

Anthony P. La Rocco (Attorney ID 023491982)
Dana B. Parker (Attorney ID 041682003)
Reymond E. Yammine (Attorney ID 306962019)

K&L GATES LLP

One Newark Center, 10th Floor
Newark, New Jersey 07102

P: (973) 848-4000

F: (973) 848-4001

*Attorneys for Defendant Watchtower
Bible and Tract Society of New York, Inc. and
East Hackensack Congregation of Jehovah's
Witnesses (improperly named as Hackensack
Congregation of Jehovah's witnesses)*

Corinne Pandelo,

Plaintiff,

v.

The Governing Body of Jehovah's Witnesses,
Fairlawn Congregation of Jehovah's
Witnesses, Watchtower Bible and Tract
Society of New York, Inc., Hackensack
Congregation of Jehovah's Witnesses, and
John and Jane Does 1-100, whose identities are
presently unknown to Plaintiff, in their official
and individual capacities,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-5508-21

Civil Action

**NOTICE OF MOTION FOR SUMMARY
JUDGMENT**

TO: Rayna E. Kessler, Esq.
ROBINS KAPLAN LLP
1325 Avenue of the Americas, Suite 2601
New York, NY 10019
Attorneys for Plaintiffs

PLEASE TAKE NOTICE that on August 26, 2022, at 9:00 a.m., or as soon thereafter as
counsel may be heard, the undersigned, counsel for Watchtower Bible and Tract Society of New
York, Inc. ("Watchtower"), the East Hackensack Congregation of Jehovah's Witnesses

(improperly named Hackensack Congregation of Jehovah's Witnesses) (the "East Hackensack Congregation") (together, "Defendants"), shall move before the Honorable Gregg A. Padovano, J.S.C., at the Superior Court of New Jersey, Bergen County Courthouse, 10 Main Street, Hackensack, New Jersey 07601, for an Order granting Defendants' motion for summary judgment.

PLEASE TAKE FURTHER NOTICE that in support hereof, Defendants rely upon the brief submitted herewith and the certification of Dana B. Parker with all attachments thereto.

PLEASE TAKE FURTHER NOTICE that a proposed form of order is enclosed herewith.

PLEASE TAKE FURTHER NOTICE that Defendants request oral argument if this motion is opposed.

PLEASE TAKE FURTHER NOTICE that the discovery end date is August 24, 2022 and that no trial date has been scheduled.

Dated: July 20, 2022

By: /s/ Anthony P. La Rocco

Anthony P. La Rocco

Dana B. Parker

Reymond Yammine

K&L GATES LLP

One Newark Center, 10th Floor

Newark, New Jersey 07102

P: (973) 848-4000

F: (973) 848-4001

Attorneys for Defendant Watchtower

Bible and Tract Society of New York, Inc. and

East Hackensack Congregation of Jehovah's

Witnesses (improperly named as Hackensack

Congregation of Jehovah's witnesses)

Corinne Pandelo,

Plaintiff,

v.

The Governing Body of Jehovah's Witnesses, Fairlawn Congregation of Jehovah's Witnesses, Watchtower Bible and Tract Society of New York, Inc., Hackensack Congregation of Jehovah's Witnesses, and John and Jane Does 1-100, whose identities are presently unknown to Plaintiff, in their official and individual capacities,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-5508-21

Civil Action

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

THIS MATTER, having come before the Court upon the application of Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"), the East Hackensack Congregation of Jehovah's Witnesses (improperly named Hackensack Congregation of Jehovah's Witnesses) (the "East Hackensack Congregation") (together, "Defendants"), by their attorneys K&L Gates LLP, upon notice to Plaintiff Corinne Pandelo ("Plaintiff"), by and through their attorney Robins Kaplan LLP, and the Court having considered the papers filed in connection with Defendants' motion for summary judgment, and the arguments of counsel, and for good cause shown:

IT IS, on this ____ day of _____, 2022,

ORDERED, that Defendants' motion for summary judgment is granted; and it is further

ORDERED, that in accordance with R. 4:6-2(b), all claims contained in Plaintiff's Complaint are hereby dismissed against Defendants with prejudice; and it is further

ORDERED, that a copy of this Order shall be served upon all counsel of record within 7 days of counsel's receipt of same.

Hon. Gregg A. Padovano, J.S.C.

THIS MOTION WAS:

OPPOSED _____

UNOPPOSED _____

Corinne Pandelo,

Plaintiff,

v.

The Governing Body of Jehovah's Witnesses, Fairlawn Congregation of Jehovah's Witnesses, Watchtower Bible and Tract Society of New York, Inc., Hackensack Congregation of Jehovah's Witnesses, and John and Jane Does 1-100, whose identities are presently unknown to Plaintiff, in their official and individual capacities,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO: BER-L-5508-21

Oral Argument is Requested

STATEMENT OF UNDISPUTED MATERIAL FACTS

K&L GATES LLP

One Newark Center, 10th Floor

Newark, New Jersey 07102

P: (973) 848-4000

F: (973) 848-4001

E: Anthony.LaRocco@klgates.com

E: Dana.Parker@klgates.com

E: Reymond.Yammine@klgates.com

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc. and East Hackensack Congregation of Jehovah's Witnesses (improperly named as Hackensack Congregation of Jehovah's witnesses)

Anthony P. La Rocco (023491982)

Dana B. Parker (041682003)

Reymond E. Yammine (306962019)

Of Counsel and on the brief

Defendants Watchtower Bible and Tract Society of New York, Inc. (“Watchtower”) and the East Hackensack Congregation of Jehovah’s Witnesses (improperly named Hackensack Congregation of Jehovah’s Witnesses) (the “East Hackensack Congregation”) (together, “Defendants”) submit this Statement of Undisputed Material Facts (“SUMF”) in support of their Motion for Summary Judgment pursuant to New Jersey Court Rule 4:46-2(a). The sources of the following facts include documents and other written discovery produced in this action, pleadings, and publicly available materials. In addition, this SUMF draws upon the certification of Dana B. Parker (“Parker Cert.”), filed concurrently with this SUMF.

A. Plaintiff’s Alleged Abuse

1. Plaintiff alleges that her grandfather, Clement Pandelo, sexually abused her beginning around 1976-1977.¹ Parker Cert., ¶ 3, Ex. B, Plaintiff’s Amended Complaint, filed on October 13, 2021 (LCV20212383924) (“2021 Amended Complaint”).

2. Plaintiff alleges the abuse ended when she disclosed the conduct to her parents, who contacted law enforcement, resulting in the incarceration of Clement Pandelo. Parker Cert., ¶ 3, Ex. B, 2021 Amended Complaint, ¶ 44.

B. Plaintiff’s 1994 Litigation

3. Plaintiff initiated litigation in 1994 against her grandfather, Clement Pandelo, her grandmother, Olga Pandelo, and her parents. Parker Cert., ¶ 3, Ex. B, 2021 Amended Complaint, ¶¶ 54-55.

4. Plaintiff’s 1994 litigation included claims for: negligent infliction of emotional distress; negligence; and intentional and/or reckless infliction of emotional distress. Parker Cert.,

¹ In her original 2021 Complaint, Plaintiff alleged that her abuse began in 1999. Parker Cert., ¶ 2, Ex. A, Plaintiff’s Complaint, filed on August 18, 2021 (LCV20211914643) (“2021 Complaint”), ¶ 38.

¶ 4, Exhibit C, Plaintiff's Second Amended Complaint, filed June 13, 1996, as part of Plaintiff's 1994 Litigation, captioned *CP-1 v. CP-3 and OP, and CP-2 and BP and CP-3 v. Fireman's Fund Insurance Company*, BER-L-516-94 ("1994 Litigation Amended Complaint").

5. Plaintiff asserted various factual allegations against her family, including: "the defendant, CP-3 [Clement Pandelo], on various dates between August 1979 and August 12, 1988 engaged in physical and sexual touching and fondling of the infant plaintiff which he knew or should have known would result in emotional distress to the infant plaintiff." Parker Cert., ¶ 4, Exhibit C, 1994 Litigation Amended Complaint, ¶ 5.

6. Plaintiff also asserted that "the defendants, OP [Olga Pandelo], CP-2 [Carl Pandelo] and BP [Plaintiff's mother] on August 12, 1988 and on other dates prior thereto, between August 1979 and August 12, 1988, carelessly and negligently failed to act for the protection of the infant plaintiff." Parker Cert., ¶ 4, Exhibit C, 1994 Litigation Amended Complaint, Fourth Count, ¶ 4.

7. Plaintiff asserted injuries, including: "the infant plaintiff has been physically, psychologically and emotionally harmed, has been unable to attend to activities normally engaged in by children of her age, has been negatively affected in academic endeavors and has been compelled to undergo intensive psychotherapy." Parker Cert., ¶ 4, Exhibit C, 1994 Litigation Amended Complaint, First Count, ¶ 6.

8. Plaintiff also asserted damages, including: "[Plaintiff] was and will be compelled to spend large and diverse sums of money for medical care[.]" Parker Cert., ¶ 4, Exhibit C, 1994 Litigation Amended Complaint, Second Count, ¶ 3.

9. Plaintiff ultimately dismissed her parents from her lawsuit. Parker Cert., ¶ 5, Exhibit D, Plaintiff's 1994 Litigation Appellate File, A-2897-99T-5 ("Appellate File"), at 20.

10. After a jury trial, Plaintiff was awarded \$2,278,874.90. Parker Cert., ¶ 3, Ex. B, 2021 Amended Complaint, ¶ 57.

11. Plaintiff appealed her jury award, specifically the jury's apportionment of liability against her parents as settling codefendants, in an attempt to maximize her claims against her grandparents. Parker Cert., ¶ 5, Exhibit D, Appellate File, at 5.

12. In its opinion, the Appellate Division noted Plaintiff's desire during trial to "question one of the elders of the church congregation to which her family belonged about certain statements made by her grandfather during church disciplinary meetings" regarding his "disfellowshipment". Parker Cert., ¶ 5, Exhibit D, Appellate File, at 22.

13. The Appellate Division affirmed the judgment in all respects. Parker Cert., ¶ 5, Exhibit D Appellate File, at 5.

14. Plaintiff was represented by counsel during her Law Division and Appellate Division proceedings. Parker Cert., ¶ 4, Exhibit C, 1994 Litigation Amended Complaint; Parker Cert., ¶ 5, Exhibit D, Appellate File.

C. The 2021 Litigation

15. On August 18, 2021, Plaintiff Corinne Pandelo initiated this action against numerous religious entities pursuant to the Child Victims Act, including Watchtower, the East Hackensack Congregation, and the Fairlawn Congregation of Jehovah's Witnesses. Parker Cert., ¶ 2, Ex. A, 2021 Complaint; Parker Cert., ¶ 3, Ex. B, 2021 Amended Complaint.

16. Plaintiff acknowledged that "None of the DEFENDANTS named in this action were a party to the 1994 action." Parker Cert., ¶ 3, Ex. B, 2021 Amended Complaint, ¶ 56.

17. In her 2021 Amended Complaint, Plaintiff asserted factual allegations, including that “[i]n or around 1976-1977, when PLAINTIFF was still wearing diapers, Pandelo began to sexually abuse her.” Parker Cert., ¶ 3, Ex. B, 2021 Amended Complaint, ¶ 38.

18. Plaintiff also asserted injuries, including: “PLAINTIFF suffered sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to her nervous system, and has been caused to suffer physical pain and mental anguish, and permanent emotional and psychological damage as a result thereof.” Parker Cert., ¶ 3, Ex. B, 2021 Amended Complaint, ¶ 242.

19. Plaintiff asserted damages, including: “As a result of the Defendants’ conduct, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.” Parker Cert., ¶ 3, Ex. B, 2021 Amended Complaint, ¶ 243.

20. On April 12, 2022, after conducting an in-camera review of the 1994 litigation file upon motion by Defendants, this Court ordered that the entirety of the file be produced to Defendants. Parker Cert., ¶ 6, Ex. E, Court Order, dated April 12, 2022 (Transaction ID LCV20221485629) (the “Order”).

21. In the Order, this Court concluded that: “all the documents contained in this file are relevant as they involved Corrine Pandelo’s prior allegations and claims that are based on very similar or the same underlying wrongful acts in this litigation Both matters involve the same plaintiff and involve similar underlying wrongful allegations as are claimed in this case.” Parker Cert., ¶ 6, Ex. E, the Order.

Dated: July 20, 2022

Respectfully submitted,

By: /s/ Anthony P. La Rocco

K&L GATES LLP

Anthony P. La Rocco

Dana B. Parker

Reymond E. Yammine

One Newark Center, 10th Floor

Newark, New Jersey 07102

P: (973) 848-4000

Attorneys for Defendant Watchtower

Bible and Tract Society of New York, Inc.

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Corinne Pandelo,

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Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-5508-21

Civil Action

**DEFENDANTS WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK,
INC. AND EAST HACKENSACK CONGREGATION OF JEHOVAH'S WITNESSES'
BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

K&L GATES LLP

One Newark Center, 10th Floor

Newark, New Jersey 07102

P: (973) 848-4000

F: (973) 848-4001

E: Anthony.LaRocco@klgates.com

E: Dana.Parker@klgates.com

E: Reymond.Yammine@klgates.com

*Attorneys for Defendant Watchtower
Bible and Tract Society of New York, Inc. and
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Of Counsel and on the brief

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PRELIMINARY STATEMENT

In 1994, Plaintiff initiated an action against her grandfather and her grandmother, later amending to add her parents, for damages stemming from her grandfather's alleged abuse while she was a minor. ("1994 litigation"). More specifically, Plaintiff alleged that her grandfather abused her between approximately 1979 and 1988. Following years of litigation, a jury ultimately awarded Plaintiff more than \$2 million in compensatory and punitive damages and apportioned the total liability for these wrongful acts among all named defendants. The New Jersey Appellate Division subsequently affirmed the jury's verdict. Now, more than 28 years later, Plaintiff seeks to repurpose these very same allegations by expanding her circle of liability to enshrine a number of newly-named religious entities including Watchtower Bible and Tract Society of New York, Inc. ("Watchtower") the East Hackensack Congregation of Jehovah's Witnesses (improperly named Hackensack Congregation of Jehovah's Witnesses) (the "East Hackensack Congregation") and Fairlawn Congregation of Jehovah's Witnesses (together, "Defendants") in violation of principles of the entire controversy doctrine and judicial estoppel.

Even a cursory review of Plaintiff's allegations makes it clear that her current claims arise out of exactly the same wrongful acts for which she was already awarded more than \$2 million. Indeed, this Court held that that the allegations raised in Plaintiff's 1994 litigation "are based on very similar or the same underlying wrongful acts alleged in this litigation Both matters involve the same plaintiff and involve similar underlying wrongful allegations as are claimed in this case."

In 1994, Plaintiff made an informed decision to pursue claims against tortfeasors who caused her harm: her grandfather, her grandmother, and her parents; a decision that earned her a significant monetary award. Part of that informed decision included not naming Defendants in

that litigation, to Defendants' detriment. After almost three decades, evidence has spoiled and key witnesses, including Plaintiff's grandfather, have died. The evidence conclusively establishes that Plaintiff has already recovered on these claims. If allowed to proceed, Plaintiff will be allowed to retain a significant windfall and Defendants will be unable to successfully defend themselves in this action.

Whether under New Jersey's entire controversy doctrine or pursuant to judicial estoppel, this lawsuit must be dismissed for violating principles of fairness to the parties and for a complete lack of judicial efficiency.

STATEMENT OF FACTS¹

On August 18, 2021, Plaintiff Corinne Pandelo initiated this action against numerous religious entities pursuant to the Child Victims Act, which temporarily revived the statute of limitations for alleged victims of childhood sexual abuse to assert certain claims that would otherwise be time barred. Plaintiff's Complaint, filed on August 18, 2021 (LCV20211914643) ("2021 Complaint"); Plaintiff's Amended Complaint, filed on October 13, 2021 (LCV20212383924) ("2021 Amended Complaint").

In the 2021 Amended Complaint, Plaintiff alleged that her grandfather, Clement Pandelo, sexually abused her beginning around 1976-1977.² Defendants' Statement of Undisputed Material Facts ("SUMF"), ¶ 1. Plaintiff alleged that her abuse ended when she disclosed the wrongful conduct to her parents, who contacted law enforcement, resulting in the incarceration of Clement Pandelo. SUMF, ¶ 2. In her complaint, Plaintiff acknowledged that she initiated the 1994

¹ To the extent required by Rule 4:46-2(a), Defendants are submitting a separate statement of material facts. Nonetheless, in support of its motion, Defendants rely solely on prior pleadings and court opinions, of which the Court should take judicial notice.

² In her original 2021 Complaint, Plaintiff alleged that her abuse began in 1999. Complaint ¶ 38.

litigation³ against her grandparents and parents arising out of the same abuse alleged here. SUMF, ¶ 16. Likewise, Plaintiff acknowledged that she was awarded more than \$2 million as a result of that action. SUMF, ¶ 10.

On April 12, 2022, after conducting an *in-camera* review of the 1994 litigation file, this Court ordered that the entirety of the file be produced to Defendants. SUMF, ¶ 20. In the Order, this Court concluded that: “all the documents contained in this file are relevant as they involved Corrine Pandelo’s prior allegations and claims *that are based on very similar or the same underlying wrongful acts in this litigation Both matters involve the same plaintiff and involve similar underlying wrongful allegations as are claimed in this case.*” SUMF, ¶ 21 (emphasis added).

Just as this Court recognized, Plaintiff’s claims in this case against Defendants are duplicative of Plaintiff’s already-litigated claims, for which Plaintiff was awarded \$2,278,874.90 via a jury verdict. Like in this case, Plaintiff’s 1994 litigation included claims for: negligent infliction of emotional distress; negligence; and intentional and/or reckless infliction of emotional distress. SUMF, ¶ 4.

In addition to the duplicative Counts, Plaintiff asserted the same factual allegations:

- “[T]he defendant, CP-3 [Clement Pandelo], on various dates between August 1979 and August 12, 1988 engaged in physical and sexual touching and fondling of the infant plaintiff which he knew or should have known would result in emotional distress to the infant plaintiff.” (SUMF ¶ 5; Parker Cert., ¶ 4, Exhibit C, Plaintiff’s Second Amended Complaint, filed June 13, 1996, as part of Plaintiff’s 1994 Litigation, captioned *CP-1 v. CP-3 and OP, and CP-2 and BP and CP-3 v. Fireman’s Fund Insurance Company*, BER-L-516-94 (“1994 Litigation Amended Complaint”), First Count, ¶ 5);
- “[T]he defendants, OP [Olga Pandelo], CP-2 [Carl Pandelo] and BP [Plaintiff’s mother] on August 12, 1988 and on other dates prior thereto, between August 1979 and August 12, 1988, carelessly and negligently failed to act for the protection of the infant plaintiff.” (SUMF, ¶ 6, 1994 Litigation Amended Complaint, Fourth Count, ¶ 4);

³ Captioned *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94.

- “In or around 1976-1977, when PLAINTIFF was still wearing diapers, Pandelo began to sexually abuse her.” (SUMF, ¶ 17, 2021 Amended Complaint, ¶ 38).

Plaintiff asserted the same injuries:

- “[T]he infant plaintiff has been *physically, psychologically and emotionally harmed*, has been unable to attend to activities normally engaged in by children of her age, has been negatively affected in academic endeavors and has been compelled to undergo intensive psychotherapy.” (SUMF, ¶ 7, 1994 Litigation Amended Complaint, First Count, ¶ 6) (emphasis added);
- “PLAINTIFF suffered sustained *physical and psychological injuries*, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to her nervous system, and has been caused to suffer physical pain and mental anguish, and permanent *emotional and psychological damage* as a result thereof.” (SUMF, ¶ 18, 2021 Amended Complaint, ¶ 242) (emphasis added).

And Plaintiff asserted the same damages:

- “[Plaintiff] was and will be compelled to spend large and diverse sums of money for *medical care*” (SUMF, ¶ 8, 1994 Litigation Amended Complaint, Second Count, ¶ 3) (emphasis added);
- “As a result of the Defendants’ conduct, PLAINTIFF has and will become obligated to expend sums of money for *medical treatment*.” (SUMF, ¶ 19, 2021 Amended Complaint, ¶ 243) (emphasis added).

Plaintiff also appealed her jury award and the Appellate Division affirmed the judgment in all respects. SUMF, ¶ 13. On appeal, Plaintiff challenged the jury’s apportionment of liability among her family, in an attempt to maximize her claims against her grandparents. SUMF, ¶ 11. Specifically, Plaintiff challenged the apportionment of liability against her parents as settling codefendants, which the Appellate Division rejected. SUMF, ¶ 11. The Appellate Division noted Plaintiff’s desire to question elders⁴ of Pandelo’s congregation during her trial. SUMF, ¶ 12 (acknowledging plaintiff wanted to “question one of the elders of the church congregation to which

⁴ Elders are mature members of the congregation who provide spiritual and religious guidance to congregation members.

her family belonged about certain statements made by her grandfather during church disciplinary meetings” regarding his “disfellowshipment”).⁵ Plaintiff was represented by counsel during her Law Division and Appellate Division proceedings.

ARGUMENT

I. Summary Judgment Standard

Summary judgment operates to provide a “prompt, businesslike and inexpensive” resolution of an action where there is no “genuine issue of material fact requiring disposition at trial.” *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 530 (1995). Under Rule 4:46-2, summary judgment should be granted in favor of the moving party if the record demonstrates “that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” R. 4:46-2(c). The thrust of *Brill* is to “encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves.” 142 N.J. at 541.

Our courts have recognized that “[w]here the moving party demonstrates a *prima facie* right to summary judgment, the opponent of a motion is required to show by competent evidential material that a genuine issue of material fact exists.” *Goldome Realty Credit Corp. v. Harwick*, 236 N.J. Super. 118, 124 (Ch. Div. 1989). It is not sufficient for an opponent of a motion for summary judgment merely to allege the existence of some factual issue. “If the facts produced by the opponent of a motion for summary judgment are of an insubstantial nature . . . summary judgment may be awarded.” *Id.* (internal citations omitted). The Court must evaluate the evidence presented and determine whether the alleged factual issue is indeed genuine. *Brill*, 142 N.J. at 520. Summary judgment standards must “be applied with discriminating care so as not to defeat

⁵ “Disfellowship” means to remove a congregant from the congregation.

a summary judgment if the movant is justly entitled to one.” *Judson v. Peoples Bank & Trust Co.*, 17 N.J. 67, 74 (1954). New Jersey courts do not hesitate to grant summary judgment where appropriate “to avoid unnecessary litigation.” *MacDougall v. Weichert*, 144 N.J. 380, 444 (1996).

II. Plaintiff’s claims are barred by the Entire Controversy Doctrine

Defendants’ motion for summary judgment must be granted, as the evidence conclusively establishes that Plaintiff has already recovered on these same claims, in violation of the entire controversy doctrine. Plaintiff’s failure to name Defendants in her initial suit was inexcusable, and Defendants are substantially prejudiced in their ability to defend this successive action. Furthermore, re-litigating the exact same case now is a senseless waste of judicial resources and time.

The entire controversy doctrine requires parties to raise all known and related claims in a single lawsuit or face the “preclusion of the omitted claims.” R. 4:30A. At its heart, the doctrine bars claims “involving the same commonality of facts in cases involving piece-meal litigation where parties for strategic reasons have withheld claims concerning the underlying action, seeking two bites at the apple.” *Hillsborough Twp. Bd. of Educ. v. Faridy Thorne Frayta, P.C.*, 321 N.J. Super. 275, 284–85 (App. Div. 1999) (citing *DiTrollo v. Antiles*, 142 N.J. 253, 269 (1995)). Where a party’s claims and defenses “could be most soundly and appropriately litigated and disposed of in a single comprehensive adjudication,” fairness dictates that the doctrine must be applied. *See Wadeer v. New Jersey Mfrs. Ins. Co.*, 220 N.J. 591, 605 (2015) (quoting *DiTrollo*, 142 N.J. at 267). In determining whether a subsequent litigation violates the doctrine, “the determinative consideration is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts.” *DiTrollo*, 142 N.J. at 271.

Critical to the doctrine is whether the right of an undisclosed defendant, such as the Defendants, “has been substantially prejudiced by not having been identified in the prior action.”

700 Highway 33 LLC v. Pollio, 421 N.J. Super. 231, 236–37 (App. Div. 2011). Particularly where, as here, newly-named defendants are faced with “the loss of witnesses, the loss of evidence, fading memories and the like.” *Kent Motor Cars, Inc. v. Reynolds & Reynolds, Co.*, 207 N.J. 428, 446 (2011) (quoting *Mitchell v. Procini*, 331 N.J. Super. 445 454-55 (App. Div. 2000)); *1707 Realty, LLC v. Revolution Architecture, LLC*, 2020 WL 8367591 at *23–24 (Law. Div. Nov. 20, 2020) (dismissing the plaintiff’s claims and stating the witness’s “unavailability in this matter directly impacts Defendants’ ability to respond to Plaintiff’s allegations, thus substantially prejudicing their ability to defend the claims”); *see also Mocco v. Frumento*, 2016 WL 10585998, at *8 (3d Cir. Sep. 25, 2017) (applying New Jersey law) (finding the overlap of evidence between the two actions would not be complete where a fact witness had passed away before the second litigation).

New Jersey courts will bar a successive action pursuant to the entire controversy doctrine where it is clear that the successive action will result in double recovery for plaintiffs. *1707 Realty*, 2020 WL 8367591 at *24 (“New Jersey Courts have long recognized the inequity and substantial prejudice that results from double recovery.”). Where plaintiffs seek “two attempts at recovery” via two actions with overlapping damages, New Jersey courts will dismiss the subsequent action with prejudice. *Id.* at 24-26.

Plaintiff’s 1994 and 2021 claims are part of a “single larger controversy,” as they “arise from interrelated facts.” *See DiTrolino*, 142 N.J. at 271. Moreover, Plaintiff asserts the same allegations of abuse by the same person—her now-deceased grandfather. SUMF, ¶ 5, 1994 Litigation Amended Complaint, First Count, ¶ 5 (“[T]he defendant, CP-3 [Clement Pandelo], on various dates between August 1979 and August 12, 1988 engaged in physical and sexual touching and fondling of the *infant plaintiff*”) (emphasis added); SUMF, ¶ 5, 2021 Amended Complaint, ¶ 38 (“In or around 1976-1977, when PLAINTIFF was *still wearing diapers*, Pandelo began to

sexually abuse her.”). Although Plaintiff’s allegations are based “in our or around” different years, the allegations are all based on alleged abuse endured when Plaintiff was an “infant” or “still wearing diapers.” SUMF ¶ 5, 1994 Litigation Amended Complaint, First Count, ¶ 5; SUMF ¶ 17, 2021 Amended Complaint, ¶ 38. Indeed, the passage of time has even distorted Plaintiff’s own memory of precisely when the abuse occurred. This will certainly be prejudicial to Defendants.

And in both complaints, Plaintiff claims physical, psychological, and emotional harm or damage. SUMF ¶ 7, 1994 Litigation Amended Complaint, First Count, ¶ 6; SUMF ¶ 18, 2021 Amended Complaint, ¶ 242. Finally, both complaints assert the identical basis for damages: large “sums of money” for Plaintiff’s medical care and treatment. SUMF ¶ 8, 1994 Litigation Amended Complaint, Second Count, ¶ 3; SUMF ¶ 19, 2021 Amended Complaint, ¶ 243. Even more, Plaintiff’s 1994 Litigation Amended Complaint specifies damages for plaintiff’s psychiatric care “in the future[.]” SUMF ¶ 8, 1994 Litigation Amended Complaint, Second Count, ¶ 3. Plaintiff’s claims do not just arise from “interrelated facts,” but from the identical facts.

Plaintiff’s failure to join Defendants in the 1994 litigation is fatal to her current litigation. In the 1994 litigation, Plaintiff acknowledged Defendants’ existence. Indeed, Plaintiff’s appeal of the 1994 litigation specifically referenced Defendants. SUMF ¶ 12, Parker Cert., ¶ 5, Exhibit D, Plaintiff’s 1994 Litigation Appellate File, A-2897-99T-5 (“Appellate File”), at 22 (acknowledging plaintiff wanted to “question one of the elders of the church congregation to which her family belonged about certain statements made by her grandfather during church disciplinary meetings” regarding his “disfellowshipment”). Similarly, the fact that Plaintiff’s 1994 litigation resulted in a jury trial where the trial court expended significant resources is also relevant to the inexcusable inquiry. *Mocco*, 2016 WL 10585998, at *6 (“the Court will examine the extent to which judicial

resources were employed in the earlier litigation . . . [i]ndeed, the Superior Court presided over a lengthy bench trial to resolve the first ‘phase’ of that litigation”).

Defendants face substantial prejudice in their ability to defend the 2021 claims, due in large part to the spoliation of evidence. As New Jersey courts have recognized, the loss of witnesses, loss of evidence and fading memories substantially prejudice Defendants here. *See Kent Motor Cars*, 207 N.J. at 446. The abuse alleged by Plaintiff occurred as far back as 1976. SUMF, ¶ 1. Had Defendants been party to the 1994 litigation, they undoubtedly would have been in a better position to defend their claims with relevant evidence. Indeed, the death of a key witness has substantially prejudiced Defendants’ ability to defend the claims against them. *See 1707 Realty*, 2020 WL 8367591 at *23–24; *see also Mocco*, 2016 WL 10585998, at *8 (recommending dismissal with prejudice of new defendants). Here, Clement Pandelo, the perpetrator of the alleged abuse, has passed away and Defendants cannot procure his testimony as they could have in the 1994 litigation. Certainly, there is even more evidence that would have been available to Defendants at the time of the initial lawsuit in 1994.

Finally, New Jersey courts have categorically rejected efforts by parties, such as Plaintiff, of seeking a second bite at the apple for the same alleged wrong:

New Jersey Courts have long recognized the inequity and substantial prejudice that results from double recovery. The Entire Controversy Doctrine was in fact partially intended to prevent a party from “two attempts at recovery.”

1707 Realty, LLC, 2020 WL 8367591, at *8 (dismissing complaint against new defendants). Here, Plaintiff’s 2021 claims seek double recovery for the same damages Plaintiff recovered as a result of the 1994 litigation. Not only do Plaintiff’s 1994 Litigation Amended Complaint and 2021 Amended Complaint seek large “sums of money,” but the 1994 Litigation Amended Complaint

sought damages for Plaintiff's psychiatric care that she "will be compelled" to spend "in the future[.]" SUMF ¶ 8, 1994 Litigation Amended Complaint, Second Count, ¶ 3. The "sums of money" toward medical care that Plaintiff seeks via her 2021 Amended Complaint are sums of money that Plaintiff has already attempted to recover. In fact, she *succeeded* in doing so.

As such, it cannot be disputed that Plaintiff's failure to join Defendants in her 1994 litigation is inexcusable, has substantially prejudiced Defendants' ability to defend the claims against them, and therefore, it is fatal to Plaintiff's current litigation. Moreover, Plaintiff has already recovered on the damages for which she improperly seeks double recovery here. Further discovery will not assist this Court, as the evidence already ascertained establishes that Plaintiff's Complaint is entirely barred by the entire controversy doctrine. As such, this Court must grant Defendants' motion for summary judgment.

III. Plaintiff's claims are barred by judicial estoppel

Judicial estoppel is a subset of res judicata that is "an equitable principle, designed to 'prevent litigants from playing fast and loose with the courts.'" *Terranova v. General Electric Pension Trust*, 457 N.J. Super. 404, 411–412 (App. Div. 2019) (quoting *Cummings v. Bahr*, 295 N.J. Super. 374, 387 (App. Div. 1996)). New Jersey courts have "equated the doctrine's policy concerns with those that buttress the entire controversy doctrine: to resolve a controversy in one judicial proceeding because 'fragmented and multiple litigation takes its toll on not only the parties but the judicial institution and the public.'" *Id.* (quoting *Cummings*, 295 N.J. Super. at 387) (internal citations omitted).

Judicial estoppel applies when, like here, a party has successfully litigated a position, and then attempts to take a position contrary to that one in subsequent litigation. *Id.* at 413. (quoting *McCurrie v. Town of Kearny*, 174 N.J. 523, 533 (2002)) ("[W]here a party has prevailed on a

litigated point, principles of judicial estoppel demand that such party be bound by its earlier representations.”).

Here, Plaintiff is judicially estopped from taking a position contrary to the one she successfully litigated in 1994; that her grandfather, her grandmother, and her parents are liable for her injuries. SUMF ¶ 5, 1994 Litigation Amended Complaint, First Count, ¶ 5 (“[T]he defendant, CP-3 [Clement Pandelo], on various dates between August 1979 and August 12, 1988 engaged in physical and sexual touching and fondling of the infant plaintiff which he knew or should have known would result in emotional distress to the infant plaintiff.”); SUMF ¶ 6, 1994 Litigation Amended Complaint, First Count, ¶ 4 (“the defendants, OP [Olga Pandelo], CP-2 [Carl Pandelo] and BP [Plaintiff’s mother] on August 12, 1988 and on other dates prior thereto, between August 1979 and August 12, 1988, carelessly and negligently failed to act for the protection of the infant plaintiff.”); SUMF ¶ 19, 2021 Amended Complaint, ¶ 243 (“As a result of the *Defendants’ conduct*, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.”) (emphasis added). Principles of judicial estoppel demand that Plaintiff be bound by her earlier representations—that the Defendants from the 1994 litigation are the cause of her alleged injuries, not the Defendants here. *See Terranova*, 457 N.J. Super. at 413. Plaintiff cannot recover for her injuries against her alleged abuser, and then “shoot[] a second line toward others, seeking contribution for” the same injuries. *Id.* at 415–16. It is uncontroverted that Plaintiff already recovered on these very claims, as her own Complaint in this case directs the Court to her jury award stemming from the 1994 litigation. SUMF, ¶ 10.

Plaintiff is taking a position contrary to the one she already successfully litigated. As such, this Court must apply the remedy of judicial estoppel to preclude Plaintiff’s improper claims.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant Defendants' motion for summary judgment.

Dated: July 20, 2022

Respectfully submitted,

By: /s/ Anthony P. La Rocco

Anthony P. La Rocco

Dana B. Parker

Reymond E. Yammine

K&L GATES LLP

One Newark Center, 10th Floor

Newark, New Jersey 07102

P: (973) 848-4000

F: (973) 848-4001

Attorneys for Defendant Watchtower

Bible and Tract Society of New York, Inc. and

East Hackensack Congregation of Jehovah's

Witnesses (improperly named as Hackensack

Congregation of Jehovah's witnesses)

Anthony P. La Rocco (Attorney ID 023491982)
Dana B. Parker (Attorney ID 041682003)
Reymond E. Yammine (Attorney ID 306962019)

K&L GATES LLP

One Newark Center, 10th Floor
Newark, New Jersey 07102

P: (973) 848-4000

F: (973) 848-4001

*Attorneys for Defendants Watchtower Bible
and Tract Society of New York, Inc. and
East Hackensack Congregation of Jehovah's
Witnesses (improperly named as Hackensack
Congregation of Jehovah's witnesses)*

Corinne Pandelo,

Plaintiff,

v.

The Governing Body of Jehovah's Witnesses,
Fairlawn Congregation of Jehovah's
Witnesses, Watchtower Bible and Tract
Society of New York, Inc., Hackensack
Congregation of Jehovah's Witnesses, and
John and Jane Does 1-100, whose identities are
presently unknown to Plaintiff, in their official
and individual capacities,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-5508-21

Civil Action

PROOF OF SERVICE

I, Dana B. Parker, hereby certify as follows:

1. I am an attorney-at-law of the State of New Jersey and counsel at K&L Gates LLP, attorneys for Defendants Watchtower Bible and Tract Society of New York, Inc. and the East Hackensack Congregation of Jehovah's Witnesses (improperly named Hackensack Congregation of Jehovah's Witnesses) (together, "Defendants").

2. On July 20, 2022, I caused to be served on all counsel of record copies of the following via electronic filing through NJ eCourts: (1) Notice of Defendants' Motion for Summary Judgment; (2) Defendants' Brief in Support of their Motion for Summary Judgment; (3) the Certification of Dana B. Parker in support thereof, with corresponding exhibits; (4) Defendants' Statement of Undisputed Material Facts; (5) a proposed form of Order; and (6) this Proof of Service.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 20, 2022

By: /s/ Dana B. Parker

Anthony P. La Rocco

Dana B. Parker

Reymond E. Yammine

K&L GATES LLP

One Newark Center, 10th Floor

Newark, New Jersey 07102

P: (973) 848-4000

F: (973) 848-4001

*Attorneys for Defendants Watchtower Bible
and Tract Society of New York, Inc. and
East Hackensack Congregation of Jehovah's
Witnesses (improperly named as Hackensack
Congregation of Jehovah's witnesses)*

Anthony P. La Rocco (Attorney ID 023491982)
Dana B. Parker (Attorney ID 041682003)
Reymond E. Yammine (Attorney ID 306962019)

K&L GATES LLP

One Newark Center, 10th Floor
Newark, New Jersey 07102

P: (973) 848-4000

F: (973) 848-4001

*Attorneys for Defendant Watchtower
Bible and Tract Society of New York, Inc. and
East Hackensack Congregation of Jehovah’s
Witnesses (improperly named as Hackensack
Congregation of Jehovah’s witnesses)*

Corinne Pandelo,

Plaintiff,

v.

The Governing Body of Jehovah’s Witnesses,
Fairlawn Congregation of Jehovah’s Witnesses,
Watchtower Bible and Tract Society of New
York, Inc., Hackensack Congregation of
Jehovah’s Witnesses, and John and Jane Does
1-100, whose identities are presently unknown
to Plaintiff, in their official and individual
capacities,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO: BER-L-5508-21

Oral Argument is Requested

**CERTIFICATION OF DANA B. PARKER
IN SUPPORT OF DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT**

I, Dana B. Parker, hereby certify as follows:

1. I am an attorney-at-law of the State of New Jersey and counsel at K&L Gates LLP, attorneys for Defendants Watchtower Bible and Tract Society of New York, Inc. (“Watchtower”) and the East Hackensack Congregation of Jehovah’s Witnesses (improperly named Hackensack Congregation of Jehovah’s Witnesses) (the “East Hackensack Congregation”) (together,

“Defendants”). I make this certification in support of Defendants’ Motion for Summary Judgment pursuant to New Jersey Court Rule 4:46-2(a).

2. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff Corinne Pandelo’s original Complaint in this litigation, filed on August 18, 2021 (LCV20211914643) (“2021 Complaint”).

3. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff Corinne Pandelo’s First Amended Complaint, filed on October 13, 2021 (LCV20212383924) (“2021 Amended Complaint”).

4. Attached hereto as **Exhibit C** is a true and correct copy of Plaintiff Corinne Pandelo’s Second Amended Complaint, filed on June 13, 1996, as part of her 1994 Litigation, captioned *CP-1 v. CP-3 and OP, and CP-2 and BP and CP-3 v. Fireman’s Fund Insurance Company*, BER-L-516-94 (“1994 Litigation Amended Complaint”).

5. Attached hereto as **Exhibit D** is a true and correct copy of the Appellate File stemming from Plaintiff’s 1994 Litigation, captioned *CP-1 v. CP-3 and OP, and CP-2 and BP v. and CP-3 v. v. Fireman’s Fund Insurance Company*, A-2897-99T5 (the “Appellate File”).

6. Attached hereto as **Exhibit E** is a true and correct copy of the Court’s Order, dated April 12, 2022 (Transaction ID LCV20221485629).

7. Attached hereto as **Exhibit F** is a true and correct copy of the Law Division’s unpublished opinion in *1707 Realty, LLC v. Revolution Architecture, LLC*, 2020 WL 8367591 (Law. Div. Nov. 20, 2020). No contrary unpublished opinions are known to counsel.

8. Attached hereto as **Exhibit G** is a true and correct copy of the Third Circuit’s unpublished opinion in *Mocco v. Frumento*, 2016 WL 10585998 (3d Cir. Sep. 25, 2017). No contrary unpublished opinions are known to counsel.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 20, 2022

/s/ Dana B. Parker

Dana B. Parker

K&L GATES LLP

One Newark Center, 10th Floor

Newark, New Jersey 07102

P: (973) 848-4000

F: (973) 848-4001

*Attorneys for Defendant Watchtower
Bible and Tract Society of New York, Inc. and
East Hackensack Congregation of Jehovah's
Witnesses (improperly named as Hackensack
Congregation of Jehovah's witnesses)*

EXHIBIT A

ROBINS KAPLAN LLP

Rayna E. Kessler, Esq.
NJ ID No. 031782010
399 Park Avenue, Suite 3600
New York, NY 10022-4611
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

THE ZALKIN LAW FIRM, P.C.

Alex Zalkin, Esq. (to be admitted *pro hac vice*)
Elizabeth Cate, Esq. (to be admitted *pro hac vice*)
10 Times Square
1441 Broadway, Suite 3147
New York, NY 10018
Telephone: (858) 259-3011
Email: irwin@zalkin.com

Attorneys for Plaintiff Corrine Pandelo

CORINNE PANDELO,

Plaintiff,

v.

**THE GOVERNING BODY OF
JEHOVAH’S WITNESSES;
FAIRLAWN CONGREGATION OF
JEHOVAH’S WITNESSES;
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK;
HACKENSACK CONGREGATION OF
JEHOVAH’S WITNESSES; and
JOHN AND JANE DOES 1-100, whose
identities are presently unknown to Plaintiff,
in their official and individual capacities,**

Defendants.

:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - BERGEN COUNTY

: DOCKET NO. _____

:
:
: **CIVIL ACTION**

:
:
: **COMPLAINT AND JURY DEMAND**

Plaintiff, CORINNE PANDELO, for her Complaint against the Defendants, states as follows:

INTRODUCTION AND MATTER BEFORE THE COURT

1. Plaintiff CORINNE PANDELO (hereinafter “PLAINTIFF”) brings this action to seek redress for the sexual abuse she suffered at the hands of Clement Pandelo (“Pandelo”), an agent of Defendant THE GOVERNING BODY OF JEHOVAH’S WITNESSES (“GOVERNING BODY”), FAIRLAWN CONGREGATION OF JEHOVAH’S WITNESSES (“FAIRLAWN CONGREGATION”), WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK (“WATCHTOWER”), HACKENSACK CONGREGATION OF JEHOVAH’S WITNESSES (“HACKENSACK CONGREGATION”), and JOHN AND JANE DOE 1-100.

2. This complaint is filed pursuant to the New Jersey Child Sexual Abuse Act (CSAA), N.J.S.A. 2A:61B-1, et seq. New Jersey passed into law Bills S477 and A3648, which became effective December 1, 2019. This historic legislation opened a two-year, one-time filing window for survivors of childhood sexual abuse in the state of New Jersey to pursue otherwise time-barred actions based on sexual abuse. This law also amends the Charitable Immunity Act, N.J.S.A. 2A:53A-7, and the Tort Claims Act, N.J.S.A. 59-1-1 et seq., to allow for additional and retroactive liability for public entities and non-profit organizations organized for religious, charitable, educational, or hospital purposes.

PARTIES

3. Plaintiff CORINNE PANEDELO is a citizen and is domiciled in the state of New Jersey.

4. PLAINTIFF was born in 1974.

5. At all times relevant herein, PLAINTIFF and her family were members of the Jehovah’s Witness organization and attended Defendant FAIRLAWN CONGREGATION.

6. At all material times, Defendant WATCHTOWER is and was a New-York non-

profit corporation conducting business in the State of New Jersey, with its principal place of business at and which may be served at 100 Watchtower Drive, Patterson, New York, 12563.

7. Many of the acts and omissions alleged herein to have been committed by the various defendants occurred in the State of New Jersey.

8. At all material times, FAIRLAWN CONGREGATION was and is a congregation of the Jehovah's Witnesses located in Fairlawn, New Jersey.

9. Upon information and belief, during all of part of the time period relevant herein, FAIRLAWN CONGREGATION was known as "South Fairlawn Congregation of Jehovah's Witnesses."

10. At all material times, FAIRLAWN CONGREGATION is and was a business or religious entity of unknown legal status, which is authorized to conduct, and is conducting business in the State of New Jersey, with its principal place of business at and which may be served at 10 Nelson Ave, Hawthorne, NJ 07506.

11. During certain of the dates of the sexual abuse of PLAINTIFF, FAIRLAWN CONGREGATION supervised PLAINTIFF's molester, Clement Pandelo.

12. Pandelo was a ministerial servant in the Jehovah's Witness organization.

13. THE GOVERNING BODY was and is a religious body with a separate existence. On information and belief, the membership of Defendant GOVERNING BODY has changed over the years, but the entity that is the GOVERNING BODY has maintained a perpetual existence.

14. GOVERNING BODY is comprised of eight members. GOVERNING BODY does not claim to have a formal president or secretary.

15. GOVERNING BODY does have a coordinator that was formerly referred to as a chairman. On information and belief, the chairman of GOVERNING BODY is the functional

equivalent to a president or secretary in a secular unincorporated association.

16. The coordinator of GOVERNING BODY rotates on a yearly basis in alphabetical order.

17. The current members of the Governing Body are KENNETH E. COOK, JR.; SAMUEL FREDERICK HERD; GEOFFREY WILLIAM JACKSON; MARK STEPHEN LETT; GERRIT LOSCH; ANTHONY MORRIS III; D. MARK SANDERSON; and DAVID H. SPLANE. GOVERNING BODY does not publicly disclose its current coordinator. The following eight paragraphs are alleged in the alternative.

18. The current coordinator of GOVERNING BODY, as of October 1, 2019, is D. MARK SANDERSON.

19. The current coordinator of GOVERNING BODY, as of October 1, 2019, is DAVID H. SPLANE.

20. The current coordinator of GOVERNING BODY, as of October 1, 2019, is KENNETH E. COOK, JR.

21. The current coordinator of GOVERNING BODY, as of October 1, 2019, is SAMUEL FRERICK HERD.

22. The current coordinator of GOVERNING BODY, as of October 1, 2019, is GEOFFREY WILLIAM JACKSON.

23. The current coordinator of GOVERNING BODY, as of October 1, 2019, is MARK STEPHEN LETT.

24. The current coordinator of GOVERNING BODY, as of October 1, 2019, is GERRIT LOSCH.

25. The current coordinator of GOVERNING BODY, as of October 1, 2019, is

ANTHONY MORRIS, III.

26. At the time of the acts giving rise to the causes of action alleged in this complaint, GOVERNING BODY's principal office and place of business was in the County of Kings, State of New York.

27. In or about April of 2001, Christian Congregation of Jehovah's Witnesses, Inc. ("CCJW") assumed from WATCHTOWER the obligation to operate the Service Department of the United States Branch of Jehovah's Witnesses.

28. At the time of the acts giving rise to the causes of action alleged in this complaint, HACKENSACK CONGREGATION was and is a congregation of the Jehovah's Witnesses located in Hackensack, New Jersey.

29. At all material times, HACKENSACK CONGREGATION is and was a business or religious entity of unknown legal status, which is authorized to conduct, and is conducting business in the State of New Jersey, with its principal place of business at and which may be served at 506 Hamilton Place, Hackensack, New Jersey, 07601.

30. During certain of the dates of the sexual abuse of PLAINTIFF, HACKENSACK CONGREGATION supervised PLAINTIFF's molester, Clement Pandelo.

31. JOHN AND JANE DOE 1-30, whose names are presently unknown, were members of and officials of defendant FAIRLAWN CONGREGATION.

32. JOHN AND JANE DOE 31-60, whose names are presently unknown, were former members and officials of defendant WATCHTOWER.

33. JOHN AND JANE DOES 61-100, whose names are presently unknown, were former members and officials of defendant the GOVERNING BODY.

34. JOHN AND JANE DOES 81-100, whose names are presently unknown, were

former members and officials of defendant HACKENSACK CONGREGATION.

FACTUAL BACKGROUND

35. Pandelo attended HACKENSACK CONGREGATION during the relevant time period. Pandelo began also attending FAIRLAWN CONGREGATION during the relevant time period because HACKENSACK CONGREGATION was undergoing construction. As a result of the construction, members of FAIRLAWN CONGREGATION were moved to HACKENSACK CONGREGATION for a period of about two years.

36. At the time of his first disfellowship in or around 1988, Pandelo was a ministerial servant in the FAIRLAWN CONGREGATION.

37. During the relevant time period, Pandelo was also a ministerial servant in the HACKENSACK CONGREGATION.

38. In or around 1979, when PLAINTIFF was approximately 3 years old and still wearing diapers, Pandelo began to sexually abuse her. The sexual abuse consisted of Pandelo's touching PLAINTIFF's genitals and undeveloped breasts underneath her clothing, inserting his fingers into her vagina, forcing her to perform oral sex on him, and forcing her to engage in vaginal and anal intercourse with him. Pandelo also forced his dog to lick PLAINTIFF's vaginal area.

39. Pandelo's sexual abuse of PLAINTIFF lasted until in or around August 1988, when she disclosed the abuse to her parents.

40. PLAINTIFF's father, Carl Pandelo, reported the sexual abuse of PLAINTIFF to the Elders in his neighborhood, some of whom were Elders in a congregation in which Pandelo was a ministerial servant.

41. The Elders convened a judicial committee to investigate the allegations of Pandelo's sexual abuse of PLAINTIFF.

42. In or around 1988, Elders disfellowshipped Pandelo based on the allegations of sexual abuse of Pandelo.

43. Carl Pandelo also reported Pandelo's sexual abuse of PLAINTIFF to law enforcement.

44. In or around 1989, Pandelo was arrested and pleaded guilty to endangering the welfare of a child and criminal sexual conduct based on his admitted sexual abuse of PLAINTIFF as well as at least one other female child.

45. As part of his guilty plea, Pandelo admitted under oath that he had sexually abused minors for forty years.

46. After his conviction for child sexual abuse of multiple children for forty years, Pandelo was reinstated to the Jehovah's Witnesses.

47. After he was reinstated, Pandelo was later disfellowshipped again when additional details were revealed about the extent of his sexual abuse of PLAINTIFF as well as revelations that Pandelo had sexually abused two other minor females.

48. Following Pandelo's second disfellowship, he was later reinstated to the Jehovah's Witnesses despite having admitted to sexually abusing multiple children.

49. Approximately ten years prior to beginning to abuse PLAINTIFF, in or around 1967, Pandelo admitted to sexual misconduct involving minor girls and/or an adulterous affair with a teenaged girl. This misconduct was reported to Elders of the Congregation that Pandelo attended at the time, and Pandelo was publicly reproofed as a result. No other action was taken with regard to the reports of sexual misconduct of Pandelo, including that no reports to law enforcement were made.

50. During the time in which Pandelo was sexually abusing PLAINTIFF, but before

Carl Pandelo had learned that his father was abusing PLAINTIFF, in or around 1985 or 1986, Carl Pandelo learned that Pandelo was sexually abusing children. He reported these allegations to an Elder—one of the same Elders to whom he later reported Pandelo’s sexual abuse of PLAINTIFF. This Elder directed Carl Pandelo to report these allegations of abuse to another Elder, which Carl did.

51. When Carl Pandelo followed up with the Elders several weeks later to find out what action they had taken with regard to Pandelo’s sexual abuse of minors, he was told that no action was taken to discipline, reproof, or disfellowship Pandelo. Pandelo’s conduct was not reported to law enforcement.

52. During the time in which Pandelo was sexually abusing PLAINTIFF, Pandelo’s neighbor, a minor child, also reported to her mother that Pandelo had been repeatedly fondling her breasts and genitals. This conduct was reported to law enforcement. Pandelo admitted to this conduct.

53. Elders of the congregation that Pandelo attended at the time were informed of this conduct, but Pandelo was not disfellowshipped even though he had admitted to sexually abusing a child.

54. In or around January 1994, PLAINTIFF filed suit in the Superior Court of New Jersey, Law Division: Bergen County through her guardian ad litem, Carl Pandelo, against Pandelo and his wife, Olga Pandelo.

55. PLAINTIFF’s 1994 lawsuit sought damages against Pandelo and his wife to compensate her for the physical and emotional injuries she sustained as a result of Pandelo’s sexual abuse of her between the years of 1979 and 1988.

56. None of the DEFENDANTS named in this action were a party to the 1994 action.

57. On December 23, 1999, after a trial before a jury, judgment was entered in favor of PLAINTIFF and against Pandelo and his wife in the amount of \$2,278,874.90.

JURISDICTION AND VENUE

58. This action is timely commenced pursuant to the New Jersey Child Victims Act, dated December 1, 2019.

59. This Court has jurisdiction pursuant to Rule 4:3-2 as the FAIRLAWN CONGREGATION and HACKENSACK CONGREGATION conducted business in the State of New Jersey at all times relevant herein, and a substantial portion of the events or omissions giving rise to the claims occurred in the County of Bergen, State of New Jersey.

60. Venue is proper pursuant to Rule 4:3-2 because a substantial part of the events or omissions giving rise to the claims occurred within Bergen County.

CAUSES OF ACTION AGAINST DEFENDANTS

**COUNT I –
NEGLIGENCE AND/OR GROSS NEGLIGENCE**

61. PLAINTIFF repeats, reiterates, and re-alleges each and every allegation contained in the previous paragraphs as if set forth herein.

62. Defendants are responsible by their knowledge, action, and/or inaction, as if all allegations set forth in this Complaint pertain to all Defendants, and they are jointly and severally liable.

63. Each Defendant owed PLAINTIFF a duty of reasonable care to protect PLAINTIFF from injury.

64. Each Defendant owed PLAINTIFF a duty of care because each Defendant had a special relationship with Plaintiff.

65. Each Defendant owed PLAINTIFF a duty to protect PLAINTIFF from harm

because each Defendant also had a special relationship with Pandelo.

66. Defendants owed PLAINTIFF a duty of reasonable care because they held their agents, including Pandelo, out as safe to work with children; and/or encouraged their agents, including Pandelo, to spend time with, interact with, and recruit children.

67. Further, Defendants, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of power. Defendants thus entered into a fiduciary relationship with PLAINTIFF and her family. Defendants exploited their position of power, putting Plaintiff at risk to be sexually assaulted.

68. Defendants, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted a position of power over PLAINTIFF.

69. Defendants, through their employees and/or agents, including Pandelo, exploited their position of power over PLAINTIFF and thereby put the minor PLAINTIFF at risk for sexual abuse.

70. Defendants entered into an express and/or implied duty to properly supervise PLAINTIFF and provide a reasonably safe environment for children who attended their services and activities by accepting the minor PLAINTIFF as a participant in their services and activities and as a minor at their facilities; and holding their facilities, services, and activities out to be safe environments for PLAINTIFF. Defendants owed PLAINTIFF a duty to properly supervise PLAINTIFF to prevent harm from foreseeable dangers. Defendants had the duty to exercise the same degree of care over minors under their control as a reasonably prudent person would have exercised under similar circumstances.

71. Each Defendant owed PLAINTIFF a duty to protect PLAINTIFF from harm, because Defendants invited PLAINTIFF onto their property and facility, and Pandelo posed a

dangerous condition on Defendant's property.

72. Defendants breached their duties to PLAINTIFF by failing to use reasonable care. Defendants' failures include, but are not limited to, failing to properly supervise their volunteers employees, and/or agents, including Pandelo, failing to properly supervise PLAINTIFF, and failing to protect Plaintiff from foreseeable dangers.

73. As a direct and proximate result of Defendants breaching their duties, PLAINTIFF sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to PLAINTIFF were caused solely and wholly by reason of the negligent and/or grossly negligent failures, actions, and inactions of Defendants.

COUNT II –
NEGLIGENT AND/OR GROSSLY NEGLIGENT SUPERVISION
Plaintiff v. All Defendants

74. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the previous paragraphs as if set forth herein.

75. Pandelo was assigned and authorized to serve as a ministerial servant by the joint efforts of WATCHTOWER and GOVERNING BODY.

76. Pandelo's duties as a ministerial servant included the supervision of children, and were authorized by WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100.

77. Pandelo was, by virtue of his appointment as a ministerial servant, an agent of WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100.

78. Pandelo was acting within the scope of his employment or agency in performing duties for, and on behalf of WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100.

79. In connection with his responsibilities as a ministerial servant at FAIRLAWN CONGREGATION, Pandelo had regular and frequent contact with children who attended the congregation.

80. In connection with his responsibilities as a ministerial servant at HACKENSACK CONGREGATION, Pandelo had regular and frequent contact with children who attended the congregation.

81. WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 knew or should have known that Pandelo would have regular and frequent contact with children in connection with his position as a ministerial servant within FAIRLAWN CONGREGATION.

82. WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 knew or should have known that Pandelo would have regular and frequent contact with children in connection with his position as a ministerial servant within HACKENSACK CONGREGATION.

83. WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 knew or should have known that Pandelo sexually abused children, including PLAINTIFF.

84. WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 concealed from PLAINTIFF and her parents their knowledge of Pandelo's sexually abusive behavior.

85. Each defendant is the agent, servant, and/or employee of the other defendants, had the right to control the specific actions contributing to the abuse of PLAINTIFF by Pandelo, and each defendant was acting within the course and scope of his or its authority as an agent, servant

and/or employee of the other.

86. The organizational structure of the Jehovah's Witnesses is hierarchical.

87. The organizational head of the Jehovah's Witnesses was and is GOVERNING BODY, and GOVERNING BODY retains the right to control the daily activities of all of the individuals and entities within the Jehovah's Witnesses organization as those activities pertain to church functioning or governance, irrespective of whether the GOVERNING BODY exercises that right to control in any particular instance.

88. GOVERNING BODY is composed of a fluctuating number of elders. The GOVERNING BODY is organized into six committees that oversee all aspects of the Jehovah's Witness Organization within the United States. Corporations such as Defendant Watchtower Bible and Tract Society of New York, Inc. have been formed and are used by the Governing Body to facilitate the preaching and care for the spiritual needs of the congregations and to hold title to properties in New York.

89. Authority flows downward from GOVERNING BODY to the local level of the Jehovah's Witness organization, which is made up of congregations. The GOVERNING BODY appoints three or more Elders to serve on the Branch Committees at each of 116 branch offices of the Jehovah's Witnesses world-wide, including the United States Branch, all subject to the GOVERNING BODY's ongoing direction and right to control. The Service Department of the United States Branch oversees the activities of the congregations under the oversight of the U.S. Branch Committee and reports to the Service Committee of the Governing Body.

90. Congregations are organized by circuit.

91. A circuit consists of some number of congregations.

92. Each circuit is staffed by a circuit overseer and/or a substitute circuit overseer

approved and appointed by the GOVERNING BODY, and subject to its direction and control.

93. It is the responsibility of the circuit overseer to ensure that directives and policies promulgated by GOVERNING BODY and WATCHTOWER are being followed and correctly implemented at the congregation, circuit and district levels.

94. The circuit overseer personally visits each congregation within his circuit twice yearly.

95. The circuit overseer personally meets with the elders of the congregations within his circuit.

96. During the circuit overseer's visits, the elders of the congregation and the circuit overseer discuss the overall functioning of the congregation, as well as specific instances of alleged wrongdoing, including allegations of child molestation.

97. The circuit overseer participates in field service and observes and reports upon the functioning of the congregation.

98. During the circuit overseer's visits, the elders of the congregation and the circuit overseer meet to discuss the men in the congregation, with the purpose of identifying men who meet the requirements for appointment as ministerial servants or elders.

99. The circuit overseer assists the elders in arriving at recommendations to defendant WATCHTOWER for appointment as ministerial servants and elders in the congregation.

100. Prior to April of 2001, circuit overseers prepared reports regarding their visits to the congregations and submitted the report to WATCHTOWER as the agent of GOVERNING BODY.

101. Since April of 2001, circuit overseers have submitted their reports to CCJW as the agent of GOVERNING BODY.

102. Day to day operations of each congregation are run by a body of elders, subject to the right to control by WATCHTOWER and GOVERNING BODY.

103. Women are not permitted to serve as elders.

104. The elders are the highest authority at the congregational level.

105. The responsibilities of the elders include directing door-to-door preaching activities, selecting potential candidates for the position of ministerial servants or elders, organizing weekly church meetings, selecting candidates for the position of publisher, handling finances for the congregation, mentoring congregation members including children of the congregation, and determining the guilt, repentance, and punishment of church members who commit wrongdoing, subject to the right to control by WATCHTOWER and GOVERNING BODY.

106. In order to be appointed as an elder, a person must be a ministerial servant in good standing or have served as an elder in another congregation.

107. When the local elders identify a candidate for the position of elder, the circuit overseer recommends the candidate to WATCHTOWER.

108. WATCHTOWER and GOVERNING BODY have ultimate authority over the appointment of any candidate to the position of elder.

109. In the spring of 2001, CCJW took over WATCHTOWER'S responsibilities for the appointment of elders.

110. CCJW also assumed the responsibility from WATCHTOWER of nominating, appointing, supervising and disciplining publishers, ministerial servants, pioneers, elders, and circuit overseers.

111. Baptized publishers who meet certain requirements may be appointed as ministerial

servants.

112. Ministerial servants serve the congregation and aid the elders in their responsibilities and take on leadership responsibilities in the absence of an elder, subject to the right to control by WATCHTOWER and GOVERNING BODY.

113. In order to be appointed as a ministerial servant, a person must be a publisher in good standing.

114. Only males may serve as ministerial servants.

115. The body of elders of the local congregation identifies potential candidates for the position of ministerial servant.

116. The body of elders in concert with the circuit overseer, determines whether a potential candidate for ministerial servant is suitable, and lives his life in accordance with appropriate morals, subject to the right to control by WATCHTOWER and GOVERNING BODY.

117. Recommendations for the appointment of any individual to the position of ministerial servant are made to the WATCHTOWER.

118. WATCHTOWER and GOVERNING BODY have the ultimate authority as to whether a candidate is elevated to the level of ministerial servant.

119. Membership in the Jehovah's Witness organization is strictly regulated and monitored by WATCHTOWER and GOVERNING BODY, and subject to their direction and control.

120. A person can attend open meetings at the Kingdom Hall for years, and not be a member of the congregation.

121. An individual who wishes to become a member of the Jehovah's Witnesses, begins the process by engaging in a period of bible study with a baptized member of the congregation,

along with self-study.

122. After months of study, a person may become an unbaptized publisher.

123. In order to become an unbaptized publisher, the aspirant must apply to the congregation's body of elders.

124. The body of elders determine whether the aspirant exhibits enough knowledge of the beliefs and organization of the Jehovah's Witnesses to become a baptized publisher, subject to the right to control by WATCHTOWER and GOVERNING BODY.

125. The body of elders determine whether the morals and ethics of the aspirant meet the Jehovah's Witnesses standards.

126. Once a person is approved as an unbaptized publisher, he or she is authorized to represent the Jehovah's Witnesses, and the specific congregation, in the community.

127. An unbaptized publisher is authorized to engage in field service, which is the centerpiece of Jehovah's Witness marketing, fundraising, and recruiting activities.

128. Field service involves door-to-door proselytizing subject to the right to control by WATCHTOWER and GOVERNING BODY.

129. By participating in field service, an unbaptized publisher is authorized by the congregation and by the Jehovah's Witness organization to distribute Jehovah's Witness literature to members of the community, to accept donations on behalf of the organization, and to invite prospective members of the community to attend open congregation meetings at the Kingdom Hall as a means of recruitment.

130. Prior to April of 2001, each publisher was instructed by the congregation, as directed by defendant WATCHTOWER, on how to become more effective at disseminating literature, receiving donations, and enticing non-members to attend public congregation meetings

or begin bible study.

131. Since April of 2001, CCJW has assumed WATCHTOWER'S responsibilities for improving publisher's presentations.

132. Publishers must submit monthly records to the congregation detailing their hours spent in field service.

133. Publishers must submit forms to the congregation secretary for each "bible study" conducted by a publisher during the month.

134. Failure to submit field service records can lead to a publisher being designated as "irregular" or "inactive", which results in lowered status within the congregation.

135. After additional study, an unbaptized publisher may seek to become a baptized publisher.

136. Baptism as one of Jehovah's Witnesses is considered an ordination as minister of the Jehovah's Witnesses.

137. To be approved for baptism, an applicant must be tested and approved by elders of the local congregation.

138. During the testing, the applicant is asked certain questions relating to the teachings of the Jehovah's Witnesses as well as the organizational structure of the Jehovah's Witnesses.

139. Baptized publishers may make a greater commitment by pledging to spend a specified number of hours in service for a period of time.

140. Pioneers are baptized publishers who have pledged to perform a specified number of hours of field service.

141. An auxiliary pioneer is a baptized publisher who applies to the congregation's elders to perform a certain number of hours of field service during a one-month period of time.

142. The elders have discretion to accept or reject an application for auxiliary pioneer.

143. A regular pioneer is a baptized publisher who pledges to spend a specified number of hours in field service each month for one year.

144. In order to become a regular pioneer, an applicant gains the recommendation of the congregation's elders, who in turn submit that recommendation for approval to WATCHTOWER.

145. WATCHTOWER has the discretion to approve or reject an application for regular pioneer, as an extension of and subject to the right to control by GOVERNING BODY.

146. Since April of 2001, CCJW has assumed responsibility for approving or rejecting applications for regular pioneers.

147. Publishers submit to the domination, direction, and control of the Jehovah's Witness organization, as expressed through the directives of WATCHTOWER and GOVERNING BODY.

148. WATCHTOWER and GOVERNING BODY, through their agents, monitors each publisher's field service and bible study records, standardizes methods to be used during proselytizing activities, provides the only approved literature to be distributed during field service, directs where publishers will perform field service, controls access to sought after positions as regular or auxiliary pioneers, and determines appointments as ministerial servants, elders, and overseers.

149. The Jehovah's Witness organization dictates and implements the Jehovah's Witness practice of shunning, which involves isolating and not interacting with members that have been disfellowshipped or have voluntarily left the church.

150. A publisher's personal grooming, appearance and dress are regulated by his or her congregation, subject to the right to control by WATCHTOWER and GOVERNING BODY.

151. A publisher's use of alcohol, tobacco, or drugs is regulated by his or her congregation, subject to the right to control by WATCHTOWER and GOVERNING BODY.

152. A publisher's illegal sexual conduct, such as child sexual abuse occurring away from Jehovah's Witness locations and events are subject to regulation and the imposition of punishment by the congregation, subject to the right to control by WATCHTOWER and GOVERNING BODY.

153. A publisher's legal sexual conduct is subject to regulation and the imposition of punishment by the congregation, subject to the right to control by WATCHTOWER and GOVERNING BODY.

154. Congregants are encouraged to bring problems to the elders to be resolved, and are discouraged from seeking intervention from outside of the Jehovah's Witness organization, subject to the right to control by WATCHTOWER and GOVERNING BODY.

155. When a congregant commits an act of wrongdoing, such as the sexual abuse of a child, that matter must be brought to an elder to be resolved.

156. The policy promulgated by WATCHTOWER and GOVERNING BODY requires elders to investigate allegations of sexual abuse of a child.

157. The policy promulgated by WATCHTOWER and GOVERNING BODY requires two witnesses to any alleged sexual abuse of a child before a judicial committee will be convened.

158. The policy promulgated by WATCHTOWER and GOVERNING BODY provides that if there are not two witnesses to any alleged sexual abuse of a child, and the accused denies any wrongdoing, the accused is determined to be innocent and no corrective, protective or punitive action is taken by the congregation.

159. If a judicial committee is convened to investigate an allegation of sexual abuse of

a child, the two original elders who investigated the wrongdoing will be joined by a third elder, who will hear the case and impose punishment upon the wrongdoer, subject to the right to control by WATCHTOWER and GOVERNING BODY.

160. Potential punishments for sexual abuse of a child include private reproof, public reproof, and disfellowship, subject to the right to control by WATCHTOWER and GOVERNING BODY.

161. Private reproof in the Jehovah's Witness organization means a private censorship of the wrongdoer that generally results in a limitation of one or more privileges within the congregation for a short time. This does not mean that a reproved person is necessarily precluded from engaging in field service.

162. The policy promulgated by WATCHTOWER and GOVERNING BODY provides that the congregation is not informed when an individual is subject to private reproof.

163. In the Jehovah's Witness organization, public reproof means an announcement is made to the congregation that the individual has been reproved by a judicial committee and found to be repentant.

164. Disfellowship is expulsion from the Jehovah's Witness organization.

165. When an individual is disfellowshipped, an announcement is made to the congregation that he or she is no longer one of Jehovah's Witnesses.

166. The policy promulgated by WATCHTOWER and GOVERNING BODY provides that when an individual is disfellowshipped, the congregation is not informed of any acts of wrongdoing, or of the basis for the person's expulsion from the Jehovah's Witness organization.

167. The policy promulgated by WATCHTOWER and GOVERNING BODY provides that a person who is disfellowshipped may seek reinstatement into the Congregation by written

request to the elders.

168. At all times prior to April of 2001, WATCHTOWER operated the Service Department of the United States branch of Jehovah's Witnesses.

169. Through the Service Department, WATCHTOWER implemented the policies and procedures promulgated by GOVERNING BODY, as an extension of and subject to the right to control by GOVERNING BODY.

170. WATCHTOWER exercised control over the day-to-day operations and activities of local congregations, as an extension of and subject to the right to control by GOVERNING BODY.

171. Prior to April of 2001, WATCHTOWER published a series of handbooks that were distributed to elders, as an extension of and subject to the right to control by GOVERNING BODY.

172. The aforesaid handbooks were not disclosed to other Jehovah's Witnesses or the public.

173. The aforesaid handbooks produced by WATCHTOWER and GOVERNING BODY provided general instructions to elders regarding day-to-day administration of the organization.

174. The aforesaid handbooks produced by WATCHTOWER and GOVERNING BODY provided instructions to elders regarding how to respond to allegations of wrongdoing, including child molestation.

175. The aforesaid handbooks produced by WATCHTOWER and GOVERNING BODY specified the actions elders were required to take upon learning of child molestation within their congregations.

176. Prior to April of 2001, WATCHTOWER provided periodic instruction to local

congregations through letters addressed to All Bodies of Elders, as an extension of and subject to the right to control by GOVERNING BODY.

177. These letters covered a broad spectrum of topics ranging from standardizing the record-keeping practices of all congregations, establishing procedures for ordering literature from defendant WATCHTOWER, remitting payments, handling administrative and procedural matters involving day-to-day congregation operations.

178. Some of the aforesaid letters provided specific instructions on how to respond to wrongdoing within the congregation, including child molestation.

179. CCJW assumed responsibility for disseminating some of these letters on and after April of 2001, as an extension of and subject to the right to control by GOVERNING BODY.

180. WATCHTOWER, through its Writing Department, and prior to April of 2001, through the Service Department, researches, writes, approves, publishes, and distributes its own materials for distribution to actual and prospective Jehovah's Witnesses, as an extension of and subject to the right to control by GOVERNING BODY.

181. WATCHTOWER appointed circuit and district overseers, as an extension of and subject to the right to control by GOVERNING BODY.

182. WATCHTOWER directly reviewed recommendations of prospective elders, as an extension of and subject to the right to control by GOVERNING BODY.

183. WATCHTOWER directly reviewed recommendations of ministerial servants, as an extension of and subject to the right to control by GOVERNING BODY.

184. GOVERNING BODY was and is authorized to approve or reject the appointment of any person recommended for the position of elder, and maintained the right to control the daily activities of any specific individual so appointed, whether or not that control was exercised.

185. GOVERNING BODY was and is authorized to approve or reject the appointment of any person recommended for the position of ministerial servant, and maintained the right to control the daily activities of any specific individual so appointed, whether or not that control was exercised.

186. GOVERNING BODY was and is authorized to approve or reject the appointment of any person recommended for the position of district or circuit overseer, and maintained the right to control the daily activities of any specific individual so appointed, whether or not that control was exercised.

187. WATCHTOWER established procedures for the discipline of members accused of wrongdoing, as an extension of and subject to the right to control by GOVERNING BODY.

188. WATCHTOWER received and maintained records regarding the disfellowship or reproof of elders and ministerial servants, as an extension of and subject to the right to control by GOVERNING BODY.

189. In March of 1997, WATCHTOWER disseminated a letter to all of the Bodies of Elders in United States congregations seeking information on men who then served, or had previously served, in any appointed position (e.g., elder, ministerial servant, regular pioneer) and were also known to have engaged in child molestation, as an extension of and subject to the right to control by GOVERNING BODY.

190. WATCHTOWER required each congregation to prepare reports detailing instances of child molestation, and to return the reports to WATCHTOWER's Service Department, as an extension of and subject to the right to control by GOVERNING BODY.

191. In July of 1998, defendant WATCHTOWER sent a follow up letter to each United States congregation, reminding those bodies of elders of the need to send the reports, and possible

legal consequences of appointing a known child molester to a position of authority, such as an elder or ministerial servant, as an extension of and subject to the right to control by GOVERNING BODY.

192. Reports regarding the sexual abuse of children were received by the Service Department and kept by defendants WATCHTOWER and GOVERNING BODY.

193. Prior to receiving the written reports, WATCHTOWER and GOVERNING BODY were aware that child molestation by elders, ministerial servants, and publishers was a problem within its congregations.

194. Despite receiving the written reports, WATCHTOWER and GOVERNING BODY did not promulgate new or effective policies for preventing or responding to child molestation.

195. Despite receiving the written reports, WATCHTOWER and GOVERNING BODY did not implement procedures or policies to educate children and adult members of the risk of child molestation within the Jehovah's Witness organization, how to identify warning signs of molestation, or how to avoid dangerous situations.

196. CCJW assumed operation of the Service Department, and gained possession and knowledge of the molestation reports, and also received new reports of molestation by Jehovah's Witnesses, as an extension of and subject to the right to control by GOVERNING BODY.

197. Reports of sexual molestation continue to be sent to CCJW, as an extension of and subject to the right to control by GOVERNING BODY.

198. At the direction of GOVERNING BODY, a policy letter from July 1989 required elders to contact defendant WATCHTOWER's Legal Department about child abuse, instead of contacting the police.

199. WATCHTOWER and GOVERNING BODY left that policy intact even after

receiving written reports of molestation from their individual agents and congregants.

200. WATCHTOWER's Service Department has never made a mandated child abuse report to law enforcement.

201. The policies on child molestation promulgated by WATCHTOWER and GOVERNING BODY through the elder handbooks and confidential policy letters were not divulged to Jehovah's Witness members.

202. Through this mandated secrecy regarding child molestation by elders, ministerial servants, and publishers, WATCHTOWER and GOVERNING BODY intentionally concealed the threat of child molestation within the Jehovah's Witnesses from their members.

203. Through policies of non-reporting to law enforcement and non-cooperation with criminal child molestation investigations, defendants WATCHTOWER and GOVERNING BODY protected accused and admitted child molesters from criminal prosecution and thereby increased the risk of molestation of minors.

204. PLAINTIFF was trained by the FAIRLAWN CONGREGATION, WATCHTOWER, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 that she should obey Pandelo and respect the individuals appointed as elders and ministerial servants, including Pandelo.

205. Pandelo was a ministerial servant in the FAIRLAWN CONGREGATION with substantial authority over PLAINTIFF and other congregants.

206. Pandelo was a ministerial servant in the HACKENSACK CONGREGATION with substantial authority over PLAINTIFF and other congregants.

207. Despite receiving a report regarding Pandelo's abuse of multiple children and knowing his propensity to sexually abuse minors, the FAIRLAWN CONGREGATION,

WATCHTOWER, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 provided no warning to members of the FAIRLAWN CONGREGATION whose children were at risk, including PLAINTIFF.

208. Despite receiving a report regarding Pandelo's abuse of multiple children and knowing his propensity to sexually abuse minors, the FAIRLAWN CONGREGATION, WATCHTOWER, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 provided no warning to members of the HACKENSACK CONGREGATION whose children were at risk, including PLAINTIFF.

209. WATCHTOWER had a duty to protect PLAINTIFF, as a minor congregant, from Pandelo's sexual criminal acts.

210. WATCHTOWER had a duty to competently investigate Pandelo prior to accepting him as its agent.

211. WATCHTOWER had a duty to competently supervise Pandelo during the time he served as its agent.

212. WATCHTOWER had a special duty to supervise Pandelo.

213. WATCHTOWER had a special duty to protect PLAINTIFF.

214. WATCHTOWER failed to adequately and competently supervise Pandelo.

215. FAIRLAWN CONGREGATION had a duty to protect PLAINTIFF, as a minor congregant, from Pandelo's sexual criminal acts.

216. FAIRLAWN CONGREGATION had a duty to competently investigate Pandelo prior to accepting him as its agent.

217. FAIRLAWN CONGREGATION had a duty to competently supervise Pandelo during the time he served as a ministerial servant.

218. FAIRLAWN CONGREGATION had a special duty to supervise Pandelo.

219. FAIRLAWN CONGREGATION had a special duty to protect PLAINTIFF.

220. FAIRLAWN CONGREGATION failed to adequately and competently supervise Pandelo.

221. GOVERNING BODY had a duty to protect PLAINTIFF, as a minor congregant, from Pandelo's sexual criminal acts.

222. GOVERNING BODY had a duty to competently investigate Pandelo prior to accepting him as its agent.

223. GOVERNING BODY had a duty to competently supervise Pandelo during the time he served as a ministerial servant.

224. GOVERNING BODY had a special duty to supervise Pandelo.

225. GOVERNING BODY had a special duty to protect PLAINTIFF.

226. GOVERNING BODY failed to adequately and competently supervise Pandelo.

227. HACKENSACK CONGREGATION had a duty to protect PLAINTIFF, as a minor congregant, from Pandelo's sexual criminal acts.

228. HACKENSACK CONGREGATION had a duty to competently investigate Pandelo prior to accepting him as its agent.

229. HACKENSACK CONGREGATION had a duty to competently supervise Pandelo during the time he served as a ministerial servant.

230. HACKENSACK CONGREGATION had a special duty to supervise Pandelo.

231. HACKENSACK CONGREGATION had a special duty to protect PLAINTIFF.

232. HACKENSACK CONGREGATION failed to adequately and competently supervise Pandelo.

233. DOES 1-100 had a duty to protect PLAINTIFF, as a minor congregant, from Pandelo's sexual criminal acts.

234. DOES 1-100 had a duty to competently investigate Pandelo prior to accepting him as their agent.

235. DOES 1-100 had a duty to competently supervise Pandelo during the time he served as a ministerial servant.

236. DOES 1-100 had a special duty to supervise Pandelo.

237. DOES 1-100 had a special duty to protect PLAINTIFF.

238. DOES 1-100 failed to adequately and competently supervise Pandelo.

239. Pandelo's sexual abuse of PLAINTIFF was proximately caused by the failure of WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION, and DOES 1-100 to adequately and competently supervise Pandelo.

240. The aforementioned occurrences of sexual abuse were caused by the negligence, carelessness, and recklessness and the willful, wanton, reckless and grossly negligent conduct of WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION, and DOES 1-100, and their agents, servants, and/or employees, in failing to properly and adequately supervise the conduct of Pandelo as it related to PLAINTIFF.

241. By reason of the foregoing, PLAINTIFF suffered sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to her nervous system, and has been caused to suffer physical pain and mental anguish, and permanent emotional and psychological damage as a result thereof.

242. As a result of the Defendants' conduct, PLAINTIFF has and will become obligated

to expend sums of money for medical treatment.

243. By reason of the foregoing, WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 are also liable to PLAINTIFF for punitive and exemplary damages.

COUNT III –
NEGLIGENT AND/OR GROSSLY NEGLIGENT RETENTION
Plaintiff v. All Defendants

244. PLAINTIFF repeats, reiterates, and realleges each and every allegation of this complaint, inclusive, with the same force and effect as if fully set forth at length herein.

245. Prior to and all times herein mentioned, WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 knew of Pandelo's conduct toward PLAINTIFF and/or his propensity to sexually abuse minors such as PLAINTIFF, and yet they maintained his employment as their agent.

246. It was reasonably foreseeable that when the elders learned that Pandelo had been accused of molesting more than one minor prior to the conclusion of his molestation of PLAINTIFF, that his continued association with the FAIRLAWN CONGREGATION, absent any warning to PLAINTIFF or her parents or other members of these congregations, would mean that there was a heightened risk that Pandelo would sexually abuse PLAINTIFF or otherwise violate appropriate sexual boundaries between adult ministerial servants and minor congregants.

247. It was reasonably foreseeable that when the elders learned that Pandelo had been accused of molesting more than one minor prior to the conclusion of his molestation of PLAINTIFF, that his continued association with the HACKENSACK CONGREGATION, absent any warning to PLAINTIFF or her parents or other members of these congregations, would mean that there was a heightened risk that Pandelo would sexually abuse PLAINTIFF or otherwise violate appropriate sexual boundaries between adult ministerial servants and minor congregants.

248. WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 undertook a duty to protect minor congregants, like PLAINTIFF, who came into contact with their agents, like Pandelo, through their participation in congregation activities, from being sexually abused by their agents, including Pandelo.

249. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to his nervous system, and has been caused to suffer physical pain and mental anguish, and permanent emotional and psychological damage as a result thereof.

250. As a result of the Defendants' conduct, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.

251. By reason of the foregoing, WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 are also liable to PLAINTIFF for punitive and exemplary damages.

COUNT IV –
NEGLIGENT AND/OR GROSSLY NEGLIGENT FAILURE TO TRAIN
RELATING TO CHILD ABUSE
Plaintiff v. All Defendants

252. PLAINTIFF repeats, reiterates, and realleges each and every allegation contained in this complaint, inclusive, with the same force and effect as if fully set forth at length herein.

253. GOVERNING BODY created, approved, or instituted all of the policies and procedures related to interactions between members of the Jehovah's Witnesses organization, and invited unrelated individuals, including minors such as PLAINTIFF, to become members of the Jehovah's Witnesses organization and congregate with each other.

254. GOVERNING BODY knew or should have known of the problem of the sexual

abuse of minors by Jehovah's Witnesses, including ministerial servants like Pandelo.

255. GOVERNING BODY and its agents, servants, and employees, had a duty to establish adequate, competent, and effective professional training and education programs and procedures for their agents, employees, and administrators, calculated to identify and prevent sexual abuse of minor congregants by ministerial servants and other agents, like Pandelo, who came into contact the minor congregants as a result of their positions within the Jehovah's Witness organization.

256. Given the prevalence of child molestation by Jehovah's Witnesses, GOVERNING BODY also had a duty to establish adequate, competent, and effective training and education programs for minor congregants and their parents calculated to educate minor congregants to identify and protect themselves against sexual abuse by ministerial servants, such as Pandelo.

257. GOVERNING BODY, and its agents, servants, and employees were negligent, careless, and reckless, and acted willfully, wantonly and with gross negligence, in failing to establish adequate and effective professional training and education programs and procedures for their agents, calculated to prevent the sexual abuse of minor congregants, like PLAINTIFF.

258. GOVERNING BODY, and its agents, servants, and employees, were negligent, careless, and reckless, and acted willfully, wantonly, and with gross negligence, in failing to establish adequate and effective training and education programs and procedures for minor congregants like PLAINTIFF, avoid sexual abuse by their agents.

259. WATCHTOWER knew or should have known of the problem of the sexual abuse of minors by Jehovah's Witnesses, including ministerial servants like Pandelo.

260. WATCHTOWER and its agents, servants, and employees, had a duty to establish adequate, competent, and effective professional training and education programs and procedures

for their agents, employees, and administrators, calculated to identify and prevent sexual abuse of minor congregants by ministerial servants and other agents, like Pandelo, who came into contact with minor congregants as a result of their positions within the Jehovah's Witness organization.

261. Given the prevalence of child molestation by Jehovah's Witnesses, WATCHTOWER also had a duty to establish adequate, competent, and effective training and education programs for minor congregants and their parents calculated to educate minor congregants to identify and protect themselves against sexual abuse by ministerial servants, such as Pandelo.

262. WATCHTOWER, and its agents, servants, and employees were negligent, careless, and reckless, and acted willfully, wantonly and with gross negligence, in failing to establish adequate and effective professional training and education programs and procedures for their agents, calculated to prevent the sexual abuse of minor congregants, like PLAINTIFF.

263. WATCHTOWER, and its agents, servants, and employees, were negligent, careless, and reckless, and acted willfully, wantonly, and with gross negligence, in failing to establish adequate and effective training and education programs and procedures for minor congregants like PLAINTIFF, avoid sexual abuse by their agents.

264. FAIRLAWN CONGREGATION knew or should have known of the problem of the sexual abuse of minors by Jehovah's Witnesses, including ministerial servants like Pandelo.

265. FAIRLAWN CONGREGATION and its agents, servants, and employees, had a duty to establish adequate, competent, and effective professional training and education programs and procedures for their agents, employees, and administrators, calculated to identify and prevent sexual abuse of minor congregants by ministerial servants and other agents, like Pandelo, who came into contact with minor congregants as a result of their positions within the Jehovah's

Witness organization.

266. Given the prevalence of child molestation by Jehovah's Witnesses, FAIRLAWN CONGREGATION also had a duty to establish adequate, competent, and effective training and education programs for minor congregants and their parents calculated to educate minor congregants to identify and protect themselves against sexual abuse by ministerial servants, such as Pandelo.

267. FAIRLAWN CONGREGATION, and its agents, servants, and employees were negligent, careless, and reckless, and acted willfully, wantonly and with gross negligence, in failing to establish adequate and effective professional training and education programs and procedures for their agents, calculated to prevent the sexual abuse of minor congregants, like PLAINTIFF.

268. FAIRLAWN CONGREGATION, and its agents, servants, and employees, were negligent, careless, and reckless, and acted willfully, wantonly, and with gross negligence, in failing to establish adequate and effective training and education programs and procedures for minor congregants like PLAINTIFF, avoid sexual abuse by their agents.

269. HACKENSACK CONGREGATION knew or should have known of the problem of the sexual abuse of minors by Jehovah's Witnesses, including ministerial servants like Pandelo.

270. HACKENSACK CONGREGATION and its agents, servants, and employees, had a duty to establish adequate, competent, and effective professional training and education programs and procedures for their agents, employees, and administrators, calculated to identify and prevent sexual abuse of minor congregants by ministerial servants and other agents, like Pandelo, who came into contact with minor congregants as a result of their positions within the Jehovah's Witness organization.

271. Given the prevalence of child molestation by Jehovah's Witnesses, HACKENSACK CONGREGATION also had a duty to establish adequate, competent, and effective training and education programs for minor congregants and their parents calculated to educate minor congregants to identify and protect themselves against sexual abuse by ministerial servants, such as Pandelo.

272. HACKENSACK CONGREGATION, and its agents, servants, and employees were negligent, careless, and reckless, and acted willfully, wantonly and with gross negligence, in failing to establish adequate and effective professional training and education programs and procedures for their agents, calculated to prevent the sexual abuse of minor congregants, like PLAINTIFF.

273. HACKENSACK CONGREGATION, and its agents, servants, and employees, were negligent, careless, and reckless, and acted willfully, wantonly, and with gross negligence, in failing to establish adequate and effective training and education programs and procedures for minor congregants like PLAINTIFF, avoid sexual abuse by their agents.

274. DOES 1-100 knew or should have known of the problem of the sexual abuse of minors by Jehovah's Witnesses, including ministerial servants like Pandelo.

275. DOES 1-100 and their agents, servants, and employees, had a duty to establish adequate, competent, and effective professional training and education programs and procedures for their agents, employees, and administrators, calculated to identify and prevent sexual abuse of minor congregants by ministerial servants and other agents, like Pandelo, who came into contact with minor congregants as a result of their positions within the Jehovah's Witness organization.

276. Given the prevalence of child molestation by Jehovah's Witnesses, DOES 1-100 also had a duty to establish adequate, competent, and effective training and education programs

for minor congregants and their parents calculated to educate minor congregants to identify and protect themselves against sexual abuse by ministerial servants, such as Pandelo.

277. DOES 1-100, and their agents, servants, and employees were negligent, careless, and reckless, and acted willfully, wantonly and with gross negligence, in failing to establish adequate and effective professional training and education programs and procedures for their agents, calculated to prevent the sexual abuse of minor congregants, like PLAINTIFF.

278. DOES 1-100, and their agents, servants, and employees, were negligent, careless, and reckless, and acted willfully, wantonly, and with gross negligence, in failing to establish adequate and effective training and education programs and procedures for minor congregants like PLAINTIFF to avoid sexual abuse by their agents.

279. Defendants' negligent failures to establish adequate and effective training and education programs and procedures for minor congregants and for their agents, employees, and administrators proximately caused PLAINTIFF to suffer injuries as detailed below.

280. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to his nervous system, and has been caused to suffer physical pain and mental anguish, and permanent emotional and psychological damage as a result thereof.

281. As a result of the Defendants' conduct, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.

282. By reason of the foregoing, WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 are also liable to PLAINTIFF for punitive and exemplary damages.

COUNT V –
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiff v. Watchtower, Fairlawn Congregation, Hackensack Congregation and Does 1-100

283. PLAINTIFF repeats, reiterates, and realleges each and every allegation contained in this complaint, inclusive, with the same force and effect as if fully set forth at length herein.

284. Defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 knew, or in the exercise of reasonable care, should have known that their acts and omissions as described in this complaint would result in serious emotional distress to PLAINTIFF.

285. Defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 acted with willful, wanton, reckless, intentional and deliberate disregard for the likelihood that PLAINTIFF would suffer severe emotional distress as a direct and proximate result of the sexual abuse he endured.

286. The conduct of Defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 as alleged above was extreme and outrageous and went beyond all bounds of decency.

287. As a direct and proximate result of defendants' acts and omissions, PLAINTIFF suffered severe emotional distress.

288. As a result of the conduct of Defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.

289. By reason of the foregoing, WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 are also liable to PLAINTIFF for punitive and exemplary damages.

COUNT VI –
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
Plaintiff v. All Defendants

290. PLAINTIFF repeats, reiterates, and realleges each and every allegation contained in this complaint, inclusive, with the same force and effect as if fully set forth at length herein.

291. Defendants knew, or in the exercise of reasonable care should have known, that their acts and omissions would result in serious emotional distress to PLAINTIFF.

292. Defendants WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 placed Pandelo in a position of power, trust and authority over PLAINTIFF, who in turn placed confidence in Pandelo. Defendants WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 owed PLAINTIFF a duty to ensure that Pandelo did not pose a threat of harm to PLAINTIFF.

293. Pandelo, as a ministerial servant in PLAINTIFF's congregation, owed a duty to PLAINTIFF to refrain from sexually assaulting and abusing her while acting as a servant-agent of Defendants WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100.

294. Defendants' negligent and careless breach of that duty was utterly reprehensible behavior and was taken with disregard for the likelihood that PLAINTIFF would suffer severe emotional distress as a direct result.

295. As a direct and proximate result of defendants' negligence as described above, PLAINTIFF suffered severe emotional distress.

296. As a result of defendants' conduct, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.

297. By reason of the foregoing, defendants are also liable to PLAINTIFF for punitive

and exemplary damages.

COUNT VII –
SEXUAL ABUSE AND BATTERY

Plaintiff v. Watchtower, Fairlawn Congregation, Hackensack Congregation and Does 1-100

298. PLAINTIFF repeats, reiterates, and realleges each and every allegation contained in this complaint, inclusive, with the same force and effect as if fully set forth at length herein.

299. Each instance of Pandelo’s sexual misconduct and inappropriate physical contact with PLAINTIFF constitutes battery.

300. WATCHTOWER, by its intentional acts, omissions, negligence, knowing and willful failure to act affirmatively to prevent, detect, report, or investigate, aided and abetted Pandelo.

301. By declining to contact law enforcement about Pandelo’s molestation of minor children prior to the conclusion of his molestation of PLAINTIFF, WATCHTOWER sought to cover up Pandelo’s acts, and protect him from detection or punishment, and thereby ratified his sexual molestation of PLAINTIFF and others.

302. FAIRLAWN CONGREGATION, by its intentional acts, omissions, negligence, knowing and willful failure to act affirmatively to prevent, detect, report, or investigate, aided and abetted Pandelo.

303. By declining to contact law enforcement about Pandelo’s molestation of minor children prior to the conclusion of his molestation of PLAINTIFF, FAIRLAWN CONGREGATION sought to cover up Pandelo’s acts and protect him from detection or punishment, and thereby ratified his sexual molestation of PLAINTIFF and others.

304. HACKENSACK CONGREGATION, by its intentional acts, omissions, negligence, knowing and willful failure to act affirmatively to prevent, detect, report, or investigate, aided and abetted Pandelo.

305. By declining to contact law enforcement about Pandelo's molestation of minor children prior to the conclusion of his molestation of PLAINTIFF, HACKENSACK CONGREGATION sought to cover up Pandelo's acts and protect him from detection or punishment, and thereby ratified his sexual molestation of PLAINTIFF and others.

306. DOES 1-100, by their intentional acts, omissions, negligence, knowing and willful failure to act affirmatively to prevent, detect, report, or investigate, aided and abetted Pandelo.

307. By declining to contact law enforcement about Pandelo's molestation of minor children prior to the conclusion of his molestation of PLAINTIFF, DOES 1-100 sought to cover up Pandelo's acts, and protect him from detection or punishment, and thereby ratified his sexual molestation of PLAINTIFF and others.

308. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to her nervous system, and has been caused to suffer physical pain and mental anguish, and permanent emotional and psychological damage as a result thereof.

309. As a result of the conduct by Defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.

310. By reason of the foregoing, defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 are also liable to PLAINTIFF for punitive and exemplary damages.

WHEREFORE, PLAINTIFF demands judgment against the defendants on each of the First, Second, Third, Fourth, Fifth, and Sixth causes of action in a sum that exceeds the jurisdictional limits of all lower courts, including compensatory and punitive damages, together

with interest, costs and disbursements pursuant to the causes of action herein.

COUNT VIII –
PUNITIVE DAMAGES
Plaintiff v. All Defendants

311. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the previous paragraphs as if set forth herein at length.

312. The aforesaid acts of Defendants were committed in outrageous, callous, wanton, and willful disregard for the safety, protection, and well-being of minors, including Plaintiff, warranting the imposition of punitive damages.

313. The actions and/or inactions of Defendants, jointly, severally, and/or through the conduct of Pandelo, were intentional, willful, and/or reckless in that Defendants' actions were intended to cause great harm to minors, including Plaintiff, and/or were done with deliberate disregard of a high degree of probability that such behavior would cause great harm to minors, including Plaintiff.

314. The actions and/or inactions of Defendants, jointly, severally, and/or through the conduct of Pandelo, against Plaintiff were extreme, callous, reckless, and/or wanton.

315. As a direct and proximate result of Defendants' wanton and willful disregard for the safety of minors, including Plaintiff, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent and/or grossly negligent failures, as well as the callous and wanton behavior, of Defendants in the hiring and retention of, as well as its failure to monitor or supervise, its employees and/or agents, including Pandelo.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, and/or individually, for compensatory and punitive damages, together with interest and costs in an unspecified amount, plus costs, disbursements, reasonable attorneys' fees, interest, and such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

The Plaintiff demands a trial by jury on all of the triable issues of this Complaint, pursuant to Rules 1:8-2(b) and 4:35-1(a).

Dated: August 18, 2021

Respectfully submitted,

ROBINS KAPLAN LLP

By: /s/Rayna E. Kessler
Rayna E. Kessler, Esq.
NJ ID No. 031782010
399 Park Avenue, Suite 3600
New York, New York 10022
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

Attorney for Plaintiff Corrine Pandelo

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:5-1(c), please take notice that Plaintiff designates Rayna E. Kessler, Esq. as trial counsel in this matter.

Dated: August 18, 2021

/s/Rayna E. Kessler
Rayna E. Kessler, Esq.

CERTIFICATION PURSUANT TO RULE 1:38-7(b)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CERTIFICATION PURSUANT TO RULE 4:5-1

I certify that the dispute that Plaintiff is suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Dated: August 18, 2021

/s/Rayna E. Kessler
Rayna E. Kessler, Esq.

EXHIBIT B

Attorney(s): ROBINS KAPLAN LLP
 RAYNA E. KESSLER, ESQ.
Office Address & Tel. No.: 399 Park Avenue, Suite 3600
 New York, NY 10022-4611
 212-980-7431
 RKessler@RobinsKaplan.com

Attorney(s) for: Plaintiff

<p>CORINNE PANDELO,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>THE GOVERNING BODY OF JEHOVAH'S WITNESSES; FAIRLAWN CONGREGATION OF JEHOVAH'S WITNESSES; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK; HACKENSACK CONGREGATION OF JEHOVAH'S WITNESSES; and JOHN AND JANE DOES 1-100, whose identities are presently unknown to Plaintiff, in their official and individual capacities,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>SUPERIOR COURT OF NEW JERSEY BERGEN COUNTY- LAW DIVISION</p> <p>DOCKET NO.: BER-L-005508-21</p> <p>CIVIL ACTION</p> <p>SUMMONS</p>
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The State of New Jersey, to the Above Named Defendant(s):

HACKENSACK CONGREGATION OF JEHOVAH'S WITNESSES

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the County listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf). If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available

from the deputy clerk if the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with \$175.00 fee and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-999-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

Dated: November 11, 2021

/S/ MICHELLE M. SMITH
MICHELLE M. SMITH, ESQ.
Clerk of the Superior Court

Name/Address of defendant to be served

**HACKENSACK CONGREGATION
OF JEHOVAH'S WITNESSES
c/o James Nicholas Pallichia
10 Brookview Ct.
Ho-Ho-Kus, New Jersey 07423**

ROBINS KAPLAN LLP

Rayna E. Kessler, Esq.
NJ ID No. 031782010
399 Park Avenue, Suite 3600
New York, NY 10022-4611
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

THE ZALKIN LAW FIRM, P.C.

Alex Zalkin, Esq. (to be admitted *pro hac vice*)
Elizabeth Cate, Esq. (to be admitted *pro hac vice*)
10 Times Square
1441 Broadway, Suite 3147
New York, NY 10018
Telephone: (858) 259-3011
Email: irwin@zalkin.com

Attorneys for Plaintiff Corrine Pandelo

CORINNE PANDELO,

Plaintiff,

v.

**THE GOVERNING BODY OF
JEHOVAH'S WITNESSES;
FAIRLAWN CONGREGATION OF
JEHOVAH'S WITNESSES;
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK;
HACKENSACK CONGREGATION OF
JEHOVAH'S WITNESSES; and
JOHN AND JANE DOES 1-100, whose
identities are presently unknown to Plaintiff,
in their official and individual capacities,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

DOCKET NO. BER-L-005508-21

CIVIL ACTION

**FIRST AMENDED COMPLAINT
AND JURY DEMAND**

Plaintiff, CORINNE PANDELO, for her First Amended Complaint against the

Defendants, states as follows:

INTRODUCTION AND MATTER BEFORE THE COURT

1. Plaintiff CORINNE PANDELO (hereinafter "PLAINTIFF") brings this action to seek redress for the sexual abuse she suffered at the hands of Clement Pandelo ("Pandelo"), an agent of Defendant THE GOVERNING BODY OF JEHOVAH'S WITNESSES ("GOVERNING BODY"), FAIRLAWN CONGREGATION OF JEHOVAH'S WITNESSES ("FAIRLAWN CONGREGATION"), WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK ("WATCHTOWER"), HACKENSACK CONGREGATION OF JEHOVAH'S WITNESSES ("HACKENSACK CONGREGATION"), and JOHN AND JANE DOE 1-100.

2. This complaint is filed pursuant to the New Jersey Child Sexual Abuse Act (CSAA), N.J.S.A. 2A:61B-1, et seq. New Jersey passed into law Bills S477 and A3648, which became effective December 1, 2019. This historic legislation opened a two-year, one-time filing window for survivors of childhood sexual abuse in the state of New Jersey to pursue otherwise time-barred actions based on sexual abuse. This law also amends the Charitable Immunity Act, N.J.S.A. 2A:53A-7, and the Tort Claims Act, N.J.S.A. 59-1-1 et seq., to allow for additional and retroactive liability for public entities and non-profit organizations organized for religious, charitable, educational, or hospital purposes.

PARTIES

3. Plaintiff CORINNE PANDELO is a citizen and is domiciled in the state of New Jersey.

4. PLAINTIFF was born in 1976.

5. At all times relevant herein, PLAINTIFF and her family were members of the Jehovah's Witness organization and attended Defendant FAIRLAWN CONGREGATION.

6. At all material times, Defendant WATCHTOWER is and was a New-York non-

profit corporation conducting business in the State of New Jersey, with its principal place of business at and which may be served at 100 Watchtower Drive, Patterson, New York, 12563.

7. Many of the acts and omissions alleged herein to have been committed by the various defendants occurred in the State of New Jersey.

8. At all material times, FAIRLAWN CONGREGATION was and is a congregation of the Jehovah's Witnesses located in Fairlawn, New Jersey.

9. Upon information and belief, during all of part of the time period relevant herein, FAIRLAWN CONGREGATION was known as "South Fairlawn Congregation of Jehovah's Witnesses."

10. At all material times, FAIRLAWN CONGREGATION is and was a business or religious entity of unknown legal status, which is authorized to conduct, and is conducting business in the State of New Jersey, with its principal place of business at and which may be served at 10 Nelson Ave, Hawthorne, NJ 07506.

11. During certain of the dates of the sexual abuse of PLAINTIFF, FAIRLAWN CONGREGATION supervised PLAINTIFF's molester, Clement Pandelo.

12. Pandelo was a ministerial servant in the Jehovah's Witness organization.

13. THE GOVERNING BODY was and is a religious body with a separate existence. On information and belief, the membership of Defendant GOVERNING BODY has changed over the years, but the entity that is the GOVERNING BODY has maintained a perpetual existence.

14. GOVERNING BODY is comprised of eight members. GOVERNING BODY does not claim to have a formal president or secretary.

15. GOVERNING BODY does have a coordinator that was formerly referred to as a chairman. On information and belief, the chairman of GOVERNING BODY is the functional

equivalent to a president or secretary in a secular unincorporated association.

16. The coordinator of GOVERNING BODY rotates on a yearly basis in alphabetical order.

17. The current members of the Governing Body are KENNETH E. COOK, JR.; SAMUEL FREDERICK HERD; GEOFFREY WILLIAM JACKSON; MARK STEPHEN LETT; GERRIT LOSCH; ANTHONY MORRIS III; D. MARK SANDERSON; and DAVID H. SPLANE. GOVERNING BODY does not publicly disclose its current coordinator. The following eight paragraphs are alleged in the alternative.

18. The current coordinator of GOVERNING BODY, as of October 1, 2019, is D. MARK SANDERSON.

19. The current coordinator of GOVERNING BODY, as of October 1, 2019, is DAVID H. SPLANE.

20. The current coordinator of GOVERNING BODY, as of October 1, 2019, is KENNETH E. COOK, JR.

21. The current coordinator of GOVERNING BODY, as of October 1, 2019, is SAMUEL FRERICK HERD.

22. The current coordinator of GOVERNING BODY, as of October 1, 2019, is GEOFFREY WILLIAM JACKSON.

23. The current coordinator of GOVERNING BODY, as of October 1, 2019, is MARK STEPHEN LETT.

24. The current coordinator of GOVERNING BODY, as of October 1, 2019, is GERRIT LOSCH.

25. The current coordinator of GOVERNING BODY, as of October 1, 2019, is

ANTHONY MORRIS, III.

26. At the time of the acts giving rise to the causes of action alleged in this complaint, GOVERNING BODY's principal office and place of business was in the County of Kings, State of New York.

27. In or about April of 2001, Christian Congregation of Jehovah's Witnesses, Inc. ("CCJW") assumed from WATCHTOWER the obligation to operate the Service Department of the United States Branch of Jehovah's Witnesses.

28. At the time of the acts giving rise to the causes of action alleged in this complaint, HACKENSACK CONGREGATION was and is a congregation of the Jehovah's Witnesses located in Hackensack, New Jersey.

29. At all material times, HACKENSACK CONGREGATION is and was a business or religious entity of unknown legal status, which is authorized to conduct, and is conducting business in the State of New Jersey, with its principal place of business at and which may be served at 506 Hamilton Place, Hackensack, New Jersey, 07601.

30. During certain of the dates of the sexual abuse of PLAINTIFF, HACKENSACK CONGREGATION supervised PLAINTIFF's molester, Clement Pandelo.

31. JOHN AND JANE DOE 1-30, whose names are presently unknown, were members of and officials of defendant FAIRLAWN CONGREGATION.

32. JOHN AND JANE DOE 31-60, whose names are presently unknown, were former members and officials of defendant WATCHTOWER.

33. JOHN AND JANE DOES 61-100, whose names are presently unknown, were former members and officials of defendant the GOVERNING BODY.

34. JOHN AND JANE DOES 81-100, whose names are presently unknown, were

former members and officials of defendant HACKENSACK CONGREGATION.

FACTUAL BACKGROUND

35. Pandelo attended HACKENSACK CONGREGATION during the relevant time period. Pandelo began also attending FAIRLAWN CONGREGATION during the relevant time period because HACKENSACK CONGREGATION was undergoing construction. As a result of the construction, members of FAIRLAWN CONGREGATION were moved to HACKENSACK CONGREGATION for a period of about two years.

36. At the time of his first disfellowship in or around 1988, Pandelo was a ministerial servant in the FAIRLAWN CONGREGATION.

37. During the relevant time period, Pandelo was also a ministerial servant in the HACKENSACK CONGREGATION.

38. In or around 1976-1977, when PLAINTIFF was still wearing diapers, Pandelo began to sexually abuse her. Over time, the sexual abuse grew to consist of Pandelo's touching PLAINTIFF's genitals and undeveloped breasts underneath her clothing, inserting his fingers into her vagina, forcing her to perform oral sex on him, and forcing her to engage in vaginal and anal intercourse with him. Pandelo also forced his dog to lick PLAINTIFF's vaginal area.

39. Pandelo's sexual abuse of PLAINTIFF lasted until in or around August 1988, when she disclosed the abuse to her parents.

40. PLAINTIFF's father, Carl Pandelo, reported the sexual abuse of PLAINTIFF to the Elders in his neighborhood, some of whom were Elders in a congregation in which Pandelo was a ministerial servant.

41. The Elders convened a judicial committee to investigate the allegations of Pandelo's sexual abuse of PLAINTIFF.

42. In or around 1988, Elders disfellowshipped Pandelo based on the allegations of sexual abuse of Pandelo.

43. Carl Pandelo also reported Pandelo's sexual abuse of PLAINTIFF to law enforcement.

44. In or around 1989, Pandelo was arrested and pleaded guilty to endangering the welfare of a child and criminal sexual conduct based on his admitted sexual abuse of PLAINTIFF as well as at least one other female child.

45. As part of his guilty plea, Pandelo admitted under oath that he had sexually abused minors for forty years.

46. After his conviction for child sexual abuse of multiple children for forty years, Pandelo was reinstated to the Jehovah's Witnesses.

47. After he was reinstated, Pandelo was later disfellowshipped again when additional details were revealed about the extent of his sexual abuse of PLAINTIFF as well as revelations that Pandelo had sexually abused two other minor females.

48. Following Pandelo's second disfellowship, he was later reinstated to the Jehovah's Witnesses despite having admitted to sexually abusing multiple children.

49. Approximately ten years prior to beginning to abuse PLAINTIFF, in or around 1967, Pandelo admitted to sexual misconduct involving minor girls and/or an adulterous affair with a teenaged girl. This misconduct was reported to Elders of the Congregation that Pandelo attended at the time, and Pandelo was publicly reproofed as a result. No other action was taken with regard to the reports of sexual misconduct of Pandelo, including that no reports to law enforcement were made.

50. During the time in which Pandelo was sexually abusing PLAINTIFF, but before

Carl Pandelo had learned that his father was abusing PLAINTIFF, in or around 1985 or 1986, Carl Pandelo learned that Pandelo was sexually abusing children. He reported these allegations to an Elder—one of the same Elders to whom he later reported Pandelo's sexual abuse of PLAINTIFF. This Elder directed Carl Pandelo to report these allegations of abuse to another Elder, which Carl did.

51. When Carl Pandelo followed up with the Elders several weeks later to find out what action they had taken with regard to Pandelo's sexual abuse of minors, he was told that no action was taken to discipline, reproof, or disfellowship Pandelo. Pandelo's conduct was not reported to law enforcement.

52. During the time in which Pandelo was sexually abusing PLAINTIFF, Pandelo's neighbor, a minor child, also reported to her mother that Pandelo had been repeatedly fondling her breasts and genitals. This conduct was reported to law enforcement. Pandelo admitted to this conduct.

53. Elders of the congregation that Pandelo attended at the time were informed of this conduct, but Pandelo was not disfellowshipped even though he had admitted to sexually abusing a child.

54. In or around January 1994, PLAINTIFF filed suit in the Superior Court of New Jersey, Law Division: Bergen County through her guardian ad litem, Carl Pandelo, against Pandelo and his wife, Olga Pandelo.

55. PLAINTIFF's 1994 lawsuit sought damages against Pandelo and his wife to compensate her for the physical and emotional injuries she sustained as a result of Pandelo's sexual abuse of her.

56. None of the DEFENDANTS named in this action were a party to the 1994 action.

57. On December 23, 1999, after a trial before a jury, judgment was entered in favor of PLAINTIFF and against Pandelo and his wife in the amount of \$2,278,874.90.

JURISDICTION AND VENUE

58. This action is timely commenced pursuant to the New Jersey Child Victims Act, dated December 1, 2019.

59. This Court has jurisdiction pursuant to Rule 4:3-2 as the FAIRLAWN CONGREGATION and HACKENSACK CONGREGATION conducted business in the State of New Jersey at all times relevant herein, and a substantial portion of the events or omissions giving rise to the claims occurred in the County of Bergen, State of New Jersey.

60. Venue is proper pursuant to Rule 4:3-2 because a substantial part of the events or omissions giving rise to the claims occurred within Bergen County.

CAUSES OF ACTION AGAINST DEFENDANTS

**COUNT I—
NEGLIGENCE AND/OR GROSS NEGLIGENCE**

61. PLAINTIFF repeats, reiterates, and re-alleges each and every allegation contained in the previous paragraphs as if set forth herein.

62. Defendants are responsible by their knowledge, action, and/or inaction, as if all allegations set forth in this Complaint pertain to all Defendants, and they are jointly and severally liable.

63. Each Defendant owed PLAINTIFF a duty of reasonable care to protect PLAINTIFF from injury.

64. Each Defendant owed PLAINTIFF a duty of care because each Defendant had a special relationship with Plaintiff.

65. Each Defendant owed PLAINTIFF a duty to protect PLAINTIFF from harm

because each Defendant also had a special relationship with Pandelo.

66. Defendants owed PLAINTIFF a duty of reasonable care because they held their agents, including Pandelo, out as safe to work with children; and/or encouraged their agents, including Pandelo, to spend time with, interact with, and recruit children.

67. Further, Defendants, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of power. Defendants thus entered into a fiduciary relationship with PLAINTIFF and her family. Defendants exploited their position of power, putting Plaintiff at risk to be sexually assaulted.

68. Defendants, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted a position of power over PLAINTIFF.

69. Defendants, through their employees and/or agents, including Pandelo, exploited their position of power over PLAINTIFF and thereby put the minor PLAINTIFF at risk for sexual abuse.

70. Defendants entered into an express and/or implied duty to properly supervise PLAINTIFF and provide a reasonably safe environment for children who attended their services and activities by accepting the minor PLAINTIFF as a participant in their services and activities and as a minor at their facilities; and holding their facilities, services, and activities out to be safe environments for PLAINTIFF. Defendants owed PLAINTIFF a duty to properly supervise PLAINTIFF to prevent harm from foreseeable dangers. Defendants had the duty to exercise the same degree of care over minors under their control as a reasonably prudent person would have exercised under similar circumstances.

71. Each Defendant owed PLAINTIFF a duty to protect PLAINTIFF from harm, because Defendants invited PLAINTIFF onto their property and facility, and Pandelo posed a

dangerous condition on Defendant's property.

72. Defendants breached their duties to PLAINTIFF by failing to use reasonable care. Defendants' failures include, but are not limited to, failing to properly supervise their volunteers employees, and/or agents, including Pandelo, failing to properly supervise PLAINTIFF, and failing to protect Plaintiff from foreseeable dangers.

73. As a direct and proximate result of Defendants breaching their duties, PLAINTIFF sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to PLAINTIFF were caused solely and wholly by reason of the negligent and/or grossly negligent failures, actions, and inactions of Defendants.

COUNT II –
NEGLIGENT AND/OR GROSSLY NEGLIGENT SUPERVISION
Plaintiff v. All Defendants

74. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the previous paragraphs as if set forth herein.

75. Pandelo was assigned and authorized to serve as a ministerial servant by the joint efforts of WATCHTOWER and GOVERNING BODY.

76. Pandelo's duties as a ministerial servant included the supervision of children, and were authorized by WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100.

77. Pandelo was, by virtue of his appointment as a ministerial servant, an agent of WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100.

78. Pandelo was acting within the scope of his employment or agency in performing duties for, and on behalf of WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100.

79. In connection with his responsibilities as a ministerial servant at FAIRLAWN CONGREGATION, Pandelo had regular and frequent contact with children who attended the congregation.

80. In connection with his responsibilities as a ministerial servant at HACKENSACK CONGREGATION, Pandelo had regular and frequent contact with children who attended the congregation.

81. WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 knew or should have known that Pandelo would have regular and frequent contact with children in connection with his position as a ministerial servant within FAIRLAWN CONGREGATION.

82. WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 knew or should have known that Pandelo would have regular and frequent contact with children in connection with his position as a ministerial servant within HACKENSACK CONGREGATION.

83. WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 knew or should have known that Pandelo sexually abused children, including PLAINTIFF.

84. WATCHTOWER, FAIRLAWN CONGREGATION, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 concealed from PLAINTIFF and her parents their knowledge of Pandelo's sexually abusive behavior.

85. Each defendant is the agent, servant, and/or employee of the other defendants, had the right to control the specific actions contributing to the abuse of PLAINTIFF by Pandelo, and each defendant was acting within the course and scope of his or its authority as an agent, servant

and/or employee of the other.

86. The organizational structure of the Jehovah's Witnesses is hierarchical.

87. The organizational head of the Jehovah's Witnesses was and is GOVERNING BODY, and GOVERNING BODY retains the right to control the daily activities of all of the individuals and entities within the Jehovah's Witnesses organization as those activities pertain to church functioning or governance, irrespective of whether the GOVERNING BODY exercises that right to control in any particular instance.

88. GOVERNING BODY is composed of a fluctuating number of elders. The GOVERNING BODY is organized into six committees that oversee all aspects of the Jehovah's Witness Organization within the United States. Corporations such as Defendant Watchtower Bible and Tract Society of New York, Inc. have been formed and are used by the Governing Body to facilitate the preaching and care for the spiritual needs of the congregations and to hold title to properties in New York.

89. Authority flows downward from GOVERNING BODY to the local level of the Jehovah's Witness organization, which is made up of congregations. The GOVERNING BODY appoints three or more Elders to serve on the Branch Committees at each of 116 branch offices of the Jehovah's Witnesses world-wide, including the United States Branch, all subject to the GOVERNING BODY's ongoing direction and right to control. The Service Department of the United States Branch oversees the activities of the congregations under the oversight of the U.S. Branch Committee and reports to the Service Committee of the Governing Body.

90. Congregations are organized by circuit.

91. A circuit consists of some number of congregations.

92. Each circuit is staffed by a circuit overseer and/or a substitute circuit overseer

approved and appointed by the GOVERNING BODY, and subject to its direction and control.

93. It is the responsibility of the circuit overseer to ensure that directives and policies promulgated by GOVERNING BODY and WATCHTOWER are being followed and correctly implemented at the congregation, circuit and district levels, including at congregations, circuits, and district levels in New Jersey.

94. The circuit overseer personally visits each congregation within his circuit twice yearly.

95. The circuit overseer personally meets with the elders of the congregations within his circuit.

96. During the circuit overseer's visits, the elders of the congregation and the circuit overseer discuss the overall functioning of the congregation, as well as specific instances of alleged wrongdoing, including allegations of child molestation.

97. The circuit overseer participates in field service and observes and reports upon the functioning of the congregation.

98. During the circuit overseer's visits, the elders of the congregation and the circuit overseer meet to discuss the men in the congregation, with the purpose of identifying men who meet the requirements for appointment as ministerial servants or elders.

99. The circuit overseer assists the elders in arriving at recommendations to defendant WATCHTOWER for appointment as ministerial servants and elders in the congregation.

100. Prior to April of 2001, circuit overseers prepared reports regarding their visits to the congregations and submitted the report to WATCHTOWER as the agent of GOVERNING BODY.

101. Since April of 2001, circuit overseers have submitted their reports to CCJW as the

agent of GOVERNING BODY.

102. Day to day operations of each congregation, including congregations in New Jersey, are run by a body of elders, subject to the right to control by WATCHTOWER and GOVERNING BODY.

103. Women are not permitted to serve as elders.

104. The elders are the highest authority at the congregational level.

105. The responsibilities of the elders include directing door-to-door preaching activities, selecting potential candidates for the position of ministerial servants or elders, organizing weekly church meetings, selecting candidates for the position of publisher, handling finances for the congregation, mentoring congregation members including children of the congregation, and determining the guilt, repentance, and punishment of church members who commit wrongdoing, subject to the right to control by WATCHTOWER and GOVERNING BODY.

106. In order to be appointed as an elder, a person must be a ministerial servant in good standing or have served as an elder in another congregation.

107. When the local elders identify a candidate for the position of elder, the circuit overseer recommends the candidate to WATCHTOWER.

108. WATCHTOWER and GOVERNING BODY have ultimate authority over the appointment of any candidate to the position of elder, including elders in New Jersey.

109. In the spring of 2001, CCIW took over WATCHTOWER'S responsibilities for the appointment of elders.

110. CCIW also assumed the responsibility from WATCHTOWER of nominating, appointing, supervising and disciplining publishers, ministerial servants, pioneers, elders, and

circuit overseers.

111. Baptized publishers who meet certain requirements may be appointed as ministerial servants.

112. Ministerial servants serve the congregation and aid the elders in their responsibilities and take on leadership responsibilities in the absence of an elder, subject to the right to control by WATCHTOWER and GOVERNING BODY.

113. In order to be appointed as a ministerial servant, a person must be a publisher in good standing.

114. Only males may serve as ministerial servants.

115. The body of elders of the local congregation identifies potential candidates for the position of ministerial servant.

116. The body of elders in concert with the circuit overseer, determines whether a potential candidate for ministerial servant is suitable, and lives his life in accordance with appropriate morals, subject to the right to control by WATCHTOWER and GOVERNING BODY.

117. Recommendations for the appointment of any individual to the position of ministerial servant are made to the WATCHTOWER.

118. WATCHTOWER and GOVERNING BODY have the ultimate authority as to whether a candidate is elevated to the level of ministerial servant.

119. Membership in the Jehovah's Witness organization is strictly regulated and monitored by WATCHTOWER and GOVERNING BODY, and subject to their direction and control.

120. A person can attend open meetings at the Kingdom Hall for years, and not be a member of the congregation.

121. An individual who wishes to become a member of the Jehovah's Witnesses, begins the process by engaging in a period of bible study with a baptized member of the congregation, along with self-study.

122. After months of study, a person may become an unbaptized publisher.

123. In order to become an unbaptized publisher, the aspirant must apply to the congregation's body of elders.

124. The body of elders determine whether the aspirant exhibits enough knowledge of the beliefs and organization of the Jehovah's Witnesses to become a baptized publisher, subject to the right to control by WATCHTOWER and GOVERNING BODY.

125. The body of elders determine whether the morals and ethics of the aspirant meet the Jehovah's Witnesses standards.

126. Once a person is approved as an unbaptized publisher, he or she is authorized to represent the Jehovah's Witnesses, and the specific congregation, in the community.

127. An unbaptized publisher is authorized to engage in field service, which is the centerpiece of Jehovah's Witness marketing, fundraising, and recruiting activities.

128. Field service involves door-to-door proselytizing subject to the right to control by WATCHTOWER and GOVERNING BODY.

129. WATCHTOWER and GOVERNING BODY controlled and directed field service, including recruitment of new Jehovah's Witness members, across the country, including in New Jersey.

130. By participating in field service, an unbaptized publisher is authorized by the congregation and by the Jehovah's Witness organization to distribute Jehovah's Witness literature to members of the community, to accept donations on behalf of the organization, and to invite

prospective members of the community to attend open congregation meetings at the Kingdom Hall as a means of recruitment.

131. Prior to April of 2001, each publisher was instructed by the congregation, as directed by defendant WATCHTOWER, on how to become more effective at disseminating literature, receiving donations, and enticing non-members to attend public congregation meetings or begin bible study.

132. Since April of 2001, CBJW has assumed WATCHTOWER'S responsibilities for improving publisher's presentations.

133. Publishers must submit monthly records to the congregation detailing their hours spent in field service.

134. Publishers must submit forms to the congregation secretary for each "bible study" conducted by a publisher during the month.

135. Failure to submit field service records can lead to a publisher being designated as "irregular" or "inactive", which results in lowered status within the congregation.

136. After additional study, an unbaptized publisher may seek to become a baptized publisher.

137. Baptism as one of Jehovah's Witnesses is considered an ordination as minister of the Jehovah's Witnesses.

138. To be approved for baptism, an applicant must be tested and approved by elders of the local congregation.

139. During the testing, the applicant is asked certain questions relating to the teachings of the Jehovah's Witnesses as well as the organizational structure of the Jehovah's Witnesses.

140. Baptized publishers may make a greater commitment by pledging to spend a

specified number of hours in service for a period of time.

141. Pioneers are baptized publishers who have pledged to perform a specified number of hours of field service.

142. An auxiliary pioneer is a baptized publisher who applies to the congregation's elders to perform a certain number of hours of field service during a one-month period of time.

143. The elders have discretion to accept or reject an application for auxiliary pioneer.

144. A regular pioneer is a baptized publisher who pledges to spend a specified number of hours in field service each month for one year.

145. In order to become a regular pioneer, an applicant gains the recommendation of the congregation's elders, who in turn submit that recommendation for approval to WATCHTOWER.

146. WATCHTOWER has the discretion to approve or reject an application for regular pioneer, as an extension of and subject to the right to control by GOVERNING BODY.

147. Since April of 2001, CCJW has assumed responsibility for approving or rejecting applications for regular pioneers.

148. Publishers submit to the domination, direction, and control of the Jehovah's Witness organization, as expressed through the directives of WATCHTOWER and GOVERNING BODY.

149. WATCHTOWER and GOVERNING BODY, through their agents, monitors each publisher's field service and bible study records, standardizes methods to be used during proselytizing activities, provides the only approved literature to be distributed during field service, directs where publishers will perform field service, controls access to sought after positions as regular or auxiliary pioneers, and determines appointments as ministerial servants, elders, and overseers.

150. The Jehovah's Witness organization dictates and implements the Jehovah's Witness practice of shunning, which involves isolating and not interacting with members that have been disfellowshipped or have voluntarily left the church.

151. A publisher's personal grooming, appearance and dress are regulated by his or her congregation, subject to the right to control by WATCHTOWER and GOVERNING BODY.

152. A publisher's use of alcohol, tobacco, or drugs is regulated by his or her congregation, subject to the right to control by WATCHTOWER and GOVERNING BODY.

153. A publisher's illegal sexual conduct, such as child sexual abuse occurring away from Jehovah's Witness locations and events are subject to regulation and the imposition of punishment by the congregation, subject to the right to control by WATCHTOWER and GOVERNING BODY.

154. A publisher's legal sexual conduct is subject to regulation and the imposition of punishment by the congregation, subject to the right to control by WATCHTOWER and GOVERNING BODY.

155. Congregants are encouraged to bring problems to the elders to be resolved, and are discouraged from seeking intervention from outside of the Jehovah's Witness organization, subject to the right to control by WATCHTOWER and GOVERNING BODY.

156. When a congregant commits an act of wrongdoing, such as the sexual abuse of a child, that matter must be brought to an elder to be resolved.

157. The policy promulgated by WATCHTOWER and GOVERNING BODY requires elders to investigate allegations of sexual abuse of a child.

158. The policy promulgated by WATCHTOWER and GOVERNING BODY requires two witnesses to any alleged sexual abuse of a child before a judicial committee will be convened.

159. The policy promulgated by WATCHTOWER and GOVERNING BODY provides that if there are not two witnesses to any alleged sexual abuse of a child, and the accused denies any wrongdoing, the accused is determined to be innocent and no corrective, protective or punitive action is taken by the congregation.

160. If a judicial committee is convened to investigate an allegation of sexual abuse of a child, the two original elders who investigated the wrongdoing will be joined by a third elder, who will hear the case and impose punishment upon the wrongdoer, subject to the right to control by WATCHTOWER and GOVERNING BODY.

161. Potential punishments for sexual abuse of a child include private reproof, public reproof, and disfellowship, subject to the right to control by WATCHTOWER and GOVERNING BODY.

162. Private reproof in the Jehovah's Witness organization means a private censorship of the wrongdoer that generally results in a limitation of one or more privileges within the congregation for a short time. This does not mean that a reprovved person is necessarily precluded from engaging in field service.

163. The policy promulgated by WATCHTOWER and GOVERNING BODY provides that the congregation is not informed when an individual is subject to private reproof.

164. In the Jehovah's Witness organization, public reproof means an announcement is made to the congregation that the individual has been reprovved by a judicial committee and found to be repentant.

165. Disfellowship is expulsion from the Jehovah's Witness organization.

166. When an individual is disfellowshipped, an announcement is made to the congregation that he or she is no longer one of Jehovah's Witnesses.

167. The policy promulgated by WATCHTOWER and GOVERNING BODY provides that when an individual is disfellowshipped, the congregation is not informed of any acts of wrongdoing, or of the basis for the person's expulsion from the Jehovah's Witness organization.

168. The policy promulgated by WATCHTOWER and GOVERNING BODY provides that a person who is disfellowshipped may seek reinstatement into the Congregation by written request to the elders.

169. At all times prior to April of 2001, WATCHTOWER operated the Service Department of the United States branch of Jehovah's Witnesses.

170. Through the Service Department, WATCHTOWER implemented the policies and procedures promulgated by GOVERNING BODY, as an extension of and subject to the right to control by GOVERNING BODY.

171. WATCHTOWER exercised control over the day-to-day operations and activities of local congregations, as an extension of and subject to the right to control by GOVERNING BODY.

172. Prior to April of 2001, WATCHTOWER published a series of handbooks that were distributed to elders, as an extension of and subject to the right to control by GOVERNING BODY.

173. The aforesaid handbooks were not disclosed to other Jehovah's Witnesses or the public.

174. The aforesaid handbooks produced by WATCHTOWER and GOVERNING BODY provided general instructions to elders regarding day-to-day administration of the organization.

175. The aforesaid handbooks produced by WATCHTOWER and GOVERNING BODY provided instructions to elders regarding how to respond to allegations of wrongdoing,

including child molestation.

176. The aforesaid handbooks produced by WATCHTOWER and GOVERNING BODY specified the actions elders were required to take upon learning of child molestation within their congregations.

177. Prior to April of 2001, WATCHTOWER provided periodic instruction to local congregations through letters addressed to All Bodies of Elders, as an extension of and subject to the right to control by GOVERNING BODY.

178. These letters covered a broad spectrum of topics ranging from standardizing the record-keeping practices of all congregations, establishing procedures for ordering literature from defendant WATCHTOWER, remitting payments, handling administrative and procedural matters involving day-to-day congregation operations.

179. Some of the aforesaid letters provided specific instructions on how to respond to wrongdoing within the congregation, including child molestation.

180. CCJW assumed responsibility for disseminating some of these letters on and after April of 2001, as an extension of and subject to the right to control by GOVERNING BODY.

181. WATCHTOWER, through its Writing Department, and prior to April of 2001, through the Service Department, researches, writes, approves, publishes, and distributes its own materials for distribution to actual and prospective Jehovah's Witnesses, as an extension of and subject to the right to control by GOVERNING BODY.

182. WATCHTOWER appointed circuit and district overseers, as an extension of and subject to the right to control by GOVERNING BODY.

183. WATCHTOWER directly reviewed recommendations of prospective elders, as an extension of and subject to the right to control by GOVERNING BODY.

184. WATCHTOWER directly reviewed recommendations of ministerial servants, as an extension of and subject to the right to control by GOVERNING BODY.

185. GOVERNING BODY was and is authorized to approve or reject the appointment of any person recommended for the position of elder, and maintained the right to control the daily activities of any specific individual so appointed, whether or not that control was exercised.

186. GOVERNING BODY was and is authorized to approve or reject the appointment of any person recommended for the position of ministerial servant, and maintained the right to control the daily activities of any specific individual so appointed, whether or not that control was exercised.

187. GOVERNING BODY was and is authorized to approve or reject the appointment of any person recommended for the position of district or circuit overseer, and maintained the right to control the daily activities of any specific individual so appointed, whether or not that control was exercised.

188. WATCHTOWER established procedures for the discipline of members accused of wrongdoing, as an extension of and subject to the right to control by GOVERNING BODY.

189. WATCHTOWER received and maintained records regarding the disfellowship or reproof of elders and ministerial servants, as an extension of and subject to the right to control by GOVERNING BODY.

190. In March of 1997, WATCHTOWER disseminated a letter to all of the Bodies of Elders in United States congregations seeking information on men who then served, or had previously served, in any appointed position (e.g., elder, ministerial servant, regular pioneer) and were also known to have engaged in child molestation, as an extension of and subject to the right to control by GOVERNING BODY.

191. WATCHTOWER required each congregation to prepare reports detailing instances of child molestation, and to return the reports to WATCHTOWER's Service Department, as an extension of and subject to the right to control by GOVERNING BODY.

192. In July of 1998, defendant WATCHTOWER sent a follow up letter to each United States congregation, reminding those bodies of elders of the need to send the reports, and possible legal consequences of appointing a known child molester to a position of authority, such as an elder or ministerial servant, as an extension of and subject to the right to control by GOVERNING BODY.

193. Reports regarding the sexual abuse of children were received by the Service Department and kept by defendants WATCHTOWER and GOVERNING BODY.

194. Prior to receiving the written reports, WATCHTOWER and GOVERNING BODY were aware that child molestation by elders, ministerial servants, and publishers was a problem within its congregations.

195. Despite receiving the written reports, WATCHTOWER and GOVERNING BODY did not promulgate new or effective policies for preventing or responding to child molestation.

196. Despite receiving the written reports, WATCHTOWER and GOVERNING BODY did not implement procedures or policies to educate children and adult members of the risk of child molestation within the Jehovah's Witness organization, how to identify warning signs of molestation, or how to avoid dangerous situations.

197. CCJW assumed operation of the Service Department, and gained possession and knowledge of the molestation reports, and also received new reports of molestation by Jehovah's Witnesses, as an extension of and subject to the right to control by GOVERNING BODY.

198. Reports of sexual molestation continue to be sent to CCJW, as an extension of and

subject to the right to control by GOVERNING BODY,

199. At the direction of GOVERNING BODY, a policy letter from July 1989 required elders to contact defendant WATCHTOWER's Legal Department about child abuse, instead of contacting the police.

200. WATCHTOWER and GOVERNING BODY left that policy intact even after receiving written reports of molestation from their individual agents and congregants.

201. WATCHTOWER's Service Department has never made a mandated child abuse report to law enforcement.

202. The policies on child molestation promulgated by WATCHTOWER and GOVERNING BODY through the elder handbooks and confidential policy letters were not divulged to Jehovah's Witness members.

203. Through this mandated secrecy regarding child molestation by elders, ministerial servants, and publishers, WATCHTOWER and GOVERNING BODY intentionally concealed the threat of child molestation within the Jehovah's Witnesses from their members.

204. Through policies of non-reporting to law enforcement and non-cooperation with criminal child molestation investigations, defendants WATCHTOWER and GOVERNING BODY protected accused and admitted child molesters from criminal prosecution and thereby increased the risk of molestation of minors.

205. PLAINTIFF was trained by the FAIRLAWN CONGREGATION, WATCHTOWER, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 that she should obey Pandelo and respect the individuals appointed as elders and ministerial servants, including Pandelo.

206. Pandelo was a ministerial servant in the FAIRLAWN CONGREGATION with

substantial authority over PLAINTIFF and other congregants.

207. Pandelo was a ministerial servant in the HACKENSACK CONGREGATION with substantial authority over PLAINTIFF and other congregants.

208. Despite receiving a report regarding Pandelo's abuse of multiple children and knowing his propensity to sexually abuse minors, the FAIRLAWN CONGREGATION, WATCHTOWER, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 provided no warning to members of the FAIRLAWN CONGREGATION whose children were at risk, including PLAINTIFF.

209. Despite receiving a report regarding Pandelo's abuse of multiple children and knowing his propensity to sexually abuse minors, the FAIRLAWN CONGREGATION, WATCHTOWER, GOVERNING BODY, HACKENSACK CONGREGATION, and DOES 1-100 provided no warning to members of the HACKENSACK CONGREGATION whose children were at risk, including PLAINTIFF.

210. WATCHTOWER had a duty to protect PLAINTIFF, as a minor congregant, from Pandelo's sexual criminal acts.

211. WATCHTOWER had a duty to competently investigate Pandelo prior to accepting him as its agent.

212. WATCHTOWER had a duty to competently supervise Pandelo during the time he served as its agent.

213. WATCHTOWER had a special duty to supervise Pandelo.

214. WATCHTOWER had a special duty to protect PLAINTIFF.

215. WATCHTOWER failed to adequately and competently supervise Pandelo.

216. FAIRLAWN CONGREGATION had a duty to protect PLAINTIFF, as a minor

congregant, from Pandelo's sexual criminal acts.

217. FAIRLAWN CONGREGATION had a duty to competently investigate Pandelo prior to accepting him as its agent.

218. FAIRLAWN CONGREGATION had a duty to competently supervise Pandelo during the time he served as a ministerial servant.

219. FAIRLAWN CONGREGATION had a special duty to supervise Pandelo.

220. FAIRLAWN CONGREGATION had a special duty to protect PLAINTIFF.

221. FAIRLAWN CONGREGATION failed to adequately and competently supervise Pandelo.

222. GOVERNING BODY had a duty to protect PLAINTIFF, as a minor congregant, from Pandelo's sexual criminal acts.

223. GOVERNING BODY had a duty to competently investigate Pandelo prior to accepting him as its agent.

224. GOVERNING BODY had a duty to competently supervise Pandelo during the time he served as a ministerial servant.

225. GOVERNING BODY had a special duty to supervise Pandelo.

226. GOVERNING BODY had a special duty to protect PLAINTIFF.

227. GOVERNING BODY failed to adequately and competently supervise Pandelo.

228. HACKENSACK CONGREGATION had a duty to protect PLAINTIFF, as a minor congregant, from Pandelo's sexual criminal acts.

229. HACKENSACK CONGREGATION had a duty to competently investigate Pandelo prior to accepting him as its agent.

230. HACKENSACK CONGREGATION had a duty to competently supervise Pandelo

during the time he served as a ministerial servant.

231. HACKENSACK CONGREGATION had a special duty to supervise Pandelo.

232. HACKENSACK CONGREGATION had a special duty to protect PLAINTIFF.

233. HACKENSACK CONGREGATION failed to adequately and competently supervise Pandelo.

234. DOES 1-100 had a duty to protect PLAINTIFF, as a minor congregant, from Pandelo's sexual criminal acts.

235. DOES 1-100 had a duty to competently investigate Pandelo prior to accepting him as their agent.

236. DOES 1-100 had a duty to competently supervise Pandelo during the time he served as a ministerial servant.

237. DOES 1-100 had a special duty to supervise Pandelo.

238. DOES 1-100 had a special duty to protect PLAINTIFF.

239. DOES 1-100 failed to adequately and competently supervise Pandelo.

240. Pandelo's sexual abuse of PLAINTIFF was proximately caused by the failure of WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION, and DOES 1-100 to adequately and competently supervise Pandelo.

241. The aforementioned occurrences of sexual abuse were caused by the negligence, carelessness, and recklessness and the willful, wanton, reckless and grossly negligent conduct of WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION, and DOES 1-100, and their agents, servants, and/or employees, in failing to properly and adequately supervise the conduct of Pandelo as it related to PLAINTIFF.

242. By reason of the foregoing, PLAINTIFF suffered sustained physical and

psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to her nervous system, and has been caused to suffer physical pain and mental anguish, and permanent emotional and psychological damage as a result thereof.

243. As a result of the Defendants' conduct, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.

244. By reason of the foregoing, WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 are also liable to PLAINTIFF for punitive and exemplary damages.

COUNT III -
NEGLIGENT AND/OR GROSSLY NEGLIGENT RETENTION
Plaintiff v. All Defendants

245. PLAINTIFF repeats, reiterates, and realleges each and every allegation of this complaint, inclusive, with the same force and effect as if fully set forth at length herein.

246. Prior to and all times herein mentioned, WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 knew of Pandelo's conduct toward PLAINTIFF and/or his propensity to sexually abuse minors such as PLAINTIFF, and yet they maintained his employment as their agent.

247. It was reasonably foreseeable that when the elders learned that Pandelo had been accused of molesting more than one minor prior to the conclusion of his molestation of PLAINTIFF, that his continued association with the FAIRLAWN CONGREGATION, absent any warning to PLAINTIFF or her parents or other members of these congregations, would mean that there was a heightened risk that Pandelo would sexually abuse PLAINTIFF or otherwise violate appropriate sexual boundaries between adult ministerial servants and minor congregants.

248. It was reasonably foreseeable that when the elders learned that Pandelo had been

accused of molesting more than one minor prior to the conclusion of his molestation of PLAINTIFF, that his continued association with the HACKENSACK CONGREGATION, absent any warning to PLAINTIFF or her parents or other members of these congregations, would mean that there was a heightened risk that Pandelo would sexually abuse PLAINTIFF or otherwise violate appropriate sexual boundaries between adult ministerial servants and minor congregants.

249. WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 undertook a duty to protect minor congregants, like PLAINTIFF, who came into contact with their agents, like Pandelo, through their participation in congregation activities, from being sexually abused by their agents, including Pandelo.

250. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to his nervous system, and has been caused to suffer physical pain and mental anguish, and permanent emotional and psychological damage as a result thereof.

251. As a result of the Defendants' conduct, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.

252. By reason of the foregoing, WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 are also liable to PLAINTIFF for punitive and exemplary damages.

COUNT IV –
NEGLIGENT AND/OR GROSSLY NEGLIGENT FAILURE TO TRAIN
RELATING TO CHILD ABUSE
Plaintiff v. All Defendants

253. PLAINTIFF repeats, reiterates, and realleges each and every allegation contained in this complaint, inclusive, with the same force and effect as if fully set forth at length herein.

254. GOVERNING BODY created, approved, or instituted all of the policies and procedures related to interactions between members of the Jehovah's Witnesses organization, and invited unrelated individuals, including minors such as PLAINTIFF, to become members of the Jehovah's Witnesses organization and congregate with each other.

255. GOVERNING BODY knew or should have known of the problem of the sexual abuse of minors by Jehovah's Witnesses, including ministerial servants like Pandelo.

256. GOVERNING BODY and its agents, servants, and employees, had a duty to establish adequate, competent, and effective professional training and education programs and procedures for their agents, employees, and administrators, calculated to identify and prevent sexual abuse of minor congregants by ministerial servants and other agents, like Pandelo, who came into contact the minor congregants as a result of their positions within the Jehovah's Witness organization.

257. Given the prevalence of child molestation by Jehovah's Witnesses, GOVERNING BODY also had a duty to establish adequate, competent, and effective training and education programs for minor congregants and their parents calculated to educate minor congregants to identify and protect themselves against sexual abuse by ministerial servants, such as Pandelo.

258. GOVERNING BODY, and its agents, servants, and employees were negligent, careless, and reckless, and acted willfully, wantonly and with gross negligence, in failing to establish adequate and effective professional training and education programs and procedures for their agents, calculated to prevent the sexual abuse of minor congregants, like PLAINTIFF.

259. GOVERNING BODY, and its agents, servants, and employees, were negligent, careless, and reckless, and acted willfully, wantonly, and with gross negligence, in failing to establish adequate and effective training and education programs and procedures for minor

congregants like PLAINTIFF, avoid sexual abuse by their agents.

260. WATCHTOWER knew or should have known of the problem of the sexual abuse of minors by Jehovah's Witnesses, including ministerial servants like Pandelo.

261. WATCHTOWER and its agents, servants, and employees, had a duty to establish adequate, competent, and effective professional training and education programs and procedures for their agents, employees, and administrators, calculated to identify and prevent sexual abuse of minor congregants by ministerial servants and other agents, like Pandelo, who came into contact with minor congregants as a result of their positions within the Jehovah's Witness organization.

262. Given the prevalence of child molestation by Jehovah's Witnesses, WATCHTOWER also had a duty to establish adequate, competent, and effective training and education programs for minor congregants and their parents calculated to educate minor congregants to identify and protect themselves against sexual abuse by ministerial servants, such as Pandelo.

263. WATCHTOWER, and its agents, servants, and employees were negligent, careless, and reckless, and acted willfully, wantonly and with gross negligence, in failing to establish adequate and effective professional training and education programs and procedures for their agents, calculated to prevent the sexual abuse of minor congregants, like PLAINTIFF.

264. WATCHTOWER, and its agents, servants, and employees, were negligent, careless, and reckless, and acted willfully, wantonly, and with gross negligence, in failing to establish adequate and effective training and education programs and procedures for minor congregants like PLAINTIFF, avoid sexual abuse by their agents.

265. FAIRLAWN CONGREGATION knew or should have known of the problem of the sexual abuse of minors by Jehovah's Witnesses, including ministerial servants like Pandelo.

266. FAIRLAWN CONGREGATION and its agents, servants, and employees, had a duty to establish adequate, competent, and effective professional training and education programs and procedures for their agents, employees, and administrators, calculated to identify and prevent sexual abuse of minor congregants by ministerial servants and other agents, like Pandelo, who came into contact with minor congregants as a result of their positions within the Jehovah's Witness organization.

267. Given the prevalence of child molestation by Jehovah's Witnesses, FAIRLAWN CONGREGATION also had a duty to establish adequate, competent, and effective training and education programs for minor congregants and their parents calculated to educate minor congregants to identify and protect themselves against sexual abuse by ministerial servants, such as Pandelo.

268. FAIRLAWN CONGREGATION, and its agents, servants, and employees were negligent, careless, and reckless, and acted willfully, wantonly and with gross negligence, in failing to establish adequate and effective professional training and education programs and procedures for their agents, calculated to prevent the sexual abuse of minor congregants, like PLAINTIFF.

269. FAIRLAWN CONGREGATION, and its agents, servants, and employees, were negligent, careless, and reckless, and acted willfully, wantonly, and with gross negligence, in failing to establish adequate and effective training and education programs and procedures for minor congregants like PLAINTIFF, avoid sexual abuse by their agents.

270. HACKENSACK CONGREGATION knew or should have known of the problem of the sexual abuse of minors by Jehovah's Witnesses, including ministerial servants like Pandelo.

271. HACKENSACK CONGREGATION and its agents, servants, and employees, had

a duty to establish adequate, competent, and effective professional training and education programs and procedures for their agents, employees, and administrators, calculated to identify and prevent sexual abuse of minor congregants by ministerial servants and other agents, like Pandelo, who came into contact with minor congregants as a result of their positions within the Jehovah's Witness organization.

272. Given the prevalence of child molestation by Jehovah's Witnesses, HACKENSACK CONGREGATION also had a duty to establish adequate, competent, and effective training and education programs for minor congregants and their parents calculated to educate minor congregants to identify and protect themselves against sexual abuse by ministerial servants, such as Pandelo.

273. HACKENSACK CONGREGATION, and its agents, servants, and employees were negligent, careless, and reckless, and acted willfully, wantonly and with gross negligence, in failing to establish adequate and effective professional training and education programs and procedures for their agents, calculated to prevent the sexual abuse of minor congregants, like PLAINTIFF.

274. HACKENSACK CONGREGATION, and its agents, servants, and employees, were negligent, careless, and reckless, and acted willfully, wantonly, and with gross negligence, in failing to establish adequate and effective training and education programs and procedures for minor congregants like PLAINTIFF, avoid sexual abuse by their agents.

275. DOES 1-100 knew or should have known of the problem of the sexual abuse of minors by Jehovah's Witnesses, including ministerial servants like Pandelo.

276. DOES 1-100 and their agents, servants, and employees, had a duty to establish adequate, competent, and effective professional training and education programs and procedures

for their agents, employees, and administrators, calculated to identify and prevent sexual abuse of minor congregants by ministerial servants and other agents, like Pandelo, who came into contact with minor congregants as a result of their positions within the Jehovah's Witness organization.

277. Given the prevalence of child molestation by Jehovah's Witnesses, DOES 1-100 also had a duty to establish adequate, competent, and effective training and education programs for minor congregants and their parents calculated to educate minor congregants to identify and protect themselves against sexual abuse by ministerial servants, such as Pandelo.

278. DOES 1-100, and their agents, servants, and employees were negligent, careless, and reckless, and acted willfully, wantonly and with gross negligence, in failing to establish adequate and effective professional training and education programs and procedures for their agents, calculated to prevent the sexual abuse of minor congregants, like PLAINTIFF.

279. DOES 1-100, and their agents, servants, and employees, were negligent, careless, and reckless, and acted willfully, wantonly, and with gross negligence, in failing to establish adequate and effective training and education programs and procedures for minor congregants like PLAINTIFF to avoid sexual abuse by their agents.

280. Defendants' negligent failures to establish adequate and effective training and education programs and procedures for minor congregants and for their agents, employees, and administrators proximately caused PLAINTIFF to suffer injuries as detailed below.

281. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to his nervous system, and has been caused to suffer physical pain and mental anguish, and permanent emotional and psychological damage as a result thereof.

282. As a result of the Defendants' conduct, PLAINTIFF has and will become obligated

to expend sums of money for medical treatment.

283. By reason of the foregoing, WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 are also liable to PLAINTIFF for punitive and exemplary damages.

COUNT V-

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiff v. Watchtower, Fairlawn Congregation, Hackensack Congregation and Does 1-100

284. PLAINTIFF repeats, reiterates, and realleges each and every allegation contained in this complaint, inclusive, with the same force and effect as if fully set forth at length herein.

285. Defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 knew, or in the exercise of reasonable care, should have known that their acts and omissions as described in this complaint would result in serious emotional distress to PLAINTIFF.

286. Defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 acted with willful, wanton, reckless, intentional and deliberate disregard for the likelihood that PLAINTIFF would suffer severe emotional distress as a direct and proximate result of the sexual abuse he endured.

287. The conduct of Defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 as alleged above was extreme and outrageous and went beyond all bounds of decency.

288. As a direct and proximate result of defendants' acts and omissions, PLAINTIFF suffered severe emotional distress.

289. As a result of the conduct of Defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.

290. By reason of the foregoing, WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 are also liable to PLAINTIFF for punitive and exemplary damages.

COUNT VI—
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

Plaintiff v. All Defendants

291. PLAINTIFF repeats, reiterates, and realleges each and every allegation contained in this complaint, inclusive, with the same force and effect as if fully set forth at length herein.

292. Defendants knew, or in the exercise of reasonable care should have known, that their acts and omissions would result in serious emotional distress to PLAINTIFF.

293. Defendants WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 placed Pandelo in a position of power, trust and authority over PLAINTIFF, who in turn placed confidence in Pandelo. Defendants WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 owed PLAINTIFF a duty to ensure that Pandelo did not pose a threat of harm to PLAINTIFF.

294. Pandelo, as a ministerial servant in PLAINTIFF's congregation, owed a duty to PLAINTIFF to refrain from sexually assaulting and abusing her while acting as a servant-agent of Defendants WATCHTOWER, GOVERNING BODY, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100.

295. Defendants' negligent and careless breach of that duty was utterly reprehensible behavior and was taken with disregard for the likelihood that PLAINTIFF would suffer severe emotional distress as a direct result.

296. As a direct and proximate result of defendants' negligence as described above,

PLAINTIFF suffered severe emotional distress.

297. As a result of defendants' conduct, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.

298. By reason of the foregoing, defendants are also liable to PLAINTIFF for punitive and exemplary damages.

COUNT VII –
SEXUAL ABUSE AND BATTERY

Plaintiff v. Watchtower, Fairlawn Congregation, Hackensack Congregation and Does 1-100

299. PLAINTIFF repeats, reiterates, and realleges each and every allegation contained in this complaint, inclusive, with the same force and effect as if fully set forth at length herein.

300. Each instance of Pandelo's sexual misconduct and inappropriate physical contact with PLAINTIFF constitutes battery.

301. WATCHTOWER, by its intentional acts, omissions, negligence, knowing and willful failure to act affirmatively to prevent, detect, report, or investigate, aided and abetted Pandelo.

302. By declining to contact law enforcement about Pandelo's molestation of minor children prior to the conclusion of his molestation of PLAINTIFF, WATCHTOWER sought to cover up Pandelo's acts, and protect him from detection or punishment, and thereby ratified his sexual molestation of PLAINTIFF and others.

303. FAIRLAWN CONGREGATION, by its intentional acts, omissions, negligence, knowing and willful failure to act affirmatively to prevent, detect, report, or investigate, aided and abetted Pandelo.

304. By declining to contact law enforcement about Pandelo's molestation of minor children prior to the conclusion of his molestation of PLAINTIFF, FAIRLAWN CONGREGATION sought to cover up Pandelo's acts and protect him from detection or

punishment, and thereby ratified his sexual molestation of PLAINTIFF and others.

305. HACKENSACK CONGREGATION, by its intentional acts, omissions, negligence, knowing and willful failure to act affirmatively to prevent, detect, report, or investigate, aided and abetted Pandelo.

306. By declining to contact law enforcement about Pandelo's molestation of minor children prior to the conclusion of his molestation of PLAINTIFF, HACKENSACK CONGREGATION sought to cover up Pandelo's acts and protect him from detection or punishment, and thereby ratified his sexual molestation of PLAINTIFF and others.

307. DOES 1-100, by their intentional acts, omissions, negligence, knowing and willful failure to act affirmatively to prevent, detect, report, or investigate, aided and abetted Pandelo.

308. By declining to contact law enforcement about Pandelo's molestation of minor children prior to the conclusion of his molestation of PLAINTIFF, DOES 1-100 sought to cover up Pandelo's acts, and protect him from detection or punishment, and thereby ratified his sexual molestation of PLAINTIFF and others.

309. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to her nervous system, and has been caused to suffer physical pain and mental anguish, and permanent emotional and psychological damage as a result thereof.

310. As a result of the conduct by Defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100, PLAINTIFF has and will become obligated to expend sums of money for medical treatment.

311. By reason of the foregoing, defendants WATCHTOWER, FAIRLAWN CONGREGATION, HACKENSACK CONGREGATION and DOES 1-100 are also liable to

PLAINTIFF for punitive and exemplary damages.

WHEREFORE, PLAINTIFF demands judgment against the defendants on each of the First, Second, Third, Fourth, Fifth, and Sixth causes of action in a sum that exceeds the jurisdictional limits of all lower courts, including compensatory and punitive damages, together with interest, costs and disbursements pursuant to the causes of action herein.

COUNT VIII -
PUNITIVE DAMAGES
Plaintiff v. All Defendants

312. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the previous paragraphs as if set forth herein at length.

313. The aforesaid acts of Defendants were committed in outrageous, callous, wanton, and willful disregard for the safety, protection, and well-being of minors, including Plaintiff, warranting the imposition of punitive damages.

314. The actions and/or inactions of Defendants, jointly, severally, and/or through the conduct of Pandelo, were intentional, willful, and/or reckless in that Defendants' actions were intended to cause great harm to minors, including Plaintiff, and/or were done with deliberate disregard of a high degree of probability that such behavior would cause great harm to minors, including Plaintiff.

315. The actions and/or inactions of Defendants, jointly, severally, and/or through the conduct of Pandelo, against Plaintiff were extreme, callous, reckless, and/or wanton.

316. As a direct and proximate result of Defendants' wanton and willful disregard for the safety of minors, including Plaintiff, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent and/or grossly negligent failures, as well as

the callous and wanton behavior, of Defendants in the hiring and retention of, as well as its failure to monitor or supervise, its employees and/or agents, including Pandelo.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, and/or individually, for compensatory and punitive damages, together with interest and costs in an unspecified amount, plus costs, disbursements, reasonable attorneys' fees, interest, and such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

The Plaintiff demands a trial by jury on all of the triable issues of this Complaint, pursuant to Rules 1:8-2(b) and 4:35-1(a).

Dated: October 13, 2021

Respectfully submitted,

ROBINS KAPLAN LLP

By: /s/Rayna E. Kessler

Rayna E. Kessler, Esq.
NJ ID No. 031782010
399 Park Avenue, Suite 3600
New York, New York 10022
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

Attorney for Plaintiff Corrine Pandelo

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:5-1(c), please take notice that Plaintiff designates Rayna E. Kessler, Esq. as trial counsel in this matter.

Dated: October 13, 2021

/s/Rayna E. Kessler
Rayna E. Kessler, Esq.

CERTIFICATION PURSUANT TO RULE 1:38-7(b)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CERTIFICATION PURSUANT TO RULE 4:5-1

I certify that the dispute that Plaintiff is suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Dated: October 13, 2021

/s/Rayna E. Kessler
Rayna E. Kessler, Esq.

ROBINS KAPLAN LLP

Rayna E. Kessler, Esq.
NJ ID No. 031782010
399 Park Avenue, Suite 3600
New York, NY 10022-4611
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

THE ZALKIN LAW FIRM, P.C.

Alex Zalkin, Esq. (to be admitted *pro hac vice*)
Elizabeth Cate, Esq. (to be admitted *pro hac vice*)
10 Times Square
1441 Broadway, Suite 3147
New York, NY 10018
Telephone: (858) 259-3011
Email: irwin@zalkin.com

Attorneys for Plaintiff Corrine Pandelo

CORINNE PANDELO,

Plaintiff,

v.

**THE GOVERNING BODY OF
JEHOVAH'S WITNESSES,
FAIRLAWN CONGREGATION OF
JEHOVAH'S WITNESSES,
WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW
YORK, HACKENSACK
CONGREGATION OF JEHOVAH'S
WITNESSES, and JOHN AND JANE
DOES 1-100, whose identities are presently
unknown to Plaintiff, in their official and
individual capacities,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

DOCKET NO. _____

CIVIL ACTION

**PLAINTIFF'S REQUEST FOR
ADMISSIONS, SET ONE**

PLEASE TAKE NOTICE that pursuant to New Jersey Court Rule 4:22-1, Plaintiff hereby serves the following Requests for Admissions to be answered separately under oath no later than thirty (30) days after service of these Requests for Admissions. Your answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless stating that a reasonable inquiry was made and that the information known or readily obtainable is insufficient to enable an admission or denial. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial, may not, on that ground alone, object to the request.

DEFINITIONS

1. "DEFENDANT" refers to the party to whom the following requests are addressed, as well as all affiliates, partners, directors, officers, employees, servants, agents, third-party contractors working on its behalf, and predecessor entities, including the predecessor's affiliates, partners, directors, officers, employees, servants, agents, and third-party contractors acting on the predecessor's behalf.

2. "SEXUAL ABUSE" means any inappropriate sexual contact and/or communication, including but not limited to all sexual contact and communications between adults and minors, all sexual contact imposed upon another person by use of force, fear, manipulation, or coercion, all sexual contact committed without consent, and all sexual activity by those sworn to celibacy.

3. "EMPLOYEE" means any person employed by YOU at any time or any PERSON, including volunteers, who provided any type of services to YOU, including but not limited to all of your present, former, or retired present, former, OR retired governing body members, branch committee members, district overseers, circuit overseers, elders, ministerial

servants, employees, volunteers, representatives, agents, secretaries, churches, congregations, branches, district's circuits, schools, principals, teachers, coaches, employees, boards, directors, subsidiaries, counselors, associates, investigators, independent contractors, agents, representatives, accountants, volunteers, attorneys, and affiliated business entities.

4. "POLICIES AND PROCEDURES" means all formal and/or informal rules, guidelines, guidance, advice, FAQs, scripts, handbooks, and/or training materials.

5. The term "PLAINTIFF" refers to the Plaintiff in this particular case.

REQUESTS FOR ADMISSIONS

Request For Admission No. 1:

Clement Pandelo was a ministerial servant in the HACKENSACK CONGREGATION OF JEHOVAH'S WITNESSES at any time between 1979 and 1988.

Request For Admission No. 2:

Clement Pandelo was a ministerial servant in the FAIRLAWN CONGREGATION OF JEHOVAH'S WITNESSES at any time between 1979 and 1988.

Request For Admission No. 3:

Corinne Pandelo was a minor congregant at HACKENSACK CONGREGATION OF JEHOVAH'S WITNESSES at some point between 1979 and 1988.

Request For Admission No. 4:

Corinne Pandelo was a minor congregant at FAIRLAWN CONGREGATION OF JEHOVAH'S WITNESSES at some point between 1979 and 1988.

Request For Admission No. 5:

PLAINTIFF was a minor congregant at HACKENSACK CONGREGATION OF JEHOVAH'S WITNESSES and/or FAIRLAWN CONGREGATION OF JEHOVAH'S WITNESSES between the years of 1979 and 1988.

Request For Admission No. 6:

At any time between 1978 and 1989, FAIRLAWN CONGREGATION OF JEHOVAH'S WITNESSES supervised Clement Pandelo in his capacity as a ministerial servant.

Request For Admission No. 7:

At any time between 1978 and 1989, HACKSENSACK CONGREGATION OF JEHOVAH'S WITNESSES supervised Clement Pandelo in his capacity as a ministerial servant.

Request For Admission No. 8:

In or around 1988, Clement Pandelo was disfellowshipped from the Jehovah's Witnesses.

Request For Admission No. 9:

Clement Pandelo's disfellowship in or around 1988 was based on the allegations of sexual abuse of PLAINTIFF.

Request For Admission No. 10:

After 1988, Clement Pandelo was disfellowshipped for a second time.

Request For Admission No. 11:

Clement Pandelo's second disfellowship was based on additional allegations of sexual abuse of children, including PLAINTIFF.

Request For Admission No. 12:

After 1988, Pandelo was reinstated to the Jehovah's Witnesses twice.

Request For Admission No. 13:

After 1988, DEFENDANT was aware that Clement Pandelo pleaded guilty to crimes involving sexual abuse of more than one minor, including PLAINTIFF.

Request For Admission No. 14:

After 1988, DEFENDANT was aware that Clement Pandelo admitted under oath that he had sexually abused multiple children for over thirty years.

Request For Admission No. 15:

Prior to 1988, DEFENDANT was aware that Pandelo had admitted to sexual misconduct involving minor girls.

Request For Admission No. 16:

Prior to 1988, DEFENDANT was aware that Pandelo had admitted to sexual misconduct involving an adulterous affair with a teenaged girl.

Request For Admission No. 17:

Prior to 1988, Pandelo was publicly reproofed for sexual misconduct.

Request For Admission No. 18:

DEFENDANT never reported Pandelo's sexual abuse of minors to any law enforcement agency.

Request For Admission No. 19:

Prior to 1988, DEFENDANT knew that Pandelo sexually abused at least one child.

Request For Admission No. 20:

Ministerial servants are agents of DEFENDANT.

Request For Admission No. 21:

DEFENDANT appoints certain individuals who have been baptized to serve as ministerial servants.

Request For Admission No. 22:

Between the years of 1979 and 1988, the body of elders of a local Jehovah's Witness congregation identified potential candidates for the position of ministerial servant.

Request For Admission No. 23:

Between the years of 1979 and 1988, the body of elders of a local Jehovah's Witness congregation in concert with the circuit overseer, determined whether a potential candidate for ministerial servant was suitable, and lived his life in accordance with appropriate morals.

Request For Admission No. 24:

Between the years of 1979 and 1988, WATCHTOWER reviewed recommendations for the appointment of any individual to the position of ministerial servant.

Request For Admission No. 25:

Between the years of 1979 and 1988, DEFENDANT had authority to decide whether a candidate was elevated to the level of ministerial servant.

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Request For Admission No. 26:

Prior to April of 2001, WATCHTOWER published a series of handbooks that were distributed to elders of local Jehovah's Witness congregations.

Request For Admission No. 27:

The handbooks published by WATCHTOWER prior to April 2001 provided instructions to elders regarding how to respond to allegations of wrongdoing, including child molestation.

Request For Admission No. 28:

WATCHTOWER promulgated a policy that requires elders to investigate allegations of sexual abuse of a child.

Request For Admission No. 29:

WATCHTOWER promulgated a policy that provides that if there are not two witnesses to any alleged sexual abuse of a child, and the accused denies any wrongdoing, the accused is determined to be innocent and no corrective, protective or punitive action is taken by the congregation.

Request For Admission No. 30:

In 1997, WATCHTOWER disseminated a letter to all of the Bodies of Elders in United States Jehovah's Witness congregations seeking information on men who then served, or had previously served, in any appointed position (e.g., elder, ministerial servant, regular pioneer) and were also known to have engaged in child molestation.

Request For Admission No. 31:

In a 1997 letter, WATCHTOWER required each congregation to prepare reports detailing instances of child molestation, and to return the reports to WATCHTOWER's Service Department.

Request For Admission No. 32:

In 1998, WATCHTOWER sent a follow up letter to each United States Jehovah's Witness congregation, reminding these congregations' bodies of elders to send reports on men who then served, or had previously served, in any appointed position (e.g., elder, ministerial

servant, regular pioneer) and were also known to have engaged in child molestation, and possible legal consequences of appointing a known child molester to a position of authority.

Request For Admission No. 33:

Reports regarding the sexual abuse of children were received by the Service Department and kept by WATCHTOWER and GOVERNING BODY.

Request For Admission No. 34:

After receiving the written reports, WATCHTOWER and GOVERNING BODY did not implement procedures or policies to educate children and adult members of the risk of child molestation within the Jehovah's Witness organization, how to identify warning signs of molestation, or how to avoid dangerous situations.

Dated: October 13, 2021

Respectfully submitted,

ROBINS KAPLAN LLP

By: /s/Rayna E. Kessler

Rayna E. Kessler, Esq.

NJ ID No. 031782010

399 Park Avenue, Suite 3600

New York, NY 10022

Telephone: (212) 980-7431

Facsimile: (212) 980-7499

Email: RKessler@RobinsKaplan.com

Attorney for Plaintiff Corinne Pandelo

ROBINS KAPLAN LLP

Rayna E. Kessler, Esq.
NJ ID No. 031782010
399 Park Avenue, Suite 3600
New York, NY 10022-4611
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

THE ZALKIN LAW FIRM, P.C.

Alex Zalkin, Esq. (to be admitted *pro hac vice*)
Elizabeth Cate, Esq. (to be admitted *pro hac vice*)
10 Times Square
1441 Broadway, Suite 3147
New York, NY 10018
Telephone: (858) 259-3011
Email: irwin@zalkin.com

Attorneys for Plaintiff Corrine Pandelo

CORINNE PANDELO,

Plaintiff,

v.

**THE GOVERNING BODY OF
JEHOVAH'S WITNESSES,
FAIRLAWN CONGREGATION OF
JEHOVAH'S WITNESSES,
WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW
YORK, HACKENSACK
CONGREGATION OF JEHOVAH'S
WITNESSES, and JOHN AND JANE
DOES 1-100, whose identities are presently
unknown to Plaintiff, in their official and
individual capacities,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

DOCKET NO. _____

CIVIL ACTION

**PLAINTIFF'S DEMAND FOR
PRODUCTION OF DOCUMENTS, SET
ONE**

DEMAND FOR PRODUCTION OF DOCUMENTS

PLEASE TAKE NOTICE that pursuant to Rule 4:18-1, Plaintiff demands the production for purposes of inspection and copying at the offices of Robins Kaplan LLP, 399 Park Avenue, Suite 3600, New York, New York 10022, within 45 days after service of the within pleadings, of the following items pertaining to the allegations of this Complaint.

Definitions

A. The term "YOU" or "YOUR" or "DEFENDANT" refers to ALL of the Defendant's present, former, OR retired governing body members, branch committee members, district overseers, circuit overseers, elders, ministerial servants, employees, volunteers, representatives, agents, secretaries, churches, congregations, branches, district's circuits, schools, principals, teachers, coaches, boards, directors, subsidiaries, counselors, associates, investigators, independent contractors, accountants, attorneys, AND affiliated business entities.

B. The term "PERPETRATOR" refers to Clement Pandelo.

C. The term "DOCUMENT" or "DOCUMENTS" and "WRITING" or "WRITINGS" refers to any AND ALL manner of written, typed, printed, reproduced, filmed OR recorded material AND ALL photographs, pictures, plans, OR other representations of any kind of anything pertaining, describing, referring, OR RELATING, directly OR indirectly, in whole OR in part, to the subject matter of each discovery request AND the term includes, but is not limited to: correspondence, papers, books, journals, ledgers, diaries, statements, memoranda, reports, invoices, work sheets, work papers, notes, transcriptions of notes, letters, abstracts, checks, diagrams, plans, blueprints, schematics, software programs, films, photographs, lists, logs, publications, advertisements, instructions, minutes, orders, purchase orders, messages, resumes, summaries, agreements, contracts, telegrams, telexes, cables, recordings, audio tapes, magnetic tapes, visual tapes, transcriptions of tapes OR records, computer tapes, books, speeches, pamphlets, leaflets, flyers, announcements, bulletins, periodicals, agenda, reports, opinions, charts, tabulations, digests, compilations, studies, expert analyses, evaluations, manuals, guides, research papers, articles, OR tangible things in POSSESSION, custody OR control of YOU or YOUR

present, former, OR retired governing body members, branch committee members, district overseers, circuit overseers, elders, ministerial servants, employees, volunteers, representatives, agents, secretaries, churches, congregations, branches, district's circuits, schools, principals, teachers, coaches, boards, directors, subsidiaries, counselors, associates, investigators, independent contractors, accountants, attorneys, AND affiliated business entities.

D. The term "POSSESSION" refers to ALL DOCUMENTS, WRITINGS AND things in the POSSESSION, custody, AND/OR control of YOU or YOUR present, former, OR retired governing body members, branch committee members, district overseers, circuit overseers, elders, ministerial servants, employees, volunteers, representatives, agents, secretaries, churches, congregations, branches, district's circuits, schools, principals, teachers, coaches, boards, directors, subsidiaries, counselors, associates, investigators, independent contractors, accountants, attorneys, AND affiliated business entities.

E. The term "RELATE TO," "RELATING TO," OR "REGARDING" refers to, in addition to the customary AND usual meaning, constituting, comprising, supporting, diminishing, contradicting, discussing, referring, reflecting, assessing, recording, describing, OR in any way relevant to, OR discoverable in whole OR in part.

F. The terms "AND," "OR," "AND/OR" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of this request any information which might be deemed outside their scope by another construction.

G. The term "ALL" refers to any and all.

DEMAND FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

ALL DOCUMENTS RELATING TO the PERPETRATOR.

REQUEST FOR PRODUCTION NO. 2:

YOUR file RELATING TO the PERPETRATOR.

REQUEST FOR PRODUCTION NO. 3:

YOUR confidential files RELATING TO the PERPETRATOR.

REQUEST FOR PRODUCTION NO. 4:

ALL DOCUMENTS RELATING TO allegations, complaints, OR reports of sexual abuse of any minor(s) made against the PERPETRATOR.

REQUEST FOR PRODUCTION NO. 5:

ALL DOCUMENTS RELATING TO investigations of sexual abuse of any minor(s) REGARDING the PERPETRATOR.

REQUEST FOR PRODUCTION NO. 6:

ALL DOCUMENTS RELATING TO the PERPETRATOR's appointment as a ministerial servant.

REQUEST FOR PRODUCTION NO. 7:

ALL DOCUMENTS RELATING TO the Perpetrator's appointment as a Baptized Publisher.

REQUEST FOR PRODUCTION NO. 8:

ALL DOCUMENTS from OR RELATING TO any judicial committee regarding the PERPETRATOR.

REQUEST FOR PRODUCTION NO. 9:

ALL DOCUMENTS RELATING TO or describing the duties AND obligations of ministerial servants within the Jehovah's Witness Church.

REQUEST FOR PRODUCTION NO. 10:

ALL DOCUMENTS RELATING TO or describing the process by which a person is nominated, appointed, evaluated, recommended, approved and installed as a ministerial servant within the Jehovah's Witness Church.

REQUEST FOR PRODUCTION NO. 11:

ALL DOCUMENTS RELATING TO or describing the duties AND obligations of Baptized Publishers within the Jehovah's Witness Church.

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REQUEST FOR PRODUCTION NO. 12:

ALL DOCUMENTS RELATING TO or describing the process by which a person is nominated, appointed, evaluated, recommended, approved and installed as a Baptized Publisher within the Jehovah's Witness Church.

REQUEST FOR PRODUCTION NO. 13:

Produce ALL form S-79a or S-79a-S forms RELATING TO the PERPETRATOR.

REQUEST FOR PRODUCTION NO. 14:

Produce ALL form S-79b or S-79b-S forms RELATING TO the PERPETRATOR.

REQUEST FOR PRODUCTION NO. 15:

Produce ALL letters of introduction REGARDING the PERPETRATOR.

REQUEST FOR PRODUCTION NO. 16:

Produce ALL publisher cards REGARDING the PERPETRATOR.

REQUEST FOR PRODUCTION NO. 17:

Produce ALL DOCUMENTS RELATING TO Plaintiff.

REQUEST FOR PRODUCTION NO. 18:

Produce ALL DOCUMENTS pertaining to how reports of alleged sexual abuse perpetrated by appointees of Defendants against children should be reported, investigated, and/or otherwise addressed by Defendants during the time period 1977 to present.

REQUEST FOR PRODUCTION NO. 19:

Produce ALL DOCUMENTS RELATING to Defendants' awareness or knowledge of the allegations contained in the Complaint.

REQUEST FOR PRODUCTION NO. 20:

Produce ALL DOCUMENTS which reflect, refer to, or discuss the allegations in the Complaint.

REQUEST FOR PRODUCTION NO. 21:

Produce ALL DOCUMENTS including, but not limited to, all of your policies, rules, regulations, protocols, guidelines, standards, training manuals, instructions, pamphlets, and/or any other written material relating to handling claims or allegations of the sexual abuse of minors.

Dated: October 13, 2021

Respectfully submitted,

ROBINS KAPLAN LLP

By: /s/Rayna E. Kessler

Rayna E. Kessler, Esq.

NJ ID No. 031782010

399 Park Avenue, Suite 3600

New York, NY 10022

Telephone: (212) 980-7431

Facsimile: (212) 980-7499

Email: RKessler@RobinsKaplan.com

Attorney for Plaintiff Corinne Pandelo

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Floor
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main St.
Hackensack, NJ 07601
LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(800) 496-4570

CAMDEN COUNTY

Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Justice
1a Fl., Suite 150
101 S. Fifth St.
Camden, NJ 08103
LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 N. Main Street
Cape May Court House, NJ 08210
LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
60 West Broad St.
P.O. Box 10
Bridgeton, NJ 08302
LAWYER REFERRAL
(856) 696-5550
LEGAL SERVICES
(856) 691-0494

ESSEX COUNTY:

Deputy Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King, Jr. Blvd.
Newark, NJ 07102
LAWYER REFERRAL
(856) 482-0618
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad St.
Woodbury, NJ 08096
LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY:

Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House - 1st Floor
583 Newark Ave.
Jersey City, NJ 07306
LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:

Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822
LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:

Deputy Clerk Superior Court
Local Filing Office, Courthouse
175 South Broad Street, P.O. Box 8068
Trenton, NJ 08650
LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:

Deputy Clerk of the Superior Court
Middlesex Vicinage
2nd Floor - Tower
56 Paterson St., P.O. Box 2633
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES

(732) 249-7600

MONMOUTH COUNTY:

Deputy Clerk of the Superior Court
Court House
P.O. Box 1269
Freehold, NJ 07728-1269
LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:

Deputy Clerk of the Superior Court
Morris County Courthouse
Civil Division
Washington and Court Sts.
P.O. Box 910
Morristown, NJ 07960-0910
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:

Deputy Clerk of the Superior Court
118 Washington Street, Room 121
P.O. Box 2191
Toms River, NJ 08754-2191
LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton Street
Paterson, NJ 07505
LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY:

Deputy Clerk of the Superior Court
Attn: Civil Case Management Office
92 Market St.
Salem, NJ 08079
LAWYER REFERRAL
(856) 678-8363
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division
P.O. Box 3000
40 North Bridge St.
Somerville, NJ 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES

(908) 231-0840

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:

Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073
LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second St.
Belvidere, NJ 07823-1500
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(908) 475-2010

EXHIBIT C

GALLO, GEFNER FENSTER
411 Hackensack Avenue
Hackensack, New Jersey 07601
Attorneys for Plaintiffs
(201) 489 5400

SUPERIOR COURT BERGEN COUNTY
RECEIVED
JUN 18 1996
Gene J. R...
DEPUTY CLERK

CP-1

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : BERGEN COUNTY**

Plaintiffs,
v.

DOCKET NO. BER-L-516-94

CP-2, BP, CP-3 and OP-1

CIVIL ACTION

Defendants,

SECOND AMENDED COMPLAINT

and

CP-3, OP

Defendant/Third Party Plaintiffs,

v.

**FIREMAN'S FUND INSURANCE
COMPANY,**

Third Party Defendant.

CP-1, residing at 63 Washington Avenue, Borough of Maywood, County of Bergen and State
of New Jersey, complaining of the defendants, says:

FIRST COUNT



- 1. CP-1 is the granddaughter of defendants, CP-3 and OP, and the daughter of CP2 and BP.
- 2. At all material times, the defendants have been and are related by blood to the

plaintiff CP-3 as paternal grandfather, CP-4 as grandmother, CP-2 as father and BP as mother

3 In the course of the relationship between plaintiff and defendants, there have been occasions on various dates between 1979 and 1988, on which the plaintiff has been in the care, custody and control of the defendants

4 By reason of the special familial relationship that existed, and by reason of the care assumed by defendants over the infant plaintiff on those occasions when she was in their charge, there existed a duty, individually and jointly, to act reasonably in the care of the infant plaintiff, and to refrain from such conduct which, when viewed by a reasonable person similarly situated, would be considered physically or emotionally harmful to the infant plaintiff.

5 Notwithstanding that duty, as described above, the defendant, CP-3, on various dates between August 1979 and August 12, 1988 did breach his duty of care by engaged in physical and sexual touching and fondling of the infant plaintiff which he knew or should have known would result in emotional distress to the infant plaintiff.

6 By reason of the defendants' conduct, the infant plaintiff has been physically, psychologically and emotionally harmed, has been unable to attend to activities normally engaged in by children of her age, has been negatively affected in academic endeavors and was and will be compelled to undergo intensive psychotherapy.

7 As a result of the said sexual abuse, as proximate result of which the plaintiff was severely injured, disabled and permanently impaired, disfigured and deformed, suffered and will suffer great pain and torment, both mental and physical; was and will be compelled to spend large and diverse sums of money for medical care; and was and will be unable to attend her usual duties and obligations in the future.

WHEREFORE, the infant plaintiff, demands judgment against the defendants, CP-3,

is a duty of care of the parent
is admit that subject to abuse is a duty which would support the claim



together with interest and costs of suit

SECOND COUNT

NR

1. The plaintiff repeats the allegations contained in the paragraphs 1 through 7 of the First Count and makes them a part hereof

D

2. The defendants CP-2, BP and OP jointly, severally or in the alternative acted in a negligent, careless and reckless manner towards the plaintiff while she was under their care and knew or should have known that their acts or omissions would cause the plaintiff to suffer physical injury to the plaintiff, both mental and physical.

D

3. As a result of the negligent, careless and reckless acts or omissions by the defendants, as a proximate result of which, the plaintiff was severely injured, disabled and permanently impaired, suffered and will suffer great pain and torment, both mental and physical; and was and will be compelled to spend large and diverse sums of money for medical care; was and will be unable to attend her usual duties and obligations in the future.

WHEREFORE, the plaintiff demands judgement against the defendants jointly, severally or in the alternative on the Second Count for damages and costs.

THIRD COUNT

NR

1. Plaintiffs repeats each and every allegations contained paragraphs 1 through 7 of the First Count and makes them a part hereof.

*Mental Abuse
Sexual Abuse*

2. The defendant, CP-3 committed sexual acts of abuse on the plaintiff and knowingly and intentionally used force against the plaintiff.

3. The plaintiff did not consent to the defendant's sexual abuse, nor was she capable of consenting to such conduct.

✓

4. Defendant OP knew or should have known that defendant CP-3 would sexually abuse

✓

11

the plaintiff

5. As a result of the said sexual abuse, as a proximate result of which the plaintiff was severely injured, disabled and permanently impaired, disfigured and deformed, suffered and will suffer great pain and torment, both mental and physical; was and will be compelled to spend large and divers sums of money for medical care, and was and will be unable to attend to her usual duties and obligations in the future.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally or in the alternative on the Second Count for damages and punitive damages and costs.

FOURTH COUNT

1. The plaintiffs repeat the allegations of the First and Second Counts as if set forth at length herein

2. By reason of her relationship with the defendant, CP-3, the defendant, OP, CP-2 and BP knew or should have known of his propensity to engage in fondling and improper touching of young females, including the infant plaintiff.

3. Because the defendants, OP, CP-2 and BP knew or should have known of the propensity of CP-3 to engage in acts set forth in paragraph 2 of this Count, and as described in the First Count, they were under a duty to exercise reasonable care to control the conduct of CP-3 so as to prevent him from creating an unreasonable risk of harm to the infant plaintiff.

4. Notwithstanding this duty, the defendants, OP, CP-2 and BP on August 12, 1988 and on other dates prior thereto, between August 1979 and August 12, 1988, carelessly and negligently failed to act for the protection of the infant plaintiff.

5. As a result of the aforementioned defendants, negligence, the infant plaintiff has been physically, emotionally and psychologically harmed, suffered and will suffer great pain and



NR

D
CP-3
BP

D
CP-2
BP

"

any that
CP-3 &
BP
negligent failure
of care

torment and was and will be compelled to spend large sums of money for medical care and was and will be unable to attend to her usual duties and obligations in the future

WHEREFORE, the plaintiff demands judgment against the defendants, OP CP-2 and BP together with interest and costs of suit.

FIFTH COUNT

1. Plaintiff repeats and realleges the allegations of the First and Second Counts as if set forth at length herein.

2. The actions and omissions of the defendant, CP-3 as described were carried out intentionally or with such a callous disregard for their consequences as to constitute a reckless infliction of emotional distress.

3. By reason of defendant, CP-3's conduct, the infant plaintiff has been permanently damaged both physically and emotionally harmed, suffered and will suffer great pain and torment and was and will be compelled to spend large sums of money for medical care and was and will be unable to attend to her usual duties and obligations in the future.

WHEREFORE, the plaintiff demands compensatory and punitive damages, together with interest and costs of suit.

SIXTH COUNT

1. Plaintiffs repeat and reallege the allegations of the First, Second, Third and Fourth Counts as if set forth at length herein.

2. The failure of defendants, OP, CP-2 and BP to take measures to protect the infant plaintiff from the actions of defendant, CP-3, when she knew or should have known of his propensity to so conduct himself constituted an intentional, egregious or reckless disregard for the welfare of the infant plaintiff.

N/A

✓

✓

N/A

Handwritten signature and initials

By reason of the aforementioned defendants' intentional and/or reckless conduct, the infant plaintiff has been permanently damaged, both physically and emotionally harmed, suffered and will suffer great pain and torment and was and will be compelled to spend large sums of money for medical care and was and will be unable to attend to her usual duties and obligations in the future

*long
CP-2
CP-3
intentional
on
malicious
abuse*

WHEREFORE, the plaintiffs demand judgment for compensatory and punitive damages, together with interest and costs of suit

SEVENTH COUNT

1. Plaintiffs repeat and reallege the allegations of the First through Fifth Counts as if set forth at length herein.

2. By reason of the actions and omissions of the defendants, and each of them, CP-1 has been compelled to expend, and will in the future, be compelled to expend vast sums of money for psychiatric care.

*CP-1
CP-2
CP-3*

WHEREFORE, the plaintiffs demands judgment for compensatory damages, together with interest and costs of suit.

EIGHTH COUNT

1. The plaintiffs repeat each and every allegation contained in the paragraphs 1 through 7 of the First Count and make them a part hereof.

2. While the plaintiff was in the care and custody of the defendants CP-3 and OP, the defendant CP-3, did intentionally, maliciously and forcibly restrain the plaintiff's body and perpetrate an unconsented touching of plaintiff's body.

3. The defendant's CP-3's unauthorized, unwelcome and malicious touching of the plaintiff's body did place the plaintiff in fear of imminent bodily harm and did in fact cause pain and

CP-3
✓
✓

bodily harm to the plaintiff

4 The defendant (DP) knew or should have known that defendant (CP-3) would assault and batter the plaintiff.

5. The said assault and battery, proximately caused the plaintiff's injuries, the result of which the plaintiff was severely injured, disabled and permanently impaired, suffered and will suffer great pain and torment, both mental and physical; was and will be compelled to spend large and divers sums of money for medical care; and was and will be unable to attend to her usual duties and obligations in the future.

WHEREFORE, the plaintiffs demands judgment against the defendants jointly, severally or in the alternative, on the Seventh Count for damages, punitive damages and costs.

NINTH COUNT

1 Plaintiffs reallege each and every paragraph and allegation above as if fully set forth herein.

2. Defendant CP-3 acts were willful and malicious in that defendants' conduct was carried on with a conscious disregard for the safety and rights of plaintiff. Defendant's unconscionable conduct thereby warrants an assessment of exemplary and punitive damages against each defendant in an amount appropriate to punish the defendant and set an example of it.

WHEREFORE, the plaintiffs demands judgment against the defendants jointly, severally or in the alternative, on the Seventh Count for damages, punitive damages and costs.

GALLO GEFFNER FENSTER
Attorneys for Plaintiff

By _____
STEPHEN A. GEFFNER

*Report
to Plaintiff*



NYA



Date: June 12, 1996

JURY DEMAND

Please take notice that plaintiff demands a trial by jury on all issues so triable herein.

GALLO GEFFNER FENSTER
Attorneys for Plaintiff

By: _____
STEPHEN A. GEFFNER

Date: June 12, 1996

CERTIFICATION

I certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration, nor is any such action or proceeding presently contemplated.

GALLO GEFFNER FENSTER
Attorneys for Plaintiff

By: _____
STEPHEN A. GEFFNER

Date: June 12, 1996

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Jay Friedrich, Esq. is designated as trial counsel.

GALLO GEFNER FENSTER
Attorneys for Plaintiff

By:



STEPHEN A. GEFNER

Date: June 12, 1996

EXHIBIT D

DKT

A - 2897-99T5

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2897-99T5**

**FILED
APPELLATE DIVISION**

NOV 16 2001

Jim Flynn
CLERK

CP-1,

Plaintiff-Appellant/
Cross-Respondent,

v.

CP-3 and OP,

Defendants-Respondents/
Cross-Appellants,

and

CP-2 and BP,

Defendants,

and

CP-3,

Defendant/Third Party
Plaintiff,

v.

**FIREMAN'S FUND INSURANCE
COMPANY,**

Third Party Defendant.

Argued telephonically October 18, 2001 - Decided **NOV 16 2001**

Before Judges Petrella, Kestin and Alley.

On appeal from the Superior Court of New
Jersey, Law Division, Bergen County, L-516-
94.

Jay Joseph Friedrich argued the cause for

T.S.P.

appellant/cross-respondent (Gallo Geffner Fenster, attorneys; Christine Salimbene, on the brief).

Ronald S. Levitt argued the cause for respondent/cross-appellant OP (Golden, Rothschild, Spagnola, Lundell Levitt & Boylan, attorneys; Mr. Levitt and Andrew W. Li, on the brief).

CP-3, respondent/cross-appellant pro se, did not argue the cause or file a brief.

PER CURIAM

Plaintiff brought this action against her paternal grandfather for sexually assaulting her from her early childhood until she was twelve years old.¹ She also named her paternal grandmother as a defendant, claiming that the grandmother either knew, or should have known, of the likelihood that her grandfather would engage in such behavior and that she failed to take reasonable precautions to guard against it. The grandfather admitted to having fondled plaintiff on numerous occasions but denied penetrating her.

Plaintiff also joined her parents as defendants but she dismissed the claims against her parents before trial. The court nevertheless submitted to the jury the question of assessing the relative liability of the parents for plaintiff's injuries, so that if they were held responsible any verdict against the grandparents could be correspondingly apportioned. The jury

¹The caption abbreviates the names of the parties as follows: plaintiff, CP-1; her parents, CP-2 and BP; her paternal grandfather, CP-3; his wife/plaintiff's paternal grandmother, OP.

found no liability on the part of the grandmother but found both the grandfather and the parents liable for plaintiff's injuries. In particular, the jury determined that the parents were forty percent negligent, and in addition, that there was a twenty-five percent responsibility of plaintiff and her parents for her and their failure to mitigate her damages by seeking appropriate treatment. After applying the various percentages, the \$3,015,000 compensatory judgment was reduced to \$1,356,750, plus prejudgment interest of \$422,124.93 for compensatory damages of \$1,778,874.93. In addition, a \$500,000 punitive damage award was made against the grandfather.

On appeal, plaintiff claims prejudicial error in the jury charge regarding the grandmother's liability and the failure to mitigate her damages. She also claims that the jury should not have been asked to assess her parents' liability, because they had been dismissed as defendants by the time of trial, and because the law does not impose the same duties on parents of sex abuse victims as it does on the spouse of the abuser.

Specifically, plaintiff contends in her brief:

I. THE JURY VERDICT ASSESSING NO LIABILITY TO OP SHOULD BE REVERSED BECAUSE THE JURY CHARGE WAS LEGALLY INCORRECT AND THE VERDICT SHEET CONFUSED THE JURY.

A. THE JURY CHARGE WAS LEGALLY INADEQUATE BECAUSE IT MISINFORMED THE JURY OF A THIRD PARTY'S DUTY TO PROTECT A CHILD FROM SEXUAL ABUSE AND MISINTERPRETED THE LEGAL DEFINITION AND APPLICATION OF "SPECIAL REASON TO KNOW."

1. The verdict in favor of OP should be

reversed because the jury charge misstated the holding of J.S. v. R.T.H., 155 N.J. 330 (1998), as it pertains to the duty of care owed by a third person to a sexually abused child.

2. The verdict in favor of OP should be reversed because the jury charge was legally inadequate in that it misconstrued the meaning and application of the term "special reason to know" as set forth in J.S. v. R.T.H., 155 N.J. 330 (1998).

B. THE JURY CHARGE WAS LEGALLY INCORRECT BECAUSE IT IMPROPERLY PERMITTED A FINDING OF LIABILITY AGAINST PLAINTIFF'S PARENTS DESPITE THE FACT THAT THEY WERE NOT PARTIES TO LAWSUIT AND THE VERDICT SHEET CONFUSED THE JURY.

1. The jury verdict assessing liability against the parents of CP-1 should be reversed because the court improperly submitted their alleged culpability to the jury to determine liability despite the fact that they were not defendants to the suit.

2. The jury verdict assessing no liability against OP and 40% liability against the plaintiff's parents should be reversed because the jury verdict confused the jury.

II. THE TRIAL COURT ERRED IN REFUSING TO PERMIT PLAINTIFF'S COUNSEL TO QUESTION A MEMBER OF THE DEFENDANTS' JEHOVAH'S WITNESS CONGREGATION REGARDING CERTAIN JUDICIAL PROCEEDINGS THE CONGREGATION TOOK AGAINST DEFENDANT CP-3.

III. THE TRIAL COURT ABUSED ITS DISCRETION BY REFUSING TO ADMIT INTO EVIDENCE PLAINTIFF'S PERSONAL JOURNAL WHICH CONTAINED ENTRIES REGARDING SPECIFIC INCIDENTS OF ABUSE AND ALTERNATE IDENTITIES AND WHICH TENDED TO ESTABLISH OP'S ACTUAL KNOWLEDGE OF HER HUSBAND'S SEXUAL ABUSE OF THEIR GRAND-DAUGHTER.

The grandmother cross-appeals, claiming that she was entitled to summary judgment dismissing the claims against her. We take it that the grandfather has abandoned his cross-appeal. We affirm the judgment in all respects.

I

We initially address plaintiff's challenges to the verdict and the jury instructions respecting her claims against her grandmother.

There is no need to repeat the sordid particulars of the monstrous abuse to which plaintiff was found to have been subjected by her grandfather. The verdict against him is not challenged on this appeal in any event. Nor is there any question that substantial evidence also existed for plaintiff's claims against her grandmother. The difficulty for plaintiff is that the jury chose not to accept that evidence and found the grandmother not to be responsible.

Our analysis begins with J.S. v. R.T.H., 155 N.J. 330 (1998). A detailed consideration of J.S. is warranted in view of its relevance to the issues raised herein respecting the alleged duties of plaintiff's paternal grandmother. In J.S., the girls and their parents sued both their sixty-four year old neighbor and his wife. The neighbor pled guilty to endangering the welfare of minors and served eighteen months in jail as the result of his sexual abuse of two girls, ages twelve and fifteen, for a period of more than one year while they spent substantial

periods of time with him at his horse barn. *Id.* at 334-35. The wife denied all liability and was granted summary judgment. *Id.* at 335-36. In deciding whether summary judgment was properly granted, the Court thus stated the issues: "whether a wife who suspects or should suspect her husband of actual or prospective sexual abuse of their neighbors' children has any duty of care to prevent such abuse," and, if so, whether "a breach of that duty constitutes a proximate cause of the harm that results from [the] sexual abuse." *Id.* at 334. The wife in *J.S.* lived outside the marital home during portions of the time in question and learned of her husband's sexual contact with the girls when her son told her of the husband's arrest. *Id.* at 337. Although she claimed to be "shocked," since she believed that her husband and the girls were just friends, for purposes of summary judgment she conceded that she knew or should have known of his proclivities or propensities. *Ibid.*

In determining whether a duty should be imposed on the wife, the Court cited the factors that are ordinarily used in making such determinations, "including the nature of the underlying risk of harm, . . . the opportunity and ability to exercise care to prevent the harm, the comparative interests of, and the relationships between or among, the parties, and . . . the societal interest in a proposed solution." *Ibid.* Risk foreseeability "is the foundational element in the determination of whether a duty exists." *Ibid.* "Foreseeability . . . is based

on a defendant's knowledge of the risk of injury and is susceptible to an objective analysis." *Id.* at 338.

Knowledge may be either actual or constructive. It is constructive if a defendant was "in a position" to "discover the risk of harm." *Ibid.* (quoting Carvalho v. Toll Bros. & Developers, 143 N.J. 565, 576-77 (1996)). In some cases, foreseeability may require that "the defendant have a 'special reason to know' that a 'particular plaintiff' or 'identifiable class of plaintiffs' would likely suffer 'a particular type' of injury." *Ibid.* (quoting People Express Airlines, Inc. v. Consolidated Rail Corp., 100 N.J. 246, 262, 263 (1985)). When the risk of harm is posed by third persons, "a plaintiff may be required to prove that the defendant was in a position to 'know or have reason to know, from past experience, that there [was] a likelihood of conduct on the part of [a] third person' that was 'likely to endanger the safety' of another." *Ibid.* (quoting Clohesy v. Food Circus Supermarkets, Inc. 149 N.J. 496, 507 (1997)). According to the Court in J.S., "implicated in this analysis is an assessment of the defendant's 'responsibility for conditions creating the risk of harm' and an analysis of whether the defendant had sufficient control, opportunity, and ability to have avoided [it]". *Id.* at 338-39 (quoting Kuzmick v. Ivy Hill Park Apts., Inc., 147 N.J. 510, 515 (1997)).

Considerations bearing on the foreseeability determination in this context, then, include whether the plaintiff has been

criminally assaulted, whether the defendant is a spouse of the wrongdoer, whether the abuse occurred on the defendant's own property, whether it occurred over an extended period of time, and whether the conduct is of the type that is extremely difficult to identify, anticipate and predict. *Id.* at 340. Although conduct involving sexual abuse is often "secretive, clandestine, and furtive," *ibid.*, a number of factors are relevant to determine whether it is foreseeable to a defendant that his or her spouse would sexually abuse a child.

These factors include, as the Court noted in *J.S.*,

whether the husband had previously committed sexual offenses against children; the number, date, and nature of those prior offenses; the gender of prior victims; the age of prior victims; where the prior offenses occurred; whether the prior offense was against a stranger or a victim known to the husband; the husband's therapeutic history and regimen; the extent to which the wife encouraged or facilitated her husband's unsupervised contact with the current victim; the presence of physical evidence such as pornographic materials depicting children and the unexplained appearance of children's apparel in the marital home; and the extent to which the victims made inappropriate sexual comments or engaged in age-inappropriate behavior in the husband and wife's presence.

[*Ibid.* (citations omitted).]

The Court continued by observing that "empirical support [existed] for the conclusion that sexual abuse of a child, while extremely difficult to detect or anticipate, is a risk that can be foreseen by a spouse." *Id.* at 341. In addition, "many child

victims fall prey to an immediate relative or a family acquaintance . . ." inside their own homes or the homes of their abusers. Ibid. Thus, the wife of a child sexual abuser is "in a unique position to observe firsthand telltale signs of sexual abuse," and may be the only person with that kind of knowledge. Ibid.

The standard of foreseeability imposed by the Court in this type of case, then, is based on "particular knowledge" or a "special reason to know" that a particular plaintiff or class of plaintiffs would suffer a particular type of injury. Id. at 342. This standard conformed to "the empirical evidence and common experience that indicate that a wife may often have actual knowledge or special reason to know that her spouse is abusing or is likely to abuse an identifiable victim . . ." Id. at 342-43. The standard also ensures that a person will not be exposed to liability to every child whom his or her spouse may threaten and harm. Id. at 343.

The Court recognized "the strong policy of this State to protect children from sexual abuse and to require reporting of suspected sexual abuse," a duty that is required of every citizen. Id. at 343 (quoting the Appellate Division's opinion, 301 N.J. Super. at 156). However, the Court also considered a defendant's interests "in a stable marital relationship and in marital privacy." Id. at 345. After noting that the common law doctrines of interspousal immunity and testimonial

disqualification have been questioned and criticized in more recent years, *ibid.*, the Court concluded that the interests of marital stability and privacy could not "outweigh society's interest in protecting children from sexual abuse." *Id.* at 346.

In defining the duty to be imposed in any case, a court "must weigh the ability and opportunity of a defendant to exercise reasonable care." *Id.* at 349. Fairness "requires a spouse, when there is particularized foreseeability of harm of sexual abuse to a child, to take reasonable steps to prevent or warn of the harm." *Id.* at 350. Hence, "when a defendant has actual knowledge or special reason to know of the likelihood of his or her spouse engaging in sexually abusive behavior against a particular person or persons, a spouse has a duty of care to take reasonable steps to prevent or warn of the harm." *Id.* at 352.

Because the *J.S.* case arose in the context of summary judgment, it was not necessary for the Court to deal with the issue of how to charge the jury. Moreover, in that case the wife had conceded for purposes of argument that she knew or should have known of her husband's proclivities. *Id.* at 337. The Court also found that she knew the victims were visiting her home nearly every day and that they spent considerable amounts of unsupervised time with her husband. *Ibid.* Based on those facts, the Court determined that summary judgment had been prematurely entered in her favor. *Id.* at 353.

Based on the principles established in *J.S.*, the trial court

here found sufficient evidence to let the liability of plaintiff's paternal grandmother go to the jury. Plaintiff, however, challenges the manner in which the jury was charged. She did not object to the charge below, and consequently we must review her claim under the standard of plain error. R. 2:10-2.

During the charge conference, the trial judge informed counsel that he would tell the jury that, in order for the grandmother to try to prevent the abuse, she had to have been aware that it was occurring, or she had to have been in a position to foresee that it was likely to occur, based on past experience. Plaintiff's counsel indicated that he had no problems with that instruction. The court further indicated that the grandmother's special reason to know involved an objective assessment of certain factors, based on past experience and knowledge, which made the foreseeability of harm of sexual abuse more likely than not. When the court stated it would read to the jury the list of factors cited by the Court in J.L.S., plaintiff's counsel responded that he had no objection.

The court further stated that it would tell the jury that it had to find that these factors existed and that the grandmother had knowledge of them before they could use the factors to find a special reason to know on her part. Plaintiff's counsel agreed with that proposition. At the close of the charge conference, plaintiff's counsel indicated he had no objections to the proposed charge.

The court charged the jury accordingly. It began by instructing the jury that, in order for the grandmother to be able to attempt to prevent the abuse or warn against it, she had "to have been aware . . . that the abuse was occurring, or she would have had to have been in a position to foresee that it was likely to occur based on past experience." Plaintiff thus had to prove that, prior to August 1988, her grandmother either actually knew the abuse was occurring "or that it would have been reasonably foreseeable for a reasonable person in her position to have known that it was likely to occur." This was called "having a special reason to know."

The court explained to the jury:

Under our law, a special reason to know has a particular or specific meaning [I]t means that certain factors, which are based on past experience or knowledge, make it more likely than not that there was the foreseeability of the harm of sexual abuse by a particular person to a particular person, or in this case, by the defendant . . . toward his granddaughter.

The trial judge continued:

Our law recognizes that sexual abuse is the kind of conduct which is often secretive, clandestine and furtive; that is, it is the type of behavior the perpetrator would usually try to hide from others.

Therefore, the law provides you with a number of factors which may be relevant to your determination of whether or not it would have been reasonably foreseeable for a wife that her husband would sexually abuse their granddaughter in this case.

These factors include one, whether the

husband had previously committed a sexual offense against children or young women; two, the number, date and nature of those prior offenses; three, the gender of the prior victims; four, the age of the prior victims; five, where the prior acts occurred; six, whether the prior acts were against a stranger or a victim known to the husband; seven, the husband's therapeutic history and regimen; eight, the extent to which the wife encouraged or facilitated her husband's unsupervised contact with the current victim; nine, the presence of physical evidence such as pornographic materials depicting children and/or the unexplained appearance of child's or children's apparel in the marital home; and ten, the extent to which the victim has made inappropriate sexual comments or engaged in age inappropriate behavior in the husband and wife's presence.

Obviously, in order for one or more of the above items to be factors in this case, thereby giving the [grandmother] . . . a special reason to know that her granddaughter would be abused by or might be abused by the grandfather, you must find not only that such factors existed, but that the [grandmother] . . . had knowledge of them or some of them.

Therefore, if you find that the plaintiff has shown by a preponderance of the credible evidence that the [grandmother] . . . was aware of one or more of the above factors, you may consider those relevant in ascertaining whether she had a special reason to know of the likelihood that Mr. P[] would sexually abuse his granddaughter

If, on the other hand, you find that the plaintiff either failed to prove that any of the factors existed, or if you find that while one or more of the factors did exist, the plaintiff failed to prove that the grandmother . . . was aware of them, then you must find that the [grandmother] . . . did not have a special reason to know that [her husband] . . . would molest his granddaughter.

[(emphasis added).]

At the conclusion of the entire jury charge, plaintiff's counsel indicated that he had no objections to it. The court also furnished the jury with a verdict sheet which asked the jury to first find whether plaintiff established that her grandfather sexually assaulted her and whether those assaults were the proximate cause of her injuries. It then asked the jury to find whether plaintiff established that her grandmother knew her husband sexually assaulted plaintiff at any time prior to August 12, 1988. If not, they were to find whether plaintiff established that her grandmother had a "special reason to know" of the likelihood that her husband would sexually assault plaintiff.

If the grandmother either knew or had a special reason to know, then the jury was asked to find whether plaintiff established that she failed to take steps to prevent or warn of the potential of her husband to commit sexual assaults on plaintiff which were a proximate cause of her injuries.

In its verdict, the jury found that the grandmother did not know of the abuse and did not have a special reason to know of the likelihood that such abuse would occur. On appeal, plaintiff argues that the jury verdict with respect to her grandmother can be explained only by the fact that, as she contends, the jury was given a misleading and incorrect instruction on the law. To support her argument, plaintiff has reviewed the evidence she

presented to support each of the J.S. factors charged to the jury, and concludes that, in light of this evidence, it was "inconceivable" that the grandmother had no knowledge of what her husband was doing to young girls for more than forty years.

Plaintiff further claims that the jury charge misstated the holding in J.S. and misstated plaintiff's burden of proof because she should not have been required to show that her grandmother knew of the existence of the J.S. factors. Instead, she urges, the jury should have been told that the grandmother could be charged with knowledge upon a showing by plaintiff of the foreseeability of the harm "through the various, but not dispositive factors, listed by the Court in J.S." Plaintiff asserts that the grandmother's simple denial of any knowledge of her husband's predatory behavior should not have been enough to preclude her from being liable to her granddaughter, and that the result of the jury charge was to exonerate the grandmother for remaining ignorant of her husband's behavior in the face of "substantial evidence pointing toward her ability to know or at least to find out."

Although plaintiff has cast her arguments as to these issues solely in terms of the jury charge, in our view she is also contending that the verdict cannot be supported by the weight of the evidence. While we acknowledge that there was strong evidence that the paternal grandfather had a long history of sexually predatory behavior, and that a rational jury could have

concluded that the woman to whom he was married for more than fifty years could not have remained ignorant of this behavior for so long, we reject plaintiff's argument that this was the only verdict the jury could have reached. Moreover, in our view the verdict was not the result of any error in the charge.

Plaintiff is, in essence, asking for a jury charge that would have told the jury that they could find the grandmother should have known of the likelihood of her husband's behavior if she knew or should have known of his past history. Such an instruction would not comport with the law because it would impute to a defendant knowledge of the risk of harm based on facts which were not known, but merely imputed, to her. Although the Supreme Court was willing in J.S. to impose liability on a defendant for failing to adequately investigate whether his or her spouse was abusing a particular plaintiff, we have no doubt that, at least with respect to the instant type of claims, a defendant's duty to investigate has to be based on his or her actual knowledge or experience of past events.

As a result, the number and location of the grandfather's assaults would have been relevant to his wife's knowledge of his sexual proclivities only if she knew about them. Moreover, even if he had sought therapeutic treatment for his problem, this would not have been relevant unless his wife knew about it.

In Chaney v. Superior Court, 46 Cal. Rptr. 2d 73 (Ct. App. 1995), a case cited by the Supreme Court in J.S., the existence

of a wife's duty of reasonable care to an injured child in these circumstances was held to depend on whether the husband's behavior was reasonably foreseeable.

Without knowledge of her husband's deviant propensities, a wife will not be able to foresee that he poses a danger and thus will not have a duty to take measures to prevent the assault. Although a wife's knowledge may be proven by circumstantial evidence, such inference must reflect the wife's actual knowledge and not merely constructive knowledge or notice.

[*Id.* at 76.]

We further note that in Pamela L. v. Farmer, 169 Cal. Rptr. 282, 283-84 (Ct. App. 1980), another case cited by the Court in J.S., the plaintiffs alleged that the wife knew of prior instances of sexual molestation by her husband. The California court held that, assuming the allegations of the husband's past conduct and the spouse's knowledge thereof were adequately proved, the foreseeability of harm would be great. *Id.* at 285.

The credibility of the grandmother's unconditional denial of knowledge of her husband's behavior was a determination for the jury to make. In accepting her denials, the jury could well have considered that no one else -- not even other adults and parents who were in the same room as the young victims when they were being fondled -- ever caught on to what the grandfather was doing. Plaintiff had the opportunity at trial to cross-examine his wife in an effort to attempt to elicit from her an admission that she really knew about her husband's problem, or to convince

the jury that her denials were untrue. The jury simply chose to believe the grandmother. We note, also, that the grandfather himself claimed that he took great care to hide what he was doing from everyone, especially his wife. In addition, all those with prior knowledge, such as plaintiff's father, admitted that they deliberately kept the grandfather's past a secret from his wife because of her frail medical condition.

In his closing statement, plaintiff's counsel made compelling arguments that her grandmother facilitated her husband's conduct in numerous specifics detailed in the evidence which he reviewed for the jury, that a wife knows when her husband has insatiable sexual habits, and that her grandmother had every reason to know that her husband was a pedophile and a predator and that any woman was his target. In fact, based on these arguments, the grandmother's counsel objected that plaintiff had blatantly misrepresented the law regarding "special reason to know" because the question was not whether these things occurred but whether the grandmother knew about them. The court assured counsel that its charge would correctly instruct the jury.

In its consideration of these arguments, it was open to the jury to believe the grandmother's testimony that she was unaware of the prior instances of fondling, and of the other alleged specific indicia of facilitation. As for plaintiff's arguments that her paternal grandfather was a pedophile and sexual predator

and that a wife should be aware of her husband's sexual appetites, the jury could have considered that he denied any conduct besides sexual touching and that, even the therapist who treated him after his conviction was not convinced that he was a pedophile. Viewed in this light, then, the jury could have reasonably found that the grandmother was unaware of her husband's prior conduct and therefore did not have a special reason to know of his proclivities.

In sum, we reject plaintiff's argument that the verdict as to the grandmother was a miscarriage of justice or the result of an erroneous jury charge.

II

We next address the argument of plaintiff that her parents' liability should not have been submitted to the jury because they were no longer defendants. We find no merit in this contention. It is firmly established that if one of several defendants settles with the plaintiff, the remaining tortfeasors are chargeable with the total verdict less the percentage of liability found attributable to the settling defendant. Cartel Capital Corp. v. Fireco of N.J., 81 N.J. 548, 569 (1980); Rogers v. Spady, 147 N.J. Super. 274, 277 (App. Div. 1977). The purposes of both the Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53A-1 to -5, and the Comparative Negligence Act, N.J.S.A. 2A:15-5.1 to -5.3, are to promote the fair sharing of the burden of the judgment by joint tortfeasors and to prevent a plaintiff

from arbitrarily selecting his or her victim. Burt v. West Jersey Health Sys., 339 N.J. Super. 296, 303 (App. Div. 2001). This rule applies whether or not a cross-claim for contribution has been filed, as long as the plaintiff is given fair and timely notice that the non-settling defendant will seek to prove the fault of a codefendant. Young v. Latta, 123 N.J. 584, 596-97 (1991); Johnson v. Am. Homestead Mortgage Corp., 306 N.J. Super. 429, 437 (App. Div. 1997).

Plaintiffs' parents were named as defendants in the action but then voluntarily dismissed, and the dismissal left them in the position of settling codefendants, with their liability subject to being apportioned at trial. We recognize that their liability could not be so apportioned if they were immune under the common-law doctrine of parental immunity. See France v. A. P. Transport, Corp., 56 N.J. 500, 507 (1970) (Francis, J., dissenting). But given the narrow perimeters of parental immunity, it is evident that the jury had enough testimony in the record from which to determine that plaintiff's parents breached their duty to take reasonable steps to keep her from coming to harm. Simply put, we hold that the "special reason to know" standard of J.S. v. R.T.H., *supra*, 155 N.J. 330, applies to parents and other care-givers in circumstances such as the ones presented in this case.

Accordingly, the liability of plaintiff's parents was appropriately determined by the jury in accordance with

traditional apportionment of liability principles.

III

After careful review of the record and of the points urged by plaintiff on appeal, we are satisfied that plaintiff's remaining contentions are without sufficient merit to warrant written discussion and that the evidence in support of the jury verdict is not insufficient. We affirm pursuant to R. 2:11-3(e)(1)(B) and (E). In addition, with respect to Judge Walsh's alleged errors in legal rulings, we are satisfied that his reasons for decision were essentially correct and we affirm substantially for those reasons.

We add only the following. Plaintiff also contends that the jury was confused by the court's instructions which asked them to decide what percentage of the damages award should be reduced by the failure of plaintiff or her parents to exercise reasonable care to protect her health. The jury was asked to express in terms of a percentage the degree to which plaintiff's injuries were the result of her own unreasonable failure to minimize or avoid future injury. We agree with the trial court that this was not a "double dip," namely, that it did not allow the parents' negligence to be considered twice by the jury. The percentage having to do with the comparative negligence of the parents is entirely different from the percentage having to do with the failure to treat plaintiff's injuries and the aggravation of those injuries. Thus, the negligence of the parents was not

submitted to the jury twice. Her parents were only mentioned in the jury charge regarding mitigation because plaintiff herself was a minor when she was treated by a person in the family's church, and her parents had been acting on her behalf at that time. We therefore conclude that plaintiff's contention that the jury was confused by the charge of mitigation as it related to the conduct of her parents is without merit.

We also reject plaintiff's argument that the court erred in refusing to allow her to question one of the elders of the church congregation to which her family belonged about certain statements made by her grandfather during church disciplinary meetings. Plaintiff did not allege that her grandmother was present at a hearing with respect to disfellowshippment of her grandfather. Since the grandmother was not present, plaintiff cannot establish how she was prejudiced by the exclusion of the testimony. In any event, the excluded testimony would not have tended to establish that the grandmother had previous knowledge of her husband's conduct. Both hearings with respect to his being disfellowshipped occurred after plaintiff had already raised her allegations against the grandfather. The relevant inquiry was whether his wife should have known beforehand what her husband was doing or was likely to do.

We thus find to be without merit plaintiff's arguments that prejudicial error occurred by virtue of the court's exclusion of certain evidence as protected by the cleric-penitent privilege.

Plaintiff's final contention is that the court erred in refusing to admit into evidence a personal journal which she recorded while she was in therapeutic treatment. We see no error in the exclusion of that journal. Even if the ruling excluding the journal had been error, it was harmless inasmuch as the jury received a considerable portion of its relevant substance through plaintiff's own testimony. We cannot conclude from our appellate vantage point that the jury's findings as to the grandmother would have been different if they had seen the journal itself inasmuch as they had heard the essence of it through plaintiff's own mouth.

IV

In view of our disposition of plaintiff's appeal as to the verdict respecting the grandmother, it is unnecessary for us to address the latter's contention on her cross-appeal that her summary judgment motion should have been granted because there was no evidence before the court that she ever had knowledge of any of the factors enumerated by the Supreme Court in J.S., SURKA. The evidence certainly was not so one-sided that a reasonable factfinder could have come to only one conclusion regarding the grandmother's liability. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 533 (1995); R. 4:46-2.

V

The judgment appealed from is affirmed.

23

I hereby certify that the foregoing
is a true copy of the original or
file in my office.


CLERK OF THE APPELLATE DIVISION

EXHIBIT E

FILED

APR 12 2022

ESTELA M. DE LA CRUZ, J.S.C.

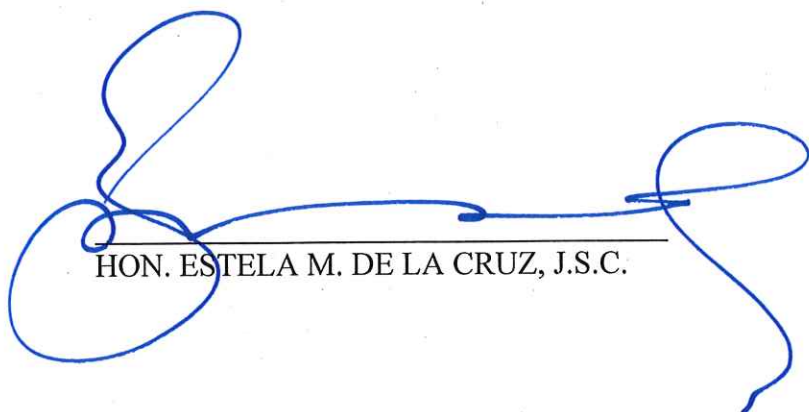
Prepared by the Court

<p>CORRINE PANDELO,</p> <p>Plaintiff,</p> <p>v.</p> <p>THE GOVERNING BODY OF JEHOVAH'S WITNESSES, FAIRLAWN CONGREGATION OF JEHOVAH'S WITNESSES, WATCHTOWER BIBLE and TRACT SOCIETY OF NEW YORK, INC., HACKENSACK CONGREGATION OF JEHOVAH'S WITNESSES, and JOHN and JANE DOES 1-100, whose identities are presently unknown to Plaintiff, in their official and individual capacities,</p> <p>Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L-4351-21</p> <p>Civil Action</p> <p>Order Pursuant to <i>In-Camera</i> Review</p>
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This matter having been opened to the Court by way of this Court's order dated February 9, 2022 that ordered an *in-camera* review of the Plaintiff's 1994 litigation file; and the Court having considered the matter and having reviewed the entire digital file produced by the Superior Court of New Jersey; and for good cause shown for the grant of this relief,

It is on this 12th day of April 2022:

1. ORDERED THAT Plaintiff's entire 1994 litigation file shall be released to all counsel in this litigation; and it is further
2. ORDERED THAT counsel are to contact alicia.castro@njcourts.gov to confirm their email addresses to receive a copy of the digital 1994 litigation file.



HON. ESTELA M. DE LA CRUZ, J.S.C.

Prepared by the Court

<p>CORRINE PANDELO,</p> <p>Plaintiff,</p> <p>v.</p> <p>THE GOVERNING BODY OF JEHOVAH'S WITNESSES, FAIRLAWN CONGREGATION OF JEHOVAH'S WITNESSES, WATCHTOWER BIBLE and TRACT SOCIETY OF NEW YORK, INC., HACKENSACK CONGREGATION OF JEHOVAH'S WITNESSES, and JOHN and JANE DOES 1-100, whose identities are presently unknown to Plaintiff, in their official and individual capacities,</p> <p>Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L-5508-21</p> <p>Civil Action</p> <p>Decision Pursuant to <i>In Camera</i> Review</p> <p>FILED APR 12 2022 ESTELA M. DE LA CRUZ, J.S.C.</p>
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On January 19, 2022, the Defendants filed a motion to obtain pleadings and papers filed regarding a prior litigation matter Plaintiff was engaged in. The Defendants filed a motion then seeking disclosure and production of litigation papers in the matter captioned Corrine Pandelo through her GAL Carl Pandelo vs. Clement Pandelo, BER-L-516-94. In that prior lawsuit filed in 1994, Plaintiff Corrine Pandelo, through her guardian ad litem, sued her grandfather, Clement Pandelo for damages stemming from her allegations of abuse that she claimed he caused. That prior lawsuit also was lodged against Olga Pandelo and the litigation spiraled into insurance carriers and other participants. The Defendants in that prior motion had requested that this Court order the Clerk of the Superior Court to disclose all the parties to the action and to produce all of the records and documents in the possession of the Clerk of the Superior Court.

On February 9, 2022, this Court ordered that the Superior Court of New Jersey was directed to produce to this Court for *in camera* review the case file in that prior 1994 litigation matter including any post-judgment documents. Upon receipt of the file the Court will then conduct an *in camera* review to determine what is discoverable pursuant to Rule.

digital file remaining on that 1994 litigation matter has a total of 196 pages. The Court has reviewed the entire 1994 digitized version of that file. The file includes the following:

- Pages 1-5 - Complaint filed on 1/12/1994 signed by Plaintiff attorney Charles E. Powers, Jr.
- Pages 6-7 - Writ of Execution – CP-1 v. CP-2, BP, CP-3 and OP and CP-3 and OP v Fireman’s Fund Insurance Company BER-L-516-94 and J-2094-00
- Page 8 – Bergen County Sheriff Department Return on Writ of Execution dated 2/22/2006
- Pages 9-11 – Bergen County Sheriff Department Report Statement and Return of Writ Execution for Chancery Foreclosure
- Pages 12-13 – Writ of Execution for Docket BER-L-516-94, J-2094-00, document also cites BER-351-05
- Page 14 – 5/24/1996 Order issued by Dr. Conrad Roncoti
- Pages 15-16 – 12/23/1994 Order issued by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 17-19 – Writ of Attachment filed on 1/3/1995 issued by Hon. Patrick F. X. Fitzpatrick, J.S.C. on Docket BER-L-516-94
- Pages 20-21 – Writ of Attachment filed on 1/10/1995 on Docket BER-L-516-94
- Pages 22-24 – Scheduling Order on Docket BER-L-516-94 filed on 1/3/1995
- Page 25 – Substitution of Attorney for Third-Party Defendant Fireman’s Fund Insurance Company filed 12/21/1994
- Page 26 – Substitution of Attorney for Plaintiffs under Docket BER-L-516-94 filed on 11/21/1994
- Page 27 – Extension of Time to File Answer Consent Form filed on 9/6/1994
- Pages 28-31 – Fireman’s Fund Insurance Company’s Answer to Third-Party Complaint filed 9/6/1994 under Docket BER-L-516-94
- Pages 32-38 – Defendant/Third-Party Plaintiff Clement Pandelo Answer and Third-Party Complaint against Fireman’s Fund Insurance Company, signed on 7/6/1994 but filing date stamp not legible
- Pages 39-43 – Defendant Olga Pandelo’s Answer, signed on 6/27/1994, but filing date stamp not legible
- Page 44 – Second Stipulation Extending Time to Answer filing date not legible
- Page 45 – Substitution of Attorney for Plaintiffs filed 5/6/1994
- Page 46 – Stipulation Extending Time to Answer filed 4/6/1994
- Page 47-54 – Four (4) Summonses, all dated 2/25/1994, filing date not legible
- Page 55 – Handwritten note (1 page), heavily redacted
- Page 56 – 7/22/1996 Discovery Order issued by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 57-59 – Case Management Order filed on 10/30/1996 issued by Hon. Patrick F. X. Fitzpatrick, J.S.C.

- Page 60 – Order issued on 7/27/1996 by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 61-62 – Amended Case Management Order filed 1/21/1997
- Pages 63-71 – Defendant OP-1’s Answer filed 1/30/1997
- Page 72 – Notice of Designation of Trial Counsel dated 1/27/1997
- Pages 73-75 – Substitution of Attorney filed 12/8/1995 for Fireman’s Fund Insurance Company’s counsel
- Pages 76-84 – Second Amended Complaint dated 6/12/1996 filing date stamp not legible
- Page 85 – Substitution of Attorney filed 6/13/1996 for Plaintiffs
- Pages 86-87 – Discovery Order filed 6/14/1996 issued by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Page 88 – Substitution of Attorney for Fireman’s Fund Insurance Company 6/24/1996
- Page 89 – Stipulation Extending Time for Answer filed 3/4/1997
- Page 90 – Substitution of Attorney filed 4/24/2000 for Clement Pandelo
- Pages 91-92 – Order to Sever issued by Hon. Patrick F. X. Fitzpatrick, J.S.C. on 1/22/1999
- Pages 93-94 – Order issued 1/22/1999 by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 95-96 – Order issued 1/22/1999 by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 97-98 – Order issued 1/22/1999 by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 99-100 – Order issued 1/22/1999 by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 101-102 – Order issued on 2/5/1999 by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 103-104 – Order for Summary Judgment issued on 2/5/1999 by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 105-106 – Final Case Management Order issued on 9/25/1998 by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Page 107 – Stipulation of Dismissal without Prejudice as to Defendants BP and CP-2 filed on 2/4/1999
- Page 108 – Notice of Designation of Trial Counsel dated 9/22/1998
- Pages 109-110 – Order directing medical exam issued by Hon. Patrick F. X. Fitzpatrick, J.S.C. on 9/10/1998
- Pages 111-112 – Order issued by Hon. Patrick F. X. Fitzpatrick, J.S.C. on 2/11/1999
- Pages 113-114 – Substitution of Attorney for Fireman’s Fund Insurance Company dated 9/4/1997
- Pages 115-116 – Discovery Order filed on 3/7/1996 issued by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 117-118 – Order dated 1/29/1996 issued by Hon. Patrick F. X. Fitzpatrick, J.S.C.
- Pages 119-124 – Defendants CP-2 and BP Answer filed on 3/19/1997

- Pages 125-133 – Second Amended Complaint filed 6/13/1996
- Pages 134-135 – Substitution of Attorney for Fireman’s Fund Insurance Company filed 10/9/1996
- Pages 136-137 – Order Denying Summary Judgment to Fireman’s Fund Insurance Company issued by Hon. Patrick F. X. Fitzpatrick, J.S.C. on 9/16/1996
- Pages 138-139 – Discovery Order issued by Hon. Patrick F. X. Fitzpatrick, J.S.C. on 6/7/1996
- Pages 140-141 – Order Denying Reformation of the July Verdict issued by Hon. Charles J. Walsh, J.S.C. on 2/8/2000
- Pages 142-143 – Order Denying New Trial issued by Hon. Charles J. Walsh, J.S.C. on 2/4/2000
- Pages 144-145 – Order of Dismissal without Prejudice as to Third-Party Defendant Fireman’s Fund Insurance Company issued by Hon. Charles J. Walsh, J.S.C. on 1/13/2000
- Pages 146-147 – Order of Dismissal without Prejudice as to Third-Party Defendant Fireman’s Fund Insurance Company by Hon. Charles J. Walsh, J.S.C. on 1/13/2000
- Pages 148-149 – Cross-Notice of Appeal filed 2/22/2000
- Pages 150-151 – Appellate CIS Form date filed not legible
- Page 152 – 2/18/2000 Letter of Randall G. Tashjian attaching appeal papers
- Page 153 – Appellate Division Check-Off Reply Form dated 2/22/2000 and signed by “Nicole”
- Pages 154-155 – Writ of Execution dated 3/8/2000.
- Pages 156-157 – Order of Judgment filed 12/23/1999 and issued by Hon. Charles J. Walsh, J.S.C.
- Pages 158-159 – Amended Order of Dismissal without Prejudice as to Fireman’s Fund Insurance Company filed on 1/24/2000 and issued by Hon. Charles J. Walsh, J.S.C.
- Pages 160-163 – Pretrial Order issued by Hon. Charles J. Walsh, J.S.C. on 11/4/1999
- Pages 164-165 – Order for Judgment against Clement Pandelo issued by Hon. Charles J. Walsh, J.S.C. on 12/23/1999
- Pages 166-168 – Notice of Appeal filed by 2/4/2000
- Pages 169-171 – Appellate CIS Form dated 2/3/2000
- Pages 172-173 – Court Transcript Request dated 2/3/2000
- Pages 174-175 – Recorded Order of Judgment under Docket BER-L-516-94 and J-2094-00 filed on 12/23/1999
- Pages 176-177 – Certification of Service of Appeal dated 2/3/2000
- Page 178 – Appellate Reply Check-Off Form dated 2/4/2000 and signed by “Nicole”
- Pages 179-182 – Order for Discovery issued on 7/19/2005 issued by Hon. Richard J. Donohue, J.S.C.

- Pages 183-185 – Petition for Discovery and supporting Certification filed 7/15/2005
- Pages 186-187 – Writ of Execution filed 5/10/2005
- Page 188-189 – Order of Judgment under Docket BER-L-516-94 and J-2094-00
- Page 190 – Certification of Service filed 12/5/2005
- Page 191 – Order filed 11/17/2000 issued by Hon. Charles J. Walsh, J.S.C.
- Pages 193-194 – Writ of Execution under Docket BER-L-516-94, J-2094-00 and handwritten docket of BER-L-212-02; filing date not legible
- Pages 195-196 – Recorded Order of Judgment under Dockets BER-L-516-94 and J-2094-00 issued by Hon. Charles J. Walsh, J.S.C.

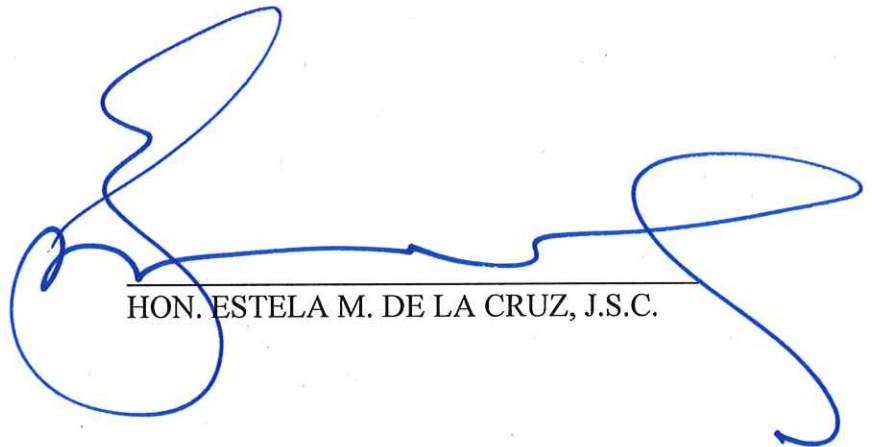
This is the total content of what currently is held by the Superior Court of that prior 1994 litigation file that was the subject of Defendants' motion. I recognize that the discovery rules in our state are to be construed liberally in favor of broad pretrial discovery. Payton vs. NJ Turnpike Authority, 148 N.J. 524, 535 (1997). The *in-camera* review was conducted in order to ensure that what is discoverable pursuant to rule would be released. I have tediously reviewed every single page of the entire submission of the 1994 litigation file jacket, and I conclude that every single page is discoverable.

This Court reviewed each document and identified with particularity as best can be discerned and there is nothing containing any secrets or information that should be withheld or protected. The file reviewed *in-camera* exclusively contains records of documents filed with the court or issued with the court. Pursuant to Rule 1:38-1, these court records and administrative records under the control of the judiciary are open for public inspection and copying. The documents reviewed all fall under the definition of a court record pursuant to Rule 1:38-2(a)(1).

None of the records have any basis to be kept confidential either by statute, rule, or prior case law. As can be seen from the list I have compiled, the records are all litigation records and filings, and all the documents contained in this file are relevant as they involved Corrine Pandelo's prior allegations and claims that are based on very similar or the same underlying wrongful acts alleged in this litigation. As all of the records reviewed are subject to public inspection pursuant to rule, this digital file will be released to all counsel in this instant litigation matter under Docket BER-L-5508-21. Both litigation

matters involve the same plaintiff and involve similar underlying wrongful allegations as are claimed in this case. The requesting parties are entitled to see that prior litigation file that this same Plaintiff in this litigation filed previously.

Counsel are to kindly contact my secretary Alicia Castro at alicia.castro@njcourts.gov to confirm your email addresses so she can disperse the digital 1994 litigation jacket PDF file in one email to all counsel involved here in the instant lawsuit. Counsel are guided accordingly.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above the printed name of the signatory.

HON. ESTELA M. DE LA CRUZ, J.S.C.

EXHIBIT F

2020 WL 8367591 (N.J.Super.L.) (Trial Order)
Superior Court of New Jersey, Law Division.
Bergen County

1707 REALTY, LLC, Plaintiff,

v.

REVOLUTION ARCHITECTURE, LLC, Conrad Roncati, R.A., Architectura, Inc., Johnson Soils Company,
Lisa V. Mahle-Greco, P.E., Bertin Engineering Associates, Inc. and Calsisto Bertin, P.E., Defendants.

REVOLUTION ARCHITECTURE, LLC, Conrad Roncati, R.A., and Architectura, Inc., Defendants/Third-Party Plaintiffs,

v.

STALWART CONSTRUCTION, LLC, et als, Third-Party Defendants.

JOHNSON SOILS COMPANY; Lisa V. Mahle-Greco, and, Calisto Bertin P.E., Defendants/Third-Party Plaintiffs,

v.

STALWART CONSTRUCTION, LLC; et als., Third-Party Defendants.

BERTIN ENGINEERING ASSOCIATES, INC., and Calisto Bertin, P.E., Defendants/Third-Party Plaintiffs,

v.

STALWART CONSTRUCTION, LLC, et als., Third-Party Defendants.

No. BER-L-2202-17.

November 20, 2020.

Order

[Kelly A. Waters](#), Esq. (ID# 030301991), [Jill A. Mucerino](#), Esq. (ID # 037692010), Wood Smith Henning & Berman LLP, 400 Connell Drive, Suite 1100, Berkeley Heights, NJ 07922, Tel. No.: (973) 265-9901, Fax No.: 1-(973) 265-9925, for defendants/third-party plaintiffs, Johnson Soils Company, Lisa V. Mahle-Greco P.E. and Calisto Bertin P.E. i/p/a Calsisto Bertin, P.E.

[Robert C. Wilson](#), Judge.

*1 THIS MATTER having been opened to the Court by application of Wood Smith Henning & Berman LLP, attorneys for Defendants/Third-Party Plaintiffs, Johnson Soils Company, Lisa V. Mahle-Greco, and Calisto Bertin, P.E. (collectively hereinafter "Defendants") for an Order dismissing the Plaintiff's Complaint for failure to produce discovery or, in the alternative, for an Order compelling production of discovery, and the Court having considered the matter; and for good cause shown;

IT IS on this 20 day of November, 2020,

ORDERED that Defendants Motion to Dismiss Plaintiff's Complaint be and hereby is GRANTED; and it is further

ORDERED that Plaintiff is required to produce all final expert reports by July 15, 2020; and

IT IS FURTHER ORDERED that a copy of the within Order shall be served upon all parties within seven (7) days of the date hereof.

<<signature>>

, J.S.C.

ROBERT C. WILSON, J.S.C.

(X) Opposed

OPINION

Argued: November 13, 2020

Decided: November 20, 2020

HONORABLE ROBERT C. WILSON, J.S.C.

Leonard E. Seaman, Esq. appearing on behalf of Plaintiff 1707 Realty, LLC (from The Law Offices of Richard Malagiere, P.C.)

Kelly A. Waters, Esq. and Jill A. Mucerino, Esq., appearing on behalf of Defendants/Third-Party Plaintiffs Johnson Soils Company, Lisa V. Mahle-Greco P.E., and Calisto Bertin P.E. (from Wood Smith Henning & Berman, LLP)

Robin S. Rubin, Esq. appearing on behalf of Defendants Revolution Architecture, LLC, Conrad Roncati, R.A., and Architectura, Inc. (from Milber Makris Plousadis & Seiden, LLP)

Michael J. Jubanyik, Esq. and Christine J. Viggiano, Esq. appearing on behalf of Defendants Bertin Engineering Associates and Calisto Bertin, P.E. (from Reilly, McDevitt & Henrich, P.C.)

PROCEDURAL HISTORY

THIS MATER initially began on November 13, 2015, when Engineered Devices Corporation initiated a legal action against 1707 Realty LLC (“Plaintiff”), and Stalwart Construction, LLC (“Stalwart”) by filing a complaint in the Superior Court of New Jersey, Hudson County, Docket No. HUD-L-4673-15, to recover on a construction lien claim (“Engineered Devices Litigation”), On February 11, 2016, Plaintiff filed crossclaims against Stalwart and Vincent DiGregorio—the owner and president of Stalwart—in the Engineered Devices Litigation.

Count One of Plaintiff’s crossclaim was against DiGregorio, in his capacity as a representative of Stalwart, for fraud relating to payment applications submitted at the Project. Count Three of Plaintiff’s crossclaim was against Stalwart for breach of contract for failure and refusal to provide Plaintiff with sufficiently skilled workers or proper materials.

Plaintiff was represented by The Law Offices of Richard Malagiere in the Engineered Devices Litigation, and in accordance with Court Rules, Mr. Malagiere, Esq. filed a certification together with Plaintiff’s responsive pleading and crossclaim stating: “I further certify that the matter in controversy is not the subject matter of any other action pending in any Court or of a pending arbitration proceeding...” and “I further certify that to the best of my knowledge, information and belief, no other party should be joined in this action.” The Engineered Devices Litigation was consolidated with three other like actions by way of an April 1, 2016, Order of the Court in response to the Notice of Motion to Consolidate filed on behalf of Plaintiff. As to Stalwart, Plaintiff claimed defective work product and numerous construction defects.

*2 On May 19, 2016, through its attorney Leonard E. Seaman, Esq., of The Law Offices of Richard Malagiere, Plaintiff filed a Notice of Motion for leave to serve a Third-Party Defendant proceeding against Ultra Contracting and Gregory Fasano (“Global Group”). In Mr. Seaman’s Certification he stated that “1707 seeks to recover from Global and Ultra for damage to the property.” Counsel further certified that Plaintiff’s claims against Global Group and Ultra should be “included as part of the matters in controversy to all a full and complete resolution of all claims in one forum.”

Having been granted leave of Court, Plaintiff filed a Third-Party Complaint against Ultra and Global Group in the Engineered Devices Litigation on June 14, 2016, alleging that Ultra and Global entered into a subcontract with Stalwart to provide labor and materials within the concrete scope of work in the construction of the Project. Plaintiff alleged that Global and Ultra “failed to construct the Project in accordance with industry standards including but not limited to local building codes. In particular numerous failures in work of Global required and continue to require extensive remediation by 1707 to portions of the Project including, but not limited to portions of the Project other than the work or products of Global.” Plaintiff also alleged “the negligence, carelessness, or recklessness” of Global and Ultra “was a proximate cause of damages suffered by 1707.” Mr. Malagiere's Certification filed on June 14, 2016, attached to the Third-Party Complaint again stated “I certify Pursuant to R. 4:5-1 that the matter in controversy is not the subject matter of any other action pending in any other Court or of a pending arbitration proceeding...” and “I further certify that to the best of my knowledge, information and belief, no other party should be joined in this action.”

On January 25, 2017, an Order of Final Judgment was entered against Vincent DiGregorio as to Plaintiff's crossclaim for fraud in the amount of \$681,506.00 (“DiGregorio Judgment”). Calculation of the DiGregorio Judgment included consideration of overpayment made to Stalwart, and included damages incurred by Plaintiff with respect to remedial work at the Project.

Only then on March 24, 2017 did Plaintiff file a Complaint in Bergen County, under Docket No. BER-L-2202-17, initiating this action, Plaintiff amended its pleadings with the filing of a First, Second, and finally, a Third Amended Complaint on October 10, 2019. The Complaint asserts claims of negligence arising out of the construction of the Project. On August 22, 2017 Defendants Johnson Soils Company (“JSC”) and Lisa Mahle-Greco were served with the Summons and Complaint. On August 29, 2017, Defendant Calisto Bertin, P.E., was served with the Summons and Complaint. Plaintiff alleges that JSC entered into an agreement to provide construction testing and monitoring of certain aspects of the same construction project, including but not limited to testing and monitoring of cast-in-place concrete, masonry, and structural steel installations. Plaintiff alleges that JSC, Lisa Mahle-Greco, and Calisto Bertin (“Moving Defendants”) are liable for the defects in the construction of the Project because they “failed to observe and/or failed to require the general contractor to correct various deficiencies in the Project.” The Complaint and subsequent iterations generally allege defects in the construction of the footings, stairs, columns, foundation, and use of unacceptable fill.

FACTUAL BACKGROUND

THE INSTANT MATTER again arises out of this one construction project, and an agreement entered between Plaintiff, and the general contractor, Stalwart, for performance of site work at the Project (“Stalwart Site Contract”). In May of 2014, Stalwart commenced site work at the Project. In September of 2014, Plaintiff entered into a second agreement with Stalwart for the construction of the hotel building at the Project, referred to as the “tower” (“Stalwart Tower Contract”). On or about September 2, 2014 JSC began performing inspections at the Project. On December 17, 2014, Stalwart commenced work on the Tower.

*3 In April of 2015, Plaintiff retained Bryan Sullivan of PTC Consulting to serve as the owner's representative for the Project. As Plaintiff's representative, Mr. Sullivan was responsible for the day-to-day handling of the Project. As part of his role and responsibility, Sullivan oversaw the progress of the Project and the status of its completion. In May of 2015, Mr. Sullivan assessed the quality of the work and alerted Plaintiff to alleged defects in the construction of the Project. The defects identified by Sullivan were both site work and tower work. In May of 2015, Plaintiff became aware of alleged deficiencies with respect to JSC's inspections. As per Plaintiff, Bryan Sullivan was the primary person responsible for noting and documenting the defective conditions.

As early as May 22, 2015, Plaintiff was aware that Sullivan determined that Stalwart was not acting in compliance with its contract. In a “Notice of Non-Compliance with Contract” Mr. Sullivan notified Stalwart that it had failed to provide “standard protocol for Code required controlled inspections, scheduling, and on-site or office inspection,” which was central to JSC's involvement with the Project. Plaintiff was unable to identify the remediation performed by Stalwart after the May 22, 2015

Notice of Non-Compliance with Contract, and in fact Plaintiff's principal conceded that he "wish[ed] we had Bryan [Sullivan] here." Without Mr. Sullivan, Plaintiff cannot describe or identify the work that was repaired by Stalwart before it left the Project.

On September 28, 2015, Plaintiff issued a Notice of Default to Stalwart, with regard to the Stalwart Tower Contract, stating that Stalwart failed "to construct the project in accordance with industry standards including but not limited to local building codes, in particular numerous failures in the placement of rebar and the pouring of concrete which required and continues to require extensive remediation." On October 7, 2015, Stalwart's contracts were terminated for cause. At the time Stalwart was terminated, the Project was partially completed up to the second floor. After Stalwart's termination and in October of 2015, March Associates Construction, Inc. ("March") replaced Stalwart at the Project, Mr. Sullivan prepared March's scopes of work for both remedial work and for remaining and incomplete work. According to Plaintiff, no remedial work was done without Bryan Sullivan being present or being aware of it. On August 15, 2017, the Project had been completely remediated and completed, and a certificate of occupancy was issued. Plaintiff credits Sullivan with having "saved the Project."

Plaintiff failed to put Defendants on notice of its claims against them before March remediated and completed the Project. Bryan Sullivan then died on March 5, 2018. Defendant served Plaintiff with discovery demands on November 1, 2017, months prior to Mr. Sullivan's passing. Plaintiff, however, did not produce any documents in this case until April 30, 2018. Only then did Plaintiff first identify PTC Consultants, which was Mr. Sullivan's business, as the owner's representative. Plaintiff's April 30, 2018, correspondence, provided records of "PTC Consultants, LLC who served as owner's representative on the project," but made no mention of Mr. Sullivan, nor indicated that he was deceased. As of April 30, 2018, Plaintiff had yet to produce its answers to interrogatories, and stated that its answers to interrogatories were in the process of review by its representative for certification and would be provided in the "upcoming days." In fact, Plaintiff did not produce its answers to interrogatories until May 17, 2018, at which time Sullivan was identified for the first time as a person with knowledge of facts relevant to this case. Plaintiff did nothing to preserve the testimony of Bryan Sullivan.

*4 Plaintiff's crossclaims in the Engineered Devices Litigation were filed in February of 2016, in Hudson County, and Plaintiff's present Complaint was filed in March of 2017 in Bergen County. The factual basis of the Engineered Devices Litigation and the current litigation are both alleged to have been caused by construction defects in connection with construction of the Project. In the Engineered Devices Litigation, Plaintiff asserted identical claims arising out of the same alleged defects claimed in the present lawsuit, and the cause of action was litigated and resulted in a judgment in favor of Plaintiff—with damages in the prior litigation overlapping those sought in the present suit. It is undisputed that Plaintiff was aware of Defendants' potential liability during the course of the Engineered Devices Litigation. Thereafter, the individual most knowledgeable about the facts of the alleged defects and resultant damages, Bryan Sullivan, died on March 5, 2018, before he was disclosed by Plaintiff in this litigation and thus his testimony was not preserved.

For the reasons set forth below, Defendants' Motion to Dismiss is hereby **GRANTED**.

MOTION TO DISMISS STANDARD UNDER RULE 4:6-2(e)

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations "to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim..." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id. It is simply not enough for a party to file mere conclusory allegations as the basis of its complaint. See Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012); see also Camden Cty. Energy Recovery Assocs., L.P. v. New Jersey Dept. of Env'tl. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999), aff'd o.b. 170 N.J. 246 (2001) ("Discovery is intended to lead to facts supporting or opposing an asserted legal theory; it is not designed to lead to formulation of a legal theory.").

Under the New Jersey Court Rules, a complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned from even an obscure statement in the Complaint, particularly if

additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The “test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts.” Printing Mart, 116 N.J. at 746. However, “a court must dismiss the plaintiff’s complaint if it has failed to articulate a legal basis entitling plaintiff to relief.” Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

RULES OF LAW AND DECISION

The Entire Controversy Doctrine and New Jersey Court Rule 4:5-1(b)(2) require that this matter be dismissed with prejudice. Plaintiff initiated this matter by filing a Complaint against the Defendants on March 27, 2017, seeking to recover damages arising from the alleged defective construction of Plaintiff’s hotel which, unbeknownst to the Defendants, the Plaintiff had already litigated in Hudson County—the Engineered Devices Litigation. Docket No. HUD-L-4673-15. The Engineered Devices Litigation resulted in a judgment for the Plaintiff, and the Plaintiff’s damages covered by that litigation directly overlap with those sought in the present suit, presenting the potential for Plaintiff’s double recovery. For those reasons, and the reason stated below, the Plaintiff’s Third Amended Complaint must be dismissed as a matter of law.

I. The Entire Controversy Doctrine Applies and Warrants Dismissal of the Third Amended Complaint

*5 The Entire Controversy Doctrine has been a cornerstone of New Jersey’s jurisprudence for many years, as evidenced by the Supreme Court’s longstanding “preference that related matters arising among related parties be adjudicated together rather than in separate, successive, fragmented, or piecemeal litigation.” Kent Motor Cars Inc. v. Reynolds, 207 N.J. 428, 443 (2011); see also Falcone v. Middlesex County Med. Soc’y, 47 N.J. 92 (1966) (citations omitted). The Entire Controversy Doctrine, which finds its support in our Constitution, requires a litigant to present “all aspects of a controversy in one legal proceeding.” Kent, 207 N.J. at 443; Hobart Bros. Co. v. Nat’l Union Fire Ins. Co., 345 N.J. Super. 229, 240-41 (App. Div. 2002) (citations omitted); N.J. Const. art. VI, § III, ¶ 4.

Our Courts have recognized the purposes of the Doctrine include “the needs of economy and the avoidance of waste, efficiency and the reduction of delay, fairness to parties, and the need for complete and final disposition through the avoidance of piecemeal decisions.” Kent, 207 N.J. at 443 (citing Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989) (citations omitted)). In determining the applicability of the Entire Controversy Doctrine in complex construction litigation, this Court looks to the core set of facts that provide the link between the distinct claims against the parties in each set of litigation. See Hobart Bros. Co., 354 N.J. Super. at 244. “The essential consideration is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts.” Id. (quotations omitted).

The Entire Controversy Doctrine applies here as the controversy which forms the factual nexus of the instant action also was at the heart of the Engineered Devices Litigation. In that case, Plaintiff brought claims of fraud against Vincent DiGregorio (counts one and two) and breach of contract against Stalwart (count three) in the form of crossclaims. Plaintiff also filed a Third-Party Complaint in the Engineered Devices Litigation asserting claims for defective workmanship against two of Stalwart’s subcontractors. That case was litigated and resulted in an Order of Final Judgment entered against Stalwart principal, Vincent DiGregorio, in favor of Plaintiff (the “DiGregorio Judgment”).

a. The Basis of Plaintiff’s Claims in both this Matter and the Engineered Devices Litigation was Stalwart’s Performance and Representations as to Quality and Completion of this Construction Project

The Engineered Devices Litigation was initiated as four separate lien actions which were ultimately consolidated. By virtue of Plaintiff’s crossclaims against Stalwart and Stalwart’s principal, Vincent DiGregorio, the scope of the suit expanded beyond the

lien actions to include claims arising out of Stalwart's defective workmanship and representations made regarding the quality and status of its workmanship. These facts formed the basis for Plaintiff's crossclaims and subsequent third-party claims in the Engineered Devices Litigation, pursuant to which Plaintiff sought the recovery of damages for defective workmanship and for overpayment on this Project.

First, Plaintiff's crossclaim against Stalwart for breach of contract was due to defective workmanship. Plaintiff claimed that Stalwart had not constructed the Project in accordance with industry standards, including violating local building codes, and refenced multiple failures including the placement of rebar and the pouring of concrete, which required extensive remediation. In the instant case, the Plaintiff seeks recovery for damages caused by Stalwart's defective construction at the Project. The Complaint identifies defects in the construction of the concrete footings, stairs, columns, foundations, and use of unacceptable fill. More specifically, Plaintiff's expert Thornton Tomasetti alleges defects in the rebar and concrete placement with respect to rebar dowels, incorrectly located rebar, and mis-located columns.

*6 Second, the failure to provide skilled workers and the allegation of "numerous construction defects," resulted in the Plaintiff's Third-Party Complaint against Ultra and Global in the Engineered Devices Litigation. That Complaint alleged that Global and Ultra had entered into contracts with Stalwart to provide labor and materials within the concrete scope of work in the construction project. It is undisputed that Plaintiff's claims against Ultra and Global centered on the alleged defective workmanship with regard to the concrete work at the Project. In the instant case, the defects and remedial costs alleged are the result of Stalwart's breach of contract. The Plaintiff alleges the Defendants are liable because they failed to observe and/or failed to require Stalwart to correct various deficiencies in the Project, meanwhile Plaintiff's liability expert concluded that the damages incurred were attributable to Stalwart.

And third, Plaintiff's claim against Mr. DiGregorio was for fraudulent payment requisitions—specifically, fraud relating to misrepresentations regarding the status and quality of work performed as set forth in payment applications. In the instant case, the Plaintiff seeks the recovery of overpayment made to Stalwart, in part, for the improper approval of payment application requisitions. The facts giving rise to this claim and the others asserted by Plaintiff in the Engineered Devices Litigation are the same as those proffered in support of the claims made against the Defendants in the instant matter.

As the record establishes, the facts and controversy that form the basis of this action and the Engineered Devices Litigation are not just interrelated but are identical. Plaintiff and Plaintiff's Counsel have also conceded that the matters in controversy are the same,

b. The Third Amended Complaint Should be Dismissed for Plaintiff's Failure to Comply With its Obligations Under Rule 4:5-1(b)(2)

Plaintiff asserts that under the Entire Controversy Doctrine and R. 4:5-1(b)(2) "a successive action shall not, however, be dismissed for failure of compliance with this rule unless the failure of compliance was inexcusable and the right of the undisclosed party to defend the successive action has been substantially prejudiced by not having been identified in the prior action." Defendants were clearly prejudiced and deprived of vital discovery, which Plaintiff had an affirmative obligation to identify to the Defendants including as to potentially liable parties in the Engineered Devices Litigation, but inexcusably failed to do so.

The Rule referenced above was intended to implement the Entire Controversy Doctrine and its underlying philosophy. See *Mortgagelinq Corp. v. Commonwealth Land Title Ins.*, 262 N.J. Super. 178, 185 (Law Div.), *aff'd* 279 N.J. Super. 89, *aff'd in part rev'd in part*, 142 N.J. 336 (1995). All parties to a litigation have an obligation to reveal the existence of any non-party who should be joined, or who might have an obligation to reveal the existence of any non-party who should be joined, or who might have some potential liability to any current party on the basis of the same transactional facts. See *Kent*, 207 N.J. at 444-45. Such obligation is continuing and requires parties to make such disclosures during the course of the litigation if a party with potential liability is identified. R. 4:5-1(b)(2).

Through the course of the Engineered Devices Litigation, Plaintiff was aware that the other Defendants were potentially liable for the damages it alleged—as early as May 2015 according to the deposition of Moshe Winer at 744:9-19. Not only were these Defendants not mentioned, but Plaintiff affirmatively represented in the Hudson County Pleadings that there were no other potentially liable parties or parties that should be joined to the Engineered Devices Litigation. The Third-Party Complaint in the Engineered Devices Litigation was filed on June 14, 2016—more than a year after Plaintiff had learned of the claimed deficiencies with respect to Defendants' inspections. Plaintiff had an affirmative obligation to identify the Defendants as potentially liable parties, but nonetheless never named them in the original litigation despite ample opportunity to do so. Even after the Default was entered in the prior litigation in January of 2017, Plaintiff had not sought to add Defendants to that proceeding. It wasn't until March of 2017 that Plaintiff initiated this separate and distinct action based on the same facts and asking for overlapping damages. It is for that reason that this Court finds Plaintiff's actions failed to comply with the Entire Controversy Doctrine and [Rule 4:5-1\(B\)\(2\)](#) by causing substantial prejudice to the Moving Defendants.

c. The Third Amended Complaint should be Dismissed for Plaintiff's Failure to Comply With its Obligations Under [Rule 4:5-1\(b\)\(2\)](#) Resulting in Substantial Prejudice

*7 It is in the trial court's discretion to dismiss a successive action on a showing that the party's failure to comply with its certification obligation constitutes inexcusable conduct and resulted in substantial prejudice to the undisclosed party who was not joined in the action. [Mitchell v. Procini](#), 315 N.J. Super. 557, 564-65 (App. Div. 1998). In making that decision, the Court looks to whether a party's ability to mount a defense on that claim is “unfairly hampered.” [Hobart Bros. Co.](#), 354 N.J. Super. at 243. The Appellate Division has equated “substantial prejudice” with “the loss of witnesses, the loss of evidence, fading memories and the like.” [Kent](#), 207 N.J. at 446 (citing [Mitchell](#), 331 N.J. Super. at 454) (quotations omitted). A party's access to relevant information “is largely dispositive of the ‘substantial prejudice’ issue...” [Kent](#), 207 N.J. at 446 (quoting [Lamb v. Global landfill Reclaiming](#), 111 N.J. 134, 152(1988)).

In the present case, Defendants are substantially prejudiced because they were deprived of an opportunity to have an expert examine and investigate the claimed defects, and they were deprived of the opportunity to examine a key witness, Biyan Sullivan. At the time Plaintiff filed its answer and crossclaims the construction was ongoing at the Project and remediation had not yet been completed. It wasn't until about March 9, 2016 that remedial work began. (See Bryan Sullivan “Change Log Order”). Defendants were unaware of the Plaintiff's allegations of negligent inspections until after the entire project had been remediated. The Complaint in this action was filed on March 24, 2017 while the Project was ongoing, but the Defendants were not served until months later, after a Certificate of Occupancy was issued on August 15, 2017. Had the Defendants been named or otherwise put on notice of a potential claim against them in the Engineered Devices Litigation, they would have had the opportunity to preserve and collect evidence relevant to the alleged defects, related Project delay, as well as remediation efforts.

Defendants were also deprived of the opportunity to preserve and collect evidence supplied by a key witness, Bryan Sullivan. Mr. Sullivan was actually identified by Plaintiff as the person most knowledgeable about the claims. While Mr. Sullivan would have been available as a witness at the time of the Engineered Devices Litigation, he was not available during the course of this litigation due to Plaintiff's failure to identify him as a person with knowledge until May 17, 2018, following the March 5, 2018 date of his passing.

Moreover, Plaintiff did not act to preserve the testimony of Mr. Sullivan—as the owner's representative responsible for the day-to-day handling of the Project in question. As stated earlier, Mr. Bryan Sullivan was instrumental in evaluating and compiling information regarding the performance of general contractor Stalwart at the Project as it related to its non-conformance with the contract documents. When Stalwart was originally replaced with March, it was Mr. Sullivan who identified the necessary remedial work and further prepared the scope of work to be included in March's contracts on behalf of Plaintiff. Mr. Sullivan's absence results in substantial prejudice because Sullivan's scope of knowledge was unrivaled—he had firsthand knowledge of the claimed defects, personally discovering and examining the conditions, and coordinated the remedial work, including the

scope of Stalwart's non-compliance, the scope of the replacement contractors remedial work, and supervision of the remediation of the defects.

Furthermore, Mr. Sullivan's observations and analyses are extensively relied on by the Plaintiff and its expert in formulating their allegations as to the existence of defects, scope of remediation, and calculation of damages. And while Bryan Sullivan was the primary person responsible for noting and documenting the defective conditions, he did not put together a formal report of his investigation of the defects, but rather only noted his observation in recorded Project Notes, Plaintiff's non-compliance with [Rule 4:5-1\(b\)\(2\)](#) in neglecting to name the Defendants in the prior action has resulted in the Defendants' inability to procure testimony from Mr. Sullivan as to his observations, recollection, and opinions, and further authentication of his file documents. His unavailability in this matter directly impacts Defendants' ability to respond to Plaintiff's allegations, thus substantially prejudicing their ability to defend the claims.

*8 Lastly, Plaintiff responds to the claim of substantial prejudice by explaining that all parties were harmed by Mr. Sullivan's passing, and that remediation or mitigation should not be conflated with the destruction of evidence. While the Court agrees with these points in principle, the issue in the present matter is that the prejudice to the Defendant was directly caused by the Plaintiff's delay and non-compliance with [Rule 4:5-1\(b\)\(2\)](#). The point of the Entire Controversy Doctrine is to avoid situations such as these, and the Court finds that, had the rule been followed, this prejudice would not have occurred.

d. The Third Amended Complaint should be Dismissed to Prevent Plaintiff's Double Recovery

New Jersey Courts have long recognized the inequity and substantial prejudice that results from double recovery. The Entire Controversy Doctrine was in fact partially intended to prevent a party from “two attempts at recovery.” [Hobart Bros. Co.](#), 345 N.J. Super. at 243; [Thomas v. Hargest](#), 363 N.J. Super 589, 595 (App. Div. 2003). A party's inability to allocate damages is also relevant for substantial prejudice, in the context of the Entire Controversy Doctrine. [Mitchell v. Procini](#), 315 N.J. Super. 557, 564-65 (App. Div. 1998); see also [Hobart Bros. Co.](#), 345 N.J. Super. at 243. Here, Plaintiff seeks damages that overlap with the damages sought in the Engineered Devices Litigation and are included in the DiGregorio Judgment.

Defendants maintain that Plaintiff's failure to join them deprived the Defendants of any opportunity to receive an allocation, credit, or offset for the DiGregorio Judgment because the damages are duplicative of those claimed in the prior case. The Court notes that this claim is of particular importance in complex construction cases. A contractor or property owner is thus precluded from proceeding against other contractors or subcontractors individually in different courts at different times. In fact, the very purpose of the Entire Controversy Doctrine—as well as the State's Complex Business Litigation Program—is to create a system for these complex construction disputes to be handled in an organized manner, without such “piecemeal” litigation tactics. When Plaintiff initiated its crossclaims and its Third-Party Complaint in the Engineered Devices Litigation and certified that there were no other parties it intended to join—while it knew the potential for the alleged liability on behalf of the Moving Defendants—it clearly violated [Rule 4:5-1\(b\)\(2\)](#).

e. Plaintiff's Claims That the Entire Controversy Doctrine Should Not Apply Because the Prior Proceeding Did Not Involve Sufficient Judicial Resources, or Was Brought Too Late Are Both Without Merit

The Plaintiff contends that the Entire Controversy Doctrine should not be invoked here because it did not have an adequate opportunity to present its claims in the earlier litigation and that it did not involve sufficient judicial resources. In that prior action Plaintiff's “lien foreclosure action,” eventually evolved and Plaintiff had the opportunity to present and pursue claims arising out of defective workmanship at the Project and the certification of payment applications. Plaintiff further argued that, once it reached a settlement of the “primary claims” the “process of joining additional parties ended,” relying upon [Karpovich v. Barbarula](#), 150 N.J. 473 (1997). First, [Karpovich](#) is wholly unlike the present case because [Karpovich](#) involved a case where there actually was minimal judicial involvement and no exchange of discovery. Furthermore, the Plaintiff's settlement in the Engineered Devices Litigation was only a partial settlement and was followed by Plaintiff's Third-Party Complaint the very

next day. Although settlement terms were reached in July of 2016, the final disposition was not until July 25, 2017. Lastly, Karpovich concerned the joinder of a legal malpractice claim with a claim of embezzlement. 150 N.J. 473 (1997). This case was concerning the same subject matter— construction Project defects and failure to inspect—against multiple Defendants.

*9 Finally, Plaintiff's claim that the Entire Controversy Doctrine claim was filed late is without merit. First, Moving Defendant asserted the Entire Controversy Doctrine claim in their Fifth Affirmative Defense in the Answer to the Complaint filed on October 17, 2020. Second, certain information was not immediately available for Defendant's claim, After Mr. Sullivan's death, for example, Defendant's substantial prejudice claims were not "ripe" for adjudication prior to Plaintiff's expert reports. The production of such reports was necessary to fully understand the depth and scope of Plaintiff's reliance on Sullivan's work.

HOLDING

Plaintiff's Complaint is dismissed on the basis of the Entire Controversy Doctrine and Rule 4:5-1(b)(2). Plaintiff's crossclaims and third-party complaints in the Engineered Devices Litigation in Hudson County rely on an identical factual basis as the current litigation and seek to recover overlapping damages from the same. Plaintiff's piecemeal litigation technique is untenable in light of Rule 4:5-1(b)(2) and the Entire Controversy Doctrine. To protect the Defendant from substantial prejudice and Plaintiff's inexcusable delay in filing the present Complaint, that Complaint must be dismissed.

CONCLUSION

For the aforementioned reasons, Defendants' Motion to Dismiss is **GRANTED**.

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EXHIBIT G

710 Fed.Appx. 535

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of Appeals 3rd Cir. App. I, IOP 5.1, 5.3, and 5.7. United States Court of Appeals, Third Circuit.

Peter MOCCO; Lorraine Mocco; First Connecticut Holding Group LLC, IV, Appellants

v.

Aegis FRUMENTO; Chicago Title Insurance Company

No. 17-1153

|

Submitted Pursuant to Third Circuit L.A.R. 34.1(a) September 11, 2017

|

(Filed: September 25, 2017)

Synopsis

Background: Holding company and its owners filed state court suit claiming that attorney and title company engaged in conspiracy by assisting in transfer of title to real estate assets from holding company to third parties. Following removal, the United States District Court for the District of New Jersey, (No. 2-12-cv-01458), [Dennis M. Cavanaugh, J., 2012 WL 5989457](#), dismissed complaint as barred by New Jersey's entire controversy doctrine (ECD). Plaintiffs appealed. The Court of Appeals, [564 Fed.Appx. 668](#), vacated and remanded with instructions. On remand, the District Court, [Esther Salas, J., 2016 WL 8679253](#), modifying report and recommendation by [Joseph A. Dickson](#), United States Magistrate Judge, granted defendants' motions to dismiss pursuant to ECD. Plaintiffs appealed.

The Court of Appeals, [Chagares](#), Circuit Judge, held that complaint was barred as sanction under New Jersey's ECD.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

***536** On appeal from the United States District Court for the District of New Jersey, (No. 2-12-cv-01458), District Judge: Honorable [Esther Salas](#)

Attorneys and Law Firms

[John B. Nance](#), Esq., [James A. Scarpone](#), Esq., [Bruce D. Vargo](#), Esq., Scarpone & Vargo, Newark, NJ, for Plaintiffs-Appellants

[James J. DiGiulio](#), Esq., [Joseph P. LaSala](#), Esq., [William F. O'Connor, Jr.](#), Esq., McElroy Deutsch Mulvaney & Carpenter, Morristown, NJ, for Defendant-Appellee Aegis J. Frumento

[Derrick R. Freijomil](#), Esq., [Michael R. O'Donnell](#), Esq., Riker Danzig Scherer Hyland & Perretti, Morristown, NJ, for Defendant-Appellee Chicago Title Insurance Co

Before: [CHAGARES](#), [JORDAN](#), and [NYGAARD](#), Circuit Judges.

OPINION*

[CHAGARES](#), Circuit Judge.

***537** This case is about whether the appellants' lawsuit against the appellees violated the New Jersey entire controversy doctrine ("ECD") and merits dismissal. The District Court concluded that dismissal was warranted pursuant to the ECD. We will affirm.

I.

We write solely for the parties' benefit and thus recite only the facts necessary to our disposition. Because this case has already been before this Court in another posture, we summarize the facts as discussed in [Mocco v. Frumento](#), [564 Fed.Appx. 668 \(3d Cir. 2014\)](#) where appropriate.

The Moccas¹ are engaged in a protracted litigation in the Superior Court of New Jersey (the "State Court Action") which was first filed in 1998 and comprises myriad parties and claims. That case involves a dispute between the Moccas and James and Cynthia Licata regarding ownership of real estate in northern New Jersey. Appellee Aegis Frumento was an attorney who represented the Licatas in some aspects of that litigation. Appellee Chicago Title issued title insurance

policies to entities involved in some of the disputed real estate transactions.

The Moccas' instant claims against Frumento and Chicago Title relate to a real estate transaction in May 2006, in which the Licatas allegedly effected the sale of real estate to another entity in violation of a state court order forbidding the Licatas and other parties from transferring the property. The Moccas claim that Frumento and Chicago Title aided the Licatas with this scheme.²

In June 2011, the Moccas filed a motion for leave to amend their claims in the State Court Action to add Frumento and Chicago Title as defendants. "That attempt was the first time that the Moccas sought to add Frumento as a defendant, although they previously had twice added and twice dismissed Chicago Title as part of a quiet-title claim."³ [Mocco](#), 564 Fed.Appx. at 669. The Moccas assert that it was not until several years after 2006 that the facts pointing to Frumento and Chicago Title's liability in that transaction surfaced.

The Superior Court denied the motion on August 5, 2011. "At an in-person hearing on the motion to amend, the state court denied the motion primarily on the basis of delay, reasoning that, " 'at the *538 very least, [the Moccas] had a year' to obtain 'the basic information that would give rise to at least [their] theory of liability,' and that 'bring[ing] in new parties and apply[ing] new theories on litigation that started back in 1998' would further postpone an already-delayed trial." [Mocco](#), 564 Fed.Appx. at 669. The Superior Court remarked that "what seems to be clear is that this information [regarding Chicago Title's liability] was known at least a year ago," when the Moccas took the relevant depositions. Joint Appendix ("J.A.") 391-92. The court concluded, "at some point you need to know the framework of the case that's going to trial, and today's the day." J.A. 403. The Moccas did not appeal this decision. The State Court Action proceeded to the first of three trials. The first trial regarding ownership issues resulted in a disposition in part unfavorable to the Moccas. J.A. 3042-64. That decision is now on appeal.

On January 25, 2012, the Moccas filed the instant action in state court. Frumento and Chicago Title removed the case to the United States District Court for the District of New Jersey. The defendants then moved to dismiss the case on ECD grounds and for failure to state a claim. The District Court granted the motion on ECD grounds. The Moccas appealed, and this Court vacated and remanded to the District Court,

noting that the District Court "applied a claim-joinder analysis instead of a party-joinder one" and on remand should do the latter "when reviewing the sufficiency of the Complaint." [Mocco](#), 564 Fed.Appx. at 671.

After the case was remanded, Chicago Title and Frumento each filed motions to dismiss pursuant to the ECD.⁴ On April 14, 2016, the Magistrate Judge issued his Report and Recommendation ("R&R") that the matter should be dismissed pursuant to the ECD. The Magistrate Judge concluded that the Moccas "violated [New Jersey Court Rule 4:5-1\(b\)\(2\)](#) by failing to timely identify Defendants Frumento and Chicago Title as potentially necessary parties in the State Court Matters." J.A. 39. The Magistrate Judge further determined that this failure was inexcusable because it was unreasonable under the circumstances, significant judicial resources had been expended, the defendants would be substantially prejudiced, and that the delay may have been strategic. The Magistrate Judge then outlined the forms of substantial prejudice to Frumento and Chicago Title, and determined that the action was "successive" because it was filed after the State Court Action was filed. The Magistrate Judge then concluded that in any event, the action would become "successive" to the State Court Action under the ECD when the State Court Action concluded, and therefore recommended administratively terminating this action pending the resolution of the *539 State Court Action, at which point this action would be dismissed with prejudice.

The Moccas filed their objections to the R&R on April 28, 2016, challenging the Magistrate Judge's findings regarding inexcusable delay and substantial prejudice, and asserting that the interpretation of "successive" action under the ECD was incorrect. (D. Ct. Dkt. No. 93.) On December 23, 2016, the District Court adopted the R&R in all respects except for the analysis regarding successive action, concluding that the action became successive when the Superior Court denied the motion to amend. The District Court thus granted the motions to dismiss in full. The Moccas timely appealed.

II.

The District Court had jurisdiction pursuant to 28 U.S.C. §§ 1332, 1441. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

A threshold issue in this case, which we address *infra*, is whether the District Court's opinion employed a motion to dismiss standard or a summary judgment standard. Our court's review over either disposition is plenary. [Allen v. DeBello](#), 861 F.3d 433, 437-38 (3d Cir. 2017);⁵ [Thomas v. Cumberland Cty.](#), 749 F.3d 217, 222 (3d Cir. 2014); see also [Bennun v. Rutgers State Univ.](#), 941 F.2d 154, 163 (3d Cir. 1991) (“Our review of the district court's conclusion that [the] present action was not barred by New Jersey's entire controversy doctrine is plenary.”).

III.

A.

New Jersey's entire controversy doctrine dictates that “a party cannot withhold part of a controversy for separate later litigation even when the withheld component is a separate and independently cognizable cause of action.” [Paramount Aviation Corp. v. Augusta](#), 178 F.3d 132, 137 (3d Cir. 1999). The doctrine is an affirmative defense and “applies in federal courts when there was a previous state-court action involving the same transaction.” [Ricketti v. Barry](#), 775 F.3d 611, 613 (3d Cir. 2015) (quoting [Bennun](#), 941 F.2d at 163). The doctrine's purposes are: “(1) complete and final disposition of cases through avoidance of piecemeal decisions; (2) fairness to parties to an action and to others with a material interest in it; and (3) efficiency and avoidance of waste and delay.” [Paramount Aviation](#), 178 F.3d at 137.

While the ECD initially only applied to joinder of claims, it now applies to joinder of parties as well. See [Cogdell v. Hosp. Ctr. at Orange](#), 116 N.J. 7, 560 A.2d 1169, 1178 (1989). The ECD, now codified as [Rule 4:5-1\(b\)\(2\)](#) of the [New Jersey Rules of Court](#), requires the following:

[E]ach party shall disclose in the certification the names of any non-party who should be joined in the action ... because *540 of potential liability to any party on the basis of the same transactional facts. Each party shall have a continuing obligation during the course of the litigation to file and serve on all other parties and with the court an amended certification if there is a change in the facts stated in the original certification.

If a party fails to comply with its obligations under this rule, the court may impose an appropriate sanction including dismissal of a successive action against a party whose

existence was not disclosed or the imposition on the noncomplying party of litigation expenses that could have been avoided by compliance with this rule. A successive action shall not, however, be dismissed for failure of compliance with this rule unless the failure of compliance was inexcusable and the right of the undisclosed party to defend the successive action has been substantially prejudiced by not having been identified in the prior action.

[N.J. Ct. R. 4:5-1\(b\)\(2\)](#). Thus, the rule provides that failure to disclose alone does not require dismissal. Rather, a court imposing dismissal as a sanction must conclude three requirements are met: “(1) the action is a ‘successive action;’ (2) the failure to provide notice of other potentially liable parties was ‘inexcusable;’ and (3) the undisclosed party's right to defend the successive action has been ‘substantially prejudiced’ by that failure.” [Kent Motor Cars, Inc. v. Reynolds & Reynolds, Co.](#), 207 N.J. 428, 25 A.3d 1027, 1034 (2011).

At its core, the ECD is “an equitable doctrine, its application [] flexible, with a case-by-case appreciation for fairness to the parties.” [Paramount Aviation](#), 178 F.3d at 137. Indeed, it is “New Jersey's ‘specific, and idiosyncratic, application of traditional *res judicata* principles.’ ” [Fornarotto v. Am. Waterworks Co.](#), 144 F.3d 276, 278 (3d Cir. 1998) (quoting [Rycoline Prods., Inc. v. C & W Unlimited](#), 109 F.3d 883, 886 (3d Cir. 1997)). Although judges are afforded discretion in shaping the remedy for a violation of [Rule 4:5-1\(b\)\(2\)](#), “in considering whether dismissal is appropriate, the court must comply with the language of [[Rule 4:5-1\(b\)\(2\)](#)] that further defines the circumstances in which that sanction is permitted.” [Kent Motor Cars](#), 25 A.3d at 1037 (emphasis added).

B.

As a threshold matter, the Moccas contend that the District Court failed to apply the summary judgment standard and instead “placed the burden of proof on the Moccas and resolved all factual conflicts (and granted all inferences) in favor of Chicago Title and Frumento.” Mocco Br. 19. While the ECD can be asserted as grounds for a motion to dismiss, when the merits of the argument are “not apparent on the face of the complaint,” it should be resolved as a motion for summary judgment.⁶ [Rycoline](#), 109 F.3d at 886 (quoting [Bethel v. Jendoco Constr. Corp.](#), 570 F.2d 1168, 1174 (3d Cir. 1978)). In this case, while many of the facts the District

Court *541 relied upon are matters of judicial notice,⁷ we do recognize that some issues referenced in its opinion were not, and were outside the scope of the complaint. See, e.g., J.A. 18 (referencing a fact witness who passed away); J.A. 17 (evaluating plaintiff's argument that Frumento was not a party to contracts and did not lose any money in the transactions at issue). Therefore, the proper vehicle for evaluating the ECD claim was under a summary judgment standard.

However, the District Court's opinion does not allude to whether it employed a summary judgment standard. We are cognizant of the Moccas' argument the District Court may not have viewed every factual issue in the light most favorable to the Moccas in rendering its decision.⁸ Nevertheless, we may affirm on any basis supported by the record. Davis v. Wells Fargo, 824 F.3d 333, 350 (3d Cir. 2016). Therefore, we examine the three requirements under Rule 4:5-1(b)(2) to determine whether dismissal based on the ECD is warranted in this case.

IV.

A.

The first requirement for dismissing a case under the ECD is whether the case is a successive action. On this issue, the parties' dispute is purely an issue of law.

As a threshold matter, we reject one interpretation advanced by the Moccas: that "successive action" means an action that was filed after the completion of the initial action. As the District Court noted, such an interpretation means "this case can never become 'successive' because it was filed during the pendency of the State Court matters." J.A. 22. There is no support in the caselaw for such a narrow position. Although the Moccas cite to Alpha Beauty Distributors, Inc. v. Winn-Dixie Stores, Inc., 425 N.J.Super. 94, 39 A.3d 937, 942 (App.Div.2012), the court in that case did not so conclude. Rather, the court in Alpha Beauty only noted that an "obvious example" of a successive action is one filed after the initial action concluded. Id. Limiting the concept of successive action to only this "obvious example" would be illogical since that would mean a party could always avoid triggering grounds for dismissal under Rule 4:5-1(b)(2) by filing the second action before the earlier-filed action reached disposition. See Archbrook Laguna, LLC v. Marsh, 414 N.J.Super. 97, 997 A.2d 1035, 1041 (App.Div.2010)

(holding that such a position would "encourage the type of forum shopping and fragmentation of controversies the entire controversy doctrine was intended to preclude").

*542 The Alpha Beauty decision does suggest, however, that a later-filed action would not be considered "successive" if the earlier-filed action had not yet reached disposition. The Appellate Division concluded that a later-filed action in state court was not successive to an earlier-filed federal action that was set for, but had not proceeded, to trial. 39 A.3d at 942. In Archbrook Laguna, the Appellate Division clarified that "the entire controversy doctrine could be applied once the first action was concluded depending upon how the first action ended." 997 A.2d at 1041.

The question before us is whether the State Court Action has "concluded" in relevant respects, thus making the instant action a successive one. The Magistrate Judge suggested that the conclusion of a state court proceeding occurs when that court issues a judgment on the merits, but added that allowing the instant action to proceed while waiting for the state court judgment would be a waste of time and resources in contravention of the ECD's principles. J.A. 51-52. Therefore, the Magistrate Judge recommended administratively terminating the instant action pending the result of the State Court Action.

The District Court took a different approach and instead reasoned that the "end" has already occurred, since "once the Superior Court barred Plaintiffs from asserting the civil conspiracy and aiding-and-abetting claims against Defendants in the State Court Matters, Plaintiffs were foreclosed from asserting those claims against Defendants in any subsequent litigation." J.A. 25. Therefore, the Court dismissed the action rather than waiting until the conclusion of the State Court Action.

We agree with the District Court's reasoning on this particular record, where the Superior Court's denial of the motion to amend (which was not appealed) was the death knell for Mocco's claims against Frumento and Chicago Title in the State Court Action. Even if the Moccas' appeal of the State Court Action's first trial were to result in their favor, and regardless of what happens in the second and third trials in that action, their claims against Frumento and Chicago Title could not be revived in the State Court Action. Given the underpinnings of the ECD — that is, avoidance of piecemeal litigation, fairness, and efficiency, Paramount Aviation, 178 F.3d at 137 — we must conclude that in this particular

situation, the instant action was successive to the State Court Action.

B.

We next examine whether the Moccas' failure to effect timely notice of Frumento and Chicago Title as potentially liable parties under [Rule 4:5-1\(b\)\(2\)](#) was inexcusable. In [Hobart Bros. Co. v. National Union Fire Insurance Co.](#), 354 N.J.Super. 229, 806 A.2d 810, 818-19 (App.Div.2002), the court provided a non-exhaustive list of factors to consider to make this determination. Relying on [Hobart Bros.](#), the District Court determined that the relevant factors in the instant case are: 1) whether the Moccas' delay in filing the motion to amend was reasonable, 2) to what extent judicial resources had been expended in the meantime, 3) whether Frumento and Chicago Title would be substantially prejudiced, and 4) whether delay was potentially strategic.

As to the element of reasonableness of the delay, the Moccas contend that the District Court should have considered "the state court's findings of discovery obstructionism by Chicago Title, which, among other things, hindered the Moccas' ability to learn the facts giving rise to their claims." Mocco Br. 26.

We agree with the District Court that this does not constitute a legitimate excuse *543 for the delay in this case.⁹ Construing all facts in favor of the Moccas, and accepting for the purposes of this motion that discovery obstacles delayed their ability to identify Frumento and Chicago Title, there is no genuine factual dispute that the Moccas had knowledge of the claims underlying the instant case as of mid-2010. The Moccas acknowledge that by February 2010, they were taking depositions in order to confirm "whether [they] should assert claims directly against Chicago Title." Mocco Br. 20 (citing J.A. 2096). The Moccas also note that an April 2010 deposition of a Chicago Title representative revealed that an agent of Chicago Title issued title insurance in a sum far above the policy's limit. See Mocco Br. at 11-12 (citing J.A. 2118-23). This is precisely what the Moccas assert in their complaint in the instant case. J.A. 119 ("Because Chicago Title failed to enforce its own rules and procedures, its 'rogue agent[]' Horizon ... w[as] able to issue over \$40 mil. of Lender title insurance which ... was essential to consummation of the frauds that were committed against the Moccas and others."). Similarly, the Moccas acknowledge that "through a review of the parties' email" from 2010

Chicago Title productions, it was able to identify "the substantial role of Mr. Frumento in counseling and persuading the participants in the May 2006 closing." Mocco Br. 21.

Although the Moccas make much of the assertion that Chicago Title delayed discovery and that the statute of limitations on their claims in this case have not expired, those issues were not pertinent to the question before the District Court:¹⁰ whether the one-year delay in alerting the Superior Court that Chicago Title and Frumento should be added was unreasonable. Based on the undisputed facts, we agree with the District Court and the Superior Court that it was.

The Moccas do not contest the District Court's conclusion that the State Court Action has commanded substantial judicial resources.

The third factor the District Court considered is substantial prejudice. Substantial prejudice is both a factor for considering inexcusable delay as well as a consideration under [Rule 4:5-1\(b\)\(2\)](#). See [Hobart Bros.](#), 806 A.2d at 819. We explore that issue *infra*, and for similar reasons conclude that Frumento and Chicago Title suffered substantial prejudice.

Finally, while the Moccas emphasize the District Court's statements regarding "the possibility that Plaintiffs could have strategically delayed to add Defendants in the State Court Matters," J.A. 13, we conclude that a determination as to whether there was strategic delay is unnecessary to the determination of inexcusable delay in this case. Even if there was no intentional conduct by Mocco to postpone asserting claims against Frumento and Chicago Title, we would still determine that the delay was inexcusable.

C.

Dismissal under [Rule 4:5-1\(b\)\(2\)](#) requires a showing of substantial prejudice, *544 which "in this context means substantial prejudice in maintaining one's defense. Generally, that implies the loss of witnesses, the loss of evidence, fading memories, and the like." [Mitchell v. Charles P. Procini, D.D.S., P.A.](#), 331 N.J.Super. 445, 752 A.2d 349, 354 (App.Div.2000); cf. [Kent Motor Cars](#), 25 A.3d at 1038. The District Court concluded that the substantial prejudice to Frumento and Chicago Title took three forms: first, that they would be unable to influence the outcome of the State Court Action; second, that they would be time-barred from asserting

any contract or tort claims in the State Court Action; and third, that they would lack the benefit of certain discovery evidence as a result of the delay. The Moccas challenge each of these conclusions.

As to Frumento's inability to participate in the State Court Action and to assert counter- or cross-claims, the Moccas advance no meritorious challenge on appeal. Since the alleged misconduct took place in 2006, Frumento is time-barred from asserting contract or tort claims against alleged co-conspirators. Excluded from the State Court Action, Frumento also could not cross-examine witnesses regarding potentially damaging testimony about him. Considering both facts together, we conclude that Frumento would suffer substantial prejudice to his defense.

As to Chicago Title, the parties disagree as to whether Chicago Title was able to participate in the State Court Action. We recognize the Moccas' argument that Chicago Title is involved in the State Court Action in its capacity as subrogee, and we note that there is lack of clarity as to whether its role is sufficient to alleviate any prejudice. We need not resolve that issue, however, because we agree with the District Court that Chicago Title has been deprived of the ability to assert claims against third parties, such as the Licatas, arising from the 2006 closing. We also agree that the death of Kenneth Williams, who was lead counsel for an entity which made a claim under a title policy issued by Chicago Title regarding the properties at issue in this case, constitutes prejudice to Chicago Title. Even considering the fact that Williams was

deposed in June 2007,¹¹ by the Moccas' own admission, at that time there was no allegation that Chicago Title aided a civil conspiracy through negligent supervision and through other tortious acts — the claims against Chicago Title at issue today. Thus, we conclude that Chicago Title also incurred substantial prejudice.

D.

The Moccas contend that the District Court should have imposed a lesser sanction than dismissal. Its entire analysis focused on offsetting the loss of Williams's testimony. Mocco Br. 40-43. While dismissal is a “last resort,” the R&R noted that “[n]o sanction could alter Defendants' inability to participate in the State Court matters, revive Defendants' lost claims or restore witnesses' dulled memories.” J.A. *545 47. Thus, the Magistrate Judge and the District Court concluded that dismissal was the only appropriate sanction in this case. On this record, that conclusion was properly drawn.

V.

For the foregoing reasons, we will affirm the judgment of the District Court.

All Citations

710 Fed.Appx. 535

Footnotes

- * This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.
- 1 Although First Connecticut Holding Group LLC, IV is also an appellant, for ease of reference, we will refer to the appellants in this case as “the Moccas.”
- 2 The Moccas allege that Frumento: 1) aided and abetted trespass to land, 2) conspired to slander title, and 3) conspired to perpetrate a wild deed scam. They allege that Chicago Title: 1) aided a civil conspiracy through negligent supervision, and 2) aided a civil conspiracy and the commission of a tort. Joint Appendix (“J.A.”) 113-21.
- 3 In 2007, as a part of a broader pleading relating to the 2006 closing, the Moccas asserted a quiet action claim against Chicago Title. J.A. 1860. This claim was voluntarily dismissed without prejudice soon thereafter, J.A.

1872-73, and re-asserted in another pleading in 2009, J.A. 1943. The Moccas agreed to dismiss this claim four months later. J.A. 1956-58.

- 4 Although the motions were styled as motions to dismiss, they included information beyond the face of the complaint. Chicago Title's motion included a memorandum of law, certification by an attorney with hundreds of pages of exhibits, and a Statement of Undisputed Material Facts. J.A. 61. Frumento's motion included a memorandum of law, and a notation that it will rely on "the papers previously filed with the Court in support of Defendant Frumento's initial motion to dismiss." D. Ct. Dkt. No. 65 (Frumento Mot. Aug. 27, 2014), at 2. Frumento's initial motion included a certification by an attorney with hundreds of pages of exhibits. D. Ct. Dkt. No. 14 (Frumento Mot. Apr. 27, 2012). The Moccas' opposition papers to both the Chicago Title and Frumento renewed motions also included certifications and numerous exhibits. The same was true for the reply filings. J.A. 62-63. The District Court issued an order acknowledging the Moccas' motion to strike the Rule 56.1 statement and instructing that "Plaintiffs may incorporate their objections to the 56.1 statement in their brief opposing Chicago Title's Motion to Dismiss." J.A. 60.
- 5 Summary judgment is appropriate "if, drawing all reasonable inferences in favor of the nonmoving party, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." [Young v. Martin](#), 801 F.3d 172, 177 (3d Cir. 2015) (quotation marks and alterations omitted); see also [Fed. R. Civ. P. 56\(a\)](#). In evaluating an appeal from a grant of a motion to dismiss pursuant to Rule 12(b)(6), we "take as true all the factual allegations of the ... Complaint and the reasonable inferences that can be drawn from them, but we disregard legal conclusions [and] ... mere conclusory statements." [Santiago v. Warminster Twp.](#), 629 F.3d 121, 128 (3d Cir. 2010) (internal citations and quotation marks omitted). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." [Id.](#)
- 6 The Moccas do not argue that they were unaware that the District Court was treating the motion dismiss as one for summary judgment. We note that the Moccas were on notice throughout the pendency of the District Court proceedings that materials outside the scope of the complaint would be used to resolve the ECD issue, since all parties appended exhibits to their filings and the District Court ordered that the Moccas may respond to any Rule 56.1 statements by Chicago Title. See [Hilferty v. Shipman](#), 91 F.3d 573, 578-79 (3d Cir. 1996) (finding no error when the appellant had adequate notice of the court's intention to review the motion as one for summary judgment and was given an opportunity to respond).
- 7 A court may take judicial notice of other courts' proceedings "not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity." [S. Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Grp. Ltd.](#), 181 F.3d 410, 426 (3d Cir. 1999).
- 8 We requested supplemental briefing from the parties on the question of whether the Moccas had forfeited this particular challenge. We are satisfied with the Moccas' showing that, in their objections to the R&R, they argued that the Magistrate Judge's conclusions were incorrectly drawn, because doing so necessarily meant they asserted that the Magistrate Judge did not follow the summary judgment standard of drawing factual conclusions in the non-movant's favor. See, e.g., D. Ct. Dkt. No. 93 (Objections to R&R, Apr. 28, 2016), at 1-3 (arguing the Magistrate Judge made improper "implicit conclusion[s]" in favor of the defendants), 4 (arguing that the Magistrate Judge overlooked facts in the Moccas' favor), 26 (challenging the R&R's conclusions as failing to identify specific claims that are time-barred), 28 (arguing that the Magistrate Judge overlooked evidence relating to an unavailable fact witness).
- 9 Although in the following analysis we consider all of the facts proffered and evaluate the District Court's decision de novo and do not afford any preclusive effect to the Superior Court's factual findings, we

nevertheless note that the Moccas are taking a second bite at the apple after receiving an unfavorable decision from the Superior Court on essentially the same issue.

- 10 Moreover, we also agree with the District Court that the relevant issue is not whether the Moccas needed time to draft pleadings and sort through their materials. Under [Rule 4:5-1\(b\)\(2\)](#), the Moccas needed only to file and serve a simple notice.
- 11 We note that before the District Court, the Moccas argued that Williams's law partner Todd Galante could testify as to the same issues. See D. Ct. Dkt. No. 93 (Mocco Objections to R&R, Apr. 28, 2016), at 29. The District Court rejected that argument, concluding that it could not “replace Mr. Williams's lost testimony by virtue of the fact that [Galante] was Mr. Williams's law partner.” J.A. 20. It noted that Galante was a bankruptcy attorney and was not in constant communication with the Moccas’ counsel, as Williams was. J.A. 19-20. Now, the Moccas apparently assert that a number of other people could testify in Williams's stead. Mocco Br. 41. This argument was forfeited and we will not consider it on appeal. See [DIRECTV Inc. v. Seijas](#), 508 F.3d 123, 125 n.1 (3d Cir. 2007).

