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Employment & Labor Law

September 3, 2021

U.S. & Electronic Mail:

Lawrence Denney, Secretary of State of Idaho
Secretary of State's Office
P.O. Box 83720
Boise, Idaho 83720-0080
claims@sos.idaho.gov

Re: Notice of Tort Claims for Jane Doe pursuant to I.C. §6-901 et seq.

To Whom It May Concern:

This firm represents Jane Doe¹ with respect to legal claims she may have against the State of Idaho and its employees as defined in § 6-902(4).

Jane Doe worked as a Legislative page during the 2020 legislative session. The following year, she returned to work as an intern for Representative Chad Christensen during the 2021 legislative session. Ms. Doe had recently graduated from high school and was still a teenager at that time. The facts and circumstances surrounding what happened to Ms. Doe and which give rise to the various claims identified herein² have been discussed in two public legislative hearings: 1) April 2021 House Ethics Committee hearing re: former Representative Aaron Von Ehlinger; 2) August 2021 House Ethics Committee hearing re: Representative Priscilla Giddings. Those hearings are available for viewing on the Idaho Public Television website. Thus, the factual circumstances will not be repeated herein except as stated below.

¹ We use this pseudonym herein as a measure to protect our client and her privacy. It has been used widely in the public sphere and during the Ethics Committee hearings re: Von Ehlinger and Rep. Giddings and as such we are confident her true identity is known. We also do not provide her residence. Ms. Doe is a resident in Idaho and should be contacted through my office.

² While the tort claims act requires a written demand of damages for negligent or otherwise wrongful acts or omissions, there are some claims at issue that clearly do not require notice under the act. Those include federal claims, constitutional claims, contract related claims, and other statutory claims. Additionally, some acts giving rise to claims may have occurred outside the scope of employment and/or with malicious or criminal intent. The intent of this Notice is to provide a full picture of the claims currently being considered whether or not they fall within the act's technical requirements.

List of Potential Claims

1. Breach of policies and/or implied-in-fact contract and including but not limited to a an implied-in-law covenant of good faith and fair dealing.
 - a. The “Respectful Workplace Policy of the Idaho Legislative Branch” is “applicable to all members of the Idaho Legislature, legislative employees, legislative interns and volunteers, and legislative partners in the course of conducting state business.” The Policy states that the Legislature is “committed to creating and maintaining a respectful work environment” and “an environment that is free from harassment and discrimination.” It states that the Legislature “will strive to prevent, eliminate, and impede the recurrence of harassing and discriminatory behavior and retaliation against individuals who report, in good faith, violations of this policy.” And “retaliation is strictly prohibited.”
 - b. The legislature knew that as an elected official, Von Ehlinger had reason to interact with young female employees including high school pages, college interns, etc. It appears that Von Ehlinger did not participate in any trainings regarding the Respectful Workplace Policy. The legislature knew or should have known about a pattern of sexually inappropriate and/or gender-based behaviors perpetrated by elected officials on females working at the legislature/conducting legislative business at the legislature. The legislature, including members in leadership, knew that Von Ehlinger had engaged in inappropriate behavior with young women whom he worked with or had contact with via his work as an elected official. The legislature knew that when he was confronted with this behavior, Von Ehlinger’s responses indicated retaliatory reactions/motives. The legislature did not take adequate measures to “prevent, eliminate and impede recurrence of harassing and discriminatory behavior” or to prevent “retaliation against individuals who report” the same in violation of its policy and statements providing it would do so. The legislature’s actions were in reckless disregard and with deliberate indifference to the rights of women in general and Ms. Doe in particular.
2. The Fourteenth Amendment to the U.S. Constitution and Article I, Section 2 of the Idaho Constitution guarantee equal treatment under the law and specifically prohibit discrimination based on one’s sex/gender.

- a. Persons (whether they are employees, interns, volunteers, or citizens) at our State's legislature should not be subjected to sexual harassment or sexual predatory behavior by any governmental official including, and perhaps most importantly, elected officials. The equal protection clauses prohibit differential treatment of men and women by government officials and include prevention of an environment at the Legislature that adversely impacts women and including women who are victims of sexual assault by government officials.
 - b. *See* details in No. 1 above, and those set forth below.
3. Defamation provides recovery for injuries caused by communications of false information which impugn one's honesty, integrity, virtue or reputation or expose one to public hatred, contempt or ridicule.
- a. Von Ehlinger and/or his attorney, David Leroy, acting on his behalf and in the scope of representing Von Ehlinger, released information defaming Ms. Doe and causing her injury on April 16, 2021.
 - b. Upon information and belief, Rep. Giddings conspired with Von Ehlinger related to this release of information and its amplification. *See* No. 8 below.
 - c. Rep. Giddings made public comments in her official capacity, including in her Legislative Newsletter and on her Legislative Facebook, defaming Ms. Doe causing her injury. Rep Giddings also publicized links to an article containing information defaming Ms. Doe causing her injury. This article also prominently featured a picture of Ms. Doe from when she was a young teenager. That thumbnail photo was reflected in Rep. Gidding's repost of the article on her public Facebook page. The article also contained a link to the unredacted response to the ethics complaint from Von Ehlinger. Rep. Giddings publicly released copies of her witness disclosures for her House Ethics hearing which contained unredacted defamatory statements related to Ms. Doe causing her injury.
 - d. These actions were taken even though at 11:47 am on April 16, 2021, Ms. Doe's attorneys informed Von Ehlinger's attorney, Mr. Leroy, that neither he nor his client should release any personally identifying information about Jane Doe. In fact, this communication warned that "should such public disclosure occur it is reasonably foreseeable that she will suffer severe emotional distress and as recent history has shown us, perhaps worse such as threats to her physical safety." The Ethics Committee's attorney also

communicated to Mr. Leroy at 12:42 pm on April 16, 2021 its request that Ms. Doe's name and other personally identifying information about her be redacted before being released. Despite these communications, personally identifying information and defamatory statements were released to multiple media outlets by Mr. Leroy, attorney for and agent of, Von Ehlinger.

4. Invasion of Privacy provides recovery for public disclosure of false information which is highly offensive to a reasonable person, and for public disclosure of embarrassing and private facts objectionable to a reasonable person.
 - a. Von Ehlinger's and Rep. Giddings' discriminatory, retaliatory and defamatory actions outlined above invaded Ms. Doe's privacy causing her injury.
5. Negligent Infliction of Emotional Distress: There is a duty to exercise ordinary care to prevent foreseeable harm. Idaho law provides for recovery of emotional distress when accompanied by some physical manifestation. An Intentional Infliction of Emotional Distress claim provides recovery for severe emotional distress suffered as a result of a defendant's extreme and outrageous conduct that was intentional or reckless.
 - a. Von Ehlinger's actions vis-à-vis Ms. Doe on or about March 9, 2021, and his discriminatory, retaliatory and defamatory actions outlined above, inflicted severe emotional distress on Ms. Doe;
 - b. Rep. Gidding's retaliatory, discriminatory and defamatory actions outlined above inflicted severe emotional distress on Ms. Doe;
 - c. The Ethics Committee's handling of the ethics complaint against Von Ehlinger and the public hearing negligently inflicted emotional distress on Ms. Doe.
6. Negligence: The law recognizes a duty to use ordinary care, which is care that a reasonably careful person would exercise under the circumstances.
 - a. Von Ehlinger's and Rep. Giddings' actions outlined above negligently caused Ms. Doe injury.
 - b. To the extent the State failed to exercise ordinary care which contributed to or caused injury to Ms. Doe. *See, e.g.*, Nos. 1, 2 and 5 c. above.

- c. Negligent Supervision: To the extent the State was negligent in appropriately supervising the individuals involved, including Von Ehlinger, Rep. Giddings and Ms. Doe to prevent the multitude of injuries inflicted upon her. *See e.g.*, No. 1 and 2 above.

7. Assault, Battery and Seduction inflicted by Von Ehlinger on Ms. Doe on or about March 9, 2021.

8. Conspiracy to violate Ms. Doe's equal protection rights in violation of 42 U.S.C. § 1985. Several members of the legislature, acting within their official capacities, engaged in a campaign to shame, blame, and intimidate Ms. Doe for having reported Von Ehlinger's sexual assault. Documents reflect that Rep. Giddings was involved in drafting the media and press statement of Aaron Von Ehlinger which claimed that he had "been falsely accused of having unconsented sexual contact with an adult volunteer member of the legislative staff." On April 16, 2021, Von Ehlinger's attorney, David Leroy, released an unredacted copy of his response, despite demands/requests/warnings that he should not do so (*See* No. 3). On April 16th, Rep. Giddings communicated with members of the press, including Bill Spencer of the Lewiston Tribune, asking if he received a copy of Von Ehlinger's response from Mr. Leroy and encouraging reporting thereon. There may be other conspirators and or acts within the furtherance of the conspiracy with regard to violating Ms. Doe's equal protection rights including, but not limited to:
 - a. Rep. Heather Scott's April 16, 2021 attempt to gain information about Jane Doe's criminal complaint to Boise Police Department;
 - b. Rep. Christy Zito's inquiry on or about April 26, 2021 regarding which criminal code is triggered by someone making a "false report," suggesting Ms. Doe could be criminally prosecuted for reporting Von Ehlinger's assault of her.
 - c. Rep. Giddings' police report alleging she was "accosted" and/or threatened by Jane Doe on or about April 20, 2021;
 - d. Rep. Gidding's Facebook post asking for donations "if you want to support due process and equality under the law."

9. The IPPEA (I.C. § 6-2101 et seq.) prohibits retaliation against an employee for reporting violations or suspected violations of law. On or about March 11, 2021, Ms.

Doe reported Von Ehlinger's criminal and tortious conduct inflicted upon her which led to an ethics complaint against Von Ehlinger. She participated in good faith in the Committee's investigation and in the public hearing. As a result of her report and participation, she experienced adverse actions including the release of her name and other identifying information, defamatory statements, invasion of her privacy, infliction of emotional distress, etc. as referenced above.

10. To the extent applicable, Title VII of the Civil Rights Act of 1964 and the Idaho Human Rights Act prohibit discrimination against employees on the basis of sex and retaliation for making good faith reports of the same.

Damages

After experiencing a traumatizing sexual assault by a member of the House of Representatives, Ms. Doe reported the same to legislative personnel as she believed she was required to do and in order to prevent Von Ehlinger from victimizing anyone else. As a result of her report, she was required to participate in an Ethics Committee process that included her having to provide public testimony. She retained counsel to represent her through that process. During her testimony, Von Ehlinger, her perpetrator, was allowed to be reseated so as to have line-sight of her, and she was further subjected to inappropriate questioning by his attorney. This, in addition to the above referenced actions (*see* Nos. 1-10) and other related events, have significantly injured Ms. Doe.

Ms. Doe suffered and continues to suffer extreme emotional distress including suicidal ideation, depression, anxiety, and panic attacks. She has experienced a multitude of physical symptoms as a result of the emotional trauma, including but not limited to: anxiety, inability to sleep; loss of appetite, the inability to keep food ingested down/regular vomiting, headaches, and inability to focus. She has experienced fear for her physical safety and the safety of her family. She has suffered injury to her good name and reputation, to her privacy and to her sense of security. Her ability to continue her work at the legislature was impacted and eventually it made it impossible for her to finish the legislative session. These unlawful events have the potential to have long-lasting impacts to her educational and career plans. Her ability to continue to work as regularly scheduled with her private employer was disrupted. Ms. Doe was suffering so significantly that she was unable to finish her college courses even though she was nearing the end of the semester. As such she did not receive credit for those classes.

It is impossible for Ms. Doe to place a value on her damages as they are primarily non-economic damages. Ultimately, should Ms. Doe proceed with litigation and trial of these

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claims, it will be up to a jury to determine the value of her damages.³ As her attorneys, we feel strongly that those damages will be determined to exceed any applicable caps. *See e.g.*, I.C. § 6-924 - \$500,000 cap per occurrence for claims under the tort claim act.

This notice is based on the information Ms. Doe has to date. The facts giving rise to the above claims may also support other torts not specifically listed herein. This notice is intended to demand damages for all injuries cause to Ms. Doe and provide appropriate notice of any legal claims regarding the same.

Sincerely,

**STRINDBERG SCHOLNICK BIRCH
HALLAM HARSTAD THORNE**

/s/ Erika Birch

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Cc: client

³ A federal jury recently determined that a woman who had experienced a hostile work environment after reporting that she had been sexually assaulted by a co-worker should receive \$1,800,000.00 in emotional distress damages. *See Fuller v. Idaho Department of Correction* (verdict February 2019).

B0629-1253 09/03/2021 10:08 AM Received by ID Secretary of State's Lawrence Denney

Erin Logue

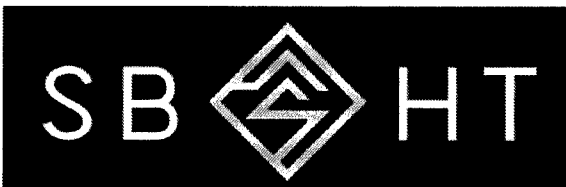
From: Robyn Salazar <Robyn@idahojobjustice.com>
Sent: Friday, September 3, 2021 10:08 AM
To: Tort Claims
Cc: Erika Birch
Subject: [External] Notice of Tort Claims
Attachments: 2021-09-03 Notice of Tort Claims.pdf

Please see the attached.

Thank you.

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