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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
UTAH, CENTRAL DIVISION**

JOHN ANTHONY LOEBACH and
VALERIE B. LOEBACH, individually
and as the natural parents and heirs of
M.L., a minor, deceased,

Plaintiffs,

vs.

DIAMOND RANCH ACADEMY, a
corporation,

Defendant.

**COMPLAINT AND JURY
DEMAND**

Civil No. _____

Honorable _____

Plaintiffs, John Anthony Loebach and Valerie B. Loebach, individually and as the natural parents and heirs of M.L., a deceased minor, by and through their counsel of record, Dewsnup, King & Olsen, hereby complain of Diamond Ranch Academy and allege the following:

PARTIES

1. M.L., a deceased minor child, resided in Hurricane, Utah, at the time of his death but was a citizen of Colorado and was domiciled there. M.L. is the son of John Anthony Loebach and Valerie B. Loebach (the “Loebachs”).

2. Plaintiff John Anthony Loebach is the natural father of M.L., a minor who was sixteen years old at the time of the incident that gives rise to this action. John Anthony Loebach is a citizen of Colorado.

3. Plaintiff Valerie B. Loebach is the natural mother of M.L. and is a citizen of Colorado.

4. Diamond Ranch Academy (“DRA”) is a Utah corporation with its principal place of business in Hurricane, Utah.

JURISDICTION

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Defendant and because the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Plaintiffs have complied with all requirements of Utah Code Annotated, §§ 78B-3-401, *et seq.*, in order to bring an action against Diamond Ranch Academy pursuant to the Utah Health Care Malpractice Act.

GENERAL ALLEGATIONS OF FACT

7. DRA is a residential treatment center and therapeutic boarding school in Hurricane, Utah, for troubled youth between the ages of 12 and 18.

8. DRA holds itself out as “an industry leader in helping youth realize their potential.” It represents that its students “become their best selves in a structured elite private school environment with a personalized therapeutic approach” and promises that “[t]he challenges you are facing with your child today do not need to limit the possibilities of tomorrow.”

9. DRA employs, among others, licensed clinical social workers. DRA’s theme is “Healing Families One Youth at a Time.”

10. M.L. was a sixteen-year-old boy who suffered from severe depression and had a history of suicide attempts.

11. Before M.L.’s enrollment at DRA, he attempted suicide twice. On one occasion M.L. tried to take his own life by hanging himself by the neck in the shower.

12. M.L.’s parents, the Loebachs, were very worried about their son’s safety, not knowing what he was capable of doing in the future. They felt helpless not knowing what they could do to help their son.

13. The Loebachs sought an intervention treatment provider that could effectively care for their son and keep him safe.

14. In their search for a provider, the Loebachs came in contact with DRA.

15. DRA assured the Loebachs that if they enrolled M.L. at DRA, DRA would care for M.L. and keep him safe, and that DRA's program would help him overcome his hardships.

16. DRA also assured the Loebachs that DRA staff were trained to keep and capable of keeping M.L. safe from suicide attempts.

17. DRA further assured the Loebachs that the DRA facility was a safe place for their son.

18. In furtherance of keeping M.L. safe, DRA told the Loebachs that M.L.'s bedroom would be under constant video surveillance.

19. DRA also told the Loebachs that DRA personnel would, at all times, be monitoring the video surveillance images of M.L.'s bedroom.

20. Video camera surveillance equipment was present in M.L.'s bedroom during M.L.'s residence at DRA, including the day he committed suicide.

21. The DRA Parent Manual states in part: "Our program is proven effective – **and we guarantee it** – when the program is followed closely and when the parents support it completely."

22. The DRA Parent Manual further states: "We recognize how difficult a decision it was to intervene on your child's behalf. We also recognize how difficult it is to place the care of you child in the hands of another. *Please take comfort in knowing that we take our responsibility very seriously.*"

23. On June 23, 2013, relying on DRA's assurances that M.L. would be properly supervised and kept safe, the Loebachs enrolled M.L. at DRA, and M.L. moved into the facility.

24. On June 23, 2013, the day M.L. was enrolled at DRA, Valerie Loebach gave DRA a summary of M.L.'s suicide attempts. This summary included an account that M.L. had previously attempted suicide by hanging himself in the shower.

25. M.L.'s pre-participation physical evaluation also noted his suicide attempt history.

26. DRA knew of M.L.'s need for supervision and treatment.

27. On July 18, 2013, DRA took M.L. off of self-harm watch.

28. On August 7, 2013, M.L. was psychologically evaluated by C.Y. Roby, Ph.D., NCCE ("Dr. Roby"), at DRA's request.

29. On August 30, 2013, DRA received Dr. Roby's report.

30. Dr. Roby's report indicated that M.L. was at risk for suicide and/or self-injurious behavior. Dr. Roby strongly recommended that this risk be taken seriously.

31. In addition to having Dr. Roby's report, DRA was in possession of and had read M.L.'s journals containing a drawing of a boy hanging from the neck.

32. On September 6, 2013, M.L. attended a football game pep rally in the DRA gym. While there, he was visibly upset and seen crying by another DRA student. When the pep rally concluded, M.L. left the gym unsupervised and unaccounted for.

33. After the pep rally, at approximately 4:22 p.m., M.L. entered his bedroom unsupervised.

34. At approximately 4:36 p.m., M.L. reviewed a suicide note he had written.

35. At approximately 4:38 p.m., M.L. entered his bathroom with his suicide note in hand and closed the door. He was clothed and wearing the belt DRA sold to him.

36. At approximately 5:01 p.m., while giving prospective clients a tour of the facilities and M.L.'s room, a DRA staff member opened the bathroom door and discovered M.L. hanging by the neck from a non-breakaway shower rod with the belt DRA sold to him.

37. When the staff member discovered M.L. and saw him hanging from the shower rod, he closed the bathroom door and ushered the prospective clients away.

38. Moments after the first staff member opened and closed the door on M.L., another staff member opened the bathroom door, looked at M.L., closed the door on him again, and walked away.

39. M.L. was left hanging from his neck until approximately 5:04 p.m., when DRA staff removed him from the hanging position and then administered CPR.

40. Approximately 2 1/2 minutes passed between the time M.L. was discovered and the time he was removed from the shower rod.

41. Ultimately, M.L. was left unsupervised for a total of 39 minutes.

42. Two days later, on September 8, 2013, M.L. died as a result of the injuries he sustained from his September 6, 2013 suicide attempt.

FIRST CLAIM FOR RELIEF
(Negligence/Knowing and Reckless Indifference)

43. Plaintiffs incorporate the previous paragraphs as if fully set forth herein.

44. DRA was acting in loco parentis and had a special legal relationship with M.L.

45. DRA had a duty to exercise reasonable care in the treatment and supervision of M.L.

46. DRA knew that M.L. had a history of attempted suicide and that M.L.'s suicidal condition should be taken seriously.

47. DRA knew that leaving M.L. unsupervised involved an extreme degree of risk, considering the probability and magnitude of the potential harm that such a lack of supervision presented to M.L.'s life and safety.

48. Despite DRA's knowledge of the risks that the lack of supervision of M.L. presented, DRA recklessly allowed M.L. to remain alone and unsupervised for more than thirty minutes, behind a closed door in a bathroom with a non-breakaway shower rod, with a belt to hang himself with.

49. DRA breached the duty that it owed to M.L. and the Loebachs, thereby creating a substantial risk of, and in fact causing, serious bodily injury and death to M.L.

50. DRA's breaches of duty included, among other things:

a. Failing to provide M.L. with adequate supervision and care;

- b. Failing to provide and/or follow policies and procedures related to supervision and care of M.L., its suicidal patient, including but not limited to its line-of-sight policy;
- c. Failing to properly assess, document, and treat M.L.'s suicidal condition;
- d. Failing to appropriately train staff;
- e. Failing to install breakaway shower rods and shower heads in M.L.'s bathroom;
- f. Failing to heed Dr. Roby's report and take M.L.'s risk of suicide seriously;
- g. Providing M.L. with the belt he hanged himself with; and
- h. Not acting immediately when it discovered M.L. but instead putting its public relations ahead of M.L.'s life.

51. DRA's acts and omissions manifested a knowing and reckless indifference toward and a disregard of the rights of others, including M.L. and the Loebachs.

52. As a direct and proximate result of DRA's acts and omissions, Plaintiffs have suffered and will continue to suffer the loss of the relationship with their son, causing them extreme mental and emotional anguish; loss of the care, comfort, companionship, society, guidance, love, affection, association, services and support of their son; and the permanent destruction of their family unit.

53. As a direct and proximate result of DRA's acts and omissions, M.L. suffered severe physical pain, discomfort, loss of enjoyment of life, and death, and the Loebachs incurred medical expenses prior to M.L.'s untimely death and have incurred funeral and burial expenses as a result of his death.

SECOND CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

54. Plaintiffs incorporate the previous paragraphs as if fully set forth herein.

55. DRA owed a fiduciary duty to Plaintiffs and/or their son.

56. DRA breached the fiduciary duty it owed to Plaintiffs and/or their son.

57. As a direct and proximate result of DRA's acts and omissions, Plaintiffs have suffered and will continue to suffer the loss of the relationship with their son, causing them extreme mental and emotional anguish; loss of the care, comfort, companionship, society, guidance, love, affection, association, services and support of their son; and the permanent destruction of their family unit.

58. As a direct and proximate result of DRA's acts and omissions, M.L. suffered severe physical pain, discomfort, loss of enjoyment of life, and death, and the Loebachs incurred medical expenses prior to M.L.'s untimely death and have incurred funeral and burial expenses as a result of his death.

THIRD CLAIM FOR RELIEF
(Premises Liability)

59. Plaintiffs incorporate the previous paragraphs as if fully set forth herein.

60. M.L. was DRA's invitee.

61. DRA owed M.L. a duty of care to eliminate unreasonably dangerous conditions on its property and to take reasonable measures to ensure a safe physical environment in the DRA facility.

62. DRA was aware that the shower rods in the DRA facility were non-breakaway types and that the presence of such shower rods presented a dangerous condition to its invitee, M.L.

63. Given M.L.'s history of suicide attempts and Dr. Roby's evaluation, DRA should have expected that M.L. would have encountered and been harmed by, or would fail to protect himself from this dangerous condition of non-breakaway shower rods in the DRA bathrooms.

64. Three days after M.L.'s death, on September 11, 2013, the Utah Department of Human Services determined that DRA was in violation of Utah Admin. Code R501-19-7.B.2 for failing to provide a safe physical environment for consumers. This violation was due in part to the presence of permanently affixed shower rods in the DRA facility bathrooms.

65. DRA breached its duty to its invitee, M.L., and failed to exercise reasonable care by:

- a. Failing to prevent or rectify the unreasonably dangerous condition of non-breakaway shower rods on the property, which was a proximate cause of M.L.'s injury and death; and

- b. Failing to protect its invitee, M.L., from the unsafe condition and hazard of non-breakaway shower rods and shower heads on the property.

66. As a direct and proximate result of DRA's breach of duty, M.L. was subjected to the dangerous conditions on DRA's property that contributed to M.L.'s injury and death.

67. As a direct and proximate result of DRA's negligence, Plaintiffs have suffered and will continue to suffer the loss of the relationship with their son, causing them extreme mental and emotional anguish; loss of the care, comfort, companionship, society, guidance, love, affection, association, services and support of their son; and the permanent destruction of their family unit.

68. As a direct and proximate result of DRA's negligence, M.L. suffered severe physical pain, discomfort, loss of enjoyment of life, and death, and the Loebachs incurred medical expenses prior to his untimely death, and have incurred funeral and burial expenses as a result of his death.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant, DRA, as follows:

1. For general damages in an amount to be proved at trial;
2. For special damages in an amount to be proved at trial;

3. For punitive damages in an amount sufficient to punish DRA and to deter DRA and others in similar situations from engaging in such conduct in the future; and

4. For such other costs, expenses, attorney's fees, and other relief the Court finds appropriate under the circumstances.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED this 29th day of March, 2016.

DEWSNUP, KING & OLSEN

/s/ Charles T. Conrad
David R. Olsen
Paul M. Simmons
Charles T. Conrad
Attorney for Plaintiffs

Plaintiffs' Address:
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.