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Attorneys for: Plaintiff

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH

ALVLIN CLINE ROBERTSON, CINDI
ROBERTSON, and ALVIN CHASE
ROBERTSON,

Plaintiffs,

v.

RED ROCK CANYON SCHOOL, LLC, a
limited liability company; RED ROCK
CANYON SCHOOL NON-PROFIT
ORGANIZATION, a corporation; MELANIE
HABIBIAN; SHERMAN HABIBIAN; J.
TODD HOCKENBURY; DOES I through X,

Defendants.

) Case No. 2:05-cv-758
)
) **FIRST AMENDED COMPLAINT FOR**
) **NEGLIGENCE; NEGLIGENT**
) **INFLICTION OF EMOTIONAL**
) **DISTRESS; FRAUD AND DECEIT;**
) **BREACH OF FIDUCIARY DUTY;**
) **BREACH OF CONTRACT;**
) **ABSOLUTE LIABILITY; and in the**
) **alternative MEDICAL**
) **MALPRACTICE**
)
) **JURY TRIAL DEMANDED**

INTRODUCTION

1. Cindi Robertson, after careful research and inquiry, entrusted 12-year-old Chase, the couple's only child to the control, direction, and supervision of

Red Rock Canyon School, (“Red Rock”). Defendant owners and operators of the school promoted, advertised, and marketed Red Rock as a therapeutic boarding school whose biggest concern was to let each child feel safe and significant while finding worth in himself through a program designed to build on his internal strengths. Chase, who was grieving and despondent due to the sudden death of his close cousin, needed to feel safe and significant.

2. At Red Rock, Chase was neither safe nor significant. Red Rock was dangerous and debauching. Defendants allowed other students to beat and berate Chase, even to urinating on his clothing and effects. Chase begged his mother for freedom and his mother asked Defendants to release him. Defendants talked her out of it by promising to move him to a safer place.
3. Defendants moved Chase in with two much older boys who were adjudicated sex offenders, one of whom, Jason Garreux, that night raped Chase while Defendants slept. Defendants concealed the attack and covered it up while trying to talk Chase out of reporting it.
4. The attack caused Chase severe permanent traumatic stress. Last year, he violently attacked and stabbed his mother, who failed to get him out of Red Rock, with a kitchen knife, but was found incompetent to stand trial for attempted murder. She survived, but Chase will never be the same, and neither will his parents.

PARTIES

5. Plaintiff Alvin Chase Robertson (“Chase”) is the son and only child of the plaintiffs Alvin Cline Robertson (“Alvin”) and Cynthia (“Cindi”) Robertson. Chase was enrolled at Red Rock Canyon School from August 6, 2001 to September 13, 2001. All plaintiffs are citizens of the State of Florida. Chase was born with deficits, including a low I.Q., but thrived in school due to his mother’s close assistance and attention in all of his educational tasks.
6. Red Rock Canyon School LLC is a limited liability company licensed by the State of Utah as a residential treatment center. Red Rock Canyon School, Inc. is a non-profit foundation. Both are citizens of the State of Utah with their principal place of business in St. George, Utah.
7. Malanie Habibian, the owner and Chief Executive Officer of Red Rock Canyon School, is a citizen of the state of Utah, with her principal place of business in St. George, Utah.
8. Sherman Habibian, the son of Melanie Habibian and Unit Manager for Red Rock, is a citizen of Utah with his principal place of residence in St. George, Utah.

9. Todd Hockenbury, at all times material Admissions Director of Red Rock, is a citizen of the State of Utah with his principal place of residence in St. George, Utah.
10. Doe defendants I through X are persons presently unknown to the plaintiffs who will be added to the complaint when their identity is ascertained.
11. In all things herein alleged and at all times material, all defendants were acting as agents for, or joint adventurers with, the other defendants, and were also acting in furtherance of a conspiracy to commit the acts or suppress the facts herein alleged.

JURISDICTION

12. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1332(a)(1). The matter in controversy exceeds the sum of Seventy-five Thousand Dollars, exclusive of interest and costs.

VENUE

13. Venue is appropriate in this Court pursuant to the provisions of 28 U.S.C. § 1391(a) and (c).

FACTS

14. The Robertsons moved from West Palm Beach, Florida to Michigan in 1999. Chase completed 5th grade at Lincoln Elementary as a good student consistent with his past record in Florida. In the fall of 2000, Chase

moved to 6th grade at Upton Middle School. He was a good student that Cindi Robertson, a full-time homemaker, prided in helping excel.

15. On January 18, 2000, Chase's 15 year-old cousin was killed in a tragic automobile collision. Chase would not be consoled. The cousins were like brothers and soul mates, in frequent communication by long distance telephone and by plane trips between Michigan and South Carolina.
16. The Upton Middle School feared that Chase's mourning adversely affected his classmates, and so transferred him to its Benton Harbor School for struggling students. Because those students were truant, the Robertsons rejected that placement, and had the middle school suspend Chase while they looked for another school.
17. After much research and many interviews, Cindi settled on Red Rock Canyon School because Melanie Habibian and Todd Hockenbury emphatically told Cindi that no sex offenders were enrolled at Red Rock. None of the other 22 schools that Cindi Robertson contacted could so state, and Cindi soon learned that Red Rock's statement was a lie.
18. On September 12, the day after 9/11/2001, Rob Marshall, Chase's therapist, reported during a scheduled phone visit to Alvin Robertson that Chase was extremely upset and scared because another student had hit him in the mouth, damaging his braces and causing his gums to bleed. Marshall minimized Chase's complaints even though the Robertsons, after a family weekend visit earlier in September, had already complained to the

individual defendants about mistreatment of Chase by students at Red Rock, including hazing, beating and urinating on Chase's bed sheets and clothing. Cindi immediately called Todd and left two unreturned messages that she wanted Chase seen by a doctor and moved from the unit about which she had already complained at the family weekend.

19. On Thursday, September 13, Cindi told Todd that she was removing Chase from Red Rock. Todd protested the removal and said that Chase was being moved to another housing unit. He said, "Kids will say anything to get out of the program". Todd told Cindi that if she removed Chase from the program "you would be signing his death warrant". Little did she know that by leaving Chase in the program, she would come close to signing her own death warrant. Cindi and Alvin decided to let Chase stay since he was being moved. Chase's new roommate, 16 year-old Jason Garreux, approached Chase with food, and explained that he would protect him from other boys.

20. On the night of September 13, 2001, Jason, whose records at Red Rock showed him to be an adjudicated sex offender, attacked and raped Chase while the Red Rock supervisory staff dozed or watched television in another room. On Friday, September 14, Chase told his other roommate about the attack. The roommate reported the rape to Red Rock. Red Rock did not notify the Robertsons until September 17 at 7 p.m. Eastern Time, over three days later. In the meantime, Red Rock's staff tried to persuade

Chase that nothing had happened, that he just had a bad dream, and otherwise to cover up the incident and not report it.

21. Not until the summer of 2005 did the Robertsons learn that Defendants had lied to them about there not being adjudicated minors for sexual offenses at Red Rock. In a letter dated January 19, 2000, Barbara Dupris, a social worker supervisor with the Bureau of Indian Affairs stated: “ Jason [Garreux] did act out sexually with another male while in treatment in the group home, but he was afraid that this information would get out and his siblings, as well as his friends, would find out that he was a homosexual. Jason indicated that they were just experimenting”.

22. This letter was faxed from the Cheyenne River Agency to Todd Hockenbury at Red Rock on June 8, 2001, several months before Chase arrived. Red Rock never produced this information during discovery as required. In addition, in a therapy progress note dated July 26, 2001, Therapist Annie Miles, LCSW, noted that Jason was “off privileges for smoking a cigarette, syringes found in contraband search, and sexualizing a lower functioning peer”.

23. On February 21, 2002 in the Fifth District Juvenile Court for Washington County, Utah, Jason plead “no contest” to two charges of sodomizing Chase, and one charge of sexually abusing Chase, Utah Code Ann. §§ 76-5-403.1(1), and 404.1(1).

FIRST CAUSE OF ACTION

(Negligence)

24. Defendants were negligent in breach of their promised and implicit custodial duties to keep Chase safe in the following respects. They:

- a. Failed to screen students in order to determine whether Red Rock's brand of "behavior modification" was appropriate for 12 year-old Chase.
- b. Failed disclose the presence of older on-site male sex offenders with a history of attacking younger boys.
- c. Failed to provide a safe environment, particularly at night in a unit where Chase was housed with two much older sex offenders with homosexual tendencies.
- d. Failed to tell his parents that Chase would be housed with two much older sex offenders.
- e. Failed to tell his parents that Chase had been housed with two much older sex offenders with homosexual tendencies.
- f. Failed to train staff to monitor closely a young boy housed with two much older sex offenders.
- g. Failed to put the staff on high alert that was monitoring an innocent boy housed with two much older sex offenders.

- h. Failed to protect Chase on the prior unit from being persecuted by hardened delinquent youth.
- i. Moved Chase to a unit with much older sex offenders to deceive Cindi and endanger Chase because Cindi had complained.
- j. Maliciously knew that housing Chase with two much older sex offenders would invite the very attack that occurred.
- k. Knew or should have known that a homosexual attack by a much older and bigger boy would cause Chase permanent post-traumatic stress disorder and other psychological problems such as a fierce hatred of all homosexuals.
- l. Falsely told Alvin and Cindi that removing Chase from Red Rock would be fatally detrimental to Chase's psyche.
- m. Falsely told Alvin and Cindi that Chase's complaints of abuse were the product of Chase's manipulative behavior to avoid the program.
- n. Covered up the sexual attack by not promptly reporting it to Alvin, Cindi and the police in order to gain time to convince Chase that he was imagining an attack that never occurred.
- o. Were not concerned with the appropriateness of Chase's placement at Red Rock but only on getting his money for the placement.
- p. Did not consult social worker Rob Marshall about the appropriateness of Chase's placement.

- q. Failed to tell Cindi what housing options were available for Chase and to consult with her about any move or decision that could affect Chase's welfare and safety.
- r. Lied to Cindi about helping Chase, solely to keep Chase at Red Rock.
- s. Failed to protect Chase after prior dangerous conduct had injured him, so as to be liable for acts or omissions under the Restatement (Second) of Torts, §321.
- t. Negligently assumed the risk of intentional or criminal conduct by Jason Garreux, pursuant to the Restatement (Second) of Torts, §302B.

25. Defendants breached their duties to Plaintiffs by lying to the Robertsons about the population of Red Rock, by allowing Chase to be abused by other boys, and particularly to be sodomized due to lack of training, supervising and monitoring, then trivializing the rape by trying to persuade Chase that it never happened, by not reporting immediately the rape, by not informing the parents until it became apparent that Chase would not be broken, by later claiming that Chase was to blame, that he consented to being raped, that his ensuing post-traumatic stress resulted from preexisting problems unrelated to the attack at Red Rock.

26. Defendants' conduct proximately caused Chase severe permanent personal injury and emotional distress from and after September 13, 2001.

27. Defendants' conduct manifested a knowing and reckless indifference toward and disregard of the rights of Chase and his parents, by reason of which Plaintiffs are entitled to recover punitive damages.

WHEREFORE, Plaintiffs pray for judgment as hereafter stated.

SECOND CAUSE OF ACTION

(Negligent Infliction of Emotional Distress)

28. Plaintiffs incorporate by this reference paragraphs 1 through 27 as if stated in full.

29. Red Rock's subjecting Chase, an innocent and sorrowing 12 year-old boy to the prospect and foreseeable certainty of homosexual assault by a 16 year- old sexual predator without supervision constituted negligent infliction of emotional distress so as to cause Chase severe personal injury and permanent mental and emotional distress.

30. Defendants' conduct manifested a knowing and reckless indifference toward and disregard of the rights of Chase and his parents, by reason of which Plaintiffs are entitled to recover punitive damages.

WHEREFORE, Plaintiffs pray for judgment against Defendants as hereafter stated.

THIRD CAUSE OF ACTION

(Fraud and Deceit)

31. Plaintiffs incorporate by this reference paragraphs 1 through 30 as if stated in full.

32. Defendants owed a duty to Plaintiffs to inform Alvin and Cindi Robertson of the fact that Red Rock Canyon School did not contain sufficient staffing to prevent, detect, and minimize the effects of incidents of sexual abuse; that their minimum wage employees were untrained, inept, and unqualified to assume the responsibility for Chase's safety and care; That Red Rock Canyon School was below the child safety standards that were reasonably anticipated and expected by Alvin and Cindi; that Chase's care and keeping were minimal to nonexistent; and that Chase would likely be harmed by Red Rock's operation, methods, and gross ineptitude, particularly in lodging Chase with much older, stronger, adjudicated sex offenders.

33. Once Chase was there, Defendants lied to Cindi and Alvin that Chase's welfare depended upon his remaining at Red Rock, when they knew that it did not, and that they cared less about Chase's welfare than they did about the money tied to his attendance.

34. When Cindi was determined, after Chase's abuse in the original unit, to take him out of Red Rock, Defendants lied that he would be moved to safety when they were planning instead to house him with two much older and bigger sex offenders with homosexual tendencies.

35. After the attack, Defendants, instead of immediately reporting the attack, launched instead an internal investigation aimed at covering up the truth, and persuading Chase, alone and unaided, that he had either dreamed the

attack or cooperated with it.

36. By failing to disclose the truth to Plaintiffs and by actively concealing the true facts from them so as to cause Plaintiffs to rely on their concealments and lack of disclosures of true facts, and intending and knowing that they would do so, Defendants are guilty of actual and constructive fraud.

37. Defendants repeatedly made intentional misrepresentations to Alvin and Cindi Robertson in order to induce them to place and maintain Chase at Red Rock.

38. Defendants continually lied to Alvin and Cindi Robertson by their promotional and marketing materials which represented Red Rock to be a safe and secure environment where Chase would be well cared for, and provided a good education, psychological counseling on the outside, and a safe, healing, environment on the inside. Plaintiffs did not know that Red Rock was a tough-love private prison where students were treated with hostile oversight as if they were convicted criminals, but were told that it was a safe and healing environment for Chase where he would be treated by a respectful, caring, well-trained staff, as emphasized by the defendants.

39. Alvin and Cindi relied also on these representations to their detriment.

Chase was emotionally and physically harmed by Defendants, and Alvin and Cindi were defrauded out of money by paying for what was represented to be quality care, services, and facilities that Chase never received.

40. Upon information and belief, Defendants knew when they made these representations to Alvin and Cindi that they were false statements made to induce Alvin and Cindi to place and maintain Chase at Red in order to secure the monthly fees they paid.
41. Upon information and belief, Defendants were aware that Red Rock was not safe, that most minors there housed there were truant and were being further harmed by the behavior modification techniques there used, which, had they been disclosed to Alvin and Cindi, would have prevented Chase's placement at Red Rock.
42. Upon information and belief, the Defendants were aware that Red Rock's environment of force, lack of supervision, lack of trained staff, and lack of psychological expertise would harm a young boy of Chase's tender psyche.
43. Defendants' conduct proximately caused Plaintiffs great mental and emotional distress
44. Defendants' conduct was intentionally fraudulent and further manifested a knowing and reckless indifference toward and disregard of the rights of Chase and his parents, by reason of which all are entitled to recover punitive damages.

WHEREFORE, Plaintiffs pray for judgment according to proof.

FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty)

45. Plaintiffs incorporate by this reference paragraphs 1 through 44 as if stated in full.

46. Defendants owed Chase, who was entrusted to their care, the highest duty of trust and confidence and were required to act in his best interest. The schools' actions and inactions, described herein, violated that relationship when they failed to act with the highest degree of trust and confidence to protect Chase from physical, emotional, mental, and sexual abuse.

47. Because Chase was unable to care for, or make decisions for himself, and was entrusted to Red Rock's care, each and all of the defendants were fiduciaries owing Chase the highest standards of custodial care. By failing to prevent, detect, and minimize both the threat and the harm to Chase while under their care and control, Defendants breached their fiduciary duty to Chase.

48. Defendants' conduct proximately caused Chase severe permanent personal injury and emotional distress from and after September 13, 2001.

49. Defendants' conduct manifested a knowing and reckless indifference toward and disregard of the rights of Chase and his parents, by reason of which Plaintiffs are entitled to recover punitive damages.

WHEREFORE, Plaintiffs pray for judgment according to proof.

FIFTH CAUSE OF ACTION

(Breach of Contract/Breach of Warranty)

50. Plaintiffs incorporate herein paragraphs 1 through 49 as if stated in full.

51. Defendants did, by both their conduct and verbal statements, expressly and impliedly agree and warrant, in exchange for valuable consideration, to provide good quality child care, schooling, education, treatment, and boarding services in a safe, nurturing environment, such that Chase would, among other things, not be intentionally or negligently harmed, would receive an education, and enjoy improved emotional and psychological health.

52. Alvin and Cindi Robertson relied on the Defendants' claims that Chase would be well cared for and properly educated in exchange for payments of money to Defendants.

53. Instead, Chase was subjected to physical, mental, emotional, and sexual abuse as described above, and was not provided an education.

54. In every contract there inheres a covenant of good faith and fair dealing imposing upon the stronger party thereto regarding contractual obligations with the weaker party to deal honestly and rightfully so that the expectations of the weaker party are not impaired.

55. The contract that Alvin and Cindi Robertson signed with Red Rock Canyon School designates Chase a "patient" so that it could, unbeknown at the time to Alvin and Cindi, defeat any ensuing liability claim on the

ground that Red Rock is a health care provider protected by the Utah Health Care Malpractice Act requiring prelitigation compliance, filing within 2 years, and a damages cap, among other benefits to the school. Indeed, that very defense has been raised in the subject case.

56. This ruse violates the covenant of good faith and fair dealing because there was no warning that Alvin and Cindi Robertson were dealing with other than a residential treatment center and/or high school providing limited health benefits.

57. Defendants breached the express contract terms and implied covenant of good faith and fair dealing by failing to supply the care expressly promised and by raising the medical malpractice defense so as to deprive Chase and his parents of damages owed them under Utah tort law.

58. As a direct and proximate result of Defendants' breaches of the express terms and implied covenant of their contract with the plaintiffs, all Plaintiffs suffered extreme mental and emotional distress from and after September 13, 2001.

59. Defendants' conduct manifested a knowing and reckless indifference toward and disregard of the rights of Chase and his parents, by reason of which Plaintiffs are entitled to recover punitive damages.

WHEREFORE, Plaintiffs pray for judgment according to proof.

SIXTH CAUSE OF ACTION

(Absolute Liability)

60. Plaintiffs incorporate paragraphs 1 through 59 as if stated in full.
61. Defendants confined Chase as a prisoner at Red Rock Canyon School.
- Chase had broken no law and was not placed at Red Rock by any government agency for either punishment or rehabilitation.
62. Red Rock would not allow Chase to leave. Red Rock would not allow him to telephone his parents. Red Rock refused to tell Chase the term of his confinement. They refused to tell Chase the reason for his incarceration or whether he needed it, or whether it would be helpful or harmful.
63. Defendants never explained to Chase that the Red Rock Program was for behavior modification. They never explained that behavior modification was to be achieved by an environment of strict enforcement of mindless rules; that peers or staff were used to police one another; that part of the program was to destroy the independence and psyche of the inmate and rebuild him into a model of robotic compliance.
64. If the penal colony into which Chase was thrown had any merit at all, which is doubtful, it was the worst possible environment for Chase, an only child who had autistic tendencies and was suffering from Asperger's Syndrome.¹ He knew he was not placed at Red Rock because he was

¹ Asperger's syndrome is one of several [autism spectrum disorders](#) (ASD) characterized by difficulties in [social interaction](#) and by restricted, [stereotyped](#) interests and activities.

truant, disobedient, adjudicated, or in need of rehabilitation from bad behavior, and he was jolted at being away from his mother at age 12, who had always worked closely with him in love and patience so that he could overcome the deficits of his low IQ.

65. Red Rock, however, with its demented tough love philosophy of behavior modification concealed that it had neither the sophistication nor the common sense to know that each young person is an individual whose background, parental environment, physical and mental conditioning and illness played into whatever problems they may have been perceived as having.

66. Red Rock's true hidden policy was that each child represented \$4000 a month, so that the rest did not much matter. To Red Rock, it was not the child's welfare that mattered, but his profit to the school.

67. When the Robertsons began the subject case at the Fifth District Court in 2001, Red Rock tricked the Robertsons' initial attorneys into filing the case under the Utah Health Care Malpractice Act. Red Rock, however, was never licensed by the Utah Department of Health as a health care provider, but was only licensed by the Utah State Board of Education as a school, and by the Utah Department of Human Services as a residential treatment center. Once Chase turned 18, he insisted on dismissing the St George case without prejudice and joining his parents in the subject case that had been stayed pending resolution of the St. George case.

68. By not being a health care provider, Red Rock did not afford and was not required to provide Chase with the screening, oversight, periodic reviews, due process protections, that a health care provider or mental hospital would have been required to provide. Accordingly, when put upon by the truant inmates at the school, Chase, having a mental illness and being outnumbered by older boys in a punitive environment, had nowhere to run and nowhere to hide. He could not escape; he could not reach his parents, he could call for help, he was ignored because pleading for help or outside contact was considered manipulative misbehavior not to be heeded, but to be punished. He was not allowed visitation by anyone not on Red Rock's approved list. He could not ask for an attorney. He could not file a grievance against Red Rock that would reach the light of day.

69. Given such a punitive profit driven policy, it is no wonder that Red Rock would, contrary to Cindi Robertson's express instructions, put 12 year-old Chase in a unit with two 16 year-old sex offenders. It would teach Chase a lesson that Red Rock was not to be trifled with.

70. It was inevitable that they, or one of them, would sexually attack the naïve, young, and vulnerable Chase in order to initiate him into their gross world of men so that he could be as were they. Given that Red Rock relied for its monitors on low wage people of no distinction or training, Defendants' promise that Chase would do well to remain at Red Rock was both false and fraudulent.

71. The public policy of Utah is that its minor citizens are entitled to special protection so that their innocence and health, safety, and welfare may be protected. The conditions and conduct of Red Rock were so primitive, confining, lacking in oversight, and dangerous to Chase, and it was so inevitable that the sexual attack that did occur, would occur, that Red Rock is strictly liable in tort to the plaintiffs for the injuries Chase suffered at Red Rock, without additional proof.

72. Defendants' conduct proximately caused Chase severe permanent personal injury and emotional distress from and after September 13, 2001.

73. Defendants' conduct manifested a knowing and reckless indifference toward and disregard of the rights of Chase and his parents, by reason of which Plaintiffs are entitled to recover punitive damages.

WHEREFORE, Plaintiffs pray for damages according to proof.

SEVENTH CAUSE OF ACTION

(Medical Malpractice)

74. Plaintiff Alvin Chase Robertson incorporates paragraphs 1 through 73 as if stated in full.

75. In the event that the defendant, Red Rock Canyon School, licensed as a residential treatment center by the Utah Department of Health and Human Services, is, during this litigation, determined to qualify as a health care provider under the Utah Health Care Malpractice Act, Utah Code Ann. §78-14-1 et seq., and assuming that there were ever established a legal

standard of care by which Red Rock Canyon School could be measured as a health care provider, though not licensed by the Utah Department of Health, then Chase alleges that the defendants, and each and all of them, had a duty to render care and treatment to Chase that met that standard.

76. By failing to determine that Chase suffered from a form of autism, by accepting him into Red Rock to begin with, by allowing him to be physically abused by numerous other students at his first residential unit, by assuring Alvin and Cindi Robertson that there were no adjudicated sex offenders at Red Rock, which was false, and then by housing Chase with two much older, stronger, and experienced sex offenders in the Blue Unit where Jason Garreux raped Chase, Defendants violated the medical practice standard of care in accepting and treating Chase on their premises.

77. Defendants, by stipulation dated February 5 and 8, 2002, waived compliance with the Prelitigation Panel Procedure required by §78-14-12 *et. seq.*

78. Defendants' conduct proximately caused Chase severe permanent personal injury and emotional distress from and after September 13, 2001.

79. Defendants' conduct manifested a knowing and reckless indifference toward and disregard of the rights of Chase and his parents, by reason of which Plaintiffs are entitled to recover punitive damages.

WHEREFORE, Plaintiffs request:

1. Damages for gross negligence and by way of example.
2. Special and general damages as to Alvin Cline Robertson.
3. Special and general damages as to Cindi Robertson.
4. Special and general damages as to Alvin Chase Robertson.
5. An order prohibiting the destruction or spoliation of evidence.
6. Trial by jury.
7. Pre-judgment interest.
8. Costs of suit.
9. Such other and further relief as the Court deems just.

Dated: February 29, 2008

_____/s/____

Thomas M. Burton