.
71. As a private residential educational and treatment program, the Judge Rotenberg Center is a place of public accommodation within the meaning of Title III of the Americans with Disabilities Act.
72. Ms. Villa is a qualified individual with disabilities that substantially limit several major life activities under both the Rehabilitation Act and the Americans with Disabilities Act.
73. The Judge Rotenberg Center failed to make reasonable modifications in policies, practices and procedures necessary for Ms. Villa to participate in and benefit from its services, facilities, privileges, advantages, and accommodations.
74. The Judge Rotenberg Center further violated Ms. Villa's rights under these laws by retaliating against her for engaging in the protected activity of making complaints about her treatment at its program and the effects it was having on her mental health.

75. The Judge Rotenberg Center's discriminatory and retaliatory conduct caused Ms. Villa serious physical injury and emotional distress. This in turn caused Mr. and Mrs. Villa to suffer economic losses including medical expenses, travel expenses, and loss of income.

### **COUNT VII**

*Unfair and Deceptive Acts or Practices in Violation of  
the Massachusetts Consumer Protection Act, Mass. Gen. Laws Chapter 93A*

76. Plaintiffs hereby reassert and incorporate the allegations of Paragraphs 1 through 35.

77. The Massachusetts Consumer Protection Act, Mass. Gen. Laws Chapter 93A, prohibits unfair or deceptive acts and practices in the conduct of any trade or commerce.

78. The Judge Rotenberg Center engaged in trade and commerce for the purposes of Chapter 93A by recruiting and then offering residential services to Ms. Villa in exchange for payment through the South Lake Tahoe Unified School District.

79. The Judge Rotenberg Center engaged in unfair and deceptive acts and practices in the conduct of trade and commerce by making willful and knowing misrepresentations in the program description it provided to Ms. Villa's school district in recruiting her for admission.

80. The school district relied on the Judge Rotenberg Center's program description in deciding it was an appropriate placement. In turn, Mr. and Mrs. Villa relied on the school district's judgment in agreeing to the placement on their daughter's behalf.

81. Ms. Villa suffered serious physical injury and emotional distress while attending the Judge Rotenberg Center, which differed significantly in both nature and quality from how it represented itself. The Judge Rotenberg Center's unfair and deceptive practices therefore caused Mr. and Mrs. Villa to suffer economic losses including medical expenses, travel expense, and loss of income.

82. Plaintiffs, through their attorney, sent a demand letter to the Judge Rotenberg Center's attorney informing it of their claims under Chapter 93A on 10 August 2018.

83. The Judge Rotenberg Center, through its attorney, refused to make a reasonable offer of settlement in its response to Plaintiffs' demand letter.

### **COUNT VIII**

*Third-Party Beneficiary Breach of Contract*

84. Plaintiffs hereby reassert and incorporate the allegations of Paragraphs 1 through 35.

85. The Judge Rotenberg Center and the Lake Tahoe Unified School District entered into the Master Contract, under which the Judge Rotenberg Center would provide residential and educational services to Ms. Villa during the 2017-2018 school year.

86. Ms. Villa was an intended third-party beneficiary of the Master Contract.
87. The Judge Rotenberg Center breached material terms of the Master Contract related to physical restraint procedures, physical punishment, verbal and emotional abuse, and employee conduct.
88. Ms. Villa and, by extension, Mr. and Mrs. Villa, suffered damages including pain, suffering, emotional distress, and economic losses because of the Judge Rotenberg Center's material breach of the Master Contract.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Honorable Court enter judgment:

89. Awarding them double or treble damages in compensation for their past and future pain, suffering, emotional distress, and economic losses resulting from Defendants' conduct;
90. Awarding them interest, costs of suit, and reasonable attorney fees; and
91. Awarding such further relief as shall be just and proper, as Plaintiffs anticipate unknown additional damages will be incurred as a result of the actions of Defendants.

### **DEMAND FOR JURY TRIAL**

92. Plaintiffs request trial by jury on all claims and issues.

Respectfully Submitted,  
SARAH, JOHNNY AND MARIE VILLA,  
By Their Attorney,

*Shain M. Neumeier*

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