

ROBINS KAPLAN LLP

Rayna E. Kessler, Esq.
NJ ID No. 031782010
1325 Avenue of the Americas, Suite 2601
New York, NY 10019
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

THE ZALKIN LAW FIRM, P.C.

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

Attorneys for Plaintiff Corinne 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-5508-21

:
:
: **CIVIL ACTION**

:
:
: **MEMORANDUM OF LAW IN SUPPORT**
: **OF PLAINTIFF CORINNE PANDELO’S**
: **OPPOSITION TO DEFENDANTS’**
: **WATCHTOWER BIBLE AND TRACT**
: **SOCIETY OF NEW YORK, INC., AND**
: **EAST HACKENSACK CONGREGATION**
: **OF JEHOVAH’S WITNESSES’ MOTION**
: **FOR SUMMARY JUDGMENT AND TO**
: **DEFENDANT FAIRLAWN**
: **CONGREGATION OF JEHOVAH’S**
: **WITNESSES’ CROSS-MOTION FOR**
: **SUMMARY JUDGEMENT**
:

TABLE OF CONTENTS

	Page(s)
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
PLAINTIFF’S STATEMENT OF FACTS AND PROCEDURAL HISTORY	4
Plaintiff’s 2021 Action Allegations	5
Plaintiff’s 1994 Action Allegations	6
Plaintiff’s Two Actions.....	7
Plaintiff’s 1994 Litigation File.....	8
ARGUMENT	9
I. Summary Judgment Standard	9
II. Summary Judgment is Inappropriate Because No Undisputed Facts Establish that The Entire Controversy Doctrine Bars Plaintiff’s Claims	10
A. The Entire Controversy Doctrine Does Not Apply Because Plaintiff Was Not Required to Join Watchtower and East Hackensack to Her 1994 Action	10
1. The Evidence Does Not Establish Plaintiff’s Inexcusable Conduct.....	11
2. Defendants Have Not Shown Substantial Prejudice.....	13
B. The Entire Controversy Doctrine Does Not Apply Because the Claims Raised in Plaintiff’s Current Action Are Distinct from the Claims Raised in Her Earlier Action	17
C. Plaintiff’s Action Will Not Result in “Double Recovery”.....	19
D. The Purposes of the Entire Controversy Doctrine Weigh in Favor of Permitting Plaintiff’s 2021 Action to Proceed	21
III. Judicial Estoppel Is Inapplicable to Plaintiff’s Claims	22
CONCLUSION.....	24

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
<u>1707 Realty, LLC v. Revolution Architecture,</u> No. BER-L-2202-17, 2020 WL 8367591 (Super. Ct. Nov. 20, 2020).....	16
<u>700 Highway 33 LLC v. Pollio,</u> 421 N.J. Super. 231 (App. Div. 2011)	14, 16
<u>Baureis v. Summit Tr. Co.,</u> 280 N.J. Super. 154 (App. Div. 1995)	18
<u>Brill v. Guardian Life Ins. Co. of Am.,</u> 142 N.J. 520 (1995)	10, 14
<u>Carrington Mortg. Servs., LLC v. Moore,</u> 464 N.J. Super. 59 (App. Div. 2020)	22
<u>Conrad v. Michelle & John, Inc.,</u> 394 N.J. Super. 1 (App. Div. 2007)	10
<u>DiTrollo v. Antiles,</u> 142 N.J. 253 (1995)	17
<u>Est. of Coop v. AHS Hosp. Corp./Morristown Med. Ctl.,</u> No. A-3713-19, 2022 WL 2309285 (App. Div. June 28, 2022).....	10
<u>Giannakopoulos v. Mid State Mall,</u> 438 N.J. Super. 595 (App. Div. 2014)	23, 25
<u>Glassman v. Friedel,</u> 249 N.J. 199 (2021)	21
<u>Gleason Design Assocs., Inc. v. Pizzelli Assocs., Inc.,</u> No. A-6527-06T1, 2008 WL 5083604 (App. Div. Dec. 4, 2008)	14, 16
<u>Gorjuice Wrap, Inc. v. Okin, Hollander & De Luca, LLP,</u> No. L-2150-07, 2011 WL 92957 (App. Div. Jan. 12, 2011)	25
<u>Hillsborough Twp. Bd. of Educ. v. Faridy Thorne Frayta, P.C.,</u> 321 N.J. Super. 275 (App. Div. 1999)	12, 18
<u>Hobart Bros. Co. v. National Union Fire Ins. Co.,</u> 354 N.J. Super 229 (App. Div. 2002)	11, 14

<u>Hobart Bros. Co. v. National Union Fire Ins. Co.,</u> A-3155-06T2, 2008 WL 2735620 (App. Div. Mar. 25, 2008).....	15
<u>K-Land Corp. No. 28 v. Landis Sewerage Auth.,</u> 173 N.J. 59 (2002)	12, 13, 22, 23
<u>Kent Motor Cars, Inc. v. Reynolds & Reynolds, Co.,</u> 207 N.J. 428 (2011)	11, 17
<u>Kimball Int'l, Inc. v. Northfield Metal Prod.,</u> 334 N.J. Super. 596 (App. Div. 2000)	23, 24, 25
<u>Mocco v. Frumento,</u> 710 Fed. Appx. 535 (3d Cir. 2017).....	17
<u>Monaghan v. Holy Trinity Church, et al.,</u> 275 N.J. Super. 594 (App. Div. 1994)	13
<u>Padron v Watchtower Bible & Tract Socy. of New York, Inc.,</u> 16 Cal App 5th 1246, 225 Cal Rptr 3d 81 (Cal Ct App 2017)	15
<u>Sellers v. Schonfeld,</u> 270 N.J. Super. 424 (App. Div. 1993)	12
<u>Statutes</u>	
N.J.S.A. 2A:53A-7	13
N.J.S.A. 2A:61B-1	23
<u>Other Authorities</u>	
<u>Rule 1:6-3(b)</u>	1
<u>Rule 1:6-6</u>	12
<u>Rule 4:5-1(b)(2)</u>	11
<u>Rule 4:30A</u>	10, 11
<u>Rule 4:46-1</u>	1, 10
<u>Rule 4:46-2</u>	12, 14
<u>Rule 4:46-2(c)</u>	10

Plaintiff CORINNE PANDELO, by and through the undersigned counsel, and in response and opposition to the motion of Defendants Watchtower Bible and Tract Society of New York, Inc. (“Watchtower”), and East Hackensack Congregation of Jehovah’s Witnesses’ (“Congregation”) Motion for Summary Judgment (“Motion”) and the Cross-Motion for Summary Judgment of Defendant Fairlawn Congregation of Jehovah’s Witnesses (“Fairlawn”),¹ states as follows:

PRELIMINARY STATEMENT

The Motion of Watchtower, East Hackensack, and Fairlawn (collectively, “Defendants”) is an unsupported, premature, and meritless attempt to avoid having this action decided on the merits. Defendants’ Motion is supported with nothing but hearsay and conclusory statements, and on this ground alone, the Court must deny it. The Motion is based on Defendants’ *assumptions*—rather than on facts in the record or any sworn statements—about why Plaintiff named certain parties but not others in her earlier action against the perpetrator of the abuse and his wife and their insurance company brought in 1994 (“1994 Action”). Defendants cry prejudice without pointing to a single

¹ Defendant Fairlawn Congregation of Jehovah’s Witnesses (“Fairlawn”) filed a Notice of Cross-Motion for Summary Judgment accompanied by a Certification, letter, and proposed order on September 9, 2022 (Trans ID: LCV20223274901) (“Cross-Motion”). Fairlawn set a return date for its “Cross-Motion” on September 23, 2022, the same return date that the Court set for Watchtower’s and East Hackensack’s Motion. Fairlawn’s filing is, in fact, a separate and distinct motion for summary judgment brought to seek judgment against Plaintiff rather than a “cross-motion.” As counsel for Fairlawn undoubtedly knows, a cross-motion is a motion “filed and served *by the responding party* together with that party’s opposition to the motion and noticed for the same return date only if it relates to the subject matter of the original motion.” Rule 1:6-3(b) (emphasis added). Fairlawn was not a responding party to the Motion—Plaintiff is the responding party. Fairlawn deceptively designated its filing as a “Cross-Motion” in order to circumvent the Rules’ requirement that a motion for summary judgment be served and filed no less than 28 days before the time specified for the return date. Rule 4:46-1. Nonetheless, in an effort to conserve judicial resources, Plaintiff opposes Fairlawn’s “Cross-Motion” in this Opposition without waiving any argument as to the inappropriate and manipulative nature of Fairlawn’s filing. For the purposes of this Opposition, Plaintiff refers to Watchtower’s and East Hackensack’s Motion and Fairlawn’s “Cross-Motion” as the “Motion,” as the “Cross-Motion” adopts by reference the entire record in Defendants’ filing.

concrete fact in the record demonstrating how they are prejudiced by not being named in the 1994 Action. Defendants claim that evidence has been lost and key witnesses have died without explaining what evidence has spoiled and how that supposed lack of evidence will prejudice their ability to prove their defenses or counter Plaintiff's proof (of which she has the burden in this action). Defendants assert that Plaintiff has already recovered from defendants in the 1994 Action and that any recovery in this action will grant her a "windfall"—but there is no evidence in the record that Plaintiff received a single penny from the judgment in the 1994 Action. And there is no evidence in the record from which Defendants can assert that the damages that Plaintiff seeks in this action overlap with the damages that she recovered in her 1994 Action.

Defendants' Motion attempts to evade liability through application of technical legal doctrines in the face of clear legislative intent that institutions like them should be held liable for permitting sexual abuse of children by their agents to thrive for decades. Essentially, Defendants argue that Plaintiff should have sued them in 1994 even though they know that they were statutorily immune from any negligence claims at that time. Now, in 2022, when the Legislature has chosen to abrogate charitable immunity for a case just like this one, and after the Legislature opened the courthouse doors to survivors of childhood sexual abuse just like Plaintiff, Defendants argue that because Plaintiff did not sue them in 1994 (when there were no viable claims that could be brought against Defendants), she should still be barred from suing them. Defendants' Motion is a thinly veiled attempt at cloaking themselves in the immunity that the Legislature has unequivocally revoked.

Defendants' Motion fails on the merits as well. Defendants argue that Plaintiff's claims should be dismissed because the entire controversy doctrine required Plaintiff to sue them as part of her earlier action or face preclusion. Defendants are wrong. First, they have fallen far short of their burden to show the requirements for application of that doctrine to bar claims against parties

not joined to an earlier lawsuit. Nor have Defendants shown that Plaintiff's earlier action and this action arise from a single controversy, a prerequisite for the doctrine to bar Plaintiff's claims. These failures alone mandate denial of Defendants' Motion. Here, Plaintiff's omission of Defendants from the earlier action was excusable, and Defendants will suffer no prejudice from defending the current action. Moreover, Defendants' argument of prejudice cannot be fully evaluated until discovery is complete in this matter. It is impossible to ascertain whether, and to what extent, discovery is unavailable or memories of witnesses have faded due to the passage of time until document discovery is complete and depositions have been taken. And the purposes of the entire controversy doctrine weigh in favor of permitting Plaintiff's claims to go forward. To deny her the opportunity to litigate claims against Defendants which were, as a practical matter, impossible for her to litigate at the time, would be unfair to Plaintiff and antithetical to the Legislature's intent in limiting charitable immunity and opening a window for sexual abuse survivors such as Plaintiff to pursue claims that had been time-barred for decades.

So too must Defendants' argument that Plaintiff's claims are barred by judicial estoppel fail. Plaintiff did not successfully litigate a contrary position in her earlier lawsuit to any positions that she alleges here. Plaintiff's allegations in her earlier lawsuit that her abuser, Pandelo, was responsible for causing her injuries—the only position that Plaintiff “successfully litigated” in that action—is entirely consistent with the position that the institutions that appointed and retained Pandelo as their agent are also responsible for injuring her when they covered up and turned a blind eye to the abuse. In addition, permitting Plaintiff's claims against Defendants to go forward will in no way result in a miscarriage of justice, a required showing for judicial estoppel to bar a claim. Quite the opposite is true. To bar Plaintiff's claims that she never had a full and fair opportunity to litigate against Defendants in 1994, particularly in the face of actions by the Legislature showing an intent to permit survivors of childhood sexual abuse to bring otherwise

time-barred negligence claims against religious institutions, would constitute a grave miscarriage of justice.

For all these reasons, and as developed more fully below, Defendants' Motion should be denied.

PLAINTIFF'S STATEMENT OF FACTS AND PROCEDURAL HISTORY

This Action involves the sexual abuse of Plaintiff Corinne Pandelo by Clement Pandelo in his role as Defendants' agent. Plaintiff filed her Original Complaint in this Action ("2021 Action") on August 18, 2021. See Parker Cert., ¶ 2, Exhibit A ("2021 Complaint"). On October 13, 2021, Plaintiff filed her First Amended Complaint. See Parker Cert., ¶ 3, Exhibit B ("2021 Amended Complaint").

On October 28, 2021, Watchtower filed its Answer to Plaintiff's 2021 Complaint. See the Certification of Rayna E. Kessler, Esq. (hereinafter, "Kessler Cert.") ¶ 3, **Exhibit A** ("Watchtower Answer"). On December 10, 2021, Watchtower filed its Answer to Plaintiff's 2021 Amended Complaint and responded to Plaintiff's Request for Admission and Plaintiff's First Set of Requests for Production of Documents. See Kessler Cert., ¶ 4, **Exhibit B** ("Watchtower's Answer to 2021 Amended Complaint and Responses to RFA's and RFP's"). As of the date of this Opposition, because the parties have not been able to agree on a confidentiality order, Watchtower has not produced any documents. See Kessler Cert., ¶ 5.

On January 31, 2022, East Hackensack filed its Answer to Plaintiff's 2021 Amended Complaint. See Kessler Cert., ¶ 6, **Exhibit C** ("East Hackensack Answer"). On February 7, 2022, East Hackensack responded to Plaintiff's Request for Admissions and First Set of Requests for Production of Documents and produced approximately 31 documents comprised of 338 pages. See Kessler Cert., ¶ 7, **Exhibit D** ("East Hackensack's Responses to RFA's and RFP's").

On August 24, 2022, Plaintiff responded to Defendants' Consolidated First Set of Requests

for Production of Documents. Plaintiff has not produced documents pending the parties' agreement on the Confidentiality Order. See Kessler Cert., ¶ 8, **Exhibit E** ("Plaintiff's Responses to Defendants' RFP's").

On June 29, 2022, after the parties agreed to vacate the default judgment entered against Fairlawn (see Trans ID: LCV20222365110), Fairlawn filed an Answer to Plaintiff's 2021 Amended Complaint. See Kessler Cert., ¶ 24, **Exhibit T** ("Fairlawn Answer"). On August 26, 2022, Plaintiff responded to Fairlawn's Request for Production of Documents. See Kessler Cert., ¶ 25, **Exhibit U** ("Plaintiff's Responses to Fairlawn Congregation's RFP's").

The parties have agreed that responses to all interrogatories that have been served will be due on October 3, 2022. See Kessler Cert., ¶ 23.

Plaintiff's 2021 Action Allegations

This Action seeks redress for Defendants' role in allowing Clement Pandelo to sexually abuse Plaintiff for over eight years while serving as Defendants' agent. The allegations in Plaintiff's 2021 Action include the following:

- Clement Pandelo was assigned and authorized by Defendant Watchtower to serve as a ministerial servant at East Hackensack and Fairlawn, and therefore acted as Defendants' agent. Clement Pandelo's duties were authorized by Defendants Watchtower, East Hackensack, Fairlawn and included regular, frequent, and supervisory contact with children who attended East Hackensack and Fairlawn. As a result of their agency relationship, Defendants had a special relationship with Clement Pandelo, and had a duty to competently investigate and supervise him. Defendants also had the right to control the specific actions contributing to Clement Pandelo's abuse of Plaintiff. See Plaintiff's Counterstatement of Material Facts (hereinafter, "CSUMF") ¶¶ 4-6.
- Defendants also owed Plaintiff a special duty to protect her from Clement Pandelo's sexual criminal acts because they held themselves out as being able to provide a safe environment for children, invited Plaintiff onto their property, and entered into an implied/express duty to supervise Plaintiff as a minor at their facilities. PI's CSUMF ¶ 7.
- Defendants knew that Clement Pandelo had abused at least three minors (including Plaintiff) prior to the last act of abuse against Plaintiff, yet Defendants did not

appropriately discipline Clement Pandelo and negligently retained him as their agent. PI's CSUMF ¶¶ 8-11.

- Defendants knew of the prevalence of child sexual abuse by their agents within their organization and were negligent in failing to establish adequate training programs for their agents and minor congregants to prevent the occurrence of child sexual abuse. PI's CSUMF ¶ 12.
- Watchtower's policies and practices that each local Jehovah's Witness congregation was required to follow mandated secrecy regarding childhood sexual abuse, which protected accused and admitted abusers (such as Clement Pandelo) from criminal prosecution and increased the risk of child abuse. PI's CSUMF ¶ 13.
- Defendants aided and abetted Clement Pandelo by failing to act affirmatively to prevent, detect, report, or investigate him, by declining to contact law enforcement about Clement Pandelo's abuse of Plaintiff prior to the conclusion of his abuse of Plaintiff, and by covering up his sexual criminal acts. See PI's CSUMF ¶ 14.

Plaintiff's 1994 Action Allegations

In 1994, Plaintiff sued Clement Pandelo and his wife, Olga Pandelo, seeking damages for Clement Pandelo's sexual abuse of Plaintiff.² Plaintiff's 1994 Litigation Amended Complaint included the following allegations:

- Clement Pandelo and Olga Pandelo owed Plaintiff a special duty of care "[b]y reason of the special familial relationship that existed" and because they were her caretakers during the times Plaintiff's parents would leave her in their care. See Parker Cert., ¶ 4, Exhibit C ("1994 Litigation Amended Complaint"), First Count.
- Clement Pandelo engaged in physical and sexual touching and fondling of Plaintiff on various dates between August 1979 and August 12, 1988, which he knew or should have known would result in emotional distress to Plaintiff. See Parker Cert., ¶ 4, Exhibit C ("1994 Litigation Amended Complaint"), First Count.
- Olga Pandelo knew or should have known of the propensity of her husband, Clement Pandelo, to engage in sexual criminal acts with minors, and breached her special duty to Plaintiff when she negligently failed to protect Plaintiff from Clement Pandelo while

² "[T]he [1994] litigation spiraled into insurance carriers and other participants" including Plaintiff's parents, Carl and Barbara Pandelo, whom Olga Pandelo impleaded in her Answer to Plaintiff's Second Amended Complaint. See Parker Cert., ¶ 6, **Exhibit E** ("Court's Order, dated April 12, 2022 (Transaction ID LCV20221485629)") at 2; see also Kessler Cert., ¶ 19, **Exhibit P** ("Order Dated May 24, 1996"). Plaintiff's parents were voluntarily dismissed from the 1994 litigation on February 4, 1999. See Kessler Cert., ¶ 9, **Exhibit F** ("1994 Action Stipulation of Dismissal").

Plaintiff was in Olga Pandelo’s care. See Parker Cert., ¶ 4, Exhibit C (“1994 Litigation Amended Complaint”), Third and Fourth Counts.

- Clement Pandelo intentionally inflicted emotional distress on Plaintiff. See Parker Cert., ¶ 4, Exhibit C (“1994 Litigation Amended Complaint”), Fifth Count.
- Olga Pandelo’s failure to protect Plaintiff from Clement Pandelo’s sexual criminal acts constituted intentional, egregious, or reckless disregard for the welfare of Plaintiff. See Parker Cert., ¶ 4, Exhibit C (“1994 Litigation Amended Complaint”), Sixth Count.

On December 23, 1999, a jury awarded Plaintiff \$2,278,874.93 in damages for Clement Pandelo’s abuse of her but found no liability on the part of Olga Pandelo. See Kessler Cert., ¶ 10, **Exhibit G** (“Order of Judgment”). In particular, the jury awarded \$1,356,750.00 in damages for Plaintiff’s underlying claims, \$500,000 in punitive damages, and \$422,124.93 in interest dating from January 18, 1994, through December 31, 1999—all against Clement Pandelo. See Kessler Cert., ¶ 10, **Exhibit G** (“Order of Judgment”). Plaintiff appealed her 1994 action on several grounds, including that the jury found that Olga Pandelo was not liable. See Parker Cert., ¶ 5, Exhibit D, (“Appellate File”), at 3. The Appellate Division affirmed the judgment “in all respects.” See Parker Cert., ¶ 5 Exhibit D (“Appellate File”), at 5.

Plaintiff’s Two Actions

Plaintiff’s 1994 Action was a lawsuit against the perpetrator of her abuse, Clement Pandelo, and his wife, Olga Pandelo. Plaintiff’s alleged damages in that case were for the injuries that the abuse caused her. See Parker Cert., ¶ 4, Exhibit C (“1994 Litigation Amended Complaint”). Plaintiff’s 2021 Action seeks to hold the institutions that appointed and retained Clement Pandelo, a known child molester, responsible for their roles in turning a blind eye to Clement Pandelo’s sexual abuse of children, which allowed his abuse of Plaintiff to continue for over eight years, and for failing to institute policies and procedures to protect children in Jehovah’s Witness congregations from the prevalent issue of child sexual abuse by their appointed agents.

Additionally, because the defendants’ relationships to Plaintiff differ, Plaintiff’s 1994 and

2021 Actions allege different duties of care. Whereas Clement Pandelo and Olga Pandelo owed Plaintiff a special duty in their role as her grandparents and caretakers, Defendants owed Plaintiff a duty because they appointed Clement Pandelo as their agent, held their agents out as safe to work with children, and invited Plaintiff onto the premises. See PI's CSUMF ¶¶ 2, 5-7.

As a result, Plaintiff's 1994 and 2021 Actions allege different breaches of those duties of care. In her 1994 Action, Plaintiff alleged that Clement Pandelo and Olga Pandelo breached their duties of care when Clement abused Plaintiff. See PI's CSUMF ¶ 3. By contrast, in her 2021 Action, Plaintiff alleges that Defendants failed to competently supervise, investigate, and discipline Clement Pandelo when he was their agent, and as such, facilitated his abuse when they declined to contact law enforcement and covered up his sexual criminal acts of which they were aware prior to the conclusion of Plaintiff's abuse. PI's CSUMF ¶¶ 8-11. Plaintiff also alleges that Defendants failed to institute policies, practices, and trainings to prevent child abuse. PI's CSUMF ¶¶ 12-14.

While Clement Pandelo's sexual abuse is relevant to both of Plaintiff's lawsuits, the injuries and damages alleged in Plaintiff's 1994 and 2021 Actions were based on each individual defendant's duties and breaches. PI's CSUMF ¶ 16. At this time, there is no evidence in the record as to whether the damages that Plaintiff seeks in her 2021 Action are coextensive with the damages that she was awarded in her 1994 Action.

Plaintiff's 1994 Litigation File

On February 9, 2022, this Court entered an Order following Defendants' uncontested motion for production that Plaintiff's entire 1994 Action be produced to all parties in this case only after the Court "conduct[ed] an *in-camera* review to determine what is discoverable pursuant to Rule [sic]." See Kessler Cert., ¶ 11, **Exhibit H** ("Order on January 19, 2022 Motion"). After an *in-camera* review, on April 12, 2022, this Court concluded that "there [was] nothing containing

any secrets or information that should be withheld or protected” in the 1994 case file and the next day, the entire file for Plaintiff’s 1994 Action was produced to all parties in this Action by the Bergen County Superior Court.

Contrary to Defendants’ misrepresentations of the Court’s order, the Court did not find that Plaintiff’s claims in the 2021 Action were “duplicative” of Plaintiff’s already-litigated claims. That word is found nowhere in the Court’s order and no reasonable inference from the order could sustain that interpretation. The Court found that the court file from Plaintiff’s 1994 Action should be produced in her 2021 Action because Plaintiff’s prior claims were “based on very similar or the same underlying wrongful acts in this litigation.” See Parker Cert., ¶ 6, Exhibit E at 5. In other words, the Court found that the court file from the 1994 Action was *relevant* to this action. Plaintiff is not challenging this simple premise.

ARGUMENT

I. Summary Judgment Standard

A court should only grant summary judgment where “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the non-moving party is entitled to a judgment or order as a matter of law.” R. 4:46-2(c). The court “must accept as true all evidence which supports the position of the party defending against the motion and must accord him [or her] the benefit of all legitimate inferences which can be deduced therefrom, and if reasonable minds could differ, the motion must be denied.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 535 (1995). When deciding a summary judgment motion, a court must not weigh the evidence or resolve credibility disputes. “These functions are uniquely and exclusively performed by a jury.” Conrad v. Michelle & John, Inc., 394 N.J. Super. 1, 13 (App. Div. 2007).

“Although Rule 4:46-1 permits a party to move for summary judgment before the close of discovery, [g]enerally, summary judgment is inappropriate prior to the completion of discovery.” Est. of Coop v. AHS Hosp. Corp./Morristown Med. Ctl., No. A-3713-19, 2022 WL 2309285, at *4 (App. Div. June 28, 2022) (internal citations and quotation marks omitted). See Kessler Cert., ¶ 12, **Exhibit I**.

II. Summary Judgment is Inappropriate Because No Undisputed Facts Establish that The Entire Controversy Doctrine Bars Plaintiff’s Claims

A. The Entire Controversy Doctrine Does Not Apply Because Plaintiff Was Not Required to Join Watchtower and East Hackensack to Her 1994 Action

The entire controversy doctrine in its current form focuses on mandatory joinder of claims rather than parties. While Defendants deceptively focus their Motion on Rule 4:30A, that rule addresses preclusion of claims that were required to be joined against the same parties to an earlier lawsuit, not successive suits against different parties. Rule 4:30A provides that “non-joinder of *claims* required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine.” Rule 4:30A (emphasis added). Rule 4:30A was amended in 1998 to restrict the scope of the entire controversy doctrine to non-joinder of *claims*; the earlier version of the rule established preclusion as a remedy for non-joinder of claims *and* parties. See Hobart Bros. Co. v. National Union Fire Ins. Co., 354 N.J. Super 229, 242 (App. Div. 2002).

Following the amendment of Rule 4:30A, preclusion of subsequent actions against parties that were not sued in an earlier action has become severely circumscribed. “Mandatory party joinder under the entire controversy doctrine has been eliminated, and preclusion of a successive action against a person not a party to the first action has been abrogated except in special situations involving both inexcusable conduct ... and substantial prejudice to the non-party resulting from

omission from the first suit.” Id. This principle has been codified in Rule 4:5-1(b)(2) since 1998.³ Rule 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.”). The party invoking the doctrine has the burden of proof on those issues. Hobart Bros. Co., 354 N.J. Super. at 242 (“New Jersey having abandoned mandatory party joinder, the party invoking the entire controversy doctrine has the burden of establishing both inexcusable conduct and substantial prejudice.”). The Supreme Court of New Jersey has held that Rule 4:5-1(b)(2) “is consistent with our general preference for addressing disputes on the merits and reserving dismissal for matters in which those lesser sanctions are inadequate.” Kent Motor Cars, Inc. v. Reynolds & Reynolds, Co., 207 N.J. 428, 447 (2011).

1. The Evidence Does Not Establish Plaintiff’s Inexcusable Conduct

Defendants have not met their burden to show that there is no genuine issue of material fact that Plaintiff’s conduct is “inexcusable.” Defendants cannot point to a single undisputed fact showing that Plaintiff’s choice of parties in her 1994 Action or in the 2021 Action was inexcusable. Instead, Defendants claim without support that mere similarity between allegations and claims of damages in Plaintiff’s 1994 Action and her 2021 Action constitutes “inexcusable conduct.” (Defs. Watchtower and Each Hackensack’s Brief in Support of their Motion for Summary Judgment (“Br.”) at 7-9.) But similarity of facts underlying two successive actions is not the only requirement to bar subsequent claims against a party not named in an earlier suit. Nor do Defendants cite to any legal authority in support of their rudimentary argument. Defendants also fail to cite any fact

³ Notably, Rule 4:5-1(b)(2) was not in effect at the time Plaintiff filed her earlier lawsuit in 1994 or her amended complaint in that lawsuit in 1996, and therefore, Plaintiff was not required to comply with its dictates.

or affidavit supporting their conclusory allegation that Plaintiff's choice of defendants in the 1994 Action was the result of an "informed decision." (Br. at 1.) This failure alone, which repeats itself over and over in Defendants' Motion, mandates its denial. See, e.g., Rule 1:6-6; R. 4:46-2; Sellers v. Schonfeld, 270 N.J. Super. 424, 427 (App. Div. 1993) ("only the affidavit together with properly certified depositions, answers to interrogatories, or admissions can supply facts outside the record that are not judicially noticeable").

New Jersey courts have interpreted "inexcusable conduct" to require a showing of bad faith or an attempt to manipulate the judicial system by reserving claims against certain parties not joined in an earlier action. "The leading cases establishing and applying the entire controversy doctrine as a bar to the subsequent assertion of omitted claims appear to have involved deliberate and calculated claim-splitting strategies designed to frustrate the orderly administration of justice, as opposed to an innocent omission by an uninformed litigant." K-Land Corp. No. 28 v. Landis Sewerage Auth., 173 N.J. 59, 70 (2002); see also Hillsborough Twp. Bd. of Educ. v. Faridy Thorne Frayta, P.C., 321 N.J. Super. 275, 284–85 (App. Div. 1999) (holding that the entire controversy doctrine bars "cases involving piece-meal litigation where parties for strategic reasons have withheld claims concerning the underlying action, seeking two bites at the apple"). Defendants can point to no undisputed facts supporting their cry of bad faith or strategic manipulation by Plaintiff, mandating rejection of their argument on this point.

In fact, the law in New Jersey at the time of Plaintiff's 1994 Action prevented Plaintiff from being able to sue Defendants successfully. The entire controversy doctrine does not apply to bar claims "either unknown, unrisen or unaccrued at the time of the original action." K-Land Corp. No. 28, 173 N.J. at 70. At the time of the 1994 Action, no viable claim had arisen against Defendants. In New Jersey, claims for negligence against nonprofit institutions organized for religious, charitable and other exempt purposes, including churches, brought by a beneficiary (*i.e.*,

congregant) were prohibited under the New Jersey Charitable Immunity Act (N.J.S.A. 2A:53A-7, et seq.). See, e.g., Monaghan v. Holy Trinity Church, et al., 275 N.J. Super. 594 (App. Div. 1994). In 2006, after Plaintiff's earlier lawsuit had been resolved, the New Jersey Legislature amended the Act to exclude from immunity any claim that "negligent hiring, supervision or retention of any employee, agent or servant resulted in a sexual offense being committed against a person under the age of eighteen (18) who is a beneficiary of the nonprofit organization." P.L.2005, c.264, s.2 (C.2A:53A-7.5). Notably, this amendment was not made retroactive until 2019. S. 477 (2018).⁴ Consequently, until years after Plaintiff's lawsuit had been resolved, Plaintiff's claims of negligence against Watchtower, East Hackensack, and Fairlawn would have been barred by statute. As a result, Defendants have not established any undisputed material facts showing that Plaintiff's decision not to name these entities as Defendants in her earlier lawsuit was inexcusable.

2. Defendants Have Not Shown Substantial Prejudice

Not only have Defendants failed to show Plaintiff's inexcusable conduct, but they have also failed to meet their burden to establish any undisputed material facts establishing that Plaintiff's current action causes them substantial prejudice as they are required to do. Hobart Bros. Co., 354 N.J. Super. at 242. Summary judgment may be granted only when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show 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." Rule 4:46-2; Brill, 142 N.J. at 528-29.!

⁴ Watchtower has been registered as a not-for-profit corporation in the State of New York since 1909. See Kessler Cert., ¶ 13, **Exhibit J**, ("Watchtower's NY Corporation Filing"). While Plaintiff alleged that she does not know what corporate entity East Hackensack and Fairlawn are (See Parker Cert., ¶ 3, **Exhibit B** ("2021 Amended Complaint"), at ¶ 10, 29), underscoring the need for more discovery in this action prior to a determination that Defendants are entitled to judgment as a matter of law, as a religious congregation, it can be inferred that Congregation would have been subject to the protections of New Jersey's Charitable Immunity Act.

“Substantial prejudice means substantial prejudice in maintaining [a] defense.” Gleason Design Assocs., Inc. v. Pizzelli Assocs., Inc., No. A-6527-06T1, 2008 WL 5083604, at *7 (App. Div. Dec. 4, 2008) (internal quotation marks omitted). See Kessler Cert., ¶ 14, **Exhibit K**.

Defendants’ sole support for their allegations of substantial prejudice consists of cursory assertions of “the loss of witnesses, the loss of evidence, fading memories and the like,” including Plaintiff’s own memory. (Br. at 7, 8, 9.) (“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.”). In a sloppy attempt to convince the Court to dismiss Plaintiff’s current action, a “remedy of last resort” (700 Highway 33 LLC v. Pollio, 421 N.J. Super. 231, 237 (App. Div. 2011)), Defendants fail to identify a single piece of evidence that has been lost or a single witness whose memory that has faded since the time of Plaintiff’s earlier action. Defendants have failed to support their hearsay assertions with even one citation to a pleading, deposition transcript, discovery response, admission or a single affidavit. The Court should not reward Defendants’ dilatory behavior by granting their motion for summary judgment. Even Defendants’ unsupported allegation that the perpetrator, Clement Pandelo, has died (Br. at 9) is devoid of any explanation of *how* the alleged loss of Pandelo’s testimony will prejudice Defendants. Defendants’ failure to point to specific undisputed facts requires that Defendants’ Motion be denied. See Hobart Bros. Co. v. National Union Fire Ins. Co., A-3155-06T2, 2008 WL 2735620, at *8 (App. Div. Mar. 25, 2008) (“Mere speculation of prejudice... is simply not enough.”).⁵ See Kessler Cert., ¶ 15, **Exhibit**

⁵ The Court should reject any attempt by Defendants to cure their failure to support their assertions in their Motion in their reply brief. Defendants’ deficient Motion is the product of either sloppy lawyering or intentional gamesmanship. The Court should reward neither by accepting belated affidavits or assertions of undisputed facts not raised in Defendants’ Motion and therefore, to which Plaintiff will not have a chance to respond. It would be borderline sanctionable behavior for

L.

Even if Defendants had properly supported their assertions of substantial prejudice, and in the event that they attempt to do so in their reply brief, they would not be able to establish substantial prejudice. Defendants' cry of prejudice boils down to the passage of time between Plaintiff's earlier action and her current action. (Br. at 1, 7, 9.) Yet "[d]elay alone does not serve to create substantial prejudice." Gleason, 2008 WL 5083604, at *7. See Kessler Cert., ¶ 14, **Exhibit K**. "[I]t is the lack of availability of information which results from the delay that is, for the most part, determinative of the issue of substantial prejudice." Id. As explained above, Defendants have not pointed to a single undisputed fact showing that they have been deprived of information to the extent that they will be substantially prejudiced as a result of the passage of time. Nor can they. Without testing Plaintiff's memory in a deposition, Defendants cannot assert, as they have attempted to do, that Plaintiff's memory has faded to a prejudicial extent. And the death of Clement Pandelo, were Defendants to have established such a fact, does not prejudice

a party to flout the rules of court by withholding supporting facts until a reply brief, thus depriving the opposing party with a chance to contest the facts. Indeed, if Defendants attempt to submit affidavits with their reply brief or support their conclusory allegations with record facts, it would be unfair not to permit Plaintiff the chance to depose their affiants and respond to their newly raised support. If intentional, this behavior of Watchtower (which East Hackensack and Fairlawn joined) would come as no surprise. As one appellate court acknowledged in discussing Watchtower's litigation tactics:

Watchtower has abused the discovery process. It has zealously advocated its position and lost multiple times. Yet, it cavalierly refuses to acknowledge the consequences of these losses and the validity of the court's orders... On the record before us, we are satisfied that the superior court's order was not arbitrary, capricious, or whimsical. To the contrary, the superior court has shown great patience and flexibility in dealing with a recalcitrant litigant who refuses to follow valid orders and merely reiterates losing arguments.

Padron v Watchtower Bible & Tract Socy. of New York, Inc., 16 Cal App 5th 1246, 1271-72, 225 Cal Rptr 3d 81, 104 (Cal Ct App 2017). The court further admonished, "Such gamesmanship has no place in civil discovery." Id. at 1269, n. 9. This Court should similarly refuse to indulge Watchtower's gamesmanship.

Defendants. Defendants have not asserted, nor can they, that Pandelo's live testimony is needed to prove any of Defendants' affirmative defenses. Unlike a case that Defendants cite, 1707 Realty, LLC v. Revolution Architecture, Pandelo is not a "key witness" for Plaintiff in her current action. No. BER-L-2202-17, 2020 WL 8367591, at *7 (Super. Ct. Nov. 20, 2020). See Kessler Cert., ¶ 16, **Exhibit M**. And, unlike in 1707 Realty, in which the court found that testimony of a deceased witness was critical to plaintiff's case because there was no record of the witness' observations or testimony, Pandelo was deposed in Plaintiff's earlier action on December 16, 1997, thus making a record of his testimony available to Defendants. See Kessler Cert., ¶ 17, **Exhibit N** ("Deposition Transcript of CP-3"). Therefore, Defendants have not shown (and cannot show) that any unavailability of Pandelo will prejudice their ability to prove their defenses.

Incredibly, Defendants' own authority supports Plaintiff's position. In 700 Highway 33 LLC v. Pollio, 421 N.J. Super. at 237, the court reversed the lower court's dismissal of claims on the basis of the entire controversy doctrine, holding that the record did not support a finding that defendants in that action were substantially prejudiced. As Defendants have failed to provide the Court with sufficient support for their claims of inexcusable conduct and substantial prejudice, this Court should reach the same outcome. In Kent Motor Cars, Inc. v. Reynolds & Reynolds, Co., 207 N.J. at 448-449, the Supreme Court of New Jersey rejected defendant's argument that the loss or destruction of documents since the time of an earlier action constituted substantial prejudice. The Court explained that defendants could not be prejudiced by any loss or destruction of documents because plaintiffs bear the burden of proving their case, and any prejudice from the loss or destruction of documents would "redound, in all likelihood, to the detriment of the [plaintiffs] rather than to [defendant] because they will lack the proofs that those documents might have revealed." Id. at 449. Similarly, in this case, any loss of witnesses, documents, or other evidence due to the passage of time since the 1994 Action will, if anything, prejudice Plaintiff, not

Defendants. Consequently, Defendants' argument on this point should be rejected.⁶

B. The Entire Controversy Doctrine Does Not Apply Because the Claims Raised in Plaintiff's Current Action Are Distinct from the Claims Raised in Her Earlier Action

Defendants' Motion should also be denied because they have not established undisputed facts establishing that Plaintiff's earlier action and her current action are "aspects of a single larger controversy" arising from "interrelated facts." DiTrollo v. Antiles, 142 N.J. 253, 271 (1995).

As one court held, the entire controversy doctrine is focused on the *consequences* of a plaintiff bringing two separate actions rather than a myopic view of whether the facts underlying the two actions are similar or identical.

That is to say, an evaluation must be made of each potential component of a particular controversy to determine the *likely consequences* of the omission of that component from the action and its reservation for litigation another day. If those consequences are likely to mean that the litigants in the action as framed will, after final judgment therein is entered, be likely to have to engage in additional litigation in order to conclusively dispose of their respective bundles of rights and liabilities which derive from a single transaction or related series of transactions, then the omitted component must be regarded as constituting an element of the minimum mandatory unit of litigation.

Baureis v. Summit Tr. Co., 280 N.J. Super. 154, 158 (App. Div. 1995). As one court put it, "[t]he fact that the various claims may have arisen out of the same construction job should not be the determinative factor." Hillsborough Township Board of Education, 321 N.J. Super. at 286. Here, Defendants can point to no undisputed facts establishing *any* consequences, let alone adverse consequences, from Plaintiff's bringing an earlier lawsuit against different defendants. This is because there are no such consequences. The lack of consequences is underlined by the absence

⁶ In Mocco v. Frumento, 710 Fed. Appx. 535 (3d Cir. 2017), a federal court decision which Defendants attached to their Motion as Exhibit G but miscited repeatedly (citing to the Report and Recommendation of the Magistrate Judge of the District of New Jersey, No. 12-1458 (ES) (JAD), 2016 WL 10585998 (D.N.J. 2016)), the Court's affirmance that the death of a witness constituted substantial prejudice was only one factor in a fact-heavy analysis in which defendants had properly supported their claims of substantial prejudice. Mocco v. Frumento, 710 Fed. Appx. at 544. See Kessler Cert., ¶ 18, **Exhibit O**.

of any fact in the record showing that, after final judgment was entered in Plaintiff's 1994 Action, defendants in that litigation engaged in any additional litigation to conclusively dispose of their rights and liabilities.

Here, Plaintiff's two actions arise from two different controversies. Plaintiff's 1994 Action sought to hold the perpetrator, Pandelo, liable for sexually abusing Plaintiff for over eight years. See Parker Cert., ¶ 4, Exhibit C ("1994 Litigation Amended Complaint"), First, Fifth, Eighth and Ninth Counts. Plaintiff also sought to hold Pandelo's wife Olga Pandelo liable for knowingly permitting Pandelo to abuse her. See Parker Cert., ¶ 4, Exhibit C ("1994 Litigation Amended Complaint"), Second, Third, Fourth, and Sixth Counts. Contrary to Defendants' misrepresentations, *Plaintiff* did not seek to hold her parents liable for her abuse—Olga Pandelo impleaded them as defendants and the Court ordered that they be added as defendants. See Kessler Cert., ¶ 19, **Exhibit P** ("Order Dated May 24, 1996"); Kessler Cert., ¶ 20, **Exhibit Q** ("OP-1 Answer to Second Amended Complaint"), at 8-9. In order to prove her claims of intentional and negligent conduct in her 1994 Action, Plaintiff had to prove that Pandelo sexually abused her and thereby caused her injuries, and that her grandmother owed her a duty and knew or should have known that Pandelo was sexually abusing her and did nothing to stop the abuse, thereby causing her injuries.

Plaintiff's current action seeks to hold Watchtower, East Hackensack, and Fairlawn responsible for negligently hiring, retaining, and supervising Pandelo, whom they knew or should have known was a child molester, and for failing to properly supervise, protect, and train Plaintiff as a minor congregant. See Parker Cert., ¶ 3, Exhibit B ("2021 Amended Complaint"). While Plaintiff must prove that Pandelo sexually abused her as part of the 2021 Action, the claims in this action arise from the negligence of Watchtower, East Hackensack, and Fairlawn rather than from the sexual abuse itself. In other words, regardless of the underlying conduct alleged in both

actions, the 2021 Action is a separate controversy involving the negligence of the institutions that hired, retained, and supervised Pandelo rather than a case solely alleging sexual abuse by a perpetrator and his wife's turning a blind eye to this abuse brought against the perpetrator and his wife.

Ironically, Defendants wring their hands over Plaintiff's "senseless waste of judicial resources" while bringing this premature and unsupported Motion which teeters dangerously close to the boundary of a sanctionable filing. Yet a jury trial of Plaintiff's 1994 Action against the only parties that Plaintiff could maintain successful claims against at that time was not a waste of judicial resources. And Plaintiff's 2021 Action seeking redress from the institutions that facilitated her abuse following a change in the law permitting her to succeed on such claims also does not waste judicial resources. Surely, the New Jersey Legislature considered the likelihood that institutions would face lawsuits for abuse that had been the subject of earlier proceedings, particularly in light of the Legislature's action in 2006 that narrowed the scope of immunity for those institutions. It is not Defendants' role to try to circumvent the Legislature's decisions or to dictate to this Court how to allocate its resources, particularly as they greedily consume such resources and time to no ascertainable end.

C. Plaintiff's Action Will Not Result in "Double Recovery"

Any recovery in the 2021 Action will not constitute "double recovery" for Plaintiff. As an initial matter, Defendants cannot point to any fact in the record (let alone an undisputed fact) showing how much Plaintiff actually recovered of the judgment awarded to her in her 1994 Action. Hence, any cry of "double recovery" is baseless and should be disregarded.

Defendants' assertion that "Plaintiff's 2021 claims seek double recovery for the same damages Plaintiff recovered as a result of the 1994 litigation" (Br. at 7) is mere speculation not supported by a single fact or affidavit. Defendants merely *assume* that Plaintiff seeks the "same

damages” in this case. Yet, without discovery (particularly without expert discovery), Defendants’ assertion is mere *ipse dixit*. Discovery in this case—specifically Plaintiff’s expert testimony and Plaintiff’s own testimony—will reveal the precise injuries and damages that Plaintiff claims resulted from Defendants’ conduct as alleged in the 2021 Action. These injuries and damages may be separate and distinct from the injuries and damages that defendants in the 1994 Action were found to have caused. Consequently, Defendants’ argument on this point should be disregarded, and the Motion should be denied as premature.

Restatement (Third) of Torts § 25 supports Plaintiff’s position.⁷ Comment b to that section explains that a claim is not satisfied against all tortfeasors in certain circumstances, which apply here:

In some instances, the injuries for which the plaintiff brings a second suit may not be entirely congruent with the injuries for which the plaintiff recovered in the first suit. Similarly, in some instances, the remedies available for the claims made by the plaintiff in a second suit may be broader than the remedies available for the claims asserted in the first suit. Satisfaction of a claim cannot occur unless the injuries sued upon are identical and the remedies available for the claims are the same.

Restatement (Third) of Torts § 25, cmt. b. Here, there are no undisputed facts that establish that the injuries for which Plaintiff brings this action are “entirely congruent” with the injuries for which she was awarded judgment in the first action. Indeed, expert discovery is likely to reveal that Plaintiff suffered distinct injuries from those she was awarded judgment for in the earlier action. And the remedies available to Plaintiff in this suit are broader than the remedies that were available to Plaintiff in her first suit. Plaintiff seeks punitive damages against Defendants (which were not available to her in her earlier action) as well as damages for the unique ways that Defendants’ acts injured her (as opposed to the ways in which Pandelo’s acts injured her). See

⁷ New Jersey follows the Restatement (Third) of Torts. See, e.g., Glassman v. Friedel, 249 N.J. 199, 222 (2021).

Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶¶ 244, 252, 283, 290, 298, 311, 313.

D. The Purposes of the Entire Controversy Doctrine Weigh in Favor of Permitting Plaintiff’s 2021 Action to Proceed

Defendants’ Motion should be denied because Defendants have not met (and cannot meet) their burden to show that the entire controversy doctrine applies to Plaintiffs’ 2021 Action, as explained above. However, even if the Court finds that the entire controversy doctrine does apply, the Court should use its discretion to permit Plaintiff’s claims to proceed in the interest of fairness. “The twin pillars of the entire controversy doctrine are fairness to the parties and fairness to the system of judicial administration.” K-Land Corp. No. 28, 173 N.J. at 73. In considering fairness to the party whose claim is sought to be barred, a court must consider whether the claimant “had a fair and reasonable opportunity to have fully litigated that claim in the original action.” Id. “[T]he equitable nature of the doctrine[] bar[s] its application where to do so would be unfair in the totality of the circumstances and would not promote any of its objectives, namely, the promotion of conclusive determinations, party fairness, and judicial economy and efficiency.” Id. at 70 (internal citations omitted). “A court must apply the doctrine in accordance with equitable principles, with careful attention to the facts of a given case.” Carrington Mortg. Servs., LLC v. Moore, 464 N.J. Super. 59, 68 (App. Div. 2020). Preclusion should be a “remedy of last resort.” K-Land Corp. No. 28, 173 N.J. at 73 (internal citations omitted).

Plaintiff suffered unspeakable acts of sexual abuse at the hands of Pandelo, an appointed agent of Defendants, for over eight years. Plaintiff alleges that Defendants knew of Pandelo’s dangerous propensities and that he posed a danger to children, including to herself, and were informed of his molestation of young girls no less than three times prior to the end of his sexual abuse of Plaintiff. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶¶ 39-42, 44-45, 49-53. Nonetheless, Defendants swept Pandelo’s sexual abuse of children under the rug. See

Parker Cert., 3, Exhibit B (“2021 Amended Complaint”), at ¶ 51. Plaintiff sought redress against Pandelo and his wife in 1994 because at the time, those individuals were the only viable parties from whom she could recover for the damages that Pandelo’s sexual abuse had wrought on her. Since the time of her first lawsuit, New Jersey’s legislature amended the Charitable Immunity Act to permit claims of negligence against nonprofit organizations for sexual abuse of their agents perpetrated against children, reflecting a growing awareness of the roles that nonprofit organizations played in allowing child sexual abuse to flourish within their ranks. P.L.2005, c.264, s.2 (C.2A:53A-7.5). Since that time, New Jersey’s legislature also passed a statute permitting survivors of childhood sexual abuse, like Plaintiff, to bring suit against their abusers and/or the institutions that employed or appointed them regardless of when the abuse occurred for a two-year window. N.J.S.A. 2A:61B-1. To penalize Plaintiff for not naming Defendants in her 1994 Action when New Jersey law mandated dismissal of her claims against Defendants at that time would be manifestly unfair. Plaintiff did not have a “fair and reasonable opportunity” to fully litigate claims against Defendants in her 1994 Action, and therefore, to bar her claims against Defendants now would run afoul of the purposes of the entire controversy doctrine. See K-Land Corp. No. 28, 173 N.J. at 73. Doing so would also permit Defendants to cloak their plea for charitable immunity in the guise of another legal doctrine. To dismiss Plaintiff’s 2021 Action would deprive Plaintiff of her only opportunity to hold Defendants accountable for their role in her injuries.

III. Judicial Estoppel Is Inapplicable to Plaintiff’s Claims

The judicial estoppel doctrine exists to protect “the integrity of the judicial process.” Kimball Int’l, Inc. v. Northfield Metal Prod., 334 N.J. Super. 596, 606 (App. Div. 2000). “A threat to the integrity of the judicial system sufficient to invoke the judicial estoppel doctrine only arises when a party advocates a position contrary to a position it successfully asserted in the same or a prior proceeding.” Id. Judicial estoppel is an “extraordinary remedy that courts invoke only when

a party's inconsistent behavior will otherwise result in a miscarriage of justice.” Id. at 608; Giannakopoulos v. Mid State Mall, 438 N.J. Super. 595, 613 (App. Div. 2014).

Judicial estoppel does not apply to bar Plaintiff’s claims here, nor have Defendants established by reference to undisputed facts that it does apply. *First*, Defendants are wrong that Plaintiff “successfully litigated” a position that her parents were liable for her injuries in her 1994 Action. (Br. at 11.) Olga Pandelo, whom Plaintiff named as a defendant in the 1994 Action, impleaded Barbara and Carl Pandelo. See Kessler Cert., ¶ 19, **Exhibit P** (“Order Dated May 24, 1996”); Kessler Cert., ¶ 20, **Exhibit Q** (“OP-1 Answer Second Amended Complaint”), at 8-9. Moreover, Plaintiff’s parents were voluntarily dismissed from the 1994 Action prior to trial. Kessler Cert., ¶ 9, **Exhibit F** (“1994 Action Stipulation and Dismissal”). Consequently, Plaintiff cannot be considered to have “successfully litigated” the 1994 Action against her parents, and judicial estoppel does not attach to any claim or theory of liability relating to Plaintiff’s parents. See Kimball, 334 N.J. Super. at 608 (“Because the doctrine of judicial estoppel only applies when a court has accepted a party's position, a party ordinarily is not barred from taking an inconsistent position in successive litigation if the first action was concluded by a settlement.”).

More fundamentally, judicial estoppel does not apply to Plaintiff’s 2021 Action (and Defendants have not met their burden to obtain summary judgment on this basis) because Plaintiff did not take positions that are contrary to each other in the two actions. Judicial estoppel is based on the principle that “if you prevail in Suit # 1 by representing that *A* is true, you are stuck with *A* in all later litigation growing out of the same events.” Id. at 607. In her 1994 Action, Plaintiff successfully litigated the position that Pandelo sexually abused her and caused her damages. See Kessler Cert., ¶ 10, **Exhibit G** (“Order of Judgment”). In her 2021 Action, Plaintiff alleges that the negligence of Watchtower, East Hackensack, and Fairlawn in hiring, retaining, and supervising Pandelo as their agent permitted Pandelo to sexually abuse her and to continue sexually abusing

her for over eight years. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at 9-31. These two positions are not contrary to each other, and Defendants have not shown how they are. In fact, Plaintiff alleges in her 2021 Action that Pandelo sexually abused her and that his sexual abuse caused her damages—a position entirely consistent with what she alleged in her 1994 Action. In her 2021 Action, she alleges that Watchtower, East Hackensack, and Fairlawn also caused her damage by permitting Pandelo to sexually abuse her and to continue to sexually abuse her. This type of successive action is not prohibited by judicial estoppel. See, e.g., Gorjuice Wrap, Inc. v. Okin, Hollander & De Luca, LLP, No. L-2150-07, 2011 WL 92957, at *11 (App. Div. Jan. 12, 2011). See Kessler Cert., ¶ 21, **Exhibit R**. Defendants’ assertions that it is belies a woeful ignorance of New Jersey law or a borderline sanctionable attempt to bring an argument unsupported by law before this Court.

Finally, even if Defendants had established that Plaintiff took contrary positions in her 1994 Action, judicial estoppel could not bar Plaintiff’s 2021 Action because permitting Plaintiff’s claims to proceed would not result in a miscarriage of justice, a required element of judicial estoppel. See, e.g., Kimball, 334 N.J. Super. at 606; Giannakopoulos, 438 N.J. Super. at 613.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants’ Motion for Summary Judgement.

Dated: September 13, 2022

Respectfully submitted,

ROBINS KAPLAN, LLP

By: */s/Rayna E. Kessler* _____

Rayna E. Kessler, Esq.

NJ ID No. 031782010

1325 Avenue of the Americas, Suite 2601

New York, New York 10019

Telephone: (212) 980-7431

Facsimile: (212) 980-7499

Email: RKessler@RobinsKaplan.com

Attorneys for Plaintiff Corinne Pandelo

ROBINS KAPLAN LLP

Rayna E. Kessler, Esq.
NJ ID No. 031782010
1325 Avenue of the Americas, Suite 2601
New York, New York 10019
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

THE ZALKIN LAW FIRM, P.C.

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

Attorneys for Plaintiff Corinne 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-5508-21

:
:
: **CIVIL ACTION**

:
:
: **CERTIFICATION OF RAYNA E.**
: **KESSLER, ESQ. IN SUPPORT**
: **OF PLAINTIFF CORINNE PANDELO’S**
: **OPPOSITION TO DEFENDANTS**
: **WATCHTOWER BIBLE AND TRACT**
: **SOCIETY OF NEW YORK, INC. AND**
: **EAST HACKENSACK CONGREGATION**
: **OF JEHOVAH’S WITNESSES’ MOTION**
: **FOR SUMMARY JUDGMENT AND TO**
: **DEFENDANT FAIRLAWN**
: **CONGREGATION OF JEHOVAH’S**
: **WITNESSES’ CROSS-MOTION FOR**
: **SUMMARY JUDGEMENT**

I, **RAYNA E. KESSLER, ESQ.**, hereby certifies the following:

1. I am an attorney at law of the State of New Jersey with the law firm of Robins Kaplan LLP. Our firm, along with the Zalkin Firm, represent Plaintiff CORINNE PANDELO (“Plaintiff”), in the above-captioned matter. I am personally familiar with the facts and set forth herein.

2. I make this Certification in support of Plaintiff’s Opposition to Defendants Watchtower Bible and Tract Society of New York, Inc., (hereinafter “Watchtower”) and East Hackensack Congregation of Jehovah’s Witnesses’ (hereinafter “East Hackensack”) Motion for Summary Judgment and the Cross-Motion for Summary Judgment of Defendant Fairlawn Congregation of Jehovah’s Witnesses (“Fairlawn”), filed in the above-captioned matter.

3. Attached as **Exhibit A** is a true and accurate copy of Watchtower’s October 28, 2021, Answer (“Watchtower Answer”), to Plaintiff’s August 18, 2021 Complaint (“2021 Action”).

4. Attached as **Exhibit B** is a true and accurate copy of Watchtower’s December 10, 2021, Answer to Plaintiff’s October 13, 2021, Amended Complaint and Responses and Objections to Plaintiff’s Request for Admission and Plaintiff’s First Set of Requests for Production of Documents (“Watchtower’s Answer to 2021 Amended Complaint and Responses to RFA’s and RFP’s”).

5. As of the date of this Opposition, because the parties have not been able to agree on a confidentiality order, Watchtower has not produced any documents.

6. Attached as **Exhibit C** is a true and accurate copy of Congregation’s January 31, 2022, Answer to Plaintiff’s 2021 Amended Complaint (“East Hackensack Answer”).

7. Attached as **Exhibit D** is a true and accurate copy of Congregation’s February 7, 2022, Responses and Objections to Plaintiff’s Request for Admissions and First Set of Requests

for Production of Documents which included approximately 31 documents comprised of 338 pages (not annexed as part of the Exhibit)(“East Hackensack’s Responses to RFA’s and RFP’s”).

8. Attached as **Exhibit E** is a true and accurate copy of Plaintiff’s August 24, 2022, Responses and Objections to Defendants’ Consolidated First Set of Requests for Production of Documents (“Plaintiff’s Responses to Defendants’ RFP’s”). Plaintiff has not produced documents pending the parties’ agreement on the Confidentiality Order.

9. Attached as **Exhibit F** is a true and accurate copy of the February 4, 1999, Stipulation of Dismissal Without Prejudice filed as part of Plaintiff’s 1994 Litigation, captioned CP-1 v. CP-2, BP, CP-3 and OP-1 and OP, and CP-3, and OP v. Fireman’s Fund Insurance Company, BER-L-516-94 (“1994 Action Stipulation of Dismissal”).

10. Attached as **Exhibit G** is a true and accurate copy of the December 23, 1999, Order of Judgment filed as part of Plaintiff’s 1994 Litigation (“Order of Judgment”).

11. Attached as **Exhibit H** is a true and accurate copy of February 9, 2022, Order on the January 19, 2022 Motion as part of the 2021 Action (“Order on January 19, 2022 Motion”).

12. Attached as **Exhibit I** is a true and accurate copy of Est. of Coop v. AHS Hosp. Corp./Morristown Med. Ctl., No. A-3713-19, 2022 WL 2309285, at *4 (App. Div. June 28, 2022).

13. Attached as **Exhibit J** is a true and accurate copy of Watchtower Bible and Tract Society of New York’s, Inc., New York Department of State, Division of Corporations, Entity Information (“Watchtower’s NY Corporation Filing”).

14. Attached as **Exhibit K** is a true and accurate copy of Gleason Design Assocs., Inc. v. Pizzelli Assocs., Inc., No. A-6527-06T1, 2008 WL 5083604, at *7 (App. Div. Dec. 4, 2008).

15. Attached as **Exhibit L** is a true and accurate copy of Hobart Bros. Co. v. National Union Fire Ins. Co., A-3155-06T2, 2008 WL 2735620, at *8 (App. Div. Mar. 25, 2008).

16. Attached as **Exhibit M** is a true and accurate copy of 1707 Realty, LLC v. Revolution Architecture, No. BER-L-2202-17, 2020 WL 8367591, at *7 (Super. Ct. Nov. 20, 2020).

17. Attached as **Exhibit N** is a true and accurate copy of the December 16, 1997 Deposition transcript of CP-3 as part of Plaintiff's 1994 Litigation ("Deposition Transcript of CP-3").

18. Attached as **Exhibit O** is a true and accurate copy of Mocco v. Frumento, 710 Fed. Appx. 535 (3d Cir. 2017).

19. Attached as **Exhibit P** is a true and accurate copy of the May 24, 1996, Order filed as part of Plaintiff's 1994 Litigation ("Order Dated May 24, 1996").

20. Attached as **Exhibit Q** is a true and accurate copy of the January 30, 1997, Answer to the Second Amended Complaint filed by defendant Olga Pandelo as part of Plaintiff's 1994 Litigation ("OP-1 Answer to Second Amended Complaint").

21. Attached as **Exhibit R** is a true and accurate copy of Gorjuice Wrap, Inc. v. Okin, Hollander & De Luca, LLP, No. L-2150-07, 2011 WL 92957, at *11 (App. Div. Jan. 12, 2011).

22. Attached as **Exhibit S** is a true and accurate copy of the January 13, 2000, Order of Dismissal Without Prejudice as part of Plaintiff's 1994 Litigation ("Order of Dismissal").

23. Plaintiff and Defendants Watchtower, East Hackensack, and Fairlawn have agreed that objections and responses to all interrogatories that have been served will be due on October 3, 2022.

24. Attached as **Exhibit T** is a true and accurate copy of the June 29, 2022 Answer filed by Fairlawn as part of the 2021 Action ("Fairlawn Answer").

25. Attached as **Exhibit U** is a true and accurate copy of Plaintiff's August 26, 2022 Responses and Objections to Fairlawn's Request for Production of Documents as part of the 2021 Action ("Plaintiff's Responses to Fairlawn Congregation's RFP's").

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: September 13, 2022

Respectfully submitted,

ROBINS KAPLAN LLP

By: /s/Rayna E. Kessler

Rayna E. Kessler, Esq.

NJ ID No. 031782010

1325 Avenue of the Americas, Suite 2601

New York, New York 10019

Telephone: (212) 980-7431

Facsimile: (212) 980-7499

Email: RKessler@RobinsKaplan.com

Attorneys for Plaintiff Corinne Pandelo

ROBINS KAPLAN LLP

RAYNA E. KESSLER, ESQ.
NJ ID No. 031782010
1325 Sixth Ave, Suite 2600
New York, New York 10019
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

THE ZALKIN LAW FIRM, P.C.

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

Attorneys for Plaintiff Corinne 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-5508-21

:
:
: **CIVIL ACTION**

:
:
: **PLAINTIFF CORINNE PANDELO’S**
: **OPPOSITION TO DEFENDANTS**
: **WATCHTOWER BIBLE AND TRACT**
: **SOCIETY OF NEW YORK, INC., THE**
: **EAST HACKENSACK CONGREGATION**
: **OF JEHOVAH’S WITNESSES AND**
: **FAIRLAWN CONGREGATION OF**
: **JEHOVAH’S WITNESSES’ STATEMENT**
: **OF MATERIAL UNDISPUTED FACTS**
: **PURSUANT TO RULE 4:46-2**

Pursuant to Rule 4:46-2(b), Plaintiff Corrine Pandelo contends that there are genuine issues as to the following material facts asserted by Defendants Watchtower Bible and Tract Society of New York, Inc. (“Watchtower”), The East Hackensack Congregation of Jehovah’s Witnesses (“East Hackensack”), and Fairlawn Congregation of Jehovah’s Witnesses (“Fairlawn”) (collectively, “Defendants”):

A. Plaintiff’s Abuse

1. Admitted in part, denied in part. Plaintiff admits that Clement Pandelo was her grandfather and that he sexually abused her beginning around 1976-1977. However, Plaintiff denies that she alleges Clement Pandelo was her grandfather in her 2021 Amended Complaint. Plaintiff also denies that she ever alleged that her abuse began in 1999. See Parker Cert., ¶ 2, Exhibit A (“2021 Complaint”), Plaintiff’s Complaint, filed on August 18, 2021 (LCV20211914643), at ¶ 38.

2. Admitted in part. Plaintiff admits that Clement Pandelo’s abuse of her ceased after Plaintiff told her parents about the abuse. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶ 39. Plaintiff also admits that her parents contacted law enforcement about Clement Pandelo’s abuse of her, and that Clement Pandelo was incarcerated. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶ 43-44. However, Defendants’ citation solely to Paragraph 44 of Plaintiff’s Amended Complaint implies that Clement Pandelo’s abuse of Plaintiff ceased when Clement Pandelo was incarcerated, which is incorrect.

B. Plaintiff’s 1994 Litigation

3. Admitted in part, denied in part. Plaintiff admits that she initiated litigation in 1994 against Clement and Olga Pandelo, but states that her father filed the lawsuit for her as *guardian ad litem*. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶ 54. Plaintiff also

admits that Clement and Olga Pandelo are her grandparents. See Parker Cert., ¶ 4, Exhibit C (“1994 Litigation 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. Plaintiff admits that her parents were added as parties to the 1994 Litigation on May 24, 1996. See the Certification of Rayna E. Kessler, Esq. (hereinafter, “Kessler Cert.,”) ¶ 19, **Exhibit P** (“Order Impleading Carl and Barbara Pandelo”). However, Plaintiff denies that she initiated litigation against her parents and/or that she alleged as much in her 2021 Amended Complaint. Plaintiff further states that her parents were voluntarily dismissed from the 1994 litigation on January 25, 1999. See Kessler Cert., ¶ 9, **Exhibit F** (“Stipulation of Dismissal”). Defendants omitted that Fireman’s Fund Insurance Company was a third-party defendant in Plaintiff’s 1994 litigation. See Parker Cert., ¶ 4, Exhibit C (“Plaintiff’s 1994 Litigation Amended Complaint”). Fireman’s Fund Insurance Company was dismissed without prejudice on January 13, 2000. See Kessler Cert., ¶ 22, **Exhibit S** (“Order of Dismissal”).

4. Denied as stated. Plaintiff’s 1994 Litigation Amended Complaint did not contain expressly enumerated claims. See Parker Cert., ¶ 4, Exhibit C (“1994 Litigation Amended Complaint”).

5. Denied as stated. Defendants misquoted Plaintiff’s allegations without indicating their omission. The full language is as follows:

[T]he defendant, CP-3 [Clement Pandelo], on various dates between August 1979 and August 12, 1988 **did breach his duty of care by** engag[ing] 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.

See Parker Cert., ¶ 4, Exhibit C (“1994 Litigation Amended Complaint”), at ¶ 5.

6. Denied as stated. Defendants misquoted Plaintiff’s allegations by deleting the preceding phrase, “**Notwithstanding this duty.**” See Parker Cert., ¶ 4, Exhibit C (“1994 Litigation

Amended Complaint”), Fourth Count, at ¶ 4 (emphasis added). Plaintiff further states that the claims against her parents were dismissed on January 25, 1999. See supra Paragraph 3, citing Kessler Cert., ¶ 9, **Exhibit F** (“Stipulation of Dismissal”).

7. Denied as stated. Defendants misquoted Plaintiff’s allegations by omitting the immediately preceding phrase, “By reason of **the defendants’** conduct.” See Parker Cert., ¶ 4, Exhibit C (“1994 Litigation Amended Complaint”), First Count, at ¶ 6 (emphasis added).

8. Admitted.

9. Admitted. By way of further answer, Plaintiff also voluntarily dismissed Fireman’s Fund Insurance Company from her lawsuit. See Kessler Cert., ¶ 22, **Exhibit S** (“Order of Dismissal”).

10. Admitted in part. Plaintiff admits that her case was tried before a jury. Plaintiff denies that she was awarded a grand total of \$2,278,874.90 in damages, as the total was \$2,278,874.93. See Kessler Cert., ¶ 10, **Exhibit G** (“Order of Judgment”). By way of further answer, Plaintiff clarifies that the damages award was comprised of the following amounts:

- Damages award against Defendant Clement Pandelo - \$1,356,750.00
- Interest from January 18, 1994 through December 31, 1999 - \$422,124.93
- Punitive damages award against Defendant Clement Pandelo - \$500,000.00

See Kessler Cert., ¶ 10, **Exhibit G** (“Order of Judgment”). Plaintiff clarifies that the aforementioned damages were only awarded for her claims against Clement Pandelo. See Kessler Cert., ¶ 9, **Exhibit F** (“Stipulation of Dismissal”); see also Kessler Cert., ¶ 10, **Exhibit G** (“Order of Judgment”).

11. Denied as stated. Plaintiff objects to Defendants’ characterization that she appealed her jury award “in an attempt to maximize her claims against her grandparents.” This

characterization is speculative, not supported by the record, and inappropriate for a statement of material facts. Plaintiff also objects to Defendants' use of "specifically," as it improperly emphasizes certain appeal claims over others. Plaintiff objects to Defendants' characterization of her parents as "settling co-defendants," as Plaintiff's parents were voluntarily dismissed without prejudice. They did not settle. See Kessler Cert., ¶ 9, **Exhibit F** ("Stipulation of Dismissal").

12. Denied as stated. Plaintiff does not know what Defendants mean by "**noted Plaintiff's desire** during trial to question one of the elders" See Parker Cert., ¶ 5, Exhibit D ("Appellate File"), at 22 (emphasis added). By way of precision, Plaintiff states that the appellate court affirmed the trial court's "refus[al] to allow [Plaintiff] to question one of the elders" because Plaintiff did not establish that Olga Pandelo was at the disciplinary meetings, and therefore questioning the elder(s) would not have established Olga Pandelo's knowledge in the court's view. Additionally, Plaintiff denies that the intended scope of her questions to the elder(s) was limited to only statements regarding Clement Pandelo's disfellowship as Defendants have stated. See Parker Cert., ¶ 5, Exhibit D ("Appellate File"), at 22.

13. Admitted. By way of further answer, Plaintiff clarifies that she did not appeal her case on all counts. Also, although the appellate division affirmed its judgment "in all respects," it was not a blanket approval—the appellate division submitted a 23-page decision outlining its reasoning. See Parker Cert., ¶ 5, Exhibit D ("Appellate File").

14. Admitted.

C. The 2021 Litigation

15. Denied. Plaintiff did not file her case pursuant to the Child Victims Act, which was passed in New York State. Plaintiff's complaint was 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 amended 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. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶ 2. In addition, Plaintiff named “Hackensack Congregation of Jehovah’s Witnesses” as a defendant, not “East Hackensack Congregation of Jehovah’s Witnesses,” as Defendants assert. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”).

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted. By way of further answer, Defendants’ motion to disclose the 1994 case file was unopposed by Plaintiff. The Court reviewed the file to determine its discoverability. Plaintiff also received a copy of the 1994 litigation file. See Kessler Cert., ¶ 11, **Exhibit H** (“Order on January 12, 1994 Motion”).

21. Admitted. By way of further answer, Defendants’ motion to disclose the 1994 case file was unopposed by Plaintiff. See Kessler Cert., ¶ 11, **Exhibit H** (“Order on January 12, 1994 Motion”). The Court did not review the file to determine duplicative claims, but instead to determine “what is discoverable,” including relevance and “secrets or information that should be withheld or protected.” See Parker Cert., ¶ 6, Exhibit E.

PLAINTIFF’S COUNTERSTATEMENT OF MATERIAL FACTS

1. This case involves the sexual abuse of Plaintiff Corinne Pandelo by Clement Pandelo as an agent of Defendants Fairlawn Congregation of Jehovah’s Witnesses (“Fairlawn”), Watchtower Bible and Tract Society of New York (“Watchtower”) and the East Hackensack Congregation of Jehovah’s Witnesses (“East Hackensack”) (hereinafter, collectively, “Defendants”).¹ See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶ 1.

2. Plaintiff’s 1994 Amended Complaint alleged facts concerning the special duties Clement Pandelo, Olga Pandelo, Carl Pandelo, and Barbara Pandelo had to Plaintiff based on their status as Plaintiff’s family members and caretakers. See e.g., Parker Cert., ¶ 4, Exhibit C (“1994 Litigation Amended Complaint”), First Count, at ¶ 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 . . .”).

3. Plaintiff’s 1994 Amended Complaint alleged that Clement Pandelo, Olga Pandelo, Carl Pandelo, and Barbara Pandelo’s breached their special duties to Plaintiff. See e.g., Parker Cert., ¶ 4, Exhibit C (“1994 Litigation Amended Complaint”), First Count, at ¶ 5. (“**Notwithstanding that duty**, as described above, the defendant CP-3 [Clement Pandelo], on various dates between August 1979 and August 12, 1988 did **breach his duty of care . . .**”).

4. Plaintiff’s 2021 Amended Complaint alleges that Defendants Watchtower, East Hackensack, and Fairlawn Congregation had agency relationship(s) with Clement Pandelo based on his position as a ministerial servant. Plaintiff alleges that he was assigned and authorized jointly

¹ In her 2021 Original Complaint, Plaintiff named Defendant “Hackensack Congregation of Jehovah’s Witnesses.” See Parker Cert., ¶ 2, Exhibit A (“2021 Complaint”). However, in its Answer, Defendant asserted that its proper name was the “East Hackensack Congregation of Jehovah’s Witnesses.” See Kessler Cert., ¶ 6, **Exhibit C** (“Congregation Answer”), at 1. For purposes of Plaintiff’s Counterstatement of Material Facts, Plaintiff will refer to Defendant “East Hackensack.”

by Defendants Watchtower and the Governing Body of Jehovah's Witnesses ("Governing Body") to serve as a ministerial servant at East Hackensack and Fairlawn. See Parker Cert., ¶ 3, Exhibit B ("2021 Amended Complaint"), at ¶¶ 35-37, 75-80, 206-07.

5. Plaintiff's 2021 Amended Complaint alleges that in connection with his responsibilities as a ministerial servant (which were authorized by Defendants Watchtower, East Hackensack, and Fairlawn) Clement Pandelo had regular and frequent contact with children, and supervised children who attended East Hackensack and Fairlawn. Plaintiff also alleges that Defendants had the right to control specific actions contributing to Clement Pandelo's abuse of Plaintiff. See Parker Cert., ¶ 3, Exhibit B ("2021 Amended Complaint"), at ¶¶ 66-70.

6. Plaintiff's 2021 Amended Complaint alleges that as a result of their agency relationship(s) and special relationship(s) with Clement Pandelo, Defendants Watchtower, East Hackensack, and Fairlawn had a duty to competently investigate and supervise Clement Pandelo. See Parker Cert., ¶ 3, Exhibit B ("2021 Amended Complaint"), at ¶¶ 211-13 (Watchtower), ¶¶ 217-19 (Fairlawn), ¶¶ 223-25 (Governing Body), ¶¶ 229-31 (East Hackensack).

7. Plaintiff's 2021 Amended Complaint alleges that Defendants Watchtower, East Hackensack, and Fairlawn had a duty to protect Plaintiff because they: had a special relationship with Clement Pandelo, held their agents out as safe to work with children, held themselves out as being able to provide a safe environment for children, invited Plaintiff onto their property, and entered into an implied/express duty to supervise Plaintiff as a minor at their facilities. See Parker Cert., ¶ 3, Exhibit B ("2021 Amended Complaint"), at ¶¶ 63-71, and ¶¶ 210, 214 (Watchtower), ¶¶ 216, 220 (Fairlawn), ¶¶ 222, 226 (Governing Body), ¶¶ 228, 232 (East Hackensack).

8. Plaintiff's 2021 Amended Complaint alleges that Defendants Watchtower, East Hackensack, and Fairlawn had notice that Clement Pandelo was sexually abusing minors prior to

1988 and did not take any action against Clement Pandelo as a result. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶¶ 49-53.

9. Plaintiff’s 2021 Amended Complaint alleges that Defendants Watchtower, East Hackensack, and Fairlawn had notice in or around 1988 that Clement Pandelo was abusing Plaintiff while she was a minor and that Defendants investigated Clement Pandelo and disfellowshipped him based on Plaintiff’s allegations of abuse. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶¶ 39-42.

10. Plaintiff’s 2021 Amended Complaint alleges that Defendants Watchtower, East Hackensack, and Fairlawn had notice that Clement Pandelo abused another minor child, and admitted to abusing her, while he was abusing Plaintiff, and that Clement Pandelo had also admitted to law enforcement that he had sexually abused minors for forty years. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶¶ 44-45, 52-53.

11. Plaintiff’s 2021 Amended Complaint alleges that Defendants Watchtower, East Hackensack, and Fairlawn did not appropriately discipline Clement Pandelo and negligently retained him as their agent after learning that Clement Pandelo had abused Plaintiff and admitted to sexually abusing minors for forty years. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶¶ 42, 46-48, 246-49.

12. Plaintiff’s 2021 Amended Complaint alleges that Defendants Watchtower, East Hackensack, and Fairlawn knew of the problem of child sexual abuse and were negligent in failing to establish adequate training and education programs and procedures for their agents and minor congregants. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶¶ 254-79.

13. Plaintiff’s 2021 Amended Complaint alleges that Defendants Watchtower and Governing Body’s policies and practices mandated secrecy regarding child abuse, and as such,

protected accused and admitted abusers (such as Clement Pandelo) from criminal prosecution and increased the risk of child abuse. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶¶ 202-03.

14. Plaintiff’s 2021 Amended Complaint alleges that Defendants Watchtower, East Hackensack, and Fairlawn aided and abetted Clement Pandelo by declining to contact law enforcement about Clement Pandelo’s abuse of Plaintiff prior to the conclusion of his abuse of Plaintiff, by covering up his sexual criminal acts, and because of their failure to act affirmatively to prevent, detect, report, or investigate Clement Pandelo. See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶¶ 300-08.

15. Plaintiff’s injuries alleged in her 1994 Amended Complaint differ from the injuries alleged in her 2021 Amended Complaint. Compare Parker Cert., ¶ 4, Exhibit C (“1994 Litigation Amended Complaint”), First Count, at ¶¶ 6-7 (“the infant plaintiff . . . has been unable to attend to activities normally engaged in by children of her age, has been negatively affected in academic endeavors . . . was severely injured, disabled and permanently impaired, disfigured and deformed . . .”). See Parker Cert., ¶ 3, Exhibit B (“2021 Amended Complaint”), at ¶ 242 (“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.”).

Dated: September 13, 2022

ROBINS KAPLAN LLP

By: /s/Rayna E. Kessler

Rayna E. Kessler, Esq.

NJ ID No. 031782010

1325 Avenue of the Americas, Suite 2601

New York, New York 10019

Telephone: (212) 980-7431

Facsimile: (212) 980-7499

Email: RKessler@RobinsKaplan.com

Attorneys for Plaintiff Corinne Pandelo

EXHIBIT A

Anthony P. La Rocco
Dana B. Parker
Thomas A. Zelante, Jr.
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.*

Corrine 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

**DEFENDANT WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK,
INC.’S ANSWER TO PLAINTIFF’S
COMPLAINT WITH AFFIRMATIVE
DEFENSES**

Defendant Watchtower Bible and Tract Society of New York, Inc. (“Defendant”), by way
of Answer to Plaintiff Corrine Pandelo’s (“Plaintiff”) Complaint, says as follows:

INTRODUCTION AND MATTER BEFORE THE COURT

1. Defendant denies that Clement Pandelo was or is an agent of Defendant. Defendant
lacks knowledge or information sufficient to form a belief as to the truth of the remaining
allegations in Paragraph 1 at this time, and therefore denies the same.

2. Defendant denies the allegations in Paragraph 2.

PARTIES

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 at this time, and therefore denies the same.

4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 at this time, and therefore denies the same.

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 at this time, and therefore denies the same.

6. Defendant denies the allegations in Paragraph 6.

7. Defendant denies the allegations in Paragraph 7.

8. Defendant denies the allegations in Paragraph 8.

9. Defendant denies the allegations in Paragraph 9.

10. Defendant denies the allegations in Paragraph 10.

11. Defendant denies the allegations in Paragraph 11.

12. Defendant denies the allegations in Paragraph 12.

13. Defendant denies the allegations in Paragraph 13.

14. Defendant denies the allegations in Paragraph 14.

15. Defendant denies the allegations in Paragraph 15.

16. Defendant denies the allegations in Paragraph 16.

17. Defendant denies the allegations in Paragraph 17.

18. Defendant denies the allegations in Paragraph 18.

19. Defendant denies the allegations in Paragraph 19.

20. Defendant denies the allegations in Paragraph 20.

21. Defendant denies the allegations in Paragraph 21.

- 22. Defendant denies the allegations in Paragraph 22.
- 23. Defendant denies the allegations in Paragraph 23.
- 24. Defendant denies the allegations in Paragraph 24.
- 25. Defendant denies the allegations in Paragraph 25.
- 26. Defendant denies the allegations in Paragraph 26.
- 27. Defendant denies the allegations in Paragraph 27.
- 28. Defendant denies the allegations in Paragraph 28.
- 29. Defendant denies the allegations in Paragraph 29.
- 30. Defendant denies the allegations in Paragraph 30.
- 31. Defendant denies the allegations in Paragraph 31.
- 32. Defendant denies the allegations in Paragraph 32.
- 33. Defendant denies the allegations in Paragraph 33.
- 34. Defendant denies the allegations in Paragraph 34.

FACTUAL BACKGROUND

- 35. Defendant denies the allegations in Paragraph 35.
- 36. Defendant denies the allegations in Paragraph 36.
- 37. Defendant denies the allegations in Paragraph 37.
- 38. Defendant denies the allegations in Paragraph 38.
- 39. Defendant denies the allegations in Paragraph 39.
- 40. Defendant denies the allegations in Paragraph 40.
- 41. Defendant denies the allegations in Paragraph 41.
- 42. Defendant denies the allegations in Paragraph 42.
- 43. Defendant denies the allegations in Paragraph 43.

44. Defendant denies the allegations in Paragraph 44.

45. Defendant denies the allegations in Paragraph 45.

46. Defendant denies the allegations in Paragraph 46.

47. Defendant denies the allegations in Paragraph 47.

48. Defendant denies the allegations in Paragraph 48.

49. Defendant denies the allegations in Paragraph 49.

50. Defendant denies the allegations in Paragraph 50.

51. Defendant denies the allegations in Paragraph 51.

52. Defendant denies the allegations in Paragraph 52.

53. Defendant denies the allegations in Paragraph 53.

54. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 at this time, and therefore denies the same.

55. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 at this time, and therefore denies the same.

56. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 at this time, and therefore denies the same.

57. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 at this time, and therefore denies the same.

JURISDICTION AND VENUE

58. Defendant denies the allegations in Paragraph 58.

59. Defendant denies the allegations in Paragraph 59.

60. Defendant denies the allegations in Paragraph 60.

CAUSES OF ACTION AGAINST DEFENDANTS

COUNT I
(NEGLIGENCE AND/OR GROSS NEGLIGENCE)

61. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

62. Defendant denies the allegations in Paragraph 62.

63. Defendant denies the allegations in Paragraph 63.

64. Defendant denies the allegations in Paragraph 64.

65. Defendant denies the allegations in Paragraph 65.

66. Defendant denies the allegations in Paragraph 66.

67. Defendant denies the allegations in Paragraph 67.

68. Defendant denies the allegations in Paragraph 68.

69. Defendant denies the allegations in Paragraph 69.

70. Defendant denies the allegations in Paragraph 70.

71. Defendant denies the allegations in Paragraph 71.

72. Defendant denies the allegations in Paragraph 72.

73. Defendant denies the allegations in Paragraph 73.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT II
(NEGLIGENT AND/OR GROSSLY NEGLIGENT SUPERVISION)

74. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

75. Defendant denies the allegations in Paragraph 75.
76. Defendant denies the allegations in Paragraph 76.
77. Defendant denies the allegations in Paragraph 77.
78. Defendant denies the allegations in Paragraph 78.
79. Defendant denies the allegations in Paragraph 79.
80. Defendant denies the allegations in Paragraph 80.
81. Defendant denies the allegations in Paragraph 81.
82. Defendant denies the allegations in Paragraph 82.
83. Defendant denies the allegations in Paragraph 83.
84. Defendant denies the allegations in Paragraph 84.
85. Defendant denies the allegations in Paragraph 85.
86. Defendant denies the allegations in Paragraph 86.
87. Defendant denies the allegations in Paragraph 87.
88. Defendant denies the allegations in Paragraph 88.
89. Defendant denies the allegations in Paragraph 89.
90. Defendant denies the allegations in Paragraph 90.
91. Defendant denies the allegations in Paragraph 91.
92. Defendant denies the allegations in Paragraph 92.
93. Defendant denies the allegations in Paragraph 93.
94. Defendant denies the allegations in Paragraph 94.
95. Defendant denies the allegations in Paragraph 95.
96. Defendant denies the allegations in Paragraph 96.
97. Defendant denies the allegations in Paragraph 97.

98. Defendant denies the allegations in Paragraph 98.
99. Defendant denies the allegations in Paragraph 99.
100. Defendant denies the allegations in Paragraph 100.
101. Defendant denies the allegations in Paragraph 101.
102. Defendant denies the allegations in Paragraph 102.
103. Defendant denies the allegations in Paragraph 103.
104. Defendant denies the allegations in Paragraph 104.
105. Defendant denies the allegations in Paragraph 105.
106. Defendant denies the allegations in Paragraph 106.
107. Defendant denies the allegations in Paragraph 107.
108. Defendant denies the allegations in Paragraph 108.
109. Defendant denies the allegations in Paragraph 109.
110. Defendant denies the allegations in Paragraph 110.
111. Defendant denies the allegations in Paragraph 111.
112. Defendant denies the allegations in Paragraph 112.
113. Defendant denies the allegations in Paragraph 113.
114. Defendant denies the allegations in Paragraph 114.
115. Defendant denies the allegations in Paragraph 115.
116. Defendant denies the allegations in Paragraph 116.
117. Defendant denies the allegations in Paragraph 117.
118. Defendant denies the allegations in Paragraph 118.
119. Defendant denies the allegations in Paragraph 119.
120. Defendant denies the allegations in Paragraph 120.

121. Defendant denies the allegations in Paragraph 121.
122. Defendant denies the allegations in Paragraph 122.
123. Defendant denies the allegations in Paragraph 123.
124. Defendant denies the allegations in Paragraph 124.
125. Defendant denies the allegations in Paragraph 125.
126. Defendant denies the allegations in Paragraph 126.
127. Defendant denies the allegations in Paragraph 127.
128. Defendant denies the allegations in Paragraph 128.
129. Defendant denies the allegations in Paragraph 129.
130. Defendant denies the allegations in Paragraph 130.
131. Defendant denies the allegations in Paragraph 131.
132. Defendant denies the allegations in Paragraph 132.
133. Defendant denies the allegations in Paragraph 133.
134. Defendant denies the allegations in Paragraph 134.
135. Defendant denies the allegations in Paragraph 135.
136. Defendant denies the allegations in Paragraph 136.
137. Defendant denies the allegations in Paragraph 137.
138. Defendant denies the allegations in Paragraph 138.
139. Defendant denies the allegations in Paragraph 139.
140. Defendant denies the allegations in Paragraph 140.
141. Defendant denies the allegations in Paragraph 141.
142. Defendant denies the allegations in Paragraph 142.
143. Defendant denies the allegations in Paragraph 143.

144. Defendant denies the allegations in Paragraph 144.
145. Defendant denies the allegations in Paragraph 145.
146. Defendant denies the allegations in Paragraph 146.
147. Defendant denies the allegations in Paragraph 147.
148. Defendant denies the allegations in Paragraph 148.
149. Defendant denies the allegations in Paragraph 149.
150. Defendant denies the allegations in Paragraph 150.
151. Defendant denies the allegations in Paragraph 151.
152. Defendant denies the allegations in Paragraph 152.
153. Defendant denies the allegations in Paragraph 153.
154. Defendant denies the allegations in Paragraph 154.
155. Defendant denies the allegations in Paragraph 155.
156. Defendant denies the allegations in Paragraph 156.
157. Defendant denies the allegations in Paragraph 157.
158. Defendant denies the allegations in Paragraph 158.
159. Defendant denies the allegations in Paragraph 159.
160. Defendant denies the allegations in Paragraph 160.
161. Defendant denies the allegations in Paragraph 161.
162. Defendant denies the allegations in Paragraph 162.
163. Defendant denies the allegations in Paragraph 163.
164. Defendant denies the allegations in Paragraph 164.
165. Defendant denies the allegations in Paragraph 165.
166. Defendant denies the allegations in Paragraph 166.

167. Defendant denies the allegations in Paragraph 167.
168. Defendant denies the allegations in Paragraph 168.
169. Defendant denies the allegations in Paragraph 169.
170. Defendant denies the allegations in Paragraph 170.
171. Defendant denies the allegations in Paragraph 171.
172. Defendant denies the allegations in Paragraph 172.
173. Defendant denies the allegations in Paragraph 173.
174. Defendant denies the allegations in Paragraph 174.
175. Defendant denies the allegations in Paragraph 175.
176. Defendant denies the allegations in Paragraph 176.
177. Defendant denies the allegations in Paragraph 177.
178. Defendant denies the allegations in Paragraph 178.
179. Defendant denies the allegations in Paragraph 179.
180. Defendant denies the allegations in Paragraph 180.
181. Defendant denies the allegations in Paragraph 181.
182. Defendant denies the allegations in Paragraph 182.
183. Defendant denies the allegations in Paragraph 183.
184. Defendant denies the allegations in Paragraph 184.
185. Defendant denies the allegations in Paragraph 185.
186. Defendant denies the allegations in Paragraph 186.
187. Defendant denies the allegations in Paragraph 187.
188. Defendant denies the allegations in Paragraph 188.
189. Defendant denies the allegations in Paragraph 189.

190. Defendant denies the allegations in Paragraph 190.
191. Defendant denies the allegations in Paragraph 191.
192. Defendant denies the allegations in Paragraph 192.
193. Defendant denies the allegations in Paragraph 193.
194. Defendant denies the allegations in Paragraph 194.
195. Defendant denies the allegations in Paragraph 195.
196. Defendant denies the allegations in Paragraph 196.
197. Defendant denies the allegations in Paragraph 197.
198. Defendant denies the allegations in Paragraph 198.
199. Defendant denies the allegations in Paragraph 199.
200. Defendant denies the allegations in Paragraph 200.
201. Defendant denies the allegations in Paragraph 201.
202. Defendant denies the allegations in Paragraph 202.
203. Defendant denies the allegations in Paragraph 203.
204. Defendant denies the allegations in Paragraph 204.
205. Defendant denies the allegations in Paragraph 205.
206. Defendant denies the allegations in Paragraph 206.
207. Defendant denies the allegations in Paragraph 207.
208. Defendant denies the allegations in Paragraph 208.
209. Defendant denies the allegations in Paragraph 209.
210. Defendant denies the allegations in Paragraph 210.
211. Defendant denies the allegations in Paragraph 211.
212. Defendant denies the allegations in Paragraph 212.

- 213. Defendant denies the allegations in Paragraph 213.
- 214. Defendant denies the allegations in Paragraph 214.
- 215. Defendant denies the allegations in Paragraph 215.
- 216. Defendant denies the allegations in Paragraph 216.
- 217. Defendant denies the allegations in Paragraph 217.
- 218. Defendant denies the allegations in Paragraph 218.
- 219. Defendant denies the allegations in Paragraph 219.
- 220. Defendant denies the allegations in Paragraph 220.
- 221. Defendant denies the allegations in Paragraph 221.
- 222. Defendant denies the allegations in Paragraph 222.
- 223. Defendant denies the allegations in Paragraph 223.
- 224. Defendant denies the allegations in Paragraph 224.
- 225. Defendant denies the allegations in Paragraph 225.
- 226. Defendant denies the allegations in Paragraph 226.
- 227. Defendant denies the allegations in Paragraph 227.
- 228. Defendant denies the allegations in Paragraph 228.
- 229. Defendant denies the allegations in Paragraph 229.
- 230. Defendant denies the allegations in Paragraph 230.
- 231. Defendant denies the allegations in Paragraph 231.
- 232. Defendant denies the allegations in Paragraph 232.
- 233. Defendant denies the allegations in Paragraph 233.
- 234. Defendant denies the allegations in Paragraph 234.
- 235. Defendant denies the allegations in Paragraph 235.

236. Defendant denies the allegations in Paragraph 236.

237. Defendant denies the allegations in Paragraph 237.

238. Defendant denies the allegations in Paragraph 238.

239. Defendant denies the allegations in Paragraph 239.

240. Defendant denies the allegations in Paragraph 240.

241. Defendant denies the allegations in Paragraph 241.

242. Defendant denies the allegations in Paragraph 242.

243. Defendant denies the allegations in Paragraph 243.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT III
(NEGLIGENT AND/OR GROSSLY NEGLIGENT RETENTION)

244. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

245. Defendant denies the allegations in Paragraph 245.

246. Defendant denies the allegations in Paragraph 246.

247. Defendant denies the allegations in Paragraph 247.

248. Defendant denies the allegations in Paragraph 248.

249. Defendant denies the allegations in Paragraph 249.

250. Defendant denies the allegations in Paragraph 250.

251. Defendant denies the allegations in Paragraph 251.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT IV
(NEGLIGENT AND/OR GROSSLY NEGLIGENT FAILURE TO TRAIN RELATING TO CHILD ABUSE)

252. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

253. Defendant denies the allegations in Paragraph 253.

254. Defendant denies the allegations in Paragraph 254.

255. Defendant denies the allegations in Paragraph 255.

256. Defendant denies the allegations in Paragraph 256.

257. Defendant denies the allegations in Paragraph 257.

258. Defendant denies the allegations in Paragraph 258.

259. Defendant denies the allegations in Paragraph 259.

260. Defendant denies the allegations in Paragraph 260.

261. Defendant denies the allegations in Paragraph 261.

262. Defendant denies the allegations in Paragraph 262.

263. Defendant denies the allegations in Paragraph 263.

264. Defendant denies the allegations in Paragraph 264.

265. Defendant denies the allegations in Paragraph 265.

266. Defendant denies the allegations in Paragraph 266.

267. Defendant denies the allegations in Paragraph 267.

268. Defendant denies the allegations in Paragraph 268.

- 269. Defendant denies the allegations in Paragraph 269.
- 270. Defendant denies the allegations in Paragraph 270.
- 271. Defendant denies the allegations in Paragraph 271.
- 272. Defendant denies the allegations in Paragraph 272.
- 273. Defendant denies the allegations in Paragraph 273.
- 274. Defendant denies the allegations in Paragraph 274.
- 275. Defendant denies the allegations in Paragraph 275.
- 276. Defendant denies the allegations in Paragraph 276.
- 277. Defendant denies the allegations in Paragraph 277.
- 278. Defendant denies the allegations in Paragraph 278.
- 279. Defendant denies the allegations in Paragraph 279.
- 280. Defendant denies the allegations in Paragraph 280.
- 281. Defendant denies the allegations in Paragraph 281.
- 282. Defendant denies the allegations in Paragraph 282.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT V
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

283. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

- 284. Defendant denies the allegations in Paragraph 284.
- 285. Defendant denies the allegations in Paragraph 285.
- 286. Defendant denies the allegations in Paragraph 286.

287. Defendant denies the allegations in Paragraph 287.

288. Defendant denies the allegations in Paragraph 288.

289. Defendant denies the allegations in Paragraph 289.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT VI
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

290. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

291. Defendant denies the allegations in Paragraph 291.

292. Defendant denies the allegations in Paragraph 292.

293. Defendant denies the allegations in Paragraph 293.

294. Defendant denies the allegations in Paragraph 294.

295. Defendant denies the allegations in Paragraph 295.

296. Defendant denies the allegations in Paragraph 296.

297. Defendant denies the allegations in Paragraph 297.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT VII
(SEXUAL ABUSE AND BATTERY)

298. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

- 299. Defendant denies the allegations in Paragraph 299.
- 300. Defendant denies the allegations in Paragraph 300.
- 301. Defendant denies the allegations in Paragraph 301.
- 302. Defendant denies the allegations in Paragraph 302.
- 303. Defendant denies the allegations in Paragraph 303.
- 304. Defendant denies the allegations in Paragraph 304.
- 305. Defendant denies the allegations in Paragraph 305.
- 306. Defendant denies the allegations in Paragraph 306.
- 307. Defendant denies the allegations in Paragraph 307.
- 308. Defendant denies the allegations in Paragraph 308.
- 309. Defendant denies the allegations in Paragraph 309.
- 310. Defendant denies the allegations in Paragraph 310.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT VIII
(PUNITIVE DAMAGES)

311. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

- 312. Defendant denies the allegations in Paragraph 312.
- 313. Defendant denies the allegations in Paragraph 313.
- 314. Defendant denies the allegations in Paragraph 314.
- 315. Defendant denies the allegations in Paragraph 315.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

AFFIRMATIVE DEFENSES

By alleging the affirmative defenses set forth below, Defendant does not allege or admit that it has the burden of proof and/or the burden of persuasion with respect to any of these matters.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

If Plaintiff has sustained damages as alleged in the Complaint, which Defendant denies, Plaintiff's claims are barred or reduced, in whole or in part, by the doctrines of contributory or comparative negligence.

THIRD AFFIRMATIVE DEFENSE

If Plaintiff has suffered any injury or incurred any damages, which Defendant denies, that injury or damage was caused, in whole or in part, by: (1) the acts or omissions of persons other than Defendant and over whom Defendant had no control; or (2) superseding or intervening causes over which Defendant had no control.

FOURTH AFFIRMATIVE DEFENSE

Defendant owed no duty of care toward Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

The injuries, damages, or losses, if any, sustained by Plaintiff were not reasonably foreseeable and were not the result of any conduct or negligence by Defendant.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate the damage, if any, that Plaintiff has allegedly sustained and to exercise reasonable care to avoid the consequences of harms, if any, by, among other things, failing to use reasonable diligence, failing to use reasonable means to prevent aggravation of any injury, and failing to take reasonable precautions to reduce any injury and damage.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages, losses, and/or injuries were not proximately caused by any act or omission of Defendant.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitations and/or repose.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrines of estoppel, collateral estoppel, laches, and/or waiver.

TENTH AFFIRMATIVE DEFENSE

Defendant denies any negligence because, at all times relevant to the Complaint, they met or exceeded the requisite standard of care.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant acted reasonably and in good faith based on all relevant facts and circumstances known by Defendant at the time they so acted.

TWELFTH AFFIRMATIVE DEFENSE

Any injuries Plaintiff sustained are the result of an unforeseeable series of events over which Defendant had no control.

THIRTEENTH AFFIRMATIVE DEFENSE

If Plaintiff has sustained damages as alleged in the Complaint, which Defendant denies, Plaintiff's damages were the result of Plaintiff's unforeseeable pre-existing medical conditions or other medical conditions for which Defendant cannot be held responsible.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant is entitled to an offset and/or reduction and Plaintiff is barred from recovering any and all amounts paid for Plaintiff's alleged injuries and damages by way of settlement or judgment of any claim, incident or lawsuit which may have contributed to the injuries and damages referred to in the Complaint, in the event Defendant should be found liable to Plaintiff, although this supposition is denied and only stated for the purposes of this affirmative defense.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim for punitive or exemplary damages fails to state a claim upon which relief can be granted.

SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks recovery of punitive or exemplary damages against Defendant, unless Defendant's liability for punitive damages and the appropriate amount of punitive damages is required to be established by clear and convincing evidence, any award of punitive damages would violate Defendant's due process protections afforded by the United States Constitution, the excessive fines clause of the Eighth Amendment of the United States Constitution, the Commerce Clause of the United States Constitution, the Full Faith and Credit Clause of the United States Constitution, rights guaranteed by the Fourteenth Amendment to the

United States Constitution and by the applicable state constitution, and would be improper under the common law and public policies of that state. Any law, statute, or other authority purporting to permit the recovery of punitive damages in this case is unconstitutional, facially, and as applied, to the extent that, without limitation, it: (1) lacks constitutionally sufficient standards to guide and restrain the jury's discretion in determining whether to award punitive damages and/or the amount, if any; (2) is void for vagueness, both facially and as applied, because it fails to provide adequate advance notice as to what conduct will result in punitive damages or what punishment will be imposed; (3) unconstitutionally may permit recovery of punitive damages based on out-of-state conduct, conduct that complied with applicable law, or conduct that was not directed at Plaintiff or did not proximately cause harm, if any, to Plaintiff; (4) unconstitutionally may permit recovery of punitive damages in an amount that is not both reasonable and proportionate to the amount of harm, if any, to Plaintiff and to the amount of compensatory damages, if any; (5) unconstitutionally may permit jury consideration of net worth or other financial information relating to Defendant; (6) is not subject to adequate trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards; (7) lacks constitutionally sufficient standards for appellate review of punitive damages awards; and (8) otherwise fails to satisfy Supreme Court precedent, including without limitation, *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *TXO Production Corp. v. Alliance Resources, Inc.*, 509 U.S. 443 (1993); *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *State Farm Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

EIGHTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks recovery of punitive or exemplary damages against Defendant, any such claim of Plaintiff for punitive damages against Defendant cannot be

maintained, because an award of punitive damages under applicable law would be unlawful, as a result of, among other deficiencies, the absence of a predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount, on the amount of punitive damages that a jury may impose, all in violation of the due process clause of the Fourteenth Amendment to the United States Constitution, the applicable state constitution, and the common law and public policies of that state.

NINETEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks recovery of punitive or exemplary damages against Defendant, any such claim of Plaintiff for punitive damages against Defendant cannot be maintained, because any award of punitive damages under applicable law would be by a jury that: (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of a punitive damages award, (2) is not adequately instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the residence, wealth, and corporate status of Defendant, and (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible. Any such verdict would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process and equal protection provisions of the applicable state constitution, and would be improper under the common law and public policies of that state.

TWENTIETH AFFIRMATIVE DEFENSE

To the extent that the Complaint seeks punitive or exemplary damages, the Due Process Clause of the United States Constitution must govern any award of punitive or exemplary damages, and the purported profits of Defendant outside the State of New Jersey may not be brought into consideration.

TWENTY-FIRST AFFIRMATIVE DEFENSE

To the extent that the Complaint seeks punitive or exemplary damages, Plaintiff's claims are barred in whole or in part because punitive or other exemplary damages are not recoverable for the causes of action set forth in the Complaint, or in the alternative, the allegations of each cause of action in the Complaint are legally insufficient to support a claim for punitive or exemplary damages as to each cause of action.

TWENTY-SECOND AFFIRMATIVE DEFENSE

To the extent that the Complaint seeks punitive or exemplary damages, Plaintiff's claims are barred in whole or in part because Defendant did not act with the requisite level of conduct to be subjected to, or that would otherwise support, any punitive or exemplary damages award in this action. Accordingly, any award of punitive or exemplary damages would be improper under the United States Constitution and the common law and public policies of New Jersey.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The Complaint is barred because Plaintiff lacks standing.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

If and only if Plaintiff's allegations are accurate, then Defendant asserts its entitlement to an apportionment of fault by the trier of fact between any person (legal or natural) to whom apportionment of fault may be made under statutory and common law principles.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of Charitable Immunity and/or the Free Exercise Clause or the Establishment Clause of the First Amendment of the United States Constitution.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred because the New Jersey Child Victim's Act violates the Due Process Clause of the New Jersey State Constitution on its face and as applied to Defendant.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the Entire Controversy Doctrine and the Mandatory Joinder Rule.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendant adopts and incorporates by reference in this Answer any defenses that may be raised by any other defendant who may be joined in this action. Defendant further gives notice that they intend to rely on any additional defenses that become available or apparent during discovery, and thus reserve the right to amend this Answer to assert any such additional defenses.

DESIGNATION OF TRIAL COUNSEL

Defendant hereby designates Anthony P. La Rocco as trial counsel.

Dated: October 28, 2021

Respectfully submitted,

By: /s/ Anthony P. La Rocco

Anthony P. La Rocco

Dana B. Parker

Thomas A. Zelante, Jr.

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.*

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-005508-21

Case Caption: PANDELO CORINNE VS THE GOVERNING
BODY O F JEHOVA

Case Initiation Date: 08/18/2021

Attorney Name: THOMAS A ZELANTE JR

Firm Name: K&L GATES LLP

Address: ONE NEWARK CENTER 10TH FL

NEWARK NJ 071025285

Phone: 9738484000

Name of Party: DEFENDANT : WATCHTOWER BIBLE

ANDTRACT SO C

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: PERSONAL INJURY

Document Type: Answer

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

Are sexual abuse claims alleged by: CORINNE PANDELO? YES

Plaintiff's date of birth: 06/14/1974

Est. date of first incident of abuse: 01/01/1979

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

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)

10/28/2021

Dated

/s/ THOMAS A ZELANTE JR

Signed

EXHIBIT B

Anthony P. La Rocco
Dana B. Parker
Thomas A. Zelante, Jr.
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.*

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

**DEFENDANT WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK,
INC.’S ANSWER TO PLAINTIFF’S
FIRST AMENDED COMPLAINT WITH
AFFIRMATIVE DEFENSES**

Defendant Watchtower Bible and Tract Society of New York, Inc. (“Defendant”), by way of Answer to Plaintiff Corinne Pandelo’s (“Plaintiff”) First Amended Complaint, says as follows:

INTRODUCTION AND MATTER BEFORE THE COURT

1. Defendant denies that Clement Pandelo was or is an agent of Defendant. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1 at this time, and therefore denies the same.

2. Defendant denies the allegations in Paragraph 2.

PARTIES

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 at this time, and therefore denies the same.

4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 at this time, and therefore denies the same.

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 at this time, and therefore denies the same.

6. Defendant denies the allegations in Paragraph 6.

7. Defendant denies the allegations in Paragraph 7.

8. Defendant denies the allegations in Paragraph 8.

9. Defendant denies the allegations in Paragraph 9.

10. Defendant denies the allegations in Paragraph 10.

11. Defendant denies the allegations in Paragraph 11.

12. Defendant denies the allegations in Paragraph 12.

13. Defendant denies the allegations in Paragraph 13.

14. Defendant denies the allegations in Paragraph 14.

15. Defendant denies the allegations in Paragraph 15.

16. Defendant denies the allegations in Paragraph 16.

17. Defendant denies the allegations in Paragraph 17.

18. Defendant denies the allegations in Paragraph 18.

19. Defendant denies the allegations in Paragraph 19.

20. Defendant denies the allegations in Paragraph 20.

21. Defendant denies the allegations in Paragraph 21.

- 22. Defendant denies the allegations in Paragraph 22.
- 23. Defendant denies the allegations in Paragraph 23.
- 24. Defendant denies the allegations in Paragraph 24.
- 25. Defendant denies the allegations in Paragraph 25.
- 26. Defendant denies the allegations in Paragraph 26.
- 27. Defendant denies the allegations in Paragraph 27.
- 28. Defendant denies the allegations in Paragraph 28.
- 29. Defendant denies the allegations in Paragraph 29.
- 30. Defendant denies the allegations in Paragraph 30.
- 31. Defendant denies the allegations in Paragraph 31.
- 32. Defendant denies the allegations in Paragraph 32.
- 33. Defendant denies the allegations in Paragraph 33.
- 34. Defendant denies the allegations in Paragraph 34.

FACTUAL BACKGROUND

- 35. Defendant denies the allegations in Paragraph 35.
- 36. Defendant denies the allegations in Paragraph 36.
- 37. Defendant denies the allegations in Paragraph 37.
- 38. Defendant denies the allegations in Paragraph 38.
- 39. Defendant denies the allegations in Paragraph 39.
- 40. Defendant denies the allegations in Paragraph 40.
- 41. Defendant denies the allegations in Paragraph 41.
- 42. Defendant denies the allegations in Paragraph 42.
- 43. Defendant denies the allegations in Paragraph 43.

44. Defendant denies the allegations in Paragraph 44.

45. Defendant denies the allegations in Paragraph 45.

46. Defendant denies the allegations in Paragraph 46.

47. Defendant denies the allegations in Paragraph 47.

48. Defendant denies the allegations in Paragraph 48.

49. Defendant denies the allegations in Paragraph 49.

50. Defendant denies the allegations in Paragraph 50.

51. Defendant denies the allegations in Paragraph 51.

52. Defendant denies the allegations in Paragraph 52.

53. Defendant denies the allegations in Paragraph 53.

54. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 at this time, and therefore denies the same.

55. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 at this time, and therefore denies the same.

56. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 at this time, and therefore denies the same.

57. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 at this time, and therefore denies the same.

JURISDICTION AND VENUE

58. Defendant denies the allegations in Paragraph 58.

59. Defendant denies the allegations in Paragraph 59.

60. Defendant denies the allegations in Paragraph 60.

CAUSES OF ACTION AGAINST DEFENDANTS

COUNT I
(NEGLIGENCE AND/OR GROSS NEGLIGENCE)

61. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

62. Defendant denies the allegations in Paragraph 62.

63. Defendant denies the allegations in Paragraph 63.

64. Defendant denies the allegations in Paragraph 64.

65. Defendant denies the allegations in Paragraph 65.

66. Defendant denies the allegations in Paragraph 66.

67. Defendant denies the allegations in Paragraph 67.

68. Defendant denies the allegations in Paragraph 68.

69. Defendant denies the allegations in Paragraph 69.

70. Defendant denies the allegations in Paragraph 70.

71. Defendant denies the allegations in Paragraph 71.

72. Defendant denies the allegations in Paragraph 72.

73. Defendant denies the allegations in Paragraph 73.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT II
(NEGLIGENT AND/OR GROSSLY NEGLIGENT SUPERVISION)

74. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

75. Defendant denies the allegations in Paragraph 75.
76. Defendant denies the allegations in Paragraph 76.
77. Defendant denies the allegations in Paragraph 77.
78. Defendant denies the allegations in Paragraph 78.
79. Defendant denies the allegations in Paragraph 79.
80. Defendant denies the allegations in Paragraph 80.
81. Defendant denies the allegations in Paragraph 81.
82. Defendant denies the allegations in Paragraph 82.
83. Defendant denies the allegations in Paragraph 83.
84. Defendant denies the allegations in Paragraph 84.
85. Defendant denies the allegations in Paragraph 85.
86. Defendant denies the allegations in Paragraph 86.
87. Defendant denies the allegations in Paragraph 87.
88. Defendant denies the allegations in Paragraph 88.
89. Defendant denies the allegations in Paragraph 89.
90. Defendant denies the allegations in Paragraph 90.
91. Defendant denies the allegations in Paragraph 91.
92. Defendant denies the allegations in Paragraph 92.
93. Defendant denies the allegations in Paragraph 93.
94. Defendant denies the allegations in Paragraph 94.
95. Defendant denies the allegations in Paragraph 95.
96. Defendant denies the allegations in Paragraph 96.
97. Defendant denies the allegations in Paragraph 97.

98. Defendant denies the allegations in Paragraph 98.
99. Defendant denies the allegations in Paragraph 99.
100. Defendant denies the allegations in Paragraph 100.
101. Defendant denies the allegations in Paragraph 101.
102. Defendant denies the allegations in Paragraph 102.
103. Defendant denies the allegations in Paragraph 103.
104. Defendant denies the allegations in Paragraph 104.
105. Defendant denies the allegations in Paragraph 105.
106. Defendant denies the allegations in Paragraph 106.
107. Defendant denies the allegations in Paragraph 107.
108. Defendant denies the allegations in Paragraph 108.
109. Defendant denies the allegations in Paragraph 109.
110. Defendant denies the allegations in Paragraph 110.
111. Defendant denies the allegations in Paragraph 111.
112. Defendant denies the allegations in Paragraph 112.
113. Defendant denies the allegations in Paragraph 113.
114. Defendant denies the allegations in Paragraph 114.
115. Defendant denies the allegations in Paragraph 115.
116. Defendant denies the allegations in Paragraph 116.
117. Defendant denies the allegations in Paragraph 117.
118. Defendant denies the allegations in Paragraph 118.
119. Defendant denies the allegations in Paragraph 119.
120. Defendant denies the allegations in Paragraph 120.

121. Defendant denies the allegations in Paragraph 121.
122. Defendant denies the allegations in Paragraph 122.
123. Defendant denies the allegations in Paragraph 123.
124. Defendant denies the allegations in Paragraph 124.
125. Defendant denies the allegations in Paragraph 125.
126. Defendant denies the allegations in Paragraph 126.
127. Defendant denies the allegations in Paragraph 127.
128. Defendant denies the allegations in Paragraph 128.
129. Defendant denies the allegations in Paragraph 129.
130. Defendant denies the allegations in Paragraph 130.
131. Defendant denies the allegations in Paragraph 131.
132. Defendant denies the allegations in Paragraph 132.
133. Defendant denies the allegations in Paragraph 133.
134. Defendant denies the allegations in Paragraph 134.
135. Defendant denies the allegations in Paragraph 135.
136. Defendant denies the allegations in Paragraph 136.
137. Defendant denies the allegations in Paragraph 137.
138. Defendant denies the allegations in Paragraph 138.
139. Defendant denies the allegations in Paragraph 139.
140. Defendant denies the allegations in Paragraph 140.
141. Defendant denies the allegations in Paragraph 141.
142. Defendant denies the allegations in Paragraph 142.
143. Defendant denies the allegations in Paragraph 143.

144. Defendant denies the allegations in Paragraph 144.
145. Defendant denies the allegations in Paragraph 145.
146. Defendant denies the allegations in Paragraph 146.
147. Defendant denies the allegations in Paragraph 147.
148. Defendant denies the allegations in Paragraph 148.
149. Defendant denies the allegations in Paragraph 149.
150. Defendant denies the allegations in Paragraph 150.
151. Defendant denies the allegations in Paragraph 151.
152. Defendant denies the allegations in Paragraph 152.
153. Defendant denies the allegations in Paragraph 153.
154. Defendant denies the allegations in Paragraph 154.
155. Defendant denies the allegations in Paragraph 155.
156. Defendant denies the allegations in Paragraph 156.
157. Defendant denies the allegations in Paragraph 157.
158. Defendant denies the allegations in Paragraph 158.
159. Defendant denies the allegations in Paragraph 159.
160. Defendant denies the allegations in Paragraph 160.
161. Defendant denies the allegations in Paragraph 161.
162. Defendant denies the allegations in Paragraph 162.
163. Defendant denies the allegations in Paragraph 163.
164. Defendant denies the allegations in Paragraph 164.
165. Defendant denies the allegations in Paragraph 165.
166. Defendant denies the allegations in Paragraph 166.

167. Defendant denies the allegations in Paragraph 167.
168. Defendant denies the allegations in Paragraph 168.
169. Defendant denies the allegations in Paragraph 169.
170. Defendant denies the allegations in Paragraph 170.
171. Defendant denies the allegations in Paragraph 171.
172. Defendant denies the allegations in Paragraph 172.
173. Defendant denies the allegations in Paragraph 173.
174. Defendant denies the allegations in Paragraph 174.
175. Defendant denies the allegations in Paragraph 175.
176. Defendant denies the allegations in Paragraph 176.
177. Defendant denies the allegations in Paragraph 177.
178. Defendant denies the allegations in Paragraph 178.
179. Defendant denies the allegations in Paragraph 179.
180. Defendant denies the allegations in Paragraph 180.
181. Defendant denies the allegations in Paragraph 181.
182. Defendant denies the allegations in Paragraph 182.
183. Defendant denies the allegations in Paragraph 183.
184. Defendant denies the allegations in Paragraph 184.
185. Defendant denies the allegations in Paragraph 185.
186. Defendant denies the allegations in Paragraph 186.
187. Defendant denies the allegations in Paragraph 187.
188. Defendant denies the allegations in Paragraph 188.
189. Defendant denies the allegations in Paragraph 189.

190. Defendant denies the allegations in Paragraph 190.
191. Defendant denies the allegations in Paragraph 191.
192. Defendant denies the allegations in Paragraph 192.
193. Defendant denies the allegations in Paragraph 193.
194. Defendant denies the allegations in Paragraph 194.
195. Defendant denies the allegations in Paragraph 195.
196. Defendant denies the allegations in Paragraph 196.
197. Defendant denies the allegations in Paragraph 197.
198. Defendant denies the allegations in Paragraph 198.
199. Defendant denies the allegations in Paragraph 199.
200. Defendant denies the allegations in Paragraph 200.
201. Defendant denies the allegations in Paragraph 201.
202. Defendant denies the allegations in Paragraph 202.
203. Defendant denies the allegations in Paragraph 203.
204. Defendant denies the allegations in Paragraph 204.
205. Defendant denies the allegations in Paragraph 205.
206. Defendant denies the allegations in Paragraph 206.
207. Defendant denies the allegations in Paragraph 207.
208. Defendant denies the allegations in Paragraph 208.
209. Defendant denies the allegations in Paragraph 209.
210. Defendant denies the allegations in Paragraph 210.
211. Defendant denies the allegations in Paragraph 211.
212. Defendant denies the allegations in Paragraph 212.

- 213. Defendant denies the allegations in Paragraph 213.
- 214. Defendant denies the allegations in Paragraph 214.
- 215. Defendant denies the allegations in Paragraph 215.
- 216. Defendant denies the allegations in Paragraph 216.
- 217. Defendant denies the allegations in Paragraph 217.
- 218. Defendant denies the allegations in Paragraph 218.
- 219. Defendant denies the allegations in Paragraph 219.
- 220. Defendant denies the allegations in Paragraph 220.
- 221. Defendant denies the allegations in Paragraph 221.
- 222. Defendant denies the allegations in Paragraph 222.
- 223. Defendant denies the allegations in Paragraph 223.
- 224. Defendant denies the allegations in Paragraph 224.
- 225. Defendant denies the allegations in Paragraph 225.
- 226. Defendant denies the allegations in Paragraph 226.
- 227. Defendant denies the allegations in Paragraph 227.
- 228. Defendant denies the allegations in Paragraph 228.
- 229. Defendant denies the allegations in Paragraph 229.
- 230. Defendant denies the allegations in Paragraph 230.
- 231. Defendant denies the allegations in Paragraph 231.
- 232. Defendant denies the allegations in Paragraph 232.
- 233. Defendant denies the allegations in Paragraph 233.
- 234. Defendant denies the allegations in Paragraph 234.
- 235. Defendant denies the allegations in Paragraph 235.

236. Defendant denies the allegations in Paragraph 236.

237. Defendant denies the allegations in Paragraph 237.

238. Defendant denies the allegations in Paragraph 238.

239. Defendant denies the allegations in Paragraph 239.

240. Defendant denies the allegations in Paragraph 240.

241. Defendant denies the allegations in Paragraph 241.

242. Defendant denies the allegations in Paragraph 242.

243. Defendant denies the allegations in Paragraph 243.

244. Defendant denies the allegations in Paragraph 244.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT III
(NEGLIGENT AND/OR GROSSLY NEGLIGENT RETENTION)

245. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

246. Defendant denies the allegations in Paragraph 246.

247. Defendant denies the allegations in Paragraph 247.

248. Defendant denies the allegations in Paragraph 248.

249. Defendant denies the allegations in Paragraph 249.

250. Defendant denies the allegations in Paragraph 250.

251. Defendant denies the allegations in Paragraph 251.

252. Defendant denies the allegations in Paragraph 252.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT IV
(NEGLIGENT AND/OR GROSSLY NEGLIGENT FAILURE TO TRAIN RELATING TO CHILD ABUSE)

253. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

254. Defendant denies the allegations in Paragraph 254.

255. Defendant denies the allegations in Paragraph 255.

256. Defendant denies the allegations in Paragraph 256.

257. Defendant denies the allegations in Paragraph 257.

258. Defendant denies the allegations in Paragraph 258.

259. Defendant denies the allegations in Paragraph 259.

260. Defendant denies the allegations in Paragraph 260.

261. Defendant denies the allegations in Paragraph 261.

262. Defendant denies the allegations in Paragraph 262.

263. Defendant denies the allegations in Paragraph 263.

264. Defendant denies the allegations in Paragraph 264.

265. Defendant denies the allegations in Paragraph 265.

266. Defendant denies the allegations in Paragraph 266.

267. Defendant denies the allegations in Paragraph 267.

268. Defendant denies the allegations in Paragraph 268.

269. Defendant denies the allegations in Paragraph 269.

- 270. Defendant denies the allegations in Paragraph 270.
- 271. Defendant denies the allegations in Paragraph 271.
- 272. Defendant denies the allegations in Paragraph 272.
- 273. Defendant denies the allegations in Paragraph 273.
- 274. Defendant denies the allegations in Paragraph 274.
- 275. Defendant denies the allegations in Paragraph 275.
- 276. Defendant denies the allegations in Paragraph 276.
- 277. Defendant denies the allegations in Paragraph 277.
- 278. Defendant denies the allegations in Paragraph 278.
- 279. Defendant denies the allegations in Paragraph 279.
- 280. Defendant denies the allegations in Paragraph 280.
- 281. Defendant denies the allegations in Paragraph 281.
- 282. Defendant denies the allegations in Paragraph 282.
- 283. Defendant denies the allegations in Paragraph 283.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT V
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

284. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

- 285. Defendant denies the allegations in Paragraph 285.
- 286. Defendant denies the allegations in Paragraph 286.
- 287. Defendant denies the allegations in Paragraph 287.

288. Defendant denies the allegations in Paragraph 288.

289. Defendant denies the allegations in Paragraph 289.

290. Defendant denies the allegations in Paragraph 290.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT VI
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

291. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

292. Defendant denies the allegations in Paragraph 292.

293. Defendant denies the allegations in Paragraph 293.

294. Defendant denies the allegations in Paragraph 294.

295. Defendant denies the allegations in Paragraph 295.

296. Defendant denies the allegations in Paragraph 296.

297. Defendant denies the allegations in Paragraph 297.

298. Defendant denies the allegations in Paragraph 298.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT VII
(SEXUAL ABUSE AND BATTERY)

299. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

- 300. Defendant denies the allegations in Paragraph 300.
- 301. Defendant denies the allegations in Paragraph 301.
- 302. Defendant denies the allegations in Paragraph 302.
- 303. Defendant denies the allegations in Paragraph 303.
- 304. Defendant denies the allegations in Paragraph 304.
- 305. Defendant denies the allegations in Paragraph 305.
- 306. Defendant denies the allegations in Paragraph 306.
- 307. Defendant denies the allegations in Paragraph 307.
- 308. Defendant denies the allegations in Paragraph 308.
- 309. Defendant denies the allegations in Paragraph 309.
- 310. Defendant denies the allegations in Paragraph 310.
- 311. Defendant denies the allegations in Paragraph 311.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT VIII
(PUNITIVE DAMAGES)

312. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

- 313. Defendant denies the allegations in Paragraph 313.
- 314. Defendant denies the allegations in Paragraph 314.
- 315. Defendant denies the allegations in Paragraph 315.
- 316. Defendant denies the allegations in Paragraph 316.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

AFFIRMATIVE DEFENSES

By alleging the affirmative defenses set forth below, Defendant does not allege or admit that it has the burden of proof and/or the burden of persuasion with respect to any of these matters.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

If Plaintiff has sustained damages as alleged in the Complaint, which Defendant denies, Plaintiff's claims are barred or reduced, in whole or in part, by the doctrines of contributory or comparative negligence.

THIRD AFFIRMATIVE DEFENSE

If Plaintiff has suffered any injury or incurred any damages, which Defendant denies, that injury or damage was caused, in whole or in part, by: (1) the acts or omissions of persons other than Defendant and over whom Defendant had no control; or (2) superseding or intervening causes over which Defendant had no control.

FOURTH AFFIRMATIVE DEFENSE

Defendant owed no duty of care toward Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

The injuries, damages, or losses, if any, sustained by Plaintiff were not reasonably foreseeable and were not the result of any conduct or negligence by Defendant.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate the damage, if any, that Plaintiff has allegedly sustained and to exercise reasonable care to avoid the consequences of harms, if any, by, among other things, failing to use reasonable diligence, failing to use reasonable means to prevent aggravation of any injury, and failing to take reasonable precautions to reduce any injury and damage.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages, losses, and/or injuries were not proximately caused by any act or omission of Defendant.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitations and/or repose.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrines of estoppel, collateral estoppel, laches, and/or waiver.

TENTH AFFIRMATIVE DEFENSE

Defendant denies any negligence because, at all times relevant to the Complaint, they met or exceeded the requisite standard of care.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant acted reasonably and in good faith based on all relevant facts and circumstances known by Defendant at the time they so acted.

TWELFTH AFFIRMATIVE DEFENSE

Any injuries Plaintiff sustained are the result of an unforeseeable series of events over which Defendant had no control.

THIRTEENTH AFFIRMATIVE DEFENSE

If Plaintiff has sustained damages as alleged in the Complaint, which Defendant denies, Plaintiff's damages were the result of Plaintiff's unforeseeable pre-existing medical conditions or other medical conditions for which Defendant cannot be held responsible.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant is entitled to an offset and/or reduction and Plaintiff is barred from recovering any and all amounts paid for Plaintiff's alleged injuries and damages by way of settlement or judgment of any claim, incident or lawsuit which may have contributed to the injuries and damages referred to in the Complaint, in the event Defendant should be found liable to Plaintiff, although this supposition is denied and only stated for the purposes of this affirmative defense.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim for punitive or exemplary damages fails to state a claim upon which relief can be granted.

SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks recovery of punitive or exemplary damages against Defendant, unless Defendant's liability for punitive damages and the appropriate amount of punitive damages is required to be established by clear and convincing evidence, any award of punitive damages would violate Defendant's due process protections afforded by the United States Constitution, the excessive fines clause of the Eighth Amendment of the United States Constitution, the Commerce Clause of the United States Constitution, the Full Faith and Credit Clause of the United States Constitution, rights guaranteed by the Fourteenth Amendment to the

United States Constitution and by the applicable state constitution, and would be improper under the common law and public policies of that state. Any law, statute, or other authority purporting to permit the recovery of punitive damages in this case is unconstitutional, facially, and as applied, to the extent that, without limitation, it: (1) lacks constitutionally sufficient standards to guide and restrain the jury's discretion in determining whether to award punitive damages and/or the amount, if any; (2) is void for vagueness, both facially and as applied, because it fails to provide adequate advance notice as to what conduct will result in punitive damages or what punishment will be imposed; (3) unconstitutionally may permit recovery of punitive damages based on out-of-state conduct, conduct that complied with applicable law, or conduct that was not directed at Plaintiff or did not proximately cause harm, if any, to Plaintiff; (4) unconstitutionally may permit recovery of punitive damages in an amount that is not both reasonable and proportionate to the amount of harm, if any, to Plaintiff and to the amount of compensatory damages, if any; (5) unconstitutionally may permit jury consideration of net worth or other financial information relating to Defendant; (6) is not subject to adequate trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards; (7) lacks constitutionally sufficient standards for appellate review of punitive damages awards; and (8) otherwise fails to satisfy Supreme Court precedent, including without limitation, *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *TXO Production Corp. v. Alliance Resources, Inc.*, 509 U.S. 443 (1993); *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *State Farm Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

EIGHTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks recovery of punitive or exemplary damages against Defendant, any such claim of Plaintiff for punitive damages against Defendant cannot be

maintained, because an award of punitive damages under applicable law would be unlawful, as a result of, among other deficiencies, the absence of a predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount, on the amount of punitive damages that a jury may impose, all in violation of the due process clause of the Fourteenth Amendment to the United States Constitution, the applicable state constitution, and the common law and public policies of that state.

NINETEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks recovery of punitive or exemplary damages against Defendant, any such claim of Plaintiff for punitive damages against Defendant cannot be maintained, because any award of punitive damages under applicable law would be by a jury that: (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of a punitive damages award, (2) is not adequately instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the residence, wealth, and corporate status of Defendant, and (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible. Any such verdict would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process and equal protection provisions of the applicable state constitution, and would be improper under the common law and public policies of that state.

TWENTIETH AFFIRMATIVE DEFENSE

To the extent that the Complaint seeks punitive or exemplary damages, the Due Process Clause of the United States Constitution must govern any award of punitive or exemplary damages, and the purported profits of Defendant outside the State of New Jersey may not be brought into consideration.

TWENTY-FIRST AFFIRMATIVE DEFENSE

To the extent that the Complaint seeks punitive or exemplary damages, Plaintiff's claims are barred in whole or in part because punitive or other exemplary damages are not recoverable for the causes of action set forth in the Complaint, or in the alternative, the allegations of each cause of action in the Complaint are legally insufficient to support a claim for punitive or exemplary damages as to each cause of action.

TWENTY-SECOND AFFIRMATIVE DEFENSE

To the extent that the Complaint seeks punitive or exemplary damages, Plaintiff's claims are barred in whole or in part because Defendant did not act with the requisite level of conduct to be subjected to, or that would otherwise support, any punitive or exemplary damages award in this action. Accordingly, any award of punitive or exemplary damages would be improper under the United States Constitution and the common law and public policies of New Jersey.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The Complaint is barred because Plaintiff lacks standing.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

If and only if Plaintiff's allegations are accurate, then Defendant asserts its entitlement to an apportionment of fault by the trier of fact between any person (legal or natural) to whom apportionment of fault may be made under statutory and common law principles.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of Charitable Immunity and/or the Free Exercise Clause or the Establishment Clause of the First Amendment of the United States Constitution.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred because the New Jersey Child Victim's Act violates the Due Process Clause of the New Jersey State Constitution on its face and as applied to Defendant.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the Entire Controversy Doctrine and the Mandatory Joinder Rule.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendant adopts and incorporates by reference in this Answer any defenses that may be raised by any other defendant who may be joined in this action. Defendant further gives notice that they intend to rely on any additional defenses that become available or apparent during discovery, and thus reserve the right to amend this Answer to assert any such additional defenses.

DESIGNATION OF TRIAL COUNSEL

Defendant hereby designates Anthony P. La Rocco as trial counsel.

Dated: December 10, 2021

Respectfully submitted,

By: /s/ Anthony P. La Rocco

Anthony P. La Rocco

Dana B. Parker

Thomas A. Zelante, Jr.

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.*

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-005508-21

Case Caption: PANDELO CORINNE VS THE GOVERNING
BODY O F JEHOVA

Case Initiation Date: 08/18/2021

Attorney Name: THOMAS A ZELANTE JR

Firm Name: K&L GATES LLP

Address: ONE NEWARK CENTER 10TH FL

NEWARK NJ 071025285

Phone: 9738484000

Name of Party: DEFENDANT : WATCHTOWER BIBLE

ANDTRACT SO C

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: PERSONAL INJURY

Document Type: Answer

Jury Demand: YES - 12 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

Are sexual abuse claims alleged by: CORINNE PANDELO? YES

Plaintiff's date of birth: 06/14/1974

Est. date of first incident of abuse: 01/01/1979

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

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)

12/10/2021

Dated

/s/ THOMAS A ZELANTE JR

Signed

Anthony P. La Rocco
Dana B. Parker
Thomas A. Zelante, Jr.
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.

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,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
DOCKET NO.: BER-L-5508-21

Civil Action

**DEFENDANT WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK,
INC.’S RESPONSE TO PLAINTIFF’S
REQUESTS FOR ADMISSIONS**

TO: Rayna E. Kessler, Esq.
Robins Kaplan LLP
399 Park Avenue, Suite 3600
New York, NY 10022-4611
Attorneys for Plaintiff Corinne Pandelo

Defendant Watch Tower Bible and Tract Society of New York, Inc.’s (“WTNY” or “Responding Defendant”), by and through its attorneys, K&L Gates, LLP, hereby submits its responses and objections to Plaintiff’s Requests for Admissions (“Requests”). The responses herein do not waive the protections of the attorney-client privilege, the work product doctrine, the

cleric-penitent privilege, the self-critical analysis privilege, the joint defense or common interest doctrine, or any other applicable privilege or immunity. WTNY expressly reserves the right to amend or to supplement its answers, responses and objections to these Requests as additional responsive information becomes available by way of discovery or otherwise.

WTNY's responses to these Requests are accurate as of the date made. WTNY is engaged in continuing investigation of the matters inquired into by these Requests, and cannot exclude the possibility that it may obtain more complete information or information which indicates that the answers or responses are incorrect. WTNY will provide supplemental information, if any, as required by New Jersey Court Rules.

Dated: December 10, 2021

Respectfully submitted,

By: /s/ Anthony P. La Rocco
Anthony P. La Rocco
Dana B. Parker
Thomas A. Zelante, Jr.
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.*

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. The following Preliminary Statement and General Objections are incorporated into Responding Defendant's responses to each Request as if Responding Defendant separately so objected and/or stated in response to each Request.

2. Investigation and discovery by Responding Defendant are continuing and are not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that were not presently known, but upon which Responding Defendant may rely in support of its contentions in this action. The responses contained herein shall not preclude Responding Defendant from introducing evidence based on such new and/or additional information.

3. Facts and evidence now known may be imperfectly understood, or the relevance or consequences of such facts and evidence may be imperfectly understood, and, accordingly, such facts and evidence may, in good faith, not have been analyzed for purposes of the following responses. Responding Defendant reserves the right to refer to, conduct discovery with reference to, or offer into evidence at trial any and all such witnesses, facts, and evidence, notwithstanding these responses. Responding Defendant expressly reserves the right to rely at any time, including trial, on information omitted from these responses as a result of mistake, error, oversight, inadvertence, or subsequent discovery.

4. Responding Defendant objects to these Requests to the extent that they seek information that is not in the possession, custody or control of Responding Defendant or is in the custody or control of a person or entity that is not a party to this litigation, or is in the joint custody and control of Plaintiff and Responding Defendant, or is equally or more readily accessible to Plaintiff and his counsel or is contained in public records.

5. Responding Defendant objects to these requests and accompanying definitions to the extent they seek to require the production or identification of documents, writings, records, or publications the possession of third parties or in the public domain, because such information is equally available to Plaintiff. Responding Defendant objects to these Requests to the extent that they seek information which requires legal interpretation and/or a legal conclusion.

6. Responding Defendant objects to these Requests to the extent that they seek privileged information, including, without limitation, information protected by the attorney-client privilege, the attorney work-product doctrine, the clergy-penitent privilege, or any applicable common law, statutory or constitutional privileges. To the extent that these Requests seek such privileged or protected information, Responding Defendant will not provide such information. Moreover, even if Responding Defendant inadvertently provides information protected from disclosure by the foregoing privileges or protections, Responding Defendant does not waive its right to assert those privileges and/or objections to disclosure.

7. Responding Defendant objects to the various requests as seeking information related to religious faith, custom, or law, or to internal church governance, which is protected from discovery by the First Amendment of the U.S. Constitution and its New Jersey analog, which bar

civil court inquiry into such matters. See Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

8. Responses to any Request is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement therein if the response were introduced in court, all of which objections and grounds are expressly reserved and may be interposed at any time of any motion or trial.

9. These responses are made without prejudice to Responding Defendant's right to produce evidence or contentions, or to add, modify, or to otherwise change or amend the responses herein based upon information hereafter obtained or evaluated, including, but not limited to, information and documents produced by other defendant(s) and other witnesses and/or any developments in the law.

10. Documents prepared or sent in connection with this litigation, including, but not limited to, pleadings, motions, discovery responses, and correspondence between counsel, are not included in the documents produced by this Responding Defendant.

11. Responding Defendant objects to the disclosure of any document created before or after the time period of the allegedly tortious occurrence set forth in the Plaintiffs' complaint.

12. Responding Defendant objects to the requests to the extent they are over broad as to time.

13. Responding Defendant objects to these requests to the extent that they seek information that would invade the privacy of persons who are not parties to this litigation.

14. Responding Defendant objects to these requests to the extent that they seek information not reasonably calculated to lead to the discovery of admissible evidence in this case.

15. Responding Defendant objects to these requests to the extent that they seek information contained in documents that no longer exist or never existed.

RESPONSES TO 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.

Response to Request For Admission No. 1:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 2:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 3:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 4:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 5:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 6:

Responding Defendant objects that this Request is vague and ambiguous as to the term "supervised." Subject to and without waiving the foregoing objection, Responding Defendant responds as follows: Denied.

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.

Response to Request For Admission No. 7:

Responding Defendant objects that this Request is vague and ambiguous as to the term "supervised." Subject to and without waiving the foregoing objection, Responding Defendant responds as follows: Denied.

Request For Admission No. 8:

In or around 1988, Clement Pandelo was disfellowshipped from the Jehovah's Witnesses.

Response to Request For Admission No. 8:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 9:

Clement Pandelo's disfellowship in or around 1988 was based on the allegations of sexual abuse of PLAINTIFF.

Response to Request For Admission No. 9:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 10:

After 1988, Clement Pandelo was disfellowshipped for a second time.

Response to Request For Admission No. 10:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 11:

Clement Pandelo's second disfellowship was based on additional allegations of sexual abuse of children, including PLAINTIFF.

Response to Request For Admission No. 11:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 12:

After 1988, Pandelo was reinstated to the Jehovah's Witnesses twice.

Response to Request For Admission No. 12:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 13:

Responding Defendant objects to this request on the grounds that it is unduly vague and unintelligible because it does not specify a specific point "[a]fter 1988" at which Responding Defendant did or did not become aware that "Clement Pandelo pleaded guilty to crimes involving sexual abuse of more than one minor, including PLAINTIFF." To the extent that this Request calls for Responding Defendant to admit or deny if, between January 1, 1989 and the present, Respondent Defendant became aware that Clement Pandelo pleaded guilty to crimes involving

sexual abuse of more than one minor, including PLAINTIFF,” including as a result of potentially learning the same through the course of this litigation, then Responding Defendant responds that it admits this Request. Responding defendant makes no admission as to when it became aware of the same.

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.

Response to Request For Admission No. 14:

Denied.

Request For Admission No. 15:

Prior to 1988, DEFENDANT was aware that Pandelo had admitted to sexual misconduct involving minor girls.

Response to Request For Admission No. 15:

Denied.

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.

Response to Request For Admission No. 16:

Denied.

Request For Admission No. 17:

Prior to 1988, Pandelo was publicly reproofed for sexual misconduct.

Response to Request For Admission No. 17:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 18:

DEFENDANT never reported Pandelo’s sexual abuse of minors to any law enforcement agency.

Response to Request For Admission No. 18:

Responding Defendant objects to this request on the grounds that it improperly presupposes the ultimate facts at issue in this case and accordingly attempts to establish the ultimate facts at issue in this case, particularly that Responding Defendant possessed knowledge of “Pandelo’s sexual abuse of minors,” and therefore no response is required.

Request For Admission No. 19:

Prior to 1988, DEFENDANT knew that Pandelo sexually abused at least one child.

Response to Request For Admission No. 19:

Denied.

Request For Admission No. 20:

Ministerial servants are agents of DEFENDANT.

Response to Request For Admission No. 20:

Denied.

Request For Admission No. 21:

DEFENDANT appoints certain individuals who have been baptized to serve as ministerial servants.

Response to Request For Admission No. 21:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Denied.

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.

Response to Request For Admission No. 22:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Responding Defendant further objects to this request on the grounds that it is vague and unintelligible, as it does not identify the “local Jehovah’s Witness congregation” to which it refers. Responding Defendant is accordingly without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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.

Response to Request For Admission No. 23:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Responding Defendant further objects to this request on the grounds that it is vague and unintelligible, as it does not identify the “local Jehovah’s Witness congregation” to which it refers. Responding Defendant is accordingly without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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.

Response to Request For Admission No. 24:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from

evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Denied.

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.

Response to Request For Admission No. 25:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Denied.

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.

Response to Request For Admission No. 26:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Admit.

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.

Response to Request For Admission No. 27:

Responding Defendant objects to this Request on the grounds that it is vague and ambiguous as to the terms "instructions" and "respond to" and "allegations of wrongdoing." Responding Defendant objects to this Request on the grounds that it violates the Establishment

Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevic, 426 U.S. 696 (1976). Subject to and without waiving these objections, Responding Defendant responds as follows: Responding Defendant admits that Watchtower published books prior to April 2001. Those books are documents that speak for themselves and therefore no further response is required. To the extent a response is required, Responding Defendant denies the remainder of Request for Admission No. 27, and defers to the documents for a complete and accurate statement of its contents.

Request For Admission No. 28:

WATCHTOWER promulgated a policy that requires elders to investigate allegations of sexual abuse of a child.

Response to Request For Admission No. 28:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevic, 426 U.S. 696 (1976). Watchtower further objects to this request on the grounds that it is vague and unintelligible, as it does not identify any time period in which Responding Defendant purportedly did or did not “promulgat[e] a policy that requires elders to investigate allegations of sexual abuse of a child” between the date of Watchtower’s formation and the present. Subject to and without waiving these objections, Responding Defendant responds as follows: Denied.

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.

Response to Request For Admission No. 29:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from

evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Watchtower further objects to this request on the grounds that it is vague and unintelligible, as it does not identify any time period in which Responding Defendant purportedly did or did not “promulgat[e] 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.” Subject to and without waiving these objections, Responding Defendant responds as follows: Denied.

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.

Response to Request For Admission No. 30:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Responding Defendant admits that in March 1997, Watchtower disseminated a letter to All Bodies of Elders in the United States. That letter is a document that speaks for itself and therefore no further response is required. To the extent a response is required, Responding Defendant denies the remainder of Request for Admission No. 30, and defers to the document for a complete and accurate statement of its content.

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.

Response to Request For Admission No. 31:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this

objection, Responding Defendant responds as follows: Responding Defendant admits that in March 1997 Watchtower disseminated a letter to All Bodies of Elders in the United States. That letter is a document that speaks for itself and therefore no further response is required. To the extent a response is required, Responding Defendant denies the remainder of Request for Admission No. 31, and defers to the document for a complete and accurate statement of its content.

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.

Response to Request For Admission No. 32:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Responding Defendant admits that in 1998 Watchtower disseminated a letter to All Bodies of Elders in the United States. That letter is a document that speaks for itself and therefore no further response is required. To the extent a response is required, Responding Defendant denies the remainder of Request for Admission No. 32, and defers to the document for a complete and accurate statement of its content.

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.

Response to Request For Admission No. 33:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Denied.

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.

Response to Request For Admission No. 34:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Denied.

Anthony P. La Rocco
Dana B. Parker
Thomas A. Zelante, Jr.
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.

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,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY
DOCKET NO.: BER-L-5508-21

Civil Action

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.’S RESPONSE TO PLAINTIFF’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

TO: Rayna E. Kessler, Esq.
Robins Kaplan LLP
399 Park Avenue, Suite 3600
New York, NY 10022-4611
Attorneys for Plaintiff Corinne Pandelo

Defendant Watchtower Bible and Tract Society of New York, Inc. (“WTNY” or “Responding Defendant”) by and through its attorneys, K&L Gates, LLP, hereby submits its responses and objections to Plaintiff’s First Set of Requests for Production of Documents (“Requests”). Neither the responses herein nor any documents which WTNY may produce or

reference in responding to these Requests waives the protections of the attorney-client privilege, the work product doctrine, the cleric-penitent privilege, the self-critical analysis privilege, the joint defense or common interest doctrine, or any other applicable privilege or immunity. WTNY expressly reserves the right to amend or to supplement its answers, responses and objections to these Requests as additional responsive information becomes available by way of discovery or otherwise.

WTNY's responses to these Requests are accurate as of the date made. WTNY is engaged in continuing investigation of the matters inquired into by these Requests, and cannot exclude the possibility that it may obtain more complete information or information which indicates that the answers or responses are incorrect. WTNY will provide supplemental information, if any, as required by New Jersey Court Rules.

Dated: December 10, 2021

Respectfully submitted,

By: /s/ Anthony P. La Rocco
Anthony P. La Rocco
Dana B. Parker
Thomas A. Zelante, Jr.
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.*

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. The following Preliminary Statement and General Objections are incorporated into Responding Defendant's responses to each Request as if Responding Defendant separately so objected and/or stated in response to each Request.

2. Investigation and discovery by Responding Defendant are continuing and are not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that are not presently known, but upon which Responding Defendant may rely in support of its contentions in this action. The responses contained herein shall not preclude Responding Defendant from introducing evidence based on such new and/or additional information.

3. Facts and evidence now known may be imperfectly understood, or the relevance or consequences of such facts and evidence may be imperfectly understood, and, accordingly, such facts and evidence may, in good faith, not have been analyzed for purposes of the following responses. Responding Defendant reserves the right to refer to, conduct discovery with reference to, or offer into evidence at trial any and all such witnesses, facts, and evidence, notwithstanding these responses. Responding Defendant expressly reserves the right to rely at any time, including trial, on information omitted from these responses as a result of mistake, error, oversight, inadvertence, or subsequent discovery.

4. Responding Defendant objects to these Requests to the extent that they seek information that is not in the possession, custody or control of Responding Defendant or is in the custody or control of a person or entity that is not a party to this litigation, or is in the joint custody and control of Plaintiff and Responding Defendant, or is equally or more readily accessible to Plaintiff and her counsel or is contained in public records.

5. Responding Defendant objects to these requests and accompanying definitions to the extent they seek to require the production or identification of documents, writings, records, or publications the possession of third parties or in the public domain, because such information is equally available to Plaintiff. Responding Defendant objects to these Requests to the extent that they seek information which requires legal interpretation and/or a legal conclusion.

6. Responding Defendant objects to these Requests to the extent that they seek privileged information, including, without limitation, information protected by the attorney-client privilege, the attorney work-product doctrine, the clergy-penitent privilege, or any applicable common law, statutory or constitutional privileges. To the extent that these Requests seek such privileged or protected information, Responding Defendant will not provide such information. Moreover, even if Responding Defendant inadvertently provides information protected from disclosure by the foregoing privileges or protections, Responding Defendant does not waive its right to assert those privileges and/or objections to disclosure.

7. Responding Defendant objects to the various requests as seeking information related to religious faith, custom or law, or to internal church governance which is protected from

discovery by the First Amendment of the U.S. Constitution and its New Jersey analog, which bar civil court inquiry into such matters. See Serbian Eastern Orthodox Diocese v. Milivojevic, 426 U.S. 696 (1976).

8. Nothing herein should be construed as an admission by Responding Defendant with respect to the admissibility or relevance of any fact or document, or as an admission that Responding Defendant agrees with the characterization of such fact or document(s) by Plaintiff. Responses to any Request are subject to all objections as to competence, relevance, materiality, propriety and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement therein if the response were introduced in court, all of which objections and grounds are expressly reserved and may be interposed at any time of any motion or trial.

9. These responses are made without prejudice to Responding Defendant's right to produce evidence or contentions, or to add, modify, or to otherwise change or amend the responses herein based upon information hereafter obtained or evaluated, including, but not limited to, information and documents produced by other defendant(s) and other witnesses and/or any developments in the law.

10. Documents prepared or sent in connection with this litigation, including, but not limited to, pleadings, motions, discovery responses and correspondence between counsel, are not included in the documents produced by this Responding Defendant.

11. Responding Defendant objects to the disclosure of any document created before or after the time period of the allegedly tortious occurrence set forth in the Plaintiffs' complaint.

12. Responding Defendant objects to the requests to the extent they over broad as to time.

13. Responding Defendant objects to these requests to the extent that they seek information that would invade the privacy of persons who are not parties to this litigation.

14. Responding Defendant objects to these requests to the extent that they seek information not reasonably calculated to lead to the discovery of admissible evidence in this case.

15. Responding Defendant objects to these requests to the extent that they seek information contained in documents that no longer exist or never existed.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**REQUEST FOR PRODUCTION NO. 1:**

ALL DOCUMENTS RELATING TO the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this request on the grounds that it seeks information not in Responding Defendant's possession, custody, or control. Responding Defendant further objects to this request on the grounds that it seeks information that is already in Plaintiff's possession, custody, or control, and/or seeks publicly available information that is equally as accessible to Plaintiff. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See documents bates-numbered WTN000001-WTN000061. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 2:

YOUR file RELATING TO the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this request on the grounds that it is unduly vague, as the term "file" is undefined." Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents

related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 3:

YOUR confidential files RELATING TO the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this request on the grounds that it is unduly vague, as the term “confidential file” is undefined.” Responding Defendant further objects to this Request on the grounds that it is duplicative of Request Number 2. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 4:

ALL DOCUMENTS RELATING TO allegations, complaints, OR reports of sexual abuse of any minor(s) made against the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other

privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 5:

ALL DOCUMENTS RELATING TO investigations of sexual abuse of any minor(s) REGARDING the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the term “investigations of sexual abuse.” Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 6:

ALL DOCUMENTS RELATING TO the PERPETRATOR’s appointment as a ministerial servant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 7:

ALL DOCUMENTS RELATING TO the Perpetrator's appointment as a Baptized Publisher.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Responding Defendant objects on the grounds that this request is vague and ambiguous as to the term "appointment as a Baptized Publisher." Without waiving the objections asserted above, Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 8:

ALL DOCUMENTS from OR RELATING TO any judicial committee regarding the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 9:

ALL DOCUMENTS RELATING TO or describing the duties AND obligations of ministerial servants within the Jehovah's Witness Church.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the term “Jehovah’s Witness Church.” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See documents bates-numbered WTNY000067-000069; WTNY000139-000143; and WTNY000212-WTNY000217. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the term “Jehovah’s Witness Church.” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 9. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 11:

ALL DOCUMENTS RELATING TO or describing the duties AND obligations of Baptized Publishers within the Jehovah’s Witness Church.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the terms “duties and obligations” and “Jehovah’s Witness Church.” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See documents bates-numbered WTNY000127-000138; WTNY000144-000173; 000WTNY000200-000211; and WTNY000217-000246. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the terms “nominated, appointed, evaluated, recommended, approved and installed” and “Jehovah’s Witness Church.” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 11. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 13:

Produce ALL form S-79a or S-79a-S forms RELATING TO the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 14:

Produce ALL forms S-79b or S-79b-S forms RELATING TO the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 15:

Produce ALL letters of introduction REGARDING the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 16:

Produce ALL publisher cards REGARDING the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 17:

Produce ALL DOCUMENTS RELATING TO Plaintiff.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague, ambiguous, and compound as to the terms “reports of” and “appointees of Defendants” and “should be reported, investigated, and/or otherwise addressed” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See documents bates-numbered WTN000120-000126; WTN000190-000199; and WTN000265. Responding Defendant also refer Plaintiff to the following documents bates-numbered WTN000070-000119; WTN0000174-000189; and WTN0000247-000268, which describe the ecclesiastical process followed by congregation elders when dealing with serious sin generally, during the relevant time-period. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 19:

Produce ALL DOCUMENTS RELATING to Defendants' awareness or knowledge of the allegations contained in the Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 20:

Produce ALL DOCUMENTS which reflect, refer to, or discuss the allegations in the Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in

this matter.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the terms “handling claims or allegations.” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production No. 18. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

EXHIBIT C

Anthony P. La Rocco
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 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

**DEFENDANT EAST HACKENSACK
CONGREGATION OF JEHOVAH’S
WITNESSES’ S (improperly named as
Hackensack Congregation of Jehovah’s
Witnesses) ANSWER TO PLAINTIFF’S
FIRST AMENDED COMPLAINT WITH
AFFIRMATIVE DEFENSES**

Defendant East Hackensack Congregation of Jehovah’s Witnesses (improperly named as
Hackensack Congregation of Jehovah’s Witnesses) (“Defendant”), by way of Answer to Plaintiff
Corinne Pandelo’s (“Plaintiff”) First Amended Complaint, say as follows:

INTRODUCTION AND MATTER BEFORE THE COURT

1. Defendant denies that Clement Pandelo was or is an agent of Defendant. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1 at this time, and therefore denies the same.

2. Defendant denies the allegations in Paragraph 2.

PARTIES

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 at this time, and therefore denies the same.

4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 at this time, and therefore denies the same.

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 at this time, and therefore denies the same.

6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 at this time, and therefore denies the same.

7. Defendant denies the allegations in Paragraph 7.

8. The allegations in Paragraph 8 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 8.

9. The allegations in Paragraph 9 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 9.

10. The allegations in Paragraph 10 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 10.

11. The allegations in Paragraph 11 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 11.

12. Defendant denies the allegations in Paragraph 12.

13. The allegations in Paragraph 13 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 13.

14. The allegations in Paragraph 14 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 14.

15. The allegations in Paragraph 15 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 15.

16. The allegations in Paragraph 16 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 16.

17. The allegations in Paragraph 17 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 17.

18. The allegations in Paragraph 18 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 18.

19. The allegations in Paragraph 19 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 19.

20. The allegations in Paragraph 20 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 20.

21. The allegations in Paragraph 21 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 21.

22. The allegations in Paragraph 22 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 22.

23. The allegations in Paragraph 23 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 23.

24. The allegations in Paragraph 24 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 24.

25. The allegations in Paragraph 25 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 25.

26. The allegations in Paragraph 26 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 26.

27. The allegations in Paragraph 27 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 27.

28. Defendant denies the allegations in Paragraph 28.

29. Defendant denies the allegations in Paragraph 29.

30. Defendant denies the allegations in Paragraph 30.

31. The allegations in Paragraph 31 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 31.

32. The allegations in Paragraph 32 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 32.

33. The allegations in Paragraph 33 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 33.

34. Defendant denies the allegations in Paragraph 34.

FACTUAL BACKGROUND

35. Defendant denies the allegations in Paragraph 35.

36. The allegations in Paragraph 36 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 36.

37. Defendant denies the allegations in Paragraph 37.

38. The allegations in Paragraph 38 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 38.

39. The allegations in Paragraph 39 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 39.

40. Defendant denies the allegations in Paragraph 40.

41. Defendant denies the allegations in Paragraph 41.

42. Defendant denies the allegations in Paragraph 42.

43. The allegations in Paragraph 43 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 43.

44. The allegations in Paragraph 44 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 44.

45. The allegations in Paragraph 45 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 45.

46. Defendant denies the allegations in Paragraph 46.

47. The allegations in Paragraph 47 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 47.

48. Defendant denies the allegations in Paragraph 48.

49. Defendant denies the allegations in Paragraph 49.

50. Defendant denies the allegations in Paragraph 50.

51. Defendant denies the allegations in Paragraph 51.

52. The allegations in Paragraph 52 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 52.

53. Defendant denies the allegations in Paragraph 53.

54. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 at this time, and therefore denies the same.

55. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 at this time, and therefore denies the same.

56. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 at this time, and therefore denies the same.

57. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 at this time, and therefore denies the same.

JURISDICTION AND VENUE

58. Defendant denies the allegations in Paragraph 58.

59. Defendant denies the allegations in Paragraph 59.

60. Defendant denies the allegations in Paragraph 60.

CAUSES OF ACTION AGAINST DEFENDANTS

COUNT I
(NEGLIGENCE AND/OR GROSS NEGLIGENCE)

61. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

62. Defendant denies the allegations in Paragraph 62.

63. Defendant denies the allegations in Paragraph 63.

64. Defendant denies the allegations in Paragraph 64.

65. Defendant denies the allegations in Paragraph 65.

66. Defendant denies the allegations in Paragraph 66.

67. Defendant denies the allegations in Paragraph 67.

68. Defendant denies the allegations in Paragraph 68.

69. Defendant denies the allegations in Paragraph 69.

70. Defendant denies the allegations in Paragraph 70.

71. Defendant denies the allegations in Paragraph 71.

72. Defendant denies the allegations in Paragraph 72.

73. Defendant denies the allegations in Paragraph 73.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT II
(NEGLIGENT AND/OR GROSSLY NEGLIGENT SUPERVISION)

74. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

75. The allegations in Paragraph 75 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 75.

76. Defendant denies the allegations in Paragraph 76.

77. Defendant denies the allegations in Paragraph 77.

78. Defendant denies the allegations in Paragraph 78.

79. The allegations in Paragraph 79 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 79.

80. Defendant denies the allegations in Paragraph 80.

81. Defendant denies the allegations in Paragraph 81.

82. Defendant denies the allegations in Paragraph 82.

83. Defendant denies the allegations in Paragraph 83.

84. Defendant denies the allegations in Paragraph 84.

85. Defendant denies the allegations in Paragraph 85.

86. The allegations in Paragraph 86 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 86.

87. The allegations in Paragraph 87 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 87.

88. The allegations in Paragraph 88 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 88.

89. Defendant denies the allegations in Paragraph 89.

90. Defendant denies the allegations in Paragraph 90.

91. Defendant denies the allegations in Paragraph 91.

92. Defendant denies the allegations in Paragraph 92.

93. The allegations in Paragraph 93 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 93.

94. Defendant denies the allegations in Paragraph 94.

95. Defendant denies the allegations in Paragraph 95.

96. Defendant denies the allegations in Paragraph 96.

97. The allegations in Paragraph 97 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 97.

98. Defendant denies the allegations in Paragraph 98.

99. The allegations in Paragraph 99 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 99.

100. The allegations in Paragraph 100 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 100.

101. The allegations in Paragraph 101 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 101.

102. Defendant denies the allegations in Paragraph 102.

103. The allegations in Paragraph 103 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 103.

104. Defendant denies the allegations in Paragraph 104.

105. Defendant denies the allegations in Paragraph 105.

106. Defendant denies the allegations in Paragraph 106.

107. Defendant denies the allegations in Paragraph 107.

108. The allegations in Paragraph 108 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 108.

109. The allegations in Paragraph 109 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 109.

110. The allegations in Paragraph 110 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 110.

111. The allegations in Paragraph 111 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 111.

112. Defendant denies the allegations in Paragraph 112.

113. The allegations in Paragraph 113 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 113.

114. The allegations in Paragraph 114 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 114.

115. Defendant denies the allegations in Paragraph 115.

116. Defendant denies the allegations in Paragraph 116.

117. The allegations in Paragraph 117 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 117.

118. The allegations in Paragraph 118 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 118.

119. The allegations in Paragraph 119 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 119.

120. The allegations in Paragraph 120 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 120.

121. The allegations in Paragraph 121 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 121.

122. The allegations in Paragraph 122 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 122.

123. The allegations in Paragraph 123 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 123.

124. The allegations in Paragraph 124 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 124.

125. The allegations in Paragraph 125 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 125.

126. The allegations in Paragraph 126 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 126.

127. The allegations in Paragraph 127 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 127.

128. The allegations in Paragraph 128 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 128.

129. The allegations in Paragraph 129 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 129.

130. The allegations in Paragraph 130 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 130.

131. Defendant denies the allegations in Paragraph 131.

132. The allegations in Paragraph 133 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 133.

133. Defendant denies the allegations in Paragraph 133.

134. Defendant denies the allegations in Paragraph 134.

135. Defendant denies the allegations in Paragraph 135.

136. The allegations in Paragraph 136 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 136.

137. Defendant denies the allegations in Paragraph 137.

138. Defendant denies the allegations in Paragraph 138.

139. Defendant denies the allegations in Paragraph 139.

140. The allegations in Paragraph 140 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 140.

141. The allegations in Paragraph 141 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 141.

142. Defendant denies the allegations in Paragraph 142.

143. Defendant denies the allegations in Paragraph 143.

144. The allegations in Paragraph 144 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 144.

145. Defendant denies the allegations in Paragraph 145.

146. The allegations in Paragraph 146 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 146.

147. The allegations in Paragraph 147 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 147.

148. The allegations in Paragraph 148 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 148.

149. The allegations in Paragraph 149 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 149.

150. The allegations in Paragraph 150 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 150.

151. Defendant denies the allegations in Paragraph 151.

152. Defendant denies the allegations in Paragraph 152.

153. Defendant denies the allegations in Paragraph 153.

154. Defendant denies the allegations in Paragraph 154.

155. Defendant denies the allegations in Paragraph 155.

156. Defendant denies the allegations in Paragraph 156.

157. Defendant denies the allegations in Paragraph 157.

158. Defendant denies the allegations in Paragraph 158.

159. Defendant denies the allegations in Paragraph 159.

160. Defendant denies the allegations in Paragraph 160.

161. Defendant denies the allegations in Paragraph 161.

162. Defendant denies the allegations in Paragraph 162.

163. Defendant denies the allegations in Paragraph 163.

164. Defendant denies the allegations in Paragraph 164.

165. The allegations in Paragraph 165 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 165.

166. Defendant denies the allegations in Paragraph 166.

167. Defendant denies the allegations in Paragraph 167.

168. Defendant denies the allegations in Paragraph 168.

169. The allegations in Paragraph 169 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 169.

170. The allegations in Paragraph 170 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 170.

171. Defendant denies the allegations in Paragraph 171.

172. Defendant denies the allegations in Paragraph 172.

173. Defendant denies the allegations in Paragraph 173.

174. Defendant denies the allegations in Paragraph 174.

175. Defendant denies the allegations in Paragraph 175.

176. Defendant denies the allegations in Paragraph 176.

177. Defendant denies the allegations in Paragraph 177.

178. Defendant denies the allegations in Paragraph 178.

179. Defendant denies the allegations in Paragraph 179.

180. The allegations in Paragraph 180 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 180.

181. The allegations in Paragraph 181 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 181.

182. The allegations in Paragraph 182 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 182.

183. The allegations in Paragraph 183 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 183.

184. The allegations in Paragraph 184 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 184.

185. The allegations in Paragraph 185 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 185.

186. The allegations in Paragraph 186 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 186.

187. The allegations in Paragraph 187 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 187.

188. The allegations in Paragraph 188 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 188.

189. The allegations in Paragraph 189 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 189.

190. Defendant denies the allegations in Paragraph 190.

191. Defendant denies the allegations in Paragraph 191.

192. Defendant denies the allegations in Paragraph 192.

193. Defendant denies the allegations in Paragraph 193.

194. The allegations in Paragraph 194 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 194.

195. The allegations in Paragraph 195 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 195.

196. The allegations in Paragraph 196 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 196.

197. The allegations in Paragraph 197 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 197.

198. The allegations in Paragraph 198 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 198.

199. The allegations in Paragraph 199 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 199.

200. The allegations in Paragraph 200 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 200.

201. The allegations in Paragraph 201 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 201.

202. The allegations in Paragraph 202 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 202.

203. The allegations in Paragraph 203 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 203.

204. The allegations in Paragraph 204 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 204.

205. Defendant denies the allegations in Paragraph 205.

206. The allegations in Paragraph 206 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 206.

207. Defendant denies the allegations in Paragraph 207.

208. Defendant denies the allegations in Paragraph 208.

209. Defendant denies the allegations in Paragraph 209.

210. The allegations in Paragraph 210 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 210.

211. The allegations in Paragraph 211 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 211.

212. The allegations in Paragraph 212 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 212.

213. The allegations in Paragraph 213 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 213.

214. The allegations in Paragraph 214 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 214.

215. The allegations in Paragraph 215 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 215.

216. The allegations in Paragraph 216 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 216.

217. The allegations in Paragraph 217 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 217.

218. The allegations in Paragraph 218 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 218.

219. The allegations in Paragraph 219 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 219.

220. The allegations in Paragraph 220 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 220.

221. The allegations in Paragraph 221 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 221.

222. The allegations in Paragraph 222 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 222.

223. The allegations in Paragraph 223 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 223.

224. The allegations in Paragraph 224 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 224.

225. The allegations in Paragraph 225 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 225.

226. The allegations in Paragraph 226 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 226.

227. The allegations in Paragraph 227 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 227.

228. Defendant denies the allegations in Paragraph 228.

229. Defendant denies the allegations in Paragraph 229.

230. Defendant denies the allegations in Paragraph 230.

231. Defendant denies the allegations in Paragraph 231.

232. Defendant denies the allegations in Paragraph 232.

233. Defendant denies the allegations in Paragraph 233.

234. The allegations in Paragraph 234 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 234.

235. The allegations in Paragraph 235 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 235.

236. The allegations in Paragraph 236 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 236.

237. The allegations in Paragraph 237 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 237.

238. The allegations in Paragraph 238 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 238.

239. The allegations in Paragraph 239 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 239.

240. Defendant denies the allegations in Paragraph 240.

241. Defendant denies the allegations in Paragraph 241.

242. Defendant denies the allegations in Paragraph 242.

243. Defendant denies the allegations in Paragraph 243.

244. Defendant denies the allegations in Paragraph 244.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT III
(NEGLIGENT AND/OR GROSSLY NEGLIGENT RETENTION)

245. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

246. Defendant denies the allegations in Paragraph 246.

247. The allegations in Paragraph 247 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 247.

248. Defendant denies the allegations in Paragraph 248.

249. Defendant denies the allegations in Paragraph 249.

250. The allegations in Paragraph 250 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 250.

251. The allegations in Paragraph 251 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 251.

252. Defendant denies the allegations in Paragraph 252.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT IV
(NEGLIGENT AND/OR GROSSLY NEGLIGENT FAILURE TO TRAIN RELATING TO CHILD ABUSE)

253. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

254. The allegations in Paragraph 254 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 254.

255. The allegations in Paragraph 255 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 255.

256. The allegations in Paragraph 256 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 256.

257. The allegations in Paragraph 257 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 257.

258. The allegations in Paragraph 258 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 258.

259. The allegations in Paragraph 259 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 259.

260. The allegations in Paragraph 260 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 260.

261. The allegations in Paragraph 261 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 261.

262. The allegations in Paragraph 262 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 262.

263. The allegations in Paragraph 263 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 263.

264. The allegations in Paragraph 264 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 264.

265. The allegations in Paragraph 265 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 265.

266. The allegations in Paragraph 266 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 266.

267. The allegations in Paragraph 267 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 267.

268. The allegations in Paragraph 268 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 268.

269. The allegations in Paragraph 269 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 269.

270. Defendant denies the allegations in Paragraph 270.

271. Defendant denies the allegations in Paragraph 271.

272. Defendant denies the allegations in Paragraph 272.

273. Defendant denies the allegations in Paragraph 273.

274. Defendant denies the allegations in Paragraph 274.

275. The allegations in Paragraph 275 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 275.

276. The allegations in Paragraph 276 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 276.

277. The allegations in Paragraph 277 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 277.

278. The allegations in Paragraph 278 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 278.

279. The allegations in Paragraph 279 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 279.

280. Defendant denies the allegations in Paragraph 280.

281. Defendant denies the allegations in Paragraph 281.

282. Defendant denies the allegations in Paragraph 282.

283. Defendant denies the allegations in Paragraph 283.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT V
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

284. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

285. Defendant denies the allegations in Paragraph 285.

286. Defendant denies the allegations in Paragraph 286.

287. Defendant denies the allegations in Paragraph 287.

288. Defendant denies the allegations in Paragraph 288.

289. Defendant denies the allegations in Paragraph 289.

290. Defendant denies the allegations in Paragraph 290.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT VI
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

291. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

292. Defendant denies the allegations in Paragraph 292.

293. Defendant denies the allegations in Paragraph 293.

294. Defendant denies the allegations in Paragraph 294.

295. Defendant denies the allegations in Paragraph 295.

296. Defendant denies the allegations in Paragraph 296.

297. Defendant denies the allegations in Paragraph 297.

298. Defendant denies the allegations in Paragraph 298.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT VII
(SEXUAL ABUSE AND BATTERY)

299. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

300. The allegations in Paragraph 300 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 300.

301. The allegations in Paragraph 301 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 301.

302. The allegations in Paragraph 302 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 302.

303. The allegations in Paragraph 303 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 303.

304. The allegations in Paragraph 304 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 304.

305. Defendant denies the allegations in Paragraph 305.

306. Defendant denies the allegations in Paragraph 306.

307. The allegations in Paragraph 307 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 307.

308. The allegations in Paragraph 308 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 308.

309. The allegations in Paragraph 309 do not assert a claim against Defendant, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 309.

310. Defendant denies the allegations in Paragraph 310.

311. Defendant denies the allegations in Paragraph 311.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

COUNT VIII
(PUNITIVE DAMAGES)

312. Defendant repeats and re-alleges all aforementioned responses as if fully incorporated herein.

313. Defendant denies the allegations in Paragraph 313.

314. Defendant denies the allegations in Paragraph 314.

315. Defendant denies the allegations in Paragraph 315.

316. Defendant denies the allegations in Paragraph 316.

WHEREFORE Defendant demands judgement in its favor and against Plaintiff denying Plaintiff's claim with prejudice and awarding Defendant such other and further relief as the Court deems just and appropriate.

AFFIRMATIVE DEFENSES

By alleging the affirmative defenses set forth below, Defendant does not allege or admit that it has the burden of proof and/or the burden of persuasion with respect to any of these matters.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

If Plaintiff has sustained damages as alleged in the Complaint, which Defendant denies, Plaintiff's claims are barred or reduced, in whole or in part, by the doctrines of contributory or

comparative negligence.

THIRD AFFIRMATIVE DEFENSE

If Plaintiff has suffered any injury or incurred any damages, which Defendant denies, that injury or damage was caused, in whole or in part, by: (1) the acts or omissions of persons other than Defendant and over whom Defendant had no control; or (2) superseding or intervening causes over which Defendant had no control.

FOURTH AFFIRMATIVE DEFENSE

Defendant owed no duty of care toward Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

The injuries, damages, or losses, if any, sustained by Plaintiff were not reasonably foreseeable and were not the result of any conduct or negligence by Defendant.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate the damage, if any, that Plaintiff has allegedly sustained and to exercise reasonable care to avoid the consequences of harms, if any, by, among other things, failing to use reasonable diligence, failing to use reasonable means to prevent aggravation of any injury, and failing to take reasonable precautions to reduce any injury and damage.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages, losses, and/or injuries were not proximately caused by any act or omission of Defendant.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitations and/or repose.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrines of estoppel, collateral estoppel, laches, and/or waiver.

TENTH AFFIRMATIVE DEFENSE

Defendant denies any negligence because, at all times relevant to the Complaint, they met or exceeded the requisite standard of care.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant acted reasonably and in good faith based on all relevant facts and circumstances known by Defendant at the time they so acted.

TWELFTH AFFIRMATIVE DEFENSE

Any injuries Plaintiff sustained are the result of an unforeseeable series of events over which Defendant had no control.

THIRTEENTH AFFIRMATIVE DEFENSE

If Plaintiff has sustained damages as alleged in the Complaint, which Defendant denies, Plaintiff's damages were the result of Plaintiff's unforeseeable pre-existing medical conditions or other medical conditions for which Defendant cannot be held responsible.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant is entitled to an offset and/or reduction and Plaintiff is barred from recovering any and all amounts paid for Plaintiff's alleged injuries and damages by way of settlement or judgment of any claim, incident or lawsuit which may have contributed to the injuries and

damages referred to in the Complaint, in the event Defendant should be found liable to Plaintiff, although this supposition is denied and only stated for the purposes of this affirmative defense.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim for punitive or exemplary damages fails to state a claim upon which relief can be granted.

SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks recovery of punitive or exemplary damages against Defendant, unless Defendant's liability for punitive damages and the appropriate amount of punitive damages is required to be established by clear and convincing evidence, any award of punitive damages would violate Defendant's due process protections afforded by the United States Constitution, the excessive fines clause of the Eighth Amendment of the United States Constitution, the Commerce Clause of the United States Constitution, the Full Faith and Credit Clause of the United States Constitution, rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the applicable state constitution, and would be improper under the common law and public policies of that state. Any law, statute, or other authority purporting to permit the recovery of punitive damages in this case is unconstitutional, facially, and as applied, to the extent that, without limitation, it: (1) lacks constitutionally sufficient standards to guide and restrain the jury's discretion in determining whether to award punitive damages and/or the amount, if any; (2) is void for vagueness, both facially and as applied, because it fails to provide adequate advance notice as to what conduct will result in punitive damages or what punishment will be imposed; (3) unconstitutionally may permit recovery of punitive damages based on out-of-state conduct, conduct that complied with applicable law, or conduct that was not directed at Plaintiff or did not proximately cause harm, if any, to Plaintiff; (4)

unconstitutionally may permit recovery of punitive damages in an amount that is not both reasonable and proportionate to the amount of harm, if any, to Plaintiff and to the amount of compensatory damages, if any; (5) unconstitutionally may permit jury consideration of net worth or other financial information relating to Defendant; (6) is not subject to adequate trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards; (7) lacks constitutionally sufficient standards for appellate review of punitive damages awards; and (8) otherwise fails to satisfy Supreme Court precedent, including without limitation, *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *TXO Production Corp. v. Alliance Resources, Inc.*, 509 U.S. 443 (1993); *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *State Farm Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

EIGHTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks recovery of punitive or exemplary damages against Defendant, any such claim of Plaintiff for punitive damages against Defendant cannot be maintained, because an award of punitive damages under applicable law would be unlawful, as a result of, among other deficiencies, the absence of a predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount, on the amount of punitive damages that a jury may impose, all in violation of the due process clause of the Fourteenth Amendment to the United States Constitution, the applicable state constitution, and the common law and public policies of that state.

NINETEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks recovery of punitive or exemplary damages against Defendant, any such claim of Plaintiff for punitive damages against Defendant cannot be maintained, because any award of punitive damages under applicable law would be by a jury

that: (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of a punitive damages award, (2) is not adequately instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the residence, wealth, and corporate status of Defendant, and (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible. Any such verdict would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process and equal protection provisions of the applicable state constitution, and would be improper under the common law and public policies of that state.

TWENTIETH AFFIRMATIVE DEFENSE

To the extent that the Complaint seeks punitive or exemplary damages, the Due Process Clause of the United States Constitution must govern any award of punitive or exemplary damages, and the purported profits of Defendant outside the State of New Jersey may not be brought into consideration.

TWENTY-FIRST AFFIRMATIVE DEFENSE

To the extent that the Complaint seeks punitive or exemplary damages, Plaintiff's claims are barred in whole or in part because punitive or other exemplary damages are not recoverable for the causes of action set forth in the Complaint, or in the alternative, the allegations of each

cause of action in the Complaint are legally insufficient to support a claim for punitive or exemplary damages as to each cause of action.

TWENTY-SECOND AFFIRMATIVE DEFENSE

To the extent that the Complaint seeks punitive or exemplary damages, Plaintiff's claims are barred in whole or in part because Defendant did not act with the requisite level of conduct to be subjected to, or that would otherwise support, any punitive or exemplary damages award in this action. Accordingly, any award of punitive or exemplary damages would be improper under the United States Constitution and the common law and public policies of New Jersey.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The Complaint is barred because Plaintiff lacks standing.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

If and only if Plaintiff's allegations are accurate, then Defendant asserts its entitlement to an apportionment of fault by the trier of fact between any person (legal or natural) to whom apportionment of fault may be made under statutory and common law principles.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of Charitable Immunity and/or the Free Exercise Clause or the Establishment Clause of the First Amendment of the United States Constitution.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred because the New Jersey Child Victim's Act violates the Due Process Clause of the New Jersey State Constitution on its face and as applied to Defendant.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the Entire Controversy Doctrine and the Mandatory Joinder

Rule.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendant adopts and incorporates by reference in this Answer any defenses that may be raised by any other defendant who may be joined in this action. Defendant further gives notice that they intend to rely on any additional defenses that become available or apparent during discovery, and thus reserve the right to amend this Answer to assert any such additional defenses.

DESIGNATION OF TRIAL COUNSEL

Defendant hereby designates Anthony P. La Rocco as trial counsel.

Dated: January 31, 2022

Respectfully submitted,

By: /s/ Anthony P. La Rocco

Anthony P. La Rocco

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 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)*

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-005508-21

Case Caption: PANDELO CORINNE VS THE GOVERNING
BODY O F JEHOVA

Case Initiation Date: 08/18/2021

Attorney Name: THOMAS A ZELANTE JR

Firm Name: K&L GATES LLP

Address: ONE NEWARK CENTER 10TH FL

NEWARK NJ 071025285

Phone: 9738484000

Name of Party: DEFENDANT : HACKENSACK

CONGREGATION OF JEH

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: PERSONAL INJURY

Document Type: Answer

Jury Demand: YES - 12 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

Are sexual abuse claims alleged by: CORINNE PANDELO? YES

Plaintiff's date of birth: 06/14/1974

Est. date of first incident of abuse: 01/01/1979

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

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)

01/31/2022

Dated

/s/ THOMAS A ZELANTE JR

Signed

EXHIBIT D

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

Anthony.LaRocco@klgates.com

Dana.Parker@klgates.com

Reymond.Yammine@klgates.com

*Attorneys for Defendant 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,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
DOCKET NO.: BER-L-5508-21

Civil Action

**DEFENDANT EAST HACKENSACK
CONGREGATION OF JEHOVAH'S
WITNESSES' (IMPROPERLY NAMED
AS HACKENSACK CONGREGATION
OF JEHOVAH'S WITNESSES)
RESPONSE TO PLAINTIFF'S
REQUESTS FOR ADMISSIONS**

TO: Rayna E. Kessler, Esq.
Robins Kaplan LLP
399 Park Avenue, Suite 3600
New York, NY 10022-4611
Attorneys for Plaintiff Corinne Pandelo

Defendant East Hackensack Congregation of Jehovah's Witnesses ("East Congregation"
or "Responding Defendant") (improperly named as the "Hackensack Congregation of Jehovah's

Witnesses”), by and through its attorneys, K&L Gates, LLP, hereby submits its responses and objections to Plaintiff’s Requests for Admissions (“Requests”). The responses herein do not waive the protections of the attorney-client privilege, the work product doctrine, the cleric-penitent privilege, the self-critical analysis privilege, the joint defense or common interest doctrine, or any other applicable privilege or immunity. East Congregation expressly reserves the right to amend or to supplement its answers, responses and objections to these Requests as additional responsive information becomes available by way of discovery or otherwise.

East Congregation’s responses to these Requests are accurate as of the date made. East Congregation is engaged in continuing investigation of the matters inquired into by these Requests, and cannot exclude the possibility that it may obtain more complete information or information which indicates that the answers or responses are incorrect. East Congregation will provide supplemental information, if any, as required by New Jersey Court Rules.

Dated: February 7, 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 East Hackensack
 Congregation of Jehovah’s Witnesses
 (improperly named as Hackensack
 Congregation of Jehovah’s Witnesses)*

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. The following Preliminary Statement and General Objections are incorporated into Responding Defendant's responses to each Request as if Responding Defendant separately so objected and/or stated in response to each Request.

2. Investigation and discovery by Responding Defendant are continuing and are not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that were not presently known, but upon which Responding Defendant may rely in support of its contentions in this action. The responses contained herein shall not preclude Responding Defendant from introducing evidence based on such new and/or additional information.

3. Facts and evidence now known may be imperfectly understood, or the relevance or consequences of such facts and evidence may be imperfectly understood, and, accordingly, such facts and evidence may, in good faith, not have been analyzed for purposes of the following responses. Responding Defendant reserves the right to refer to, conduct discovery with reference to, or offer into evidence at trial any and all such witnesses, facts, and evidence, notwithstanding these responses. Responding Defendant expressly reserves the right to rely at any time, including trial, on information omitted from these responses as a result of mistake, error, oversight, inadvertence, or subsequent discovery.

4. Responding Defendant objects to these Requests to the extent that they seek information that is not in the possession, custody or control of Responding Defendant or is in the custody or control of a person or entity that is not a party to this litigation, or is in the joint custody and control of Plaintiff and Responding Defendant, or is equally or more readily accessible to Plaintiff and her counsel or is contained in public records.

5. Responding Defendant objects to these requests and accompanying definitions to the extent they seek to require the production or identification of documents, writings, records, or publications the possession of third parties or in the public domain, because such information is equally available to Plaintiff. Responding Defendant objects to these Requests to the extent that they seek information which requires legal interpretation and/or a legal conclusion.

6. Responding Defendant objects to these Requests to the extent that they seek privileged information, including, without limitation, information protected by the attorney-client privilege, the attorney work-product doctrine, the clergy-penitent privilege, or any applicable common law, statutory or constitutional privileges. To the extent that these Requests seek such privileged or protected information, Responding Defendant will not provide such information. Moreover, even if Responding Defendant inadvertently provides information protected from disclosure by the foregoing privileges or protections, Responding Defendant does not waive its right to assert those privileges and/or objections to disclosure.

7. Responding Defendant objects to the various requests as seeking information related to religious faith, custom, or law, or to internal church governance, which is protected from discovery by the First Amendment of the U.S. Constitution and its New Jersey analog, which bar civil court inquiry into such matters. See Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

8. Responses to any Request is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement therein if the response were introduced in court, all of which objections and grounds are expressly reserved and may be interposed at any time of any motion or trial.

9. These responses are made without prejudice to Responding Defendant's right to produce evidence or contentions, or to add, modify, or to otherwise change or amend the responses herein based upon information hereafter obtained or evaluated, including, but not limited to, information and documents produced by other defendant(s) and other witnesses and/or any developments in the law.

10. Documents prepared or sent in connection with this litigation, including, but not limited to, pleadings, motions, discovery responses, and correspondence between counsel, are not included in the documents produced by this Responding Defendant.

11. Responding Defendant objects to the disclosure of any document created before or after the time period of the allegedly tortious occurrence set forth in the Plaintiff's complaint.

12. Responding Defendant objects to the requests to the extent they are over broad as to time.

13. Responding Defendant objects to these requests to the extent that they seek information that would invade the privacy of persons who are not parties to this litigation.

14. Responding Defendant objects to these requests to the extent that they seek information not reasonably calculated to lead to the discovery of admissible evidence in this case.

15. Responding Defendant objects to these requests to the extent that they seek information contained in documents that no longer exist or never existed.

RESPONSES TO 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.

Response to Request For Admission No. 1:

Denied.

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.

Response to Request For Admission No. 2:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 3:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 4:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 5:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 6:

Responding Defendant objects that this Request is vague and ambiguous as to the term "supervised." Subject to and without waiving the foregoing objection, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 7:

At any time between 1978 and 1989, HACKENSACK CONGREGATION OF JEHOVAH'S WITNESSES supervised Clement Pandelo in his capacity as a ministerial servant.

Response to Request For Admission No. 7:

Responding Defendant objects that this Request is vague and ambiguous as to the term "supervised." Subject to and without waiving the foregoing objection, Responding Defendant responds as follows: Denied.

Request For Admission No. 8:

In or around 1988, Clement Pandelo was disfellowshipped from the Jehovah's Witnesses.

Response to Request For Admission No. 8:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 9:

Clement Pandelo's disfellowship in or around 1988 was based on the allegations of sexual abuse of PLAINTIFF.

Response to Request For Admission No. 9:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 10:

After 1988, Clement Pandelo was disfellowshipped for a second time.

Response to Request For Admission No. 10:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 11:

Clement Pandelo's second disfellowship was based on additional allegations of sexual abuse of children, including PLAINTIFF.

Response to Request For Admission No. 11:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 12:

After 1988, Pandelo was reinstated to the Jehovah's Witnesses twice.

Response to Request For Admission No. 12:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

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.

Response to Request For Admission No. 13:

Responding Defendant objects to this request on the grounds that it is unduly vague and unintelligible because it does not specify a specific point "[a]fter 1988" at which Responding Defendant did or did not become aware that "Clement Pandelo pleaded guilty to crimes involving sexual abuse of more than one minor, including PLAINTIFF." To the extent that this Request calls for Responding Defendant to admit or deny if, between January 1, 1989 and the present,

Respondent Defendant became aware that Clement Pandelo pleaded guilty to crimes involving sexual abuse of more than one minor, including PLAINTIFF,” including as a result of potentially learning the same through the course of this litigation, then Responding Defendant responds that it admits this Request. Responding defendant makes no admission as to when it became aware of the same.

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.

Response to Request For Admission No. 14:

Denied.

Request For Admission No. 15:

Prior to 1988, DEFENDANT was aware that Pandelo had admitted to sexual misconduct involving minor girls.

Response to Request For Admission No. 15:

Denied.

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.

Response to Request For Admission No. 16:

Denied.

Request For Admission No. 17:

Prior to 1988, Pandelo was publicly reproofed for sexual misconduct.

Response to Request For Admission No. 17:

After reasonable inquiry, Responding Defendant is without knowledge to admit or deny this Request.

Request For Admission No. 18:

DEFENDANT never reported Pandelo’s sexual abuse of minors to any law enforcement agency.

Response to Request For Admission No. 18:

Responding Defendant objects to this request on the grounds that it improperly presupposes the ultimate facts at issue in this case and accordingly attempts to establish the ultimate facts at issue in this case, particularly that Responding Defendant possessed knowledge of “Pandelo’s sexual abuse of minors,” and therefore no response is required.

Request For Admission No. 19:

Prior to 1988, DEFENDANT knew that Pandelo sexually abused at least one child.

Response to Request For Admission No. 19:

Denied.

Request For Admission No. 20:

Ministerial servants are agents of DEFENDANT.

Response to Request For Admission No. 20:

Denied.

Request For Admission No. 21:

DEFENDANT appoints certain individuals who have been baptized to serve as ministerial servants.

Response to Request For Admission No. 21:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Denied.

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.

Response to Request For Admission No. 22:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Responding Defendant further objects to this request on the grounds that it is vague and unintelligible, as it does not identify the “local Jehovah’s Witness congregation” to which it refers. Responding Defendant is without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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.

Response to Request For Admission No. 23:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Responding Defendant further objects to this request on the grounds that it is vague and unintelligible, as it does not identify the “local Jehovah’s Witness congregation” to which it refers. Responding Defendant is without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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.

Response to Request For Admission No. 24:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this

objection, Responding Defendant responds as follows: Responding Defendant is without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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.

Response to Request For Admission No. 25:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Denied.

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.

Response to Request For Admission No. 26:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Admit.

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.

Response to Request For Admission No. 27:

Responding Defendant objects to this Request on the grounds that it is vague and ambiguous as to the terms "instructions" and "respond to" and "allegations of wrongdoing." Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking

information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving these objections, Responding Defendant responds as follows: Responding Defendant is without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

Request For Admission No. 28:

WATCHTOWER promulgated a policy that requires elders to investigate allegations of sexual abuse of a child.

Response to Request For Admission No. 28:

Responding Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term “investigate” as it could have a criminal connotation or a religious one. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Responding Defendant is without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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.

Response to Request For Admission No. 29:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Responding Defendant further objects to this request on the grounds that it is vague and unintelligible, as it does not identify any time period in which Responding Defendant purportedly did or did not “promulgat[e] 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.” Subject to and without waiving these objections, Responding Defendant responds as follows: Denied.

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.

Response to Request For Admission No. 30:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Responding Defendant is accordingly without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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.

Response to Request For Admission No. 31:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Responding Defendant is without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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.

Response to Request For Admission No. 32:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Responding Defendant is without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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.

Response to Request For Admission No. 33:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Responding Defendant is without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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.

Response to Request For Admission No. 34:

Responding Defendant objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution by improperly seeking information and documents that are related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion because the First Amendment of the United States Constitution and its New Jersey analog bar civil courts from

evaluating or interpreting such religious evidence in order to reach a decision. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving this objection, Responding Defendant responds as follows: Responding Defendant is without knowledge sufficient to permit it to admit or deny this request after reasonable investigation.

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

Anthony.LaRocco@klgates.com

Dana.Parker@klgates.com

Reymond.Yammine@klgates.com

*Attorneys for Defendant 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,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY
DOCKET NO.: BER-L-5508-21

Civil Action

**DEFENDANT HACKENSACK
CONGREGATION OF JEHOVAH’S
WITNESSES’ RESPONSE TO
PLAINTIFF’S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS**

TO: Rayna E. Kessler, Esq.
Robins Kaplan LLP
399 Park Avenue, Suite 3600
New York, NY 10022-4611
Attorneys for Plaintiff Corinne Pandelo

Defendant East Hackensack Congregation of Jehovah’s Witnesses (“East Congregation”
or “Responding Defendant”) (improperly named as the “Hackensack Congregation of Jehovah’s

Witnesses”), by and through its attorneys, K&L Gates, LLP, hereby submits its responses and objections to Plaintiff’s First Set of Requests for Production of Documents (“Requests”). Neither the responses herein nor any documents which East Congregation may produce or reference in responding to these Requests waives the protections of the attorney-client privilege, the work product doctrine, the cleric-penitent privilege, the self-critical analysis privilege, the joint defense or common interest doctrine, or any other applicable privilege or immunity. East Congregation expressly reserves the right to amend or to supplement its answers, responses and objections to these Requests as additional responsive information becomes available by way of discovery or otherwise.

East Congregation’s responses to these Requests are accurate as of the date made. East Congregation is engaged in continuing investigation of the matters inquired into by these Requests, and cannot exclude the possibility that it may obtain more complete information or information which indicates that the answers or responses are incorrect. East Congregation will provide supplemental information, if any, as required by New Jersey Court Rules.

Dated: February 7, 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 East Hackensack

Congregation of Jehovah’s Witnesses

(improperly named as Hackensack

Congregation of Jehovah’s Witnesses)

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. The following Preliminary Statement and General Objections are incorporated into Responding Defendant's responses to each Request as if Responding Defendant separately so objected and/or stated in response to each Request.

2. Investigation and discovery by Responding Defendant are continuing and are not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that are not presently known, but upon which Responding Defendant may rely in support of its contentions in this action. The responses contained herein shall not preclude Responding Defendant from introducing evidence based on such new and/or additional information.

3. Facts and evidence now known may be imperfectly understood, or the relevance or consequences of such facts and evidence may be imperfectly understood, and, accordingly, such facts and evidence may, in good faith, not have been analyzed for purposes of the following responses. Responding Defendant reserves the right to refer to, conduct discovery with reference to, or offer into evidence at trial any and all such witnesses, facts, and evidence, notwithstanding these responses. Responding Defendant expressly reserves the right to rely at any time, including trial, on information omitted from these responses as a result of mistake, error, oversight, inadvertence, or subsequent discovery.

4. Responding Defendant objects to these Requests to the extent that they seek information that is not in the possession, custody or control of Responding Defendant or is in the custody or control of a person or entity that is not a party to this litigation, or is in the joint custody and control of Plaintiff and Responding Defendant, or is equally or more readily accessible to Plaintiff and her counsel or is contained in public records.

5. Responding Defendant objects to these requests and accompanying definitions to the extent they seek to require the production or identification of documents, writings, records, or publications in the possession of third parties or in the public domain, because such information is equally available to Plaintiff. Responding Defendant objects to these Requests to the extent that they seek information which requires legal interpretation and/or a legal conclusion.

6. Responding Defendant objects to these Requests to the extent that they seek privileged information, including, without limitation, information protected by the attorney-client privilege, the attorney work-product doctrine, the clergy-penitent privilege, or any applicable common law, statutory or constitutional privileges. To the extent that these Requests seek such privileged or protected information, Responding Defendant will not provide such information. Moreover, even if Responding Defendant inadvertently provides information protected from disclosure by the foregoing privileges or protections, Responding Defendant does not waive its right to assert those privileges and/or objections to disclosure.

7. Responding Defendant objects to the various requests as seeking information related to religious faith, custom or law, or to internal church governance which is protected from

discovery by the First Amendment of the U.S. Constitution and its New Jersey analog, which bar civil court inquiry into such matters. See Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

8. Nothing herein should be construed as an admission by Responding Defendant with respect to the admissibility or relevance of any fact or document, or as an admission that Responding Defendant agrees with the characterization of such fact or document(s) by Plaintiff. Responses to any Request are subject to all objections as to competence, relevance, materiality, propriety and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement therein if the response were introduced in court, all of which objections and grounds are expressly reserved and may be interposed at any time of any motion or trial.

9. These responses are made without prejudice to Responding Defendant's right to produce evidence or contentions, or to add, modify, or to otherwise change or amend the responses herein based upon information hereafter obtained or evaluated, including, but not limited to, information and documents produced by other defendant(s) and other witnesses and/or any developments in the law.

10. Documents prepared or sent in connection with this litigation, including, but not limited to, pleadings, motions, discovery responses and correspondence between counsel, are not included in the documents produced by this Responding Defendant.

11. Responding Defendant objects to the disclosure of any document created before or after the time period of the allegedly tortious occurrence set forth in the Plaintiff's complaint.

12. Responding Defendant objects to the requests to the extent they over broad as to time.

13. Responding Defendant objects to these requests to the extent that they seek information that would invade the privacy of persons who are not parties to this litigation.

14. Responding Defendant objects to these requests to the extent that they seek information not reasonably calculated to lead to the discovery of admissible evidence in this case.

15. Responding Defendant objects to these requests to the extent that they seek information contained in documents that no longer exist or never existed.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

ALL DOCUMENTS RELATING TO the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this request on the grounds that it seeks information not in Responding Defendant's possession, custody, or control. Responding Defendant further objects to this request on the grounds that it seeks information that is already in Plaintiff's possession, custody, or control, and/or seeks publicly available information that is equally as accessible to Plaintiff. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See documents bates-numbered EAST000001-000094. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 2:

YOUR file RELATING TO the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this request on the grounds that it is unduly vague, as the term "file" is undefined." Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents

related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 3:

YOUR confidential files RELATING TO the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this request on the grounds that it is unduly vague, as the term “confidential file” is undefined.” Responding Defendant further objects to this Request on the grounds that it is duplicative of Request Number 2. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 4:

ALL DOCUMENTS RELATING TO allegations, complaints, OR reports of sexual abuse of any minor(s) made against the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other

privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 5:

ALL DOCUMENTS RELATING TO investigations of sexual abuse of any minor(s) REGARDING the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the term “investigations of sexual abuse.” Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 6:

ALL DOCUMENTS RELATING TO the PERPETRATOR’s appointment as a ministerial servant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 7:

ALL DOCUMENTS RELATING TO the Perpetrator's appointment as a Baptized Publisher.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Responding Defendant objects on the grounds that this request is vague and ambiguous as to the term "appointment as a Baptized Publisher." Without waiving the objections asserted above, Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 8:

ALL DOCUMENTS from OR RELATING TO any judicial committee regarding the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 9:

ALL DOCUMENTS RELATING TO or describing the duties AND obligations of ministerial servants within the Jehovah's Witness Church.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the term “Jehovah’s Witness Church.” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See documents bates-numbered EAST000151-000156. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the term “Jehovah’s Witness Church.” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 9. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 11:

ALL DOCUMENTS RELATING TO or describing the duties AND obligations of Baptized Publishers within the Jehovah’s Witness Church.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the terms “duties and obligations” and “Jehovah’s Witness Church.” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See documents bates-numbered EAST000095-000322. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the terms “nominated, appointed, evaluated, recommended, approved and installed” and “Jehovah’s Witness Church.” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 11. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 13:

Produce ALL form S-79a or S-79a-S forms RELATING TO the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 14:

Produce ALL forms S-79b or S-79b-S forms RELATING TO the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 15:

Produce ALL letters of introduction REGARDING the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 16:

Produce ALL publisher cards REGARDING the PERPETRATOR.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Responding Defendant responds as follows: None. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 17:

Produce ALL DOCUMENTS RELATING TO Plaintiff.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 1 and documents bates numbered EAST000323-000324. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague, ambiguous, and compound as to the terms “reports of” and “appointees of Defendants” and “should be reported, investigated, and/or otherwise addressed” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See documents bates-numbered EAST000325-000338. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 19:

Produce ALL DOCUMENTS RELATING to Defendants' awareness or knowledge of the allegations contained in the Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

REQUEST FOR PRODUCTION NO. 20:

Produce ALL DOCUMENTS which reflect, refer to, or discuss the allegations in the Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. Responding Defendant further objects to this Request on the grounds that it seeks documents protected by the attorney-client privilege, the attorney work product doctrine, the cleric-penitent privilege, and/or any other privilege. Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 1. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Responding Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it is not limited in time or scope and is not reasonably calculated to lead to the discovery of relevant and/or admissible evidence. This request is also vague and ambiguous as to the terms “handling claims or allegations.” Responding Defendant further objects to this Request on the grounds that it violates the Establishment Clause and Equal Protection Clause of the United States Constitution and its New Jersey analog by improperly seeking information and documents related to the religious beliefs, faith, custom, practices, and internal governance or discipline of the Religion. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Without waiving the objections asserted above, Responding Defendant responds as follows: See response to Request for Production 18. Responding Defendant reserves the right to supplement this response upon the completion of further discovery and investigation in this matter.

EXHIBIT E

ROBINS KAPLAN LLP

RAYNA E. KESSLER, ESQ.
NJ ID No. 031782010
1325 Sixth Ave, Suite 2600
New York, New York 10019
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

THE ZALKIN LAW FIRM, P.C.

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

Attorneys for Plaintiff Corinne 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, 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

**PLAINTIFF CORINNE PANDELO’S
OBJECTIONS AND RESPONSES TO
DEFENDANTS WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK,
INC. AND EAST HACKENSACK
CONGREGATION OF JEHOVAH’S
WITNESSES’ CONSOLIDATED FIRST
SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

TO: Anthony P. La Rocco, Esq.
Dana B. Parker, Esq.
Reymond E. Yammine, Esq.

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*

Plaintiff CORINNE PANDELO ("Plaintiff") by and through her attorneys, hereby provides her objections and responses ("Objections and Responses") to the Consolidated First Set of Requests for Production of Documents, propounded by Defendants Watchtower Bible and Tract Society of New York, Inc. and East Hackensack Congregation of Jehovah's Witnesses ("Defendants").

Dated: August 24, 2022

THE ZALKIN LAW FIRM, P.C.

By: /s/ Elizabeth A. Cate, Esq.

Elizabeth A. Cate, Esq. (admitted *pro hac vice*)

10 Times Square

1441 Broadway, Suite 3147

New York, NY 10018

Telephone: (858) 259-3011

Email: elizabeth@zalkin.com

Attorneys for Plaintiff Corinne Pandelo

GENERAL OBJECTIONS

The general objections listed below are considered applicable to and are incorporated into each and every response by Plaintiff, and each response is made without waiving any of the general objections. The assertion of these general objections in response to individual Requests shall not be considered a waiver of the remaining general objections.

1. Plaintiff objects to these Requests to the extent that they seek information not in Plaintiff's possession, custody, or control.

2. Plaintiff objects to these Requests to the extent that they seek information in the possession, custody, or control of third parties.

3. Plaintiff objects to these Requests to the extent that they seek documents and information protected by Rule 4:10-2(c), the work product doctrine, and the attorney-client privilege.

4. Plaintiff objects to these Requests to the extent that they seek information prepared in anticipation of litigation or after the commencement of this litigation.

5. Plaintiff objects to these Requests to the extent that they seek legal opinions or conclusions.

6. Plaintiff objects to these Requests to the extent that they seek documents or information beyond the scope of information which Plaintiff is required to provide pursuant to the New Jersey Court Rules.

7. Plaintiff objects to these Requests to the extent that they are overly broad, unduly burdensome, or impose unreasonable expense.

8. Plaintiff objects to these Requests to the extent that they are vague and ambiguous.

9. Plaintiff objects to these Requests to the extent that they seek documents or information which are not relevant to the lawsuit and which are not reasonably calculated to lead to the discovery of admissible evidence.

10. Plaintiff objects to these Requests to the extent that they seek documents or information to which Defendants have equal access.

11. Plaintiff objects to these Requests to the extent that they require the production of publicly available materials, as the burden of locating, identifying, and producing such documents is substantially the same or less for Defendants as it is for Plaintiff.

12. Plaintiff objects to these Requests to the extent that they request information found in documents or responses previously produced or obtained by authorizations and can be derived or ascertained as easily by Defendants as by Plaintiff from those documents.

13. Plaintiff objects to these Requests to the extent that they are duplicative and cumulative to discovery already answered.

14. Pursuant to N.J.S.A. 2A:61B-1(f)(1), all materials referencing names of child sexual abuse victims will be redacted in Plaintiff's responses.

These responses to the Requests are based upon the information available at the present time from Plaintiff's present knowledge, information, and belief, and are subject to additional or different information that further investigation may disclose. Discovery and investigation are ongoing in this matter. Accordingly, Plaintiff's responses to these Requests are made without prejudice to Plaintiff's right to amend these responses further as information is acquired and to make use of, or proffer at any hearing or at trial, subsequently discovered or acquired documents, knowledge, or information obtained in discovery in this action.

These discovery responses are directed to Defendants and are answered by and on behalf of Plaintiff, not any other party. Nothing stated herein shall be construed as an admission by Plaintiff regarding the admissibility or relevance of any fact or document or as an admission of the truth or accuracy of any characterization of any document of any kind contained in Defendants requests.

OBJECTIONS TO DEFINITIONS

1. Plaintiff objects to the definition of the term “Identify” as overbroad and unduly burdensome in that it requests information about individuals outside of Plaintiff’s custody and control and violates these individuals’ rights to privacy. Plaintiff will provide the full name, present or last known home or business address, telephone number, and occupation of individuals she identifies, to the extent that she possesses this information.

2. Plaintiff objects to the scope of the definition of “identify, when used with respect to a document” because it is overbroad, vague, ambiguous, and unduly burdensome to the extent that it requires Plaintiff to specify, state, describe, and/or identify aspects of documents that are equally available and/or identifiable to Defendant. In the responses below, Plaintiff has interpreted “Identify” to mean that she will provide information sufficient to identify documents, which may be limited to bates numbers of produced documents.

3. Plaintiff objects to the definition of the term “Complaint” as it does not refer to the operative complaint in this action. Plaintiff will interpret “Complaint” to refer to her First Amended Complaint and Jury Demand filed on October 13, 2021.

4. Plaintiff objects to the definitions of “Communicate” or “Communication” as overly broad, unduly burdensome, and vague to the extent that they are defined as including face-to-face and telephone communications to the extent that such communications may not have been reduced to written form and are therefore not responsive to these requests. Plaintiff will produce any documents responsive to these requests.

OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

1. All documents and/or other writings that refer to, relate to, concern or discuss any of the facts or events underlying the claims, defenses and allegations set forth in the Complaint or any

Defendants' Answer to the Complaint, including, but not limited to, your investigation of the facts or events.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants' possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

2. All documents that reflect, refer to, or relate to any admission that you contend has been made at any time by any party to this action regarding the facts or events underlying the claims and allegations set forth in the Complaint or any Defendants' Answer to the Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, indefinite as to time and without

reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

3. All documents that reflect, refer to, or relate to any declaration against interest that you contend has been made at any time by any party to this action regarding the facts or events underlying the claims and allegations set forth in the Complaint or any Defendants' Answer to the Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this

matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

4. All photographs, videotapes, audio tapes or other forms of electronic recording, sketches, or reproductions, which refer to or relate to the subject matter of this litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

5. All documents that you intend to use as an exhibit at trial or any evidentiary hearing in this litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, and vague. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving these objections, Plaintiff states that, as this action is in its early

stages, Plaintiff will provide a supplemental response pursuant to the applicable Court Rules.

6. All documents prepared by each and every expert identified by you during discovery in this litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests documents outside the scope of permitted discovery in New Jersey.

Subject to and without waiving any of these objections, Plaintiff states that, as this action is in its early stages, Plaintiff will provide a supplemental response disclosing documents reflecting facts known and opinions held by any expert that Plaintiff intends to call at trial and/or who conducted an examination of Plaintiff pursuant to R. 4:19.

7. All documents produced to or received from any potential expert who may testify on your behalf at trial.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests documents outside

the scope of permitted discovery in New Jersey.

Subject to and without waiving any of these objections, Plaintiff states that, as this action is in its early stages, Plaintiff will provide a supplemental response disclosing documents reflecting facts known and opinions held by any expert that Plaintiff intends to call at trial and/or who conducted an examination of Plaintiff pursuant to R. 4:19.

8. All documents that refer to or relate to any communications between any such expert and you or any of your representatives.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests documents outside the scope of permitted discovery in New Jersey.

Subject to and without waiving any of these objections, Plaintiff states that, as this action is in its early stages, Plaintiff will provide a supplemental response disclosing documents reflecting facts known and opinions held by any expert that Plaintiff intends to call at trial and/or who conducted an examination of Plaintiff pursuant to R. 4:19.

9. All documents produced by you to any other party to this litigation in response to any interrogatory, document request, and/or request for admission.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground

that it is duplicative and cumulative of other requests.

Subject to and without waiving any of these objections, Plaintiff currently has no documents responsive to this Request. Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules if she receives responsive documents.

10. All documents related in any way to your first discovery of your injuries related to the alleged abuse.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff objects to the use of the terms “discovery” and “injuries” as vague, ambiguous, and undefined. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants’ possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

11. All documents supporting, indicating, or proving that any act of unlawful sexual conduct by Clement Pandelo was committed against you.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants' possession. Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

12. All documents supporting, indicating, or proving where and when any act of unlawful sexual conduct by Clement Pandelo was committed against you.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests

information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants' possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

13. All documents supporting, indicating, or proving that WTNY knew or should have known that Clement Pandelo committed an act of unlawful sexual conduct against a minor child before his alleged act or acts of unlawful sexual conduct against you as alleged in your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this

matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

14. All documents relating to your relationship with Clement Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to the undefined term “relationship.” Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Clement Pandelo was her grandfather. Plaintiff further refers Defendants to the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants’ possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

15. Any document or communications between you and any other person or organization

(except your attorneys of record) about any of the allegations in your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants' possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

16. Written or electronic information showing or referring to your affiliation with any church, religious organization, spiritual organization, or any anti-religious organization between 1976 and the present.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action.

Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she is standing on her objections and will not produce information responsive to this Request.

17. Any diaries, notes, or any other printed or recorded material prepared or kept by you between 1976 and the present.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant or calculated to lead to the discovery of relevant evidence in this action. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

18. Any written or electronic information in your possession, custody, or control about alleged child sexual abuse by, or claims against, religious entities and members of Jehovah's Witnesses, including newspapers, magazines, books, the internet, or information from counselors,

therapists, or other mental health professionals about those subjects.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff objects to this request as unintelligible.

Subject to and without waiving any of these objections, to the extent the Request asks Plaintiff to produce documents in her possession, custody, and control related to child sexual abuse of Jehovah's Witnesses, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants' possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

19. Written or electronic documents that contain any information you have about Clement Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff objects to the use of the undefined term "any information." Plaintiff will produce written or electronic documents that contain

information about Clement Pandelo's abuse of her as alleged in the Complaint. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests.

Subject to and without waiving any of these objections, please see Plaintiff's response to Request Number 14.

20. Any correspondence, including emails, letters, notes, memorandums, diaries, or any other printed, written, or electronically recorded or audio recording, or communications:

- a. Between you and Clement Pandelo;
- b. Between any member of your family and Clement Pandelo;
- c. Between you and the East Hackensack Congregation or any person affiliated with it;
- d. Between you and the Fairlawn Congregation or any person affiliated with it; and
- e. Between you and any other person or entity affiliated with Jehovah's Witnesses, including but not limited to WTNY.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff will produce correspondence or communications in her possession, custody, or control that relate to the allegations in her Complaint.

Subject to and without waiving any of these objections, please see Plaintiff's response to Request Number 15.

21. Copies of any materials in your possession from the Hackensack Congregation, Fairlawn Congregation, or any other congregation of Jehovah's Witnesses.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff will produce documents in her possession, custody, or control from East Hackensack Congregation, Fairlawn Congregation, or any other Jehovah's Witness Congregation that relate to the allegations in her Complaint. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

22. Any and all documents or records showing or referring to your baptism in any religion, including as one of Jehovah's Witnesses (if any) and marriage(s) (if any) including certificates from each of those events and photographs from those events.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Photographs of Plaintiff's baptism and marriage are not relevant to her claims in this action and Plaintiff will not produce these photographs. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the

claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she is standing on her objections and will not produce documents responsive to this Request.

23. All notes, memoranda, correspondence, or other documents pertaining to Clement Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff will produce documents in her possession, custody, or control that relate to the allegations in her Complaint.

Subject to and without waiving any of these objections, please see Plaintiff's response to Request Number 14.

24. Any and all documents containing or memorializing statements made by any third party about you and Clement Pandelo and about any other member of your immediate family and Clement Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff objects to this Request to the extent it requires Plaintiff to produce documents not within her custody or control. Plaintiff will

produce documents in her possession, custody, or control that relate to the allegations in her Complaint.

Subject to and without waiving any of these objections, please see Plaintiff's response to Request Number 15.

25. Documents containing or referring to allegations of sexual abuse of any minor by Clement Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants' possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

26. All documents which reflect any discussions or communications between you and any other person (other than your attorneys of record) which relate to interactions between Clement Pandelo and you or with any member or your family.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff will produce documents in her possession, custody, or control that relate to the allegations in her Complaint.

Subject to and without waiving any of these objections, please see Plaintiff's responses to Request Numbers 14 and 15.

27. All documents showing when WTNY first became aware of your alleged abuse by Clement Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, duplicative, and cumulative of other requests. Plaintiff objects to the use of the term "aware" as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

28. All documents showing when East Hackensack Congregation of Jehovah's Witnesses first became aware of your alleged abuse by Clement Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, duplicative, and cumulative of other requests. Plaintiff objects to the use of the term “aware” as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

29. All documents showing that Defendants allegedly ratified or approved of the sexual contact between you and Clement Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, duplicative, and cumulative of other requests. Plaintiff objects to this request as vague and undefined, including in its use of the undefined terms “ratified” and “approved.” Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff objects to this request to the extent that it calls for legal conclusions.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental

response pursuant to the applicable provisions of the New Jersey Court Rules.

30. All documents identifying each and every person who allegedly provided notice to any of the Defendants of your alleged sexual abuse, or the sexual abuse of any other minor child, by Clement Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is duplicative and cumulative of other requests. Plaintiff objects to this request as vague and undefined, including in its use of the undefined term “notice.” Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff. Plaintiff objects to this request to the extent that it calls for legal conclusions.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

31. All documents that in any way support or prove the allegations made in Paragraph 5 of your Complaint that “At all times relevant herein, PLAINTIFF and her family were members of the Jehovah’s Witness organization and attended Defendant FAIRLAWN CONGREGATION.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Plaintiff further objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary.

As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

32. All documents that in any way support or prove the allegations made in Paragraph 35 of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Plaintiff further objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

33. All documents that in any way support or prove the allegations made in Paragraphs 36 and 37 of your Complaint that “At the time of his first disfellowship in or around 1988, Pandelo was a ministerial servant in the FAIRLAWN CONGREGATION” and “was also a ministerial servant in the HACKENSACK CONGREGATION.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and unduly burdensome. Plaintiff further objects to this request on the ground that it is duplicative and cumulative of other requests.

Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

34. All documents that in any way support or prove the allegations made in Paragraph 38 of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants’

possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

35. All documents that in any way support or prove the allegations made in Paragraph 39 of your Complaint that “Pandelo’s sexual abuse of PLAINTIFF lasted until in or around August 1988, when she disclosed the abuse to her parents.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants’ possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

36. All documents that in any way support or prove the allegations made in Paragraph 40

of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

37. All documents that in any way support or prove the allegations made in Paragraph 41 of your Complaint that “The Elders convened a judicial committee to investigate the allegations of Pandelo’s sexual abuse of PLAINTIFF.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

38. All documents that in any way support or prove the allegations made in Paragraph 42 of your Complaint that “In or around 1988, Elders disfellowshipped Pandelo based on the allegations of sexual abuse of Pandelo.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

39. All documents that in any way support or prove the allegations made in Paragraph 43 of your Complaint that “Carl Pandelo also reported Pandelo’s sexual abuse of PLAINTIFF to law enforcement.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or

information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

40. All documents that in any way support or prove the allegations made in Paragraph 44 of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

41. All documents that in any way support or prove the allegations made in Paragraph 45

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

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

42. All documents that in any way support or prove the allegations made in Paragraph 46 of your Complaint that “After his conviction for child sexual abuse of multiple children for forty years, Pandelo was reinstated to the Jehovah’s Witnesses.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this

matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

43. All documents that in any way support or prove the allegations made in Paragraph 47 of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

44. All documents that in any way support or prove the allegations made in Paragraph 48 of your Complaint that “Following Pandelo’s second disfellowship, he was later reinstated to the Jehovah’s Witnesses despite having admitted to sexually abusing multiple children.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or

information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

45. All documents that in any way support or prove the allegations made in Paragraph 49 of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental

response pursuant to the applicable provisions of the New Jersey Court Rules.

46. All documents that in any way support or prove the allegations made in Paragraph 50 of your Complaint that “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 other 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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

47. All documents that in any way support or prove the allegations made in Paragraph 51 of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff

objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

48. All documents that in any way support or prove the allegations made in Paragraph 52 of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary.

As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

49. All documents that in any way support or prove the allegations made in Paragraph 53 of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

50. All documents that in any way support or prove the allegations made in Paragraph 54 of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or

information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants' possession.

51. All documents that in any way support or prove the allegations made in Paragraph 55 of your Complaint that "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."

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants'

possession.

52. All documents that in any way support or prove the allegations made in Paragraph 56 of your Complaint that “None of the DEFENDANTS named in this action were a party to the 1994 action.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants’ possession.

53. All documents that in any way support or prove the allegations made in Paragraph 57 of your Complaint that “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.”

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this

request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants' possession.

54. All documents that in any way support or prove the allegations made in Paragraph 309 of your Complaint or otherwise relevant to your claims that you "have sustained physical and psychological injuries, including but not limited to, severe emotional distress, confusion, humiliation, fright, anxiety, a severe shock to [your] nervous system, and ha[ve] been caused to suffer physical pain and mental anguish, and permanent emotional and psychological damage as a result thereof."

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad and vague. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request to the extent that it seeks expert testimony, which will be disclosed at the appropriate time.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants'

possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

55. Complete copies of all records of any counseling, diagnosis, examination, or treatment by any psychologist, psychiatrist, counselor, social worker, or any other practitioner in the mental health or medical field with you or involving you between 1976 and the present.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, including to the extent that it requests records of counseling, diagnosis, examination, or treatment of third parties not relevant to the claims in this action. Plaintiff will only produce her own records in this action. Plaintiff also objects to this request on the ground that it is vague, including in its use of the undefined terms “counseling,” “diagnosis,” “examination,” “treatment,” “counselor,” “practitioner,” and “mental health or medical field.” Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

56. Complete copies of all of your medical records not included in the answers to the requests above, including all notes and records of examination, diagnosis, or treatment by any medical doctor,

naturopath, osteopath, or any other member of the healings arts.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, including to the extent that it requests records not relevant to the claims in this action. Plaintiff will only produce medical records of treatment for injuries claimed as a result of the allegations in this action. Plaintiff also objects to this request on the ground that it is vague, including in its use of the undefined terms “diagnosis,” “examination,” “treatment,” “naturopath,” and “any other member of the healings arts.” Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

57. A list of all prescription medication that you have been prescribed between 1976 and the present, including the dosage and prescribing doctor.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, including to the extent that it requests records not relevant to the claims in this action. Plaintiff also objects to this request as overly burdensome to the extent that it requests Plaintiff to create a “list” of medications. Plaintiff will only produce pre-existing records of prescription medications that she was prescribed for injuries claimed as a result of the allegations in this action. Plaintiff also objects to this request on the ground that it is

vague and undefined. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

58. Complete copies of all of your school records between 1976 and the present.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, including to the extent that it requests records not relevant to the claims in this action. Plaintiff also objects to this request on the ground that it is vague and undefined. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

59. Any other documents relating to the 1994 lawsuit against Clement Pandelo and his wife, Olga Pandelo, that you reference in Paragraph 55 of your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff

objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendants and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants' possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce additional documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

60. All documents relating to any other prior lawsuit, civil action, criminal action, dissolution or divorce proceeding, child custody proceeding, restraining order proceeding, small claims proceeding, unemployment benefits proceeding, workers' compensation claim, or insurance claim, or any other administrative or tribunal proceeding to which you have been a party.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product

privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff has no documents responsive to this Request.

61. All social networking postings by you or between you and any other person, including photographs, written posts, social media contacts (e.g., “Friends”), and indications of interest in people, places, things or issues.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff objects to the use of the undefined terms “postings,” “contacts,” “Friends,” “indications of interest,” “things,” and “issues.” Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff will not produce all social networking posts by her or between her and any other person and/or indications of interest in people, places, things or issues without relevance to the allegations asserted in the Complaint.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered produced by the Court on February 9, 2022 to all parties in this action, including Defendants, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendants’ possession. Plaintiff further states that other than the above-referenced file, she has no documents responsive to this Request.

62. Any and all photographs that include you and Clement Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly

burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she is standing on her objections and will not produce pictures of herself and Clement Pandelo, as he was her grandfather, without relevance to the allegations asserted in the Complaint.

63. All photographs of you taken during the period of 1976 through 1988.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff will not produce all pictures of herself from a 12-year period without relevance to the allegations asserted in the Complaint.

Subject to and without waiving any of these objections, Plaintiff states that she has no photographs responsive to this Request.

64. To the extent not produced in response to other requests, any documents indicating that you have ever been arrested and all documents relating to those arrests, if any.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or

other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that she has no documents responsive to this Request.

65. To the extent not addressed above, all other documents verifying or otherwise relating to your allegations of damages in your Complaint in this case, including all medical bills.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, and vague. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff refers Defendants to her response to Request Number 54.

66. Records of any treatment for substance abuse or other addiction received by you at any time.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that she has no documents responsive to this Request.

THE ZALKIN LAW FIRM, P.C.

Dated: August 24, 2022

By: /s/ Elizabeth A. Cate, Esq.
Elizabeth A. Cate, Esq.
Attorneys for Plaintiff Corinne Pandelo

CERTIFICATION

I hereby certify that I have reviewed the document production request and that I have made or caused to be made a good faith search for documents responsive to the request. I further certify that as of this date, to the best of my knowledge and information, the production is complete based on my personal knowledge and/or information provided by others. I acknowledge my continuing obligation to make a good faith effort to identify additional documents that are responsive to the request and to promptly serve a supplemental written response and production of such documents, as appropriate, as I become aware of them. I certify that I did not speak to anyone outside my attorneys for the preparation of these Responses.

Dated: 8/24/2022Signed:  Christine Pandelo (Aug 24, 2022 20:41 EDT)

EXHIBIT F

SUPERIOR COURT BERGEN COUNTY
LED

FEB 4 1999

[Signature]
CLERK

Melli, Guerin & Melli, P.C
West 115 Century Road
Paramus, New Jersey 07652
(201) 265-9500
Attorney(s) for Defendants, BP and CP2
File #17,048

CP-1,	
	Plaintiff(s)
vs.	
CP-2, BP, CP-3 and OP,	
	Defendant(s)
vs.	
CP-3 and OP,	
	Defendant/Third Party Plaintiffs,
vs.	
FIREMAN'S FUND INSURANCE COMPANY,	
	Third Party Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Docket No.: BER-L-516-94

CIVIL ACTION

STIPULATION OF DISMISSAL
WITHOUT PREJUDICE

The matter in difference in the above-entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the Second Amend Complaint only against defendants, BP and CP-2, be and it is hereby dismissed, without prejudice.

Dated: January 25, 1999

MELLI, GUERIN & MELLI, P.C.

By: *Suzanne J. Frankland*
Suzanne J. Frankland
Attorney for Defendants, BP & CP-2

GALLO, GEFFNER, FENSTER, P.C.

By: *Jay Joseph Fiedrich*
Jay Joseph Fiedrich
Attorney for Plaintiff, CP-1

EXHIBIT G

FILED

DEC 23 1999

CHARLES J. WALSH
J.S.C.

JAN 10 2000

GALLO GEFFNER FENSTER, P.C.
Continental Plaza II
411 Hackensack Avenue
Hackensack, NJ 07601
(201) 489-5400
Attorneys for Plaintiff

RECORDED AS A LIEN

CP-1, and infant by her Guardian Ad Litem,
CP-2 and BP, Individually,

Plaintiffs,

vs.

CP-3 and OP-1,

Defendants,

and

CP-3,

Defendant/Third Party Plaintiff,

vs.

**FIREMAN'S FUND INSURANCE
COMPANY,**

Third Party Defendant.

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

DOCKET NO. BER-L-516-94

CIVIL ACTION

ORDER OF JUDGMENT

J 2094-00

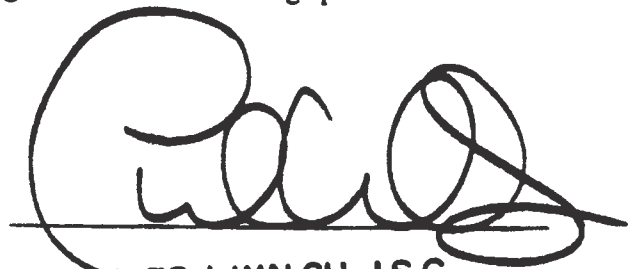
This matter coming on for trial before the Honorable Charles J. Walsh, J.S.C. from November 29, 1999, through December 17, 1999, before a jury and in the presence of Gallo Geffner Fenster, P.C., attorneys for CP-1, Jay Joseph Friedrich, Esq. appearing, and Randall Tashjian, Esq., attorney for Clement Pandelo, and Rothchild Spagnolia Mundo and

Levit, P.C., attorneys for Olga Pandelo, Ronald Levit, Esq. appearing, and the jury having considered the testimony of witnesses presented on behalf of parties herein and good cause being shown, it is on the 23rd day of December, 1999, ordered and adjudged as follows:

1. Judgment shall be and is hereby entered in favor of Plaintiff against Defendant, Clement Pandelo, the amount of \$1,356,750.00 plus interest from January 18, 1994 through December 31, 1999 in the amount of \$422,124.93 with a total judgment of \$1,778,874.93.

2. Judgment in the amount of \$500,000.00 shall be and is hereby entered in favor of the plaintiff against defendant, Clement Pandelo, as and for punitive damages.

3. A judgment in favor of Olga Pandelo dismissing plaintiff's cause of action without costs.

A handwritten signature in black ink, appearing to read 'C. Walsh', written over a horizontal line.

CHARLES J. WALSH, J.S.C.

EXHIBIT H

Anthony P. La Rocco
Dana B. Parker
Thomas A. Zelante, Jr.
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
Hackensack Congregation of Jehovah's Witnesses*

FILED
FEB 09 2022
ESTELA M. DE LA CRUZ, J.S.C.

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,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY
DOCKET NO.: BER-L-5508-21

Civil Action

ORDER

1/19/22 motion

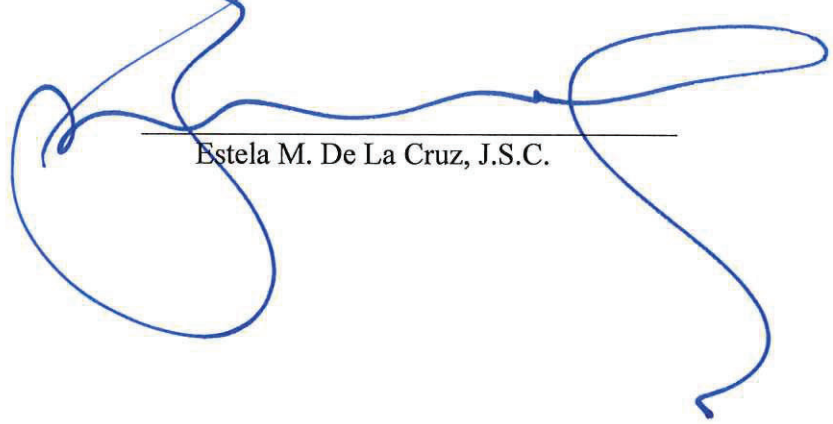
THIS MATTER, having been brought before the Court by Defendants Watchtower Bible and Tract Society of New York, Inc. and Hackensack Congregation of Jehovah's Witnesses (collectively, "Defendants"), by and through their attorneys, K&L Gates LLP, and the Court having considered the moving papers, ^{an No} ~~any timely~~ opposition thereto, and ~~oral argument, if any,~~ and good cause having been shown,

IT IS on the 9 day of Feb, 2022

1.) ORDERED that Defendants' motion to disclose the Casefile of Plaintiff's 1994 Lawsuit against Clement Pandelo, captioned Carl Pandelo, Guardian Ad Litem v. Clement Pandelo, BER-L-516-94, be and hereby is GRANTED; and it is further

2.) ORDERED that, pursuant to N.J.S.A. 2A:82-46 and Rule 1.38, the Clerk of the Superior Court of New Jersey is directed to ~~disclose to all parties to this action the complete, unredacted~~ *produce to this Court for In Camera Review* casefile for the action captioned Carl Pandelo, Guardian Ad Litem v. Clement Pandelo, BER-L-516-94, including all documents from the same in the possession of the Clerk of the Superior Court of New Jersey, *and including any post judgment documents.**

3.) ORDERED that this Order shall be served upon all parties within seven (7) days of the date of this Order.



Estela M. De La Cruz, J.S.C.

THIS MOTION WAS:

OPPOSED []
UNOPPOSED []

** Upon receipt of the file, the Court will conduct an In Camera Review to determine what is discoverable pursuant to Rule.*

EXHIBIT I

2022 WL 2309285

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

ESTATE OF Marc COOPER and
Jean Abbott, Plaintiff-Appellant,

v.

AHS HOSPITAL CORPORATION/MORRISTOWN
MEDICAL CENTER¹ and Marian Lee, in her capacity
as an employee of Morristown Medical Center and
her individual capacity, Defendants-Respondents.

DOCKET NO. A-3713-19

|

Submitted January 6, 2022

|

Decided June 28, 2022

On appeal from the Superior Court of New Jersey, Law
Division, Morris County, Docket No. L-0655-18.

Attorneys and Law Firms

Bedi Rindosh, Attorneys-at-Law, attorneys for appellant
([Jason A. Rindosh](#), on the briefs).

Weber Gallagher Simpson Stapleton Fires & Newby,
LLP, attorneys for respondent AHS Hospital Corporation/
Morristown Medical Center ([Kenneth M. Brown](#), of counsel
and on the brief; [Anna K. Papamarkos](#), on the brief).

Before Judges [Mitterhoff](#) and [Alvarez](#).

Opinion

PER CURIAM

*1 Plaintiffs Estate of Marc Cooper and Jean Abbott appeal from an April 3, 2020 order granting defendant Morristown Medical Center's (MMC) motion for summary judgment. After a careful consideration of the record and the applicable law, we reverse and remand.

We discern the following facts from the record. On January 13, 2017, Marc Cooper suffered a drug overdose at the residence of Marian Lee, where he had been renting a

room with his girlfriend, Michelle Lehnert. This resulted in Cooper's hospitalization at MMC. Coincidentally, Lee worked as an emergency room nurse at MMC and was on duty the day of Cooper's hospitalization. After Cooper's admission to the hospital, through a process that remains unclear, a "Patient/Family Contact List" was generated listing "Roger Cooper (father) as the primary contact and Marian Lee as the secondary contact." Roger Cooper had arrived at the hospital prior to Cooper's mother, Abbott. Plaintiffs allege—and MMC does not dispute—that no one signed the contact form.²

Later that day, Cooper's sister texted Lee seeking the keys to Cooper's vehicle and his cell phone, which Lee purportedly failed to provide. Cooper's family also alleged that Lee entered Cooper's hospital room twice on January 13 to inquire about his status, including while Cooper's family members were present, and therefore had access to Cooper's medical records. At some point following these two visits, Cooper's mother and sister went to the nurses' station and requested that no one enter Cooper's hospital room except for his treatment team and immediate family. Plaintiffs do not allege Lee entered Cooper's hospital room again. According to plaintiffs' expert report, "Lee did not provide any direct care to Marc Cooper during his hospital stay." On January 15, 2017, two days after his admittance to the hospital, Cooper died from the overdose.

On April 6, 2018, plaintiffs filed a nine-count complaint against MMC and Lee alleging breach of privacy, conversion, unjust enrichment, legal fraud, negligence/ implied bailment, intentional infliction of extreme emotional distress, negligence/ respondeat superior, common law right to privacy, and punitive damages. On October 1, 2018, plaintiffs sent MMC discovery requests for "Form C Interrogatories," "Supplemental Interrogatories," and a "First Notice to Produce." After filing an Answer, Lee filed an Offer of Judgment which was accepted by plaintiffs, resulting in a November 13, 2018 settlement of the claims against Lee only.

As to MMC, the suit alleged only breach of privacy, intentional infliction of emotional distress, negligence, breach of the common law right to privacy, and punitive damages.³ On April 23, 2019, MMC filed an unopposed motion to alter the track assignment of the matter to medical malpractice Track III. Plaintiffs then filed the appropriate Affidavit of Merit (AOM) and a supplemental AOM on May 30, 2019, and July 2, 2019, respectively.

*2 On August 6, 2019, MMC moved to dismiss the complaint, which the trial court denied. Plaintiffs filed a motion to compel, alleging MMC's discovery responses were incomplete. On November 8, 2019, the court granted the motion, ordering MMC to "provide the complete medical records of Marc Cooper" and "produce a privilege log for any documents withheld from discovery production[.]" On November 15, 2019, plaintiffs sent MMC "a Second Notice to Produce with demands specific to their policies, procedures and protocols [concerning] patient privacy, as well as records related to the training and supervision of Marian Lee."

Before complying with the Second Notice to Produce, MMC moved for summary judgment on January 10, 2020. That same day, MMC's counsel represented to plaintiffs' counsel via email that the discovery pertaining to the "requested policies and procedures" would be provided in the near future. On January 22, 2020, following MMC's purported failure to produce the desired discovery materials, "[p]laintiffs filed a motion to strike [MMC's] [a]nswer for failure to provide discovery." On February 26, 2020, the court entered a Consent Order that terminated plaintiffs' pending discovery motion, extended the final discovery end date until August 15, 2020, required MMC to provide the outstanding discovery no later than March 6, 2020, and extended the time for service of plaintiffs' expert report until May 15, 2020. On March 6, 2020, MMC responded to plaintiffs and produced the requested discovery. On April 3, 2020, after a hearing, the court granted MMC's motion for partial summary judgment, dismissing all counts with prejudice. The court found "[p]laintiffs have failed to establish a prima facie case that [MMC] breached any duty owing to them. The [p]laintiffs [also had] failed to establish a prima facie case of liability under respondeat superior."

On April 17, 2020, plaintiffs nevertheless served MMC with "the expert report of Janice Schwartz, MSN, RN-BC[.]" On May 12, 2020, the court denied plaintiffs' motion for reconsideration. This appeal followed.

On appeal, plaintiffs present the following arguments for our consideration:

POINT I

THE [TRIAL] COURT'S ORDER GRANTING SUMMARY JUDGMENT SHOULD BE REVERSED BECAUSE DEFENDANT MMC OWED PLAINTIFF[S] A NON-DELEGABLE DUTY TO PROTECT PATIENT PRIVACY THAT WAS VIOLATED.

POINT II

THE [TRIAL] COURT'S ORDER GRANTING SUMMARY JUDGMENT SHOULD BE REVERSED BECAUSE DEFENDANT MMC VIOLATED ITS DUTY TO PREVENT EMPLOYEES FROM INVADING MARC COOPER'S PRIVACY RIGHTS.

POINT III

THE [TRIAL] COURT'S ORDER GRANTING SUMMARY JUDGMENT SHOULD BE REVERSED BECAUSE DEFENDANT MMC IS RESPONSIBLE FOR THE TORTS OF ITS EMPLOYEES UNDER THE DOCTRINE OF RESPONDEAT SUPERIOR.

POINT IV

THE [TRIAL] COURT'S ORDER GRANTING SUMMARY JUDGEMENT SHOULD BE REVERSED BECAUSE DEFENDANT MMC IS LIABLE FOR THE TORTS OF ITS EMPLOYEES UNDER APPLICABLE AGENCY PRINCIPLES.

POINT V


THE [TRIAL] COURT SHOULD HAVE DETERMINED THAT CO-DEFENDANT LEE ADMITTED FAULT BY ACCEPTANCE OF HER OFFER OF JUDGMENT.

POINT VI

THE [TRIAL] COURT ORDER GRANTING SUMMARY JUDGMENT SHOULD BE REVERSED BECAUSE DISCOVERY WAS ONGOING.

POINT VII

THE [TRIAL] COURT ORDER DENYING RECONSIDERATION OF THE SUMMARY JUDGMENT ORDER SHOULD BE REVERSED BASED ON THE NEW EVIDENCE SUBMITTED.

We review a trial court's grant of summary judgment de novo, applying the same standard as the trial court. [Conley v. Guerrero](#), 228 N.J. 339, 346 (2017). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show 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."  [Temple Fuente](#)

[De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh](#), 224 N.J. 189, 199 (2016) (quoting [R. 4:46-2\(c\)](#)).

A.

*3 Initially, we reject plaintiffs' argument that MMC's duty to protect patient privacy was non-delegable. "In cases involving a significant risk of grave harm, ... the duty owed to the public may be too important to allow its delegation ... and therefore the legislature or the court may impose a nondelegable duty on the principal." [Great N. Ins. Co. v. Leontarakis](#), 387 N.J. Super. 583, 591 (App. Div. 2006). "[U]nder modern principles of agency law[,] liability of an employer for the torts of an employee acting outside the scope of his [or her] employment is permitted when the conduct violates a non-delegable duty of the employer." [J.H. v. Mercer Cnty. Youth Det. Ctr.](#), 396 N.J. Super. 1, 17 (App. Div. 2007). "The primary reason for imposing a nondelegable duty on the principal is that the duty is of extraordinary importance to the public." [Leontarakis](#), 387 N.J. Super. at 592.

The test for a non-delegable duty is a fact-specific inquiry and turns on considerations such as "the relationship among the relevant parties, ... the nature of the risk, warranted by the opportunity and ability to exercise care, [and whether the duty is] grounded in the public policy of [New Jersey]."

[Davis v. Devereux Found.](#), 209 N.J. 269, 278 (2012); see, e.g., [J.D.A. v. N.J. Dep't of Corr.](#), 189 N.J. 413, 417 (2007) (acknowledging that New Jersey Department of Corrections bears "a non[-]delegable duty to assure adequate medical care to inmates," which includes, inter alia, "maintaining and making available to inmates complete and accurate medical records[.]"); [In re Stransky](#), 130 N.J. 38, 44 (1992) (finding an "attorney's fiduciary responsibility for client trust funds [to be] a non-delegable duty.")

Here, our inquiry centers on whether patient confidentiality qualifies as a matter of "extraordinary importance to the public." See [Leontarakis](#), 387 N.J. Super. at 592. We acknowledge that "the Hospital Patients' Bill of Rights Act incorporates the privilege and protects the right of hospital patients to privacy and confidentiality of their medical records to the extent consistent with providing adequate medical care." [Smith v. Datla](#), 451 N.J. Super. 82, 103 (App. Div. 2017). However, while no one disputes the importance of shielding a patient's medical records from public view,

plaintiffs do not present persuasive evidence that this court should overturn the presently applicable standard—a duty to take "reasonable steps to maintain the confidentiality of [a] plaintiff's medical records"—and replace it with the more stringent non-delegable duty standard. See [Est. of Behringer v. Med. Ctr. at Princeton](#), 249 N.J. Super. 597, 642 (App. Div. 1991). This step "would ... represent a significant expansion of New Jersey tort law" as it would expose hospitals and medical centers to absolute liability for breaches of medical privacy committed by their employees—regardless of the "[m]easures taken by the employer to guard against" such breaches. [Davis](#), 209 N.J. at 289.

In addition, we are mindful that we "should normally defer to the [New Jersey] Supreme Court with respect to the creation of a new cause of action" and therefore, we decline to hold—for the time being—that hospitals possess a non-delegable duty to ensure patient confidentiality. [Riley v. Keenan](#), 406 N.J. Super. 281, 297 (App. Div. 2009).

B.

We also reject plaintiffs' argument that Lee's Offer of Judgment should be deemed an admission of liability. "An offer of judgment pursuant to [Rule 4:58](#) is designed to encourage parties to settle claims that ought to be settled, saving time, expense, and averting risk, while the specter of the continued prosecution of the lawsuit remains." [Serico v. Rothberg](#), 234 N.J. 168, 179 (2018). These settlement offers, however, are not evidence of liability absent a specific provision in the settlement saying so. [Petro-Lubricant Testing Labs., Inc. v. Adelman](#), 233 N.J. 236, 262 (2018). "A settlement generally 'reflects ambiguously on the merits of the action' and is not a determination of whether the allegations are true or false." *Ibid.* (quoting [McCubbrey v. Veninga](#), 39 F.3d 1054, 1055 (9th Cir. 1994)). Thus, plaintiffs' contention that MMC's liability "was established as a matter of law" based on the settlement agreement has no merit and requires no further discussion. See [R. 2:11-3\(e\)\(1\)\(E\)](#).

C.

*4 Although we conclude that MMC does not have a non-delegable duty to ensure patient confidentiality and that the offer of judgment did not conclusively establish MMC's liability, we find nonetheless that we must reverse

and remand the case because granting summary judgment was premature. “Although [Rule 4:46-1](#) permits a party to move for summary judgment before the close of discovery, ‘[g]enerally, summary judgment is inappropriate prior to the completion of discovery.’ ” [Branch v. Cream-O-Land Dairy](#), 459 N.J. Super. 529, 541 (App. Div. 2019) (alteration in original) (quoting [Wellington v. Est. of Wellington](#), 359 N.J. Super. 484, 496 (App. Div. 2003)). “A motion for summary judgment is not premature merely because discovery has not been completed, unless plaintiff is able to ‘demonstrate with some degree of particularity the likelihood that further discovery will supply the missing elements of the cause of action.’ ” [Badiali v. N.J. Mfrs. Ins. Grp.](#), 220 N.J. 544, 555 (2015) (quoting [Wellington](#), 359 N.J. Super. at 496).

Here, discovery was unfinished at the time the court granted MMC's motion for summary judgment. In particular, Lee herself had yet to be deposed. The record is therefore incomplete concerning vital facts including the preparation of the Patient/Family Contact List. Plaintiffs advance the theory that, if Lee and/or other MMC staff played a role in its creation, liability could attach insofar as the list authorized Lee to be present in Cooper's hospital room.

In its written order granting summary judgment, the court held:

[T]here was a “Patient Family [C]ontact form” that was completed (by whom it was completed remains an unanswered question) which had Lee's name on it as a person allowed to visit Cooper's room. The record is inadequate to conclude who prepared the form, and when, and who provided the information contained thereon. The form, however, is not, for these reasons given any weight in the [c]ourt's analysis. While it may have been relevant as to [p]laintiffs' claims against Lee, it has no relevance to the claims against [d]efendant.... [N]o evidence has been presented to the [c]ourt to show how or in what manner that form was used/not used by

hospital staff to allow or deny access to Cooper's hospital room. The court further notes that, in view of the busy and sometimes fast moving efforts of the treatment team to provide care to ... Cooper, described by ... Abbott in her deposition, and the constant traffic of personnel, it would be contrary to logic and common sense to conclude that the hospital would be under a duty to essentially have guards stationed at every hospital room as a matter of course to deny entry to other hospital health care professionals as efforts are underway to save a patient's life.

Ironically, the court declined to accord any weight to the Contact List because “[t]he record [was] inadequate” and plaintiffs failed to present evidence as to how the form was generated and subsequently used by hospital staff. This was error. Discovery was ongoing, and plaintiffs still sought precisely the sort of evidence that would cure the inadequacies the trial court cites to justify omitting the Contact List from its analysis. Had discovery continued until Lee's deposition, plaintiffs could have gleaned the information they needed to defeat summary judgment. See [Badiali](#), 220 N.J. at 555.

Lee, however, refused to be deposed until the resolution of MMC's summary judgment motion. Cooper's medical records consisted of a “hybrid chart” that featured both handwritten and electronic elements; plaintiffs' expert alleged in her report that “reviewing an audit trail” would have enabled the parties to determine if “a breach in the privacy of [Cooper's] electronic medical record” occurred. Given the present uncertainty as to whether Lee accessed Cooper's medical records, this case represents a clear instance where additional, relevant information may have been obtained had the court permitted discovery to continue.

D.

*5 The curtailing of discovery denied plaintiffs an opportunity to cure the inadequate record the court cited in support of its summary judgment decision, especially when it came to plaintiffs' respondeat superior and apparent agency claims.

The Restatement provides:

A master or other principal who is under a duty to provide protection for or have care used to protect others and who confides the performance of such duty to a servant or other person is subject to liability to such others ... for harm caused to them by the failure of such agent to perform the duty.

[[Restatement \(Second\) of Agency § 214 \(Am. Law Inst. 2018\)](#).]

“Under respondeat superior, an employer can be found liable for the negligence of an employee causing injuries to third parties, if, at the time of the occurrence, the employee was acting within the scope of his or her employment.” [Carter v. Reynolds](#), 175 N.J. 402, 408-09 (2003). The court found Lee had not been acting within the scope of her employment when she twice accessed Cooper's hospital room and held plaintiffs “alleged no facts that would lead the [c]ourt to determine that the [p]laintiff reasonably believed that [Lee] came to Cooper's hospital room on the authority of [MMC].”

Plaintiffs argue, however, Lee acted with apparent authority to enter Cooper's hospital room “by use of the instrumentalities provided to her by ... MMC, namely her identification badge and scrubs work uniform.”

To invoke apparent authority,

the plaintiff must establish, (1) that the appearance of authority has been created by the conduct of the alleged principal and it cannot be established “alone and solely by

proof of [conduct by] the supposed agent, “(2) that a third party has relied on the agent's apparent authority to act for a principal, and (3) that the reliance was reasonable under the circumstances.

[[Mercer v. Weyerhaeuser Co.](#), 324 N.J. Super. 290, 318 (App. Div. 1999) (alteration in original) (emphasis added) (citations omitted).]

Plaintiffs’ theory of apparent authority may have been advanced by the completion of discovery concerning MMC's training and procedures for preserving confidentiality, and Lee's understanding of her concerns regarding a patient whom she knew personally but was not under her care. Abbott may have “reasonably believed that ... Lee came to Cooper's hospital room on the authority of [MMC].” However, as Lee had not been deposed, the trial court's dismissal of the claims was simply premature as it was based on an incomplete record.

Because we find that the court prematurely granted summary judgment, plaintiffs’ argument regarding their motion for reconsideration is moot, and we need not address it. On remand, discovery should include Lee's deposition. To the extent we have not addressed plaintiffs’ remaining arguments, we find they lack sufficient merit to warrant discussion in a written opinion. [See R. 2:11-3\(e\)\(1\)\(E\)](#).

Reversed and remanded. We do not retain jurisdiction.

All Citations

Not Reported in Atl. Rptr., 2022 WL 2309285

Footnotes

- 1 Improperly pled as Morristown Medical Center.
- 2 Despite this stipulation, the record contains a copy of the Family Contact List that features a signature, allegedly Abbott's, at the bottom of the second and final page.
- 3 MMC attempted to file its answer on July 25, 2018; however, due to an issue with the eCourts filing, this effort was unsuccessful, resulting in default. Plaintiffs agreed to vacate the default, and MMC filed its answer on March 26, 2019.

EXHIBIT J

Department of State Division of Corporations

Entity Information

[Return to Results](#)

[Return to Search](#)

Entity Details ^

ENTITY NAME: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.	DOS ID: 30360
FOREIGN LEGAL NAME:	FICTITIOUS NAME:
ENTITY TYPE: DOMESTIC NOT-FOR-PROFIT CORPORATION	DURATION DATE/LATEST DATE OF DISSOLUTION:
SECTION OF LAW: -	ENTITY STATUS: ACTIVE
DATE OF INITIAL DOS FILING: 03/04/1909	REASON FOR STATUS:
EFFECTIVE DATE INITIAL FILING: 03/04/1909	INACTIVE DATE:
FOREIGN FORMATION DATE:	STATEMENT STATUS: NOT REQUIRED
COUNTY: ULSTER	NEXT STATEMENT DUE DATE:
JURISDICTION: NEW YORK, UNITED STATES	NFP CATEGORY: CHARITABLE

[ENTITY DISPLAY](#)
 [NAME HISTORY](#)
 [FILING HISTORY](#)
 [MERGER HISTORY](#)
 [ASSUMED NAME HISTORY](#)

Service of Process Name and Address

Name: THE CORPORATION

Address: ATTN LEGAL, 100 WATCHTOWER DRIVE, PATTERSON, NY, UNITED STATES, 12563 - 2232

Chief Executive Officer's Name and Address

Name:

Address:

Principal Executive Office Address

Address:

Registered Agent Name and Address

Name:

Address:

Entity Primary Location Name and Address

Name:

Address:

Farmcorpflag

Is The Entity A Farm Corporation: NO

Stock Information

Share Value

Number Of Shares

Value Per Share

EXHIBIT K

2008 WL 5083604

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

GLEASON DESIGN ASSOCIATES,
INC., Plaintiff-Appellant,

v.

PIZZELLI ASSOCIATES, INC. and Daniel V. Pizzelli,
Defendants/Third Party Plaintiffs-Respondents,

v.

Benderson Development Co., Inc., Carey
Excavating, Inc. and Control Point Associates,
Inc., Third-Party Defendants-Respondents.

Submitted Oct. 29, 2008.

|

Decided Dec. 4, 2008.

West KeySummary

1 **Action** 🔑 Splitting Causes of Action

The entire controversy doctrine did not preclude a contractor's claim against a third-party contractor for professional negligence that arose out of defects in the third party contractor's contour drawings and supply of soil to the site because the third party contractor failed to demonstrate that it would suffer substantial prejudice resulting from the contractor's failure to join it as a party in the earlier litigation. The evidence of the third party contractor's alleged professional negligence, namely its engineering drawings, remained intact, the statute of limitations had not run against it, and nothing in the prior litigation suggested that the parties intended a global settlement.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-3215-05.

Attorneys and Law Firms

Katz & Dougherty, L.L.C., attorneys for appellant ([George T. Dougherty](#), on the brief).

Thompson Becker & Bothwell, L.L.C., attorneys for respondents Pizzelli Associates, Inc. and Daniel V. Pizzelli ([John H. King](#), on the brief).

Walder, Hayden & Brogan, P.A., attorneys for respondent Benderson Development Co., Inc. ([Shalom D. Stone](#), of counsel and on the brief).

Hoagland, Longo, Moran, Dunst & Doukas, L.L.P., attorneys for respondent Control Point Associates, Inc., join in the brief of respondent Benderson.

Before Judges [CUFF](#) and [BAXTER](#).

Opinion

PER CURIAM.

*1 Plaintiff Gleason Design Associates, Inc. appeals from a July 6, 2007 order that dismissed its complaint against defendant Pizzelli Associates, Inc. on the basis of the entire controversy doctrine. The motion judge concluded that because Gleason was aware of the existence of a claim against Pizzelli at the time Gleason settled litigation in Atlantic County, but failed to join Pizzelli in the Atlantic County litigation, the present professional negligence suit against Pizzelli was barred by the entire controversy doctrine. We reverse.

I.

Both the Atlantic County litigation and the instant matter arise out of the same series of contracts related to the installation of soil at a commercial building site in Hamilton Township in Atlantic County. In particular, on or about September 19, 2002, Gleason entered into a contract with third-party defendant Benderson Development Co., Inc. (Benderson). That contract required Gleason to regrade the surface of Benderson's land to accommodate the improvements Benderson intended to make, including drainage areas, parking lots and buildings. The contract between Benderson and Gleason did not specify the number of cubic yards of soil Gleason was obliged to deliver to the site. Instead, Benderson provided measurements by Benderson's surveyors, third-party defendant Control Point Associates, Inc., showing the

elevations of various parts of the construction site as of January 10, 2002. In formulating its construction bid, Gleason relied upon those contour drawings to calculate the amount of soil necessary to perform its contract with Benderson.

Gleason was the successful bidder, and signed the contract with Benderson in September 2002. Gleason then engaged the services of Pizzelli to survey the site and to install markings that would identify the areas of the site that had to be excavated and the areas that had to be filled to attain the grading called for by Benderson's contour drawings.

Relying upon the drawings furnished by Benderson, Gleason calculated the quantity of fill needed to attain the specified grade change. Gleason then contracted with third-party defendant Carey Excavating, Inc. (Carey) for the delivery of 25,000 cubic yards, agreeing to pay \$7.40 per cubic yard delivered and installed. Not long after the work began, Carey reported to Gleason that the indicated grades had been reached without even spreading all of the approximately 17,000 cubic yards that had been delivered at that time. Gleason, assuming that it had over-estimated its needs, consulted with Pizzelli to verify the accuracy of the staking and, after being assured by Pizzelli of its accuracy, instructed Carey to remove the excess material from the site. Carey then disposed of the excess soil at a construction site adjacent to the Benderson site. Whether Carey gave or sold the material to the contractors there is unknown.

Approximately six months later, after Carey had disposed of the excess fill, Benderson revealed for the first time that the Control Point contour drawings that Benderson had supplied to Gleason were incorrect. Specifically, by letter of April 10, 2003, Benderson informed Carey and Gleason that the "survey that the contract was awarded on was incorrect. Due to this error, an additional 7,500 to 15,000 cubic yards of additional soil may become necessary." Benderson assured both Carey and Gleason that it would reimburse Gleason for the additional soil to be supplied, stating "[r]est assured, whatever amount is determined necessary, Benderson Development Co., Inc. will reimburse Gleason Design Associates at the appropriate unit rate."

*2 Thus, by its April 10, 2003 letter, Benderson implicitly admitted that the error in its own contour drawings had been the cause of Gleason's and Carey's erroneous belief that they had brought excess fill to the site. Notwithstanding the payment assurances Benderson made in its April 10, 2003 letter, Benderson bypassed Gleason by canceling Gleason's

contract, and began to deal directly with Carey. Benderson justified the cancellation of its contract with Gleason by asserting that Gleason had stolen soil from the site. Dealing directly with Carey, Benderson induced Carey to deliver all of the remaining soil for the site, including the soil that Carey would have had to deliver if it had fulfilled its contract with Gleason for 25,000 cubic yards of material.

Benderson, however, paid Carey only for the delivery of soil in excess of 25,000 cubic yards on the assumption that Gleason had paid Carey for the 25,000 cubic yards specified in Carey's contract with Gleason. Ultimately, Benderson also reneged on its April 10, 2003 assurances to Gleason as well. Specifically, Benderson paid Gleason only \$78,000 of the \$235,000 amount that was due to Gleason under the September 19, 2002 contract.

On June 27, 2003, Carey instituted suit in Atlantic County against Gleason and Benderson to recover the sums due from each. Four days after suit was instituted, Benderson settled with Carey. Gleason, in turn, filed a third-party complaint against Benderson for breach of contract, unjust enrichment and tortious circumvention of the subcontract relationship between Gleason and Carey. In all of the pleadings and discovery exchanged between Gleason and Benderson in the Atlantic County litigation, Benderson never repudiated its letter of April 10, 2003 nor denied it had issued faulty drawings for the existing contours. Moreover, Benderson never denied that its faulty drawings significantly underestimated the amount of fill that was required to bring the surface up to the required grade.

Not until discovery in the Atlantic County litigation was complete and the parties were engaged in pretrial settlement discussions three weeks before the trial date, did Benderson's counsel mention to Gleason's counsel that Benderson intended to defend against Gleason's contract claim by demonstrating professional negligence on the part of Pizzelli, who was Gleason's surveyor, and who was not a party in the litigation. Benderson had never filed a third-party complaint or obtained an expert report against Pizzelli.

On March 14, 2005, when the parties appeared before the judge in Atlantic County for trial, Benderson's counsel raised with the judge the issue of Pizzelli's professional negligence, causing the judge to ask Gleason why Pizzelli had not been joined as a party. Gleason's counsel advised the judge that up until three weeks earlier, all parties had been proceeding on the assumption that Benderson's admittedly erroneous survey

caused all the problems that led Benderson to repudiate its contract with Gleason and negotiate directly with Carey for the purchase of additional soil.

*3 According to a certification filed in the instant litigation, Gleason's counsel informed the judge in Atlantic County that had Benderson raised that issue during the discovery period or even a reasonable time prior to trial, Gleason would have been in a position to pursue it. That same certification further maintained “[i]t was at this time that [the][j]udge advised that Gleason could settle the matter with Benderson and still institute a civil action against Pizzelli, should it be found necessary to do so.” The purported statement by the judge in Atlantic County was never included in any of the settlement documents or releases that were executed when that litigation was concluded. In that settlement, Benderson paid Gleason \$12,500, which Gleason then paid to Carey. The settlement also obligated Gleason to pay another \$45,000 directly to Carey.


After the Atlantic County litigation was concluded, Gleason sought the advice of an independent expert who opined that Pizzelli's negligence caused or contributed to Gleason's losses. Based upon that professional opinion, Gleason instituted suit against Pizzelli on December 5, 2005, in Mercer County, alleging professional negligence. Pizzelli answered and also filed third-party complaints against Benderson, Control Point and Carey. With no discovery attempted, Pizzelli and the third-party defendants filed motions to dismiss based upon the entire controversy doctrine. Those motions were denied by order of November 3, 2006. Thereafter, Pizzelli moved for dismissal on the same facts, but this time based its dismissal motion on the doctrine of res judicata. The third-party defendants filed similar motions. After argument, the court granted all parties' motions to dismiss and signed orders of dismissal on July 6, 2007.

Several months later, on December 20, 2007, the judge filed a written opinion.¹ The court held that “the present professional negligence suit against Pizzelli is barred by the entire controversy doctrine [because] Gleason had actual or practical notice of the existence of a claim against those parties, including Pizzelli, who were part of or associated with the settlement of the Atlantic County case at the time the settlement was entered into.”

On appeal, Gleason argues that the entire controversy doctrine does not apply because the facts and theory of recovery in its present case against Pizzelli are entirely different from the

facts and theory of recovery in the earlier Atlantic County litigation. Pizzelli argues that the doctrine bars Gleason's claims because the same facts form the basis of this action and the Atlantic County suit.

II.

On appeal, we apply the same standard as the trial judge to determine whether Gleason's claims are barred by the entire controversy doctrine.  *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378, 658 A.2d 1230 (1995). *Rule* 4:30A codifies the entire controversy doctrine. The *Rule* specifies that “[n]on-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine....” The entire controversy doctrine “has been a cornerstone of New Jersey's jurisprudence for many years.” *Hobart Bros. Co. v. Nat'l Union Fire Ins. Co.*, 354 N.J. Super. 229, 240, 806 A.2d 810 (App.Div.), certif. denied, 175 N.J. 170 (2002). As we observed in *Hobart*, the doctrine “has gone through several evolutions, from a doctrine of mandatory joinder of claims, to mandatory joinder of parties, to inclusion of potential legal malpractice claims, to an exemption for legal malpractice claims.” *Ibid.* (internal citations omitted). We explained the purposes and the parameters of the doctrine as follows:

*4 The doctrine requires a litigant to present “all aspects of a controversy in one legal proceeding.” It is “intended to be applied to prevent a party from voluntarily electing to hold back a related component of the controversy in the first proceeding by precluding it from being raised in a subsequent proceeding thereafter.”

As with many legal principles, it is more easily stated than applied. The entire controversy doctrine, is, at bottom, an equitable one. It rests upon the “twin pillars [of] fairness to the parties and fairness to the system of judicial administration.”

....

Because a violation of the entire controversy doctrine may result in the preclusion of a claim, a court must consider whether the party against whom the doctrine is sought to be invoked has had a fair and reasonable opportunity to litigate that claim. In considering that question, a court must remember that the “entire controversy doctrine is not intended to be a trap for the unwary.” On the other


hand, a court must also be sensitive to the possibility that a party has purposely withheld claims from an earlier suit for strategic reasons or to obtain “two bites at the apple.” A court should not permit itself to be made a party to such strategic choices that wreak unfair results upon others.

[*Id.* at 240-41 (internal citations omitted).]

In 1998, the Court significantly amended *Rule* 4:30A to restrict the scope of the entire controversy doctrine. The 1998 amendment limited the reach of the doctrine to non-joinder of claims, as opposed to the pre-1998 formulation of non-joinder of claims and parties. Pressler, *Current N.J. Court Rules*, comment 1 on *R.* 4:30A (2009). In other words, “[p]reclusion of a successive action against a person not a party to the first action has been abrogated except in special situations involving both inexcusable conduct ... and substantial prejudice to the non-party resulting from omission from the first suit.” *Ibid.*


We turn first to a determination of whether the claims against Pizzelli in the instant litigation arise from the same transaction or series of transactions that were the subject of the Atlantic County litigation. If so, then Gleason is precluded from maintaining the present litigation if Pizzelli is able to demonstrate both inexcusable conduct and substantial prejudice resulting from Gleason's failure to join Pizzelli in the first suit. *Ibid.*


The claims in the instant litigation arise from facts related to the earlier Atlantic County litigation because the claims in both suits arise out of defects in Benderson's contour drawings and the supply of soil to the site. While it is true, as Gleason claims, that the Atlantic County litigation did not encompass claims of professional malpractice, Gleason has provided no authority for the proposition that an assertion of professional malpractice in a second suit renders the entire controversy doctrine inapplicable even when both suits arise from the same set of transactions.


*5 Indeed, the doctrine applies even when the claims in one action are premised on a different legal theory from the claims asserted in the second action.  *DiTrollo v. Antiles*, 142 *N.J.* 253, 271, 662 A.2d 494 (1995). “The entire controversy doctrine does not require commonality of legal issues. Rather, the determinative consideration is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts.” *Ibid.* In this case, the claims that Gleason has asserted against Pizzelli arise from related facts and from

the same series of transactions as the claims asserted in the Atlantic County litigation.

Consequently, we turn to an analysis of whether Gleason has engaged in “inexcusable conduct” causing Pizzelli to suffer substantial prejudice. *Hobart Bros.*, *supra*, 354 *N.J.Super.* at 242, 806 A.2d 810. The party asserting the entire controversy doctrine as a defense, here, Pizzelli, bears the burden of proof. *Ibid.* In his analysis of the inexcusable conduct prong, the motion judge concluded that “[t]he slightest effort by Gleason would have readily revealed potential claims against ... Pizzelli.” Gleason does not directly challenge that conclusion. Instead, Gleason simply maintains that it decided not to assert claims against Pizzelli in the Atlantic County suit, because Gleason believed all issues arising from the site would be resolved in the Atlantic County suit and that it would recover all of its losses in that litigation.

Gleason explains, “Had the Gleason-Benderson contract/interference suit concluded as anticipated by Gleason, Benderson would have disgorged its windfall sufficiently for Gleason to satisfy the contract payments due to Carey. There would have been no need for Gleason to investigate *other* sources of recovery.” That is the same argument that we rejected in  *Wm. Blanchard Co. v. Beach Concrete Co.*, 150 *N.J.Super.* 277, 292-94, 375 A.2d 675 (App.Div.) (applying the entire controversy doctrine to dismiss claims asserted late in litigation arising from a complex, multi-party construction project), *certif. denied*, 75 *N.J.* 528, 384 A.2d 507 (1977).

Our decision in *Hillsborough Township Board of Education v. Faridy Thorne Frayta, P.C.* is an instance where—although the plaintiff had knowledge of the claims against the defendants during the pendency of the earlier litigation—the second suit was not barred because it was not based on facts related to the earlier litigation.  321 *N.J.Super.* 275, 286, 728 A.2d 857 (App.Div.1999). A comparison of the facts there with those here demonstrates why Gleason's failure here to join Pizzelli in the earlier litigation is “inexcusable” within the meaning of *Hobart*.

In *Hillsborough*, the plaintiff failed to join the defendants, the architect and the construction manager in earlier litigation related to lead in the water supply, and then commenced a second suit against defendants related to a leaky roof.  *Id.* at 280-81, 728 A.2d 857. The only issue that was presented in the first suit was the plaintiff's claim for damages associated with the plumber's use of lead solder in the drinking water

when the architectural plans and applicable codes required use of non-lead solder. [Id.](#) at 286, 728 A.2d 857. We reasoned:

*6 Allegations of design defects were not implicated in that complaint at all. The only allegation against Faridy and Wagner was their alleged negligence in failing to supervise the plumbers during their installation of piping while using lead solder. Thus, the claims are clearly separate and discrete. There would be no replication of proofs. The trial court would not be retracing ground that had already been covered. Judicial economy will not, therefore, be sacrificed. The fact that the various claims may have arisen out of the same construction job should not be the determinative factor.

[*Ibid.*]

Consequently, we concluded that “the policies underlying application of the entire controversy doctrine would not be promoted by barring the claims under the circumstances presented [t]here.” *Ibid.* In so holding, we relied upon the significant factual difference between claims pertaining to the lead solder in the drinking water that were asserted in the first suit compared to claims involving the leaking roof that were asserted in the second suit. *Ibid.* Here, unlike *Hillsborough*, where the claims were “clearly separate and discrete,” *ibid.*, the same allegations about incorrect elevation measurements permeate both suits. Moreover, unlike in *Hillsborough*, where “[t]here would be no replication of proofs,” *ibid.*, here the same proofs would be required in both suits. For those reasons, our opinion in *Hillsborough* supports the conclusion that the first prong of the Hobart test is satisfied in this case. Gleason's failure to join Pizzelli in the first suit was inexcusable because “the trial court would be retracing ground that had already been covered.” *See Ibid.*

Gleason relies upon our decision in [Mocci v. Carr Engineering Associates, P.A.](#), 306 N.J.Super. 302, 304, 703 A.2d 686 (App.Div.1997), *certif. denied*, 153 N.J. 404 (1998), arguing that the facts of that case are “strikingly similar” to the facts here. In *Mocci*, the defendant engineering firm raised the entire controversy doctrine as a defense against the Gleason's later suit, where the defendant engineering firm had negligently performed engineering services and been an expert witness in the Gleason's earlier suit. [Id.](#) at 304, 703 A.2d 686. We held that the doctrine did not bar the Gleason's later suit against the defendant engineering firm because the

facts giving rise to the later suit were not known at the time of the earlier suit. [Id.](#) at 305, 308, 703 A.2d 686.

Mocci, however, is distinguishable. In *Mocci*, we held the entire controversy doctrine does not require a party to join his own witness as a defendant merely because an adverse party rejects that witness's opinion. [Id.](#) at 308, 703 A.2d 686. Thus, the rationale and operative facts of *Mocci* make it distinguishable. We therefore agree with the motion judge's conclusion that Gleason's conduct was inexcusable within the meaning of Hobart.

Having determined that Gleason engaged in “inexcusable conduct,” we turn to an analysis of whether Pizzelli has demonstrated substantial prejudice as a result of Gleason's failure to join Pizzelli as a party in the Atlantic County litigation. This requires us to analyze “fairness to the parties and fairness to the system of judicial administration.” [Gelber v. Zito P'ship](#), 147 N.J. 561, 565, 688 A.2d 1044 (1997). “Fairness is thus a protective concept that focuses primarily on whether defendants would be in a better position to defend themselves if the claims against them had been raised and asserted in the first litigation.” [DiTrollo, supra](#), 142 N.J. at 273, 662 A.2d 494.

*7 Gleason argues Pizzelli will not suffer substantial prejudice if this case continues because the statute of limitations has not run and Pizzelli can just as easily defend against Gleason's claims now as it could have during the Atlantic County suit. Pizzelli asserts that it will be substantially prejudiced if Gleason's complaint is reinstated because it was unable to participate in the settlement agreements during the Atlantic County suit and those settlements will now have to be unraveled if Gleason secures a judgment against defendant. The motion judge found, without any explanation, that Pizzelli and the parties that settled the Atlantic County suit would be substantially prejudiced if Gleason were allowed to pursue this litigation. We disagree with the judge's conclusion.

We held in *Hillsborough* that the entire controversy doctrine should not bar the later suit because the defendants would not suffer substantial prejudice. [321 N.J.Super. at 287-88](#). We based that conclusion upon three factors: the evidence remained intact because the leaky roof at issue in the second suit had not been modified; the statute of limitations had not run; and there was no indication that the parties intended

the first suit as a “global settlement” of all claims. The rationale of *Hillsborough* is certainly applicable here because the evidence of Pizzelli's alleged professional negligence, namely its engineering drawings, remains intact; the statute of limitations has not run against Pizzelli;² and nothing in the Atlantic County litigation suggests that the parties intended a global settlement.³

Our conclusion that Pizzelli has not suffered substantial prejudice is bolstered by Pizzelli's failure to demonstrate how the delay has prejudiced its ability to maintain a defense in the present litigation. “Substantial prejudice ‘means substantial prejudice in maintaining [a] defense.’” *Mitchell v. Charles P. Procini D.D.S., P.A.*, 331 N.J.Super. 445, 454, 752 A.2d 349 (App.Div.2000), (quoting *Blank v. City of Elizabeth*, 318 N.J.Super. 106, 114-15, 723 A.2d 75 (App.Div.), *aff'd as modified*, 162 N.J. 150, 742 A.2d 540 (1999)). The Court reached the same result three years later in *K-Land Corp. No. 28 v. Landis Sewerage Auth.*, 173 N.J. 59, 75, 800 A.2d 861 (2002) (reasoning that Gleason's claim in later litigation should be no more difficult to defend against than it would have been if asserted in the earlier suit). Furthermore, “[d]elay alone does not serve to create substantial prejudice.” *Mitchell, supra*, 331 N.J.Super. at 454, 752 A.2d 349. “[I]t is the lack of availability of information which results from the delay that is, for the most part, determinative of the issue of substantial prejudice.” *Ibid.*

Here, the information currently available to Pizzelli would also have been available as a defense in the Atlantic County litigation. Specifically, Pizzelli has access to the same design drawings, invoices and measurements that were available to the parties in the Atlantic County litigation. Indeed,

nothing has changed. Consequently, because Pizzelli has not demonstrated a lack of availability of information resulting from the delay, Pizzelli has not established substantial prejudice.

*8 We likewise reject Pizzelli's argument that the earlier settlement between Gleason, Benderson and Carey will have to be dismantled if Gleason's claims are reinstated and Gleason succeeds in securing a judgment against Pizzelli. However, this should not bar Gleason's claims, as the earlier settlement can be credited against any judgment secured by Gleason in the instant litigation. *Id.* at 456-57, 752 A.2d 349.

Accordingly, we conclude Pizzelli has not demonstrated that it would suffer substantial prejudice if this action is not dismissed under the entire controversy doctrine. “We have always emphasized that preclusion is a remedy of last resort.” *Olds v. Donnelly*, 150 N.J. 424, 446, 696 A.2d 633 (1997). “‘Courts must carefully analyze’ both fairness to the parties and fairness to the system of judicial administration’ before dismissing claims or parties to a suit.” *Id.* at 446-47, 696 A.2d 633 (quoting *Gelber, supra*, 147 N.J. at 565, 688 A.2d 1044). Because Pizzelli has not demonstrated substantial prejudice resulting from Gleason's failure to join it as a party in the Atlantic County litigation, Pizzelli should not be permitted to now use the entire controversy doctrine as a sword.


Reversed and remanded.

All Citations

Not Reported in A.2d, 2008 WL 5083604

Footnotes

- 1 Although the court granted Pizzelli's July 6, 2007 motion on the grounds of res judicata, when the court issued its written decision on December 20, 2007, the judge relied on the entire controversy doctrine as a basis for dismissing Gleason's complaint. Thus, we analyze the entire controversy doctrine that formed the basis of the judge's written statement of reasons.

- 2 Pizzelli performed the surveying services in question during October 2002. The statute of limitations for professional negligence actions is six years.  [N.J.S.A. 2A:14-1](#). Consequently, the statute of limitations had not run against Pizzelli at the time Gleason filed the instant complaint on December 5, 2005.
- 3 The motion judge never resolved the factual dispute concerning whether or not the trial judge in the Atlantic County litigation assured Gleason that Gleason could institute later litigation against Pizzelli.

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT L

2008 WL 2735620

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

HOBART BROTHERS COMPANY, an
Ohio Corporation, Plaintiff-Appellant,

v.

NATIONAL UNION FIRE INSURANCE COMPANY,
a Pennsylvania Corporation, Defendant-Respondent,

and

Continental Insurance Company, a New
Hampshire Corporation as successor to certain
policies issued by Harbor Insurance Company, a
California corporation and/or Greenwich Insurance
Company, a California corporation, Defendant.

Argued March 4, 2008.

I

Decided March 25, 2008.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, L-8356-97.

Attorneys and Law Firms

[Gregory J. Schwartz](#) argued the cause for appellant (Schwartz
Kelly, LLC, attorneys; Mr. Schwartz, of counsel; Mr.
Schwartz and [Vanessa M. Kelly](#), on the brief).

[Karol Corbin Walker](#) argued the cause for respondent (Seiden
Wayne, LLC, and Smith, Stratton, Wise, Heher & Brennan,
LLP, attorneys; [Thomas E. Hastings](#), of counsel; Ms. Walker
and [Gregory S. Thomas](#), on the brief).

Before Judges [COBURN](#), [FUENTES](#) and [CHAMBERS](#).

Opinion

PER CURIAM.

*1 This is a declaratory judgment action for insurance
coverage under comprehensive general liability (“CGL”) insurance policies. Coverage is sought for the costs of an
environmental clean-up of commercial property ordered by
the Department of Environmental Protection (“DEP”). The

insured is plaintiff Hobart Brothers Company (“Hobart”). The
carrier is defendant National Union Fire Insurance Company
 (“National Union”). A Law Division judge entered summary
judgment for National Union based solely on the entire
controversy doctrine. The judge concluded that Hobart's
deliberate failure to include National Union in earlier suits
was inexcusable and accepted National Union's claim that it
had suffered substantial prejudice as a result. Hobart appeals,
contending that neither finding is supported by the record.
We agree with Hobart and therefore reverse and remand for
further proceedings.

I

The property is located in an industrial park in Nutley. From
at least 1933 until 1963, it was used as a lumberyard. In
1963, a building was constructed on the property, and until
1968 the building was used by a textile-cutting company. In
1968, Nova Industries, Inc. (“Nova”) leased the property for a
manufacturing process that involved the use of two pollutants;
trichloroethene (“TCE”) and trichloroethane (“TCA”).

In 1984, Hobart acquired Nova, and merged it into
a newly-formed, wholly-owned subsidiary. At the time,
this transaction triggered obligations under New Jersey's
Environmental Clean-up Responsibility Act (“ECRA”),
[N.J.S.A. 13:1K-6 to -13](#),¹ which included obtaining DEP
approval before the transaction was finalized. Unfortunately,
DEP's approval was not sought. When Hobart acquired
Nova, and for about ten years prior to the acquisition,
Nova's primary CGL carrier was Atlantic Mutual insurance
Company (“Atlantic Mutual”). During the acquisition, Nova
was represented by the law firm of Gutkin, Miller, Shapiro &
Selesner (“Gutkin”).

In 1990, Hobart sold the assets of Nova to Technology
Dynamics, Inc. This sale also triggered the ECRA.
Hobart notified DEP, which determined that the site was
contaminated by Nova's spills of TCE and TCA. Hobart
agreed to a DEP plan for the clean-up.

In 1991, Hobart retained Harding Lawson Associates
 (“HLA”), an environmental consulting firm. At that time,
HLA estimated that the cost of removing the TCE and TCA
from the site would be about \$700,000.

In 1992, Hobart sued Gutkin for malpractice, alleging that
compliance with ECRA was the seller's responsibility and that

Gutkin, as Nova's attorney, was responsible for Nova's failure to satisfy the ECRA requirements. Gutkin's malpractice carrier at the time was National Union. In 1993, Hobart and Nova sued Atlantic Mutual under the CGL policies it had issued to Nova. Both actions sought the same relief: compensation for the clean-up expenses. And in both actions, Hobart was represented by the same law firm, Anderson, Kill, Olick & Oshinsky ("Anderson"), which filed certifications under *Rule 4:5-1* stating that there were no other parties that should be joined in the actions.

*2 In July 1994, HLA increased its estimate of the clean-up costs to \$1.4 million. In December 1994, HLA wrote to Hobart's in-house engineer further increasing the estimate to \$2.7 million, but that letter was not received by Hobart before it settled with Gutkin and Atlantic Mutual in 1995. In the settlements, Hobart received \$100,000 from Gutkin's carrier, National Union, and \$973,454 from Atlantic Mutual.

Hobart gave Atlantic Mutual a customary general release, but in the Gutkin action, the release was unusual. Although National Union was not a party in the lawsuit, it insisted on being a party to that settlement agreement. At National Union's insistence, that agreement provided that it would receive a release from Hobart

limited to claims that have been or could have been made in the future in this litigation upon National Union's professional liability insurance policy issued to ... Gutkin....

In return, National Union agreed to accept the following additional language demanded by Hobart's attorneys: "This release shall have no effect on any claim under any insurance policy issued by National Union to [Hobart]."

In October 1995, Hobart became aware for the first time of HLA's last estimate of \$2.7 million. And in July 1997, Hobart began the action that we are now reviewing against National Union and Continental Insurance Company ("Continental"), which was a successor to Harbor Insurance Company, the company that had provided Hobart with umbrella liability policies.

Two years after Hobart filed this action, National Union and Continental moved for summary judgment, relying on the

entire controversy doctrine. A Law Division judge agreed and dismissed the action. Hobart appealed, and another panel reversed and remanded for further proceedings. *Hobart Bros. Co. v. Nat'l, Union Fire Ins. Co.*, 354 N.J.Super. 229 (App.Div.), certif. denied, 175 N.J. 170 (2002) ("*Hobart I*").

In *Hobart I* the court rejected the Law Division judge's determination that Hobart's failure to join National Union in the earlier lawsuits "was a sufficient basis, by itself, to preclude Hobart from maintaining the present action." *Id.* at 242. The court held that the action should not have been dismissed unless Hobart's deliberate failure to join National Union was inexcusable and had resulted in substantial prejudice to National Union. *Ibid.* On remand, the court directed the judge to consider at the least the following factors:

- (1) Is National Union precluded, as it contends, from seeking recovery from Atlantic Mutual?
- (2) If National Union is precluded, can it be compensated by an allocation calculation, as Hobart asserts?
- (3) Was Hobart's failure to supply information about its liability carriers as part of the Gutkin discovery an attempt to thwart the assertion of a claim against National Union?
- (4) Was Hobart's action in settling with Atlantic Mutual and Gutkin without conferring with HLA as to the status of its cost estimates unreasonable in the circumstances[?]


*3 (5) Should National Union, as the Gutkin firm's malpractice carrier, be charged with knowledge of the Nutley claim? In this latter regard, all the participants in this matter have addressed that issue based upon their own alleged understanding of the internal workings of insurance carriers, without any specifics to the instant claim. Determining the parameters of resolving that issue will require some careful analysis. National Union has, for example, already produced for in-camera review its file in connection with the legal malpractice litigation. After an in-camera review, the Assignment Judge wrote to all counsel that no "document contained any information of plaintiff's claim for coverage against National Union [and][n]o reference to any insurance policy issued by National Union to Hobart was found." We leave to the trial judge and the parties whether that statement sufficiently demonstrates that its malpractice section, which defended claims presented against an insured,


operated independently of the section which handled first-party claims by its own insureds.

(6) What impelled Hobart to insert in the Gutkin settlement agreement the apparently unique provision exempting its own liability policies with National Union from the scope of the release it was to provide?

(7) To what extent were judicial resources called upon in connection with the earlier suits?

(8) Was Hobart's decision to settle its claims relating to the clean-up of the Nutley site without calling upon its own insurance policies reasonable?

(9) What is the nature of the prejudice to which National Union might be subjected if this suit were allowed to continue, i.e., is its ability to mount a defense to this claim unfairly hampered, or is the prejudice restricted to the release of Atlantic Mutual, or is it a combination of both? In this regard, we have in the past spoken of the concept of substantial prejudice for purposes of claim preclusion in terms of the loss of evidence, [ *Mitchell v. Procini*, 331 N.J.Super. 445, 454 (App.Div.2000)], but we do not understand the concept of substantial prejudice to be necessarily restricted to that area alone. The running of a period of limitations or the bar of a claim for contribution or indemnification may constitute substantial prejudice in certain contexts.

(10) What is the impact, if any, of the Supreme Court's recent opinion in [ *K-Land Corp. No. 28 v. Landis Sewerage Auth.*, 173 N.J. 59 (2002)], issued after this appeal was argued?

[*Id.* at 243-44.]

The questions posed in *Hobart I* implied the necessity for further development of the facts. But before recounting the subsequently developed facts, we note the relevant additional facts on which *Hobart I* was based (apart from those described above) that related to the remanded issues.

Gutkin's answer referred to Hobart's failure to join its general liability carrier as a party in the suit. And Gutkin's counsel asked for information about Hobart's own liability coverage. In response, Hobart only provided information regarding Nova's liability policies. The issue was not thereafter pursued.

*4 While the actions were proceeding against Gutkin and Atlantic Mutual, Hobart was defending many toxic tort cases in which plaintiffs alleged that they had been injured by Hobart's emission of welding fumes. National Union provided Hobart with coverage for those claims. In *Hobart I*, the court observed that Hobart "made a conscious choice not to pursue National Union in connection with the Nutley matter" because it wanted to preserve good relations with National Union in the defense of the toxic tort cases. *Id.* at 236. That comment was based on the following passage from a deposition given by Hobart's general counsel:

The concern always was that we had had—"we," Hobart, had a fine working relationship with National Union as well as, for that matter, USF & G and Great American, parties who we litigated against for this toxic tort coverage, had maintained good relationships with them on the defense of cases, these welding cases that were ongoing and very voluminous and potentially very costly. And we candidly didn't want—necessarily want to pursue National Union unless we really thought it was absolutely necessary because we didn't want to jeopardize the health of that ongoing relationship on the other cases. The other cases were very much larger in potential liability.

There were literally thousands and thousands of these lawsuits, welding fumes lawsuits pending and the aggregate potential liability from them was far, far, far in excess, much in excess of anything that would have flowed from the Nova site.

And that is the basic preservation of the good will of the relationship was really the governing sort of watch word, as it were, of our thoughts on that.

As will appear shortly, although the court's comment in *Hobart I* was warranted by the just cited quotation from the deposition of Hobart's general counsel, the actual motivation was based, to a substantial degree, on other considerations that appeared, as further discovery showed, in what was a more complex factual setting.

On the remand ordered in *Hobart I*, the following additional facts were presented to another Law Division judge.

National Union provided annual one-million dollar CGL policies to Hobart from 1983 to 1988. But the 1987 National Union policy, which covered the period January 1987 to January 1988, and which was the first National Union policy to list Nova as a named insured, contained an exclusion for

bodily injury or property damage arising out of a discharge of pollutants, an exclusion not present in its policies covering the earlier periods. Nova maintained its own liability policy with Atlantic Mutual for a few years after its sale to Hobart. Hobart also maintained umbrella policies with Continental's predecessor for twenty-million dollars in 1984 and ten-million dollars in 1985 and 1986.

At a meeting in January 1992, Paul Breene, a member of the Anderson law firm, Hobart's insurance coverage counsel, and Hobart's representatives agreed that Hobart would not sue National Union because Nova was not covered under the National Union policy until 1987. They concluded that such an action was unlikely to succeed because of the pollution exclusion in the 1987 National Union policy. In preparation for the meeting, Richard Cultice, Hobart's treasurer, had searched for policies in which Nova was the named insured, and the only National Union policy he found that listed Nova was the 1987 policy. Breene said that he focused on the 1987 policy because that was when Nova was added as a named insured on that policy. He also testified as follows:

*5 [W]e missed the issue. I think we didn't consider this coverage. In retrospect we should have. We thought of this solely as a Nova liability and not as a Hobart liability and did not consider that there might be coverage directly running to Hobart for this liability.

In May 1994, before the settlements were made, an internal memorandum to Breene from Mark E. Miller, Breene's associate, suggested further review of Hobart's insurance policies to see if there were other viable coverage claims. A schedule of the policies was appended to the memorandum, but the only National Union policy listed was the one for 1987 that had the pollution exclusion clause.

Breene also indicated that when the first two cases settled it "made little sense" for Hobart to attempt to sue National Union because they were "high percentage" settlements. He described the giving of the release to National Union in the Gutkin case as unusual because National Union was not a party to that action. He further explained that he included Hobart's reservation of the right to sue National Union in the release because Hobart was unwilling "to simply

give away claims for nothing." He also testified that the only National Union policy of which he was aware when he drafted the reservation was the 1987 policy. In *Hobart I*, the court noted, in essence, that the claim-reservation language of the release "was not included in the original draft of the settlement agreement. Its later insertion indicates that it was not considered to be a routine clause..." *Id.* at 237. Apparently, the record at the time contained no further information about why the reservation was included in the release.

Breene said that when Hobart became aware after the settlements with Gutkin and Atlantic Mutual of HLA's new \$2.7 million estimate for the cleanup, no thought was given to suing National Union. That issue only arose about two years after the settlements when Hobart was acquired by another company and its attorney reviewed Hobart's policies.

At all relevant times, National Union's claims agent was American International Adjustment Company, which became AIG Technical Services, Inc. ("AIG"). Since AIG defended Hobart's claim against Gutkin, AIG became aware of Hobart's obligation to clean up the Nutley site in 1992. AIG also handled Hobart's defense in the welding fume cases. But AIG's environmental and malpractice departments were separate, and an attorney in AIG's environmental department stated that she had no contact with anyone in the malpractice department.

As of July 1997, there had been no soil removal at the site. Soil-vapor extraction and groundwater pump-and-treat were used to abate the pollution under DEP supervision. All of the data relating to investigation and remediation were made available to National Union during the discovery conducted in these proceedings, and National Union has never complained about the quality of the data or the methods selected for the remediation.

*6 Few judicial resources were consumed in the Gutkin and Atlantic Mutual cases. After the initial pleadings were filed, there were no motions or depositions. There were no court appearances except for a very brief and routine trial call. App.'s brief 17-18

II

Following the *Hobart I* remand and after the parties engaged in further discovery, both parties moved for summary



judgment and, as already noted, National Union prevailed on the ground that the entire controversy doctrine barred Hobart's suit. But Continental did not pursue summary judgment, choosing instead to go to trial. Hobart's motion for leave to appeal dismissal of its action against National Union was denied, and Hobart and Continental settled before trial.

The judge gave the following reasons for granting National Union's summary judgment motion, first addressing the question of whether the failure to join National Union was inexcusable: Hobart knew when it filed the first two actions that National Union was entitled to notice of the pollution at the Nutley site. Breene's testimony, that the only National Union policy that he knew of when the first two actions were filed was the 1987 policy that contained the pollution exclusion, is unbelievable. The May 1994 Miller internal memorandum suggesting that Breene review all of Hobart's insurance policies before settlement with Gutkin and Atlantic Mutual provides further support for the conclusion that Breene knew of the earlier National Union policies and their relevance. Moreover, since Hobart did not assert before the remand that the only National Union policy it or its attorney's reviewed in 1994 was the 1987 policy, judicial estoppel bars that contention after the remand.


The judge then ruled on the issue of prejudice, noting first that because of the passage of time, remediation of the site was almost complete. Consequently, National Union "lost the opportunity to have its experts investigate the site" and can no longer "identify other parties that may have contributed to the pollution." In addition, National Union was prejudiced because it could no longer bring claims for subrogation or contribution as a result of the releases granted in the prior litigation.




We turn next to our reasons for reversal of the judgment.


III

National Union supports the judge's reliance on judicial estoppel and also relies, alternatively, on quiai-estoppel. Judicial estoppel prevents a party from taking a position contrary to a position successfully espoused in the same or prior litigation.  *McCurrie v. Town of Kearny*, 174 N.J. 523, 533 (2002);  *Kimball Int'l, Inc. v. Northfield Metal Prods.*, 334 N.J. Super, 596, 607 (App.Div.2000), *certif. denied*, 167 N.J. 88 (2001). Here, the judge faulted Hobart for not

previously asserting that the 1997 policy was the only one it reviewed and ruled that it should be barred from asserting after remand that it did not review the earlier policies.


We do not accept the idea that not taking a particular position is the same as taking a position for purposes of judicial estoppel. Nor is there any inconsistency between the reason given pre-remand for not suing National Union by Hobart's general counsel, which was maintenance of good relations, and Breene's subsequent explanation that, in addition to maintenance of good relations, suit was not brought against National Union because the only policy then-reviewed was the 1987 policy, which had the pollution exclusion. His testimony was not contrary to the earlier position; rather, it further explained that position. Also, of course, the doctrine is inapplicable because Hobart did not successfully maintain its position in the pre-remand proceedings. Quasi-estoppel, the other argument advanced by National Union, is merely a form of judicial estoppel applied to circumstances outside the courtroom.  *Heuer v. Heuer*, 152 N.J. 226, 237 (1998). Since there were no such circumstances here, this doctrine is also inapplicable.

*7 Generally, the entire controversy doctrine requires the joinder of claims arising from a single transaction. *Oliver v. Ambrose*, 152 N.J. 383, 392 (1998). The goals intended to be achieved by mandatory joinder in those circumstances include efficiency, economy, and fairness to the parties and to the court system. *Id.* at 392-93 (citations omitted);  *Vision Mortgage Corp. v. Patricia J. Chiapperini, Inc.*, 156 N.J. 580, 584 (1999). When, as here, the withheld claim involves a new party, the doctrine is a bar only if two elements are present: inexcusable conduct in withholding the claim and substantial prejudice to the new party.  *K-Land Corp. No. 28 v. Landis Sewerage Auth.*, 173 N.J. 59, 69-70 (2002). In other words, the doctrine applies to calculated claim-splitting, not to situations where the omission is uninformed and innocent.  *Id.* at 70. The party invoking the doctrine has the burden of proof on those issues. *Hobart I, supra*, 354 N.J. Super. at 242.

Since the case is here on review of summary judgment, our review is *de novo*.  *Bennett v. Lugo*, 368 N.J. Super. 466, 479 (App.Div.), *certif. denied*, 180 N.J. 457 (2004). The governing principle is that summary judgment is proper when

the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show 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).]

In other words, when the evidence is so one-sided that one party must prevail as a matter of law, summary judgment should be granted.  *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 540 (1995).


National Union did not meet its burden of showing that Hobart's failure to include it in the Atlantic Mutual litigation was a calculated and unjustified splitting of claims. Breene's testimony, that when the decision was made he only considered the 1987 policy, and that he did not believe a suit on that policy was warranted because of the seeming adequacy of the settlements and because the policy's pollution exclusion made success unlikely, was uncontradicted. And, contrary to the judge's finding, the Miller internal memorandum corroborated Breene's testimony because, although it lists many insurance policies, the only National Union policy listed is the one for 1987.



Breene's testimony is further buttressed by the undeniable fact that Hobart did not consider suing National Union when, after settling with Gutkin and Atlantic Mutual, it learned that the clean-up would cost almost twice what it had previously believed. Indeed, neither Hobart nor its counsel considered the possibility of an action against National Union until Hobart was purchased by another company some two years after the settlements. That company's attorney discovered the existence and relevance of the earlier National Union policies, none of which included Nova as a named insured or pollution exclusion clauses. Of course, this action is based on the coverage afforded by those policies, not by the 1987 policy. In short, this case involved nothing more than a mistake by Hobart's counsel; it was not a deliberate splitting of claims and cannot be characterized as unjustifiable. Hobart was thus entitled to a favorable ruling on this issue.

*8 In addition, National Union failed to prove the second, and equally important element of the entire controversy defense; namely, that the non-joinder caused it prejudice, which is the subject to which we now turn.

In its appellate brief, National Union described the prejudice it suffered in the following words:

National Union has been prejudiced by Hobart's broad release of Atlantic Mutual, the insurer which covered Nova for 16 years prior to its merger with Hobart, during the period when most, if not all, of the pollution-causing activities took place. This broad release effectively distinguished any contribution or equitable subrogation claims by National against Atlantic Mutual. Further, the trial court found that "after 14 years, the contaminated site is near completion of being remediated, so that there is now a change at the site, [and] National Union has lost the opportunity to have its experts investigate the site and also precludes their [] ability to identify other parties that may have contributed to the contamination.

We begin our analysis with the settled proposition that an insurance company is not entitled to deny coverage "unless there are both a breach of the notice provision and a likelihood of appreciable prejudice."  *Cooper v. Gov't Employees Ins. Co.*, 51 N.J. 86, 94 (1968).

In  *Sagendorf v. Selective Insurance Co. of America*, 293 N.J.Super. 81, 93 (App.Div.1996) (quoting  *Morales v. National Grange Mutual Insurance Co.*, 176 N.J.Super. 347 (Law Div.1980)), we endorsed the principle that "the carrier must establish more than the mere fact that it cannot employ its normal procedures in investigating and evaluating the claim...." And we noted that even a six-year delay in notification would not necessarily indicate prejudice. *Id.* at 95. *Sagendorf* involved a pollution claim submitted to the insurance carrier about two years after DEP became involved in the site. *Ibid.* We rejected the denial of coverage, noting the following, among other things:

Defendant had the benefit of the various DEP tests as well as the consulting tests and studies, and fails to point to anything to indicate they were unreliable.... Defendant has pointed to no expert or other evidence-beyond speculation-linking plaintiffs' failure to give it earlier notice with any resultant prejudice. It fails altogether to identify a likely circumstance detrimentally affecting a successful defense on the merits of the remediation expenses.

[*Id.* at 96 (citation omitted).]

Our observations in *Sagendorf* are equally applicable here. Although National Union's agent, AIG, which monitored the

defense of the Gutkin action, became aware of the pollution in 1992, and National Union itself obtained that information at the latest in 1997 when this suit was filed, to date it has failed to indicate, let alone prove, any facts supporting its claim of prejudice. And in particular, it has wholly failed to provide any evidence that the contamination had any cause other than the activities of Nova. National Union had the burden of persuasion on the issue of prejudice. [Owens-Illinois, Inc. v. United Insurance Co.](#), 138 N.J. 437 (1994), and [Carter-Wallace, supra](#). But neither of those cases so holds; they are simply cases in which it happened that all of the carriers were involved in a single action. While the concept of resolving related claims in a single action is relevant to an entire controversy determination, there can be no unfairness as to allocation here since the allocation must be made in accordance with the noted principles applicable to environmental insurance claims.

*9 The judge found, and National Union maintains, that the release Hobart gave to Atlantic Mutual caused prejudice by denying National Union an opportunity to seek contribution from Atlantic Mutual. Assuming the release would bar an action by National Union against Atlantic Mutual, no prejudice results from that bar.

There is no prejudice because in these environmental coverage disputes allocation is proportionate to the degree of risks transferred or retained during the years of exposure, and losses are allocated among carriers based on the extent of the risk assumed; i.e., the policy limits multiplied by the years of coverage. [Carter-Wallace, Inc. v. Admiral Ins. Co.](#), 154 N.J. 312, 320-23 (1998). Accordingly, an insurer will pay its pro rate share of the costs for each triggered policy year. [Id.](#) at 322, [Spaulding Composites Co., Inc. v. Aenta Cas. & Sur. Co.](#), 176 N.J. 25, 39-42 (2003), cert. denied sub nom., [Spaulding Composites Co., Inc. v. Caldwell Trucking PRP Group](#), 540 U.S. 1142, 124 S.Ct. 1061, 157 L. Ed.2d 953 (2004).

National Union argues that “[a]s a matter of fundamental fairness, the allocation of responsibility for a single covered loss ... must take place in a single action.” To support that proposition, National Union cites [Owens-Illinois, Inc. v. United Insurance Co.](#), 138 N.J. 437 (1994), and [Carter-Wallace, supra](#). But neither of those cases so holds; they are simply cases in which it happened that all of the carriers were involved in a single action. While the concept of resolving related claims in a single action is relevant to an entire controversy determination, there can be no unfairness as to allocation here since the allocation must be made in accordance with the noted principles applicable to environmental insurance claims.

In short, if National Union is liable, the degree of liability can be fully and fairly determined without the presence of Atlantic Mutual in the case and without the necessity of reserving a claim against that entity for some supposed future litigation.

Finally, we emphasize that Hobart's conduct resulted in an extremely minimal use of judicial resources since, as noted, the cases against Atlantic Mutual and Gutkin were resolved without motion practice or depositions and after one routine trial call.

At oral argument, the parties agreed that resolution of this appeal would in no way deprive National Union of its defenses under the policy, including the defense of untimely notice.

Reversed and remanded.

All Citations

Not Reported in A.2d, 2008 WL 2735620

Footnotes

1 The ECRA is now known as the Industrial Site Recovery Act, [N.J.S.A. 13:1K-6 to -14](#).

EXHIBIT M

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 [MortgageInq 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**.

EXHIBIT N

A P P E A R A N C E S:

GALLO, GEFNER, FENSTER, ESQS.
BY: JAY J. FRIEDRICH, ESQ.
For the Plaintiff

MELLI & WRIGHT, ESQS.
BY: SUZANNE J. FRANKLAND, ESQ.
For CP-2 and BP

GOLDEN, ROTHSCHILD & SPAGNOLA, ESQS.
BY: RONALD S. LEVITT, ESQ.
For OP-1

RANDALL G. TASHJIAN, ESQ.
For CP-3

A L S O P R E S E N T:

CP-1
CP-2
BP

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
CP-3				
By Mr. Friedrich	4		22	
By Mr. Levitt		14		
By Ms. Frankland		19		27
By Mr. Tashjian	30			

1 CP-3 189 Kaywin Road Paramus, New Jersey was previously
2 sworn.

3

4 DIRECT EXAMINATION BY MR. FRIEDRICH: (Continued)

5 Q I think we left off with Judy Polick (sic).

6 MR. LEVITT: That was the last question..

7 Q Could you tell us what type of physical
8 contact you had with Judy Polick (sic)?

9 A With who?

10 Q Judy Polick (sic).

11 MR. LEVITT: Holick, H.

12 MR. FRIEDRICH: I wrote it down. Holick.

13 A I touched her breast over her clothes and that's
14 it.

15 Q How old was she at the time?

16 A I don't recall.

17 Q And it was only one touching?

18 A Once or twice.

19 Q And while you were doing this was she
20 having a conversation with you?

21 A No.

22 Q Was she sitting on your lap?

23 A No.

24 Q Describe how it happened?

25 A It was a dance and it was one of these like bunny

1 hop dances and everybody come in the group and that was
2 it.

3 Q You just put your hands out and touched
4 her?

5 A No, I was grabbing around and everybody was moving
6 around and I did the same thing.

7 Q Now, did you ever expose yourself to any
8 women under the age of 18?

9 MR. TASHJIAN: Just as to the form of that,
10 expose what?

11 Q Expose your genitals?

12 A Anyone under 18.

13 Q I assume you're going to give me a yes or
14 no, if you say yes, I'll go on.

15 MR. TASHJIAN: When he was under 18 or over
16 18?

17 Q When you were over 18?

18 A Well, I guess you could call it exposing myself if
19 I had sexual relations with a female of the opposite sex,
20 yes.

21 Q Okay. Did you ever expose yourself to any
22 of your nieces or nephews or grandsons or granddaughters?

23 A Did I ever expose myself?

24 MR. TASHJIAN: Again, same thing, expose
25 genitals?

1 MR. FRIEDRICH: Same thing, genitals, yes.

2 A Knowingly or unknowingly?

3 Q Either at this point then we'll ask the
4 next question.

5 MR. TASHJIAN: Go with the knowingly first.

6 A Knowingly, no.

7 Q Unknowingly if there's such a thing?

8 A What's that?

9 Q Unknowingly?

10 A Unknowingly, I understand that there were times
11 when the one bathing suit that I wore where the elastic on
12 it was loose and my penis came out of my suit while in the
13 water.

14 Q And who observed this?

15 A It was my brother-in-law George's son and daughter.

16 Q Okay. And when they saw your penis what if
17 anything did they do?

18 A They were laughing about it and I got mad and I
19 hollered at them because I said there was nothing funny
20 about the incident.

21 Q Okay. So you didn't realize you were
22 exposed?

23 A Absolutely.

24 Q Is that the only occurrence?

25 A That I know of.

1 Q Now, did you... Janet (sic) is your
2 sister-in-law, correct?

3 A Jeanette.

4 Q Jeanette, I'm sorry. Jeanette. She's your
5 sister-in-law?

6 A That's right.

7 Q Correct. And I think you did already
8 testify that you had touched her body, her breast and her
9 genitals?

10 A I mentioned I had touched her, yes.

11 Q And do you know how many times you had the
12 occasion to touch her vagina and her breasts?

13 A No.

14 Q More than once?

15 A Well, I know I touched her breasts more than once
16 and I don't know whether I touched her vagina or not.

17 Q Did you ever touch her daughter's vagina or
18 breasts?

19 A I touched her daughter's vagina over her clothes in
20 the back of a truck when we were moving some chairs.

21 Q All right.

22 A And her brother was there while I was doing it.

23 Q And -- wait a minute. Her daughter's name
24 is Darlene, correct?

25 A That's right.

1 Q Around Darlene's brother was watching you
2 touch?

3 A He was in the back of the truck with us.

4 Q And he was watching you do this?

5 A Well, we were driving and the truck was going back
6 and forth, I grabbed her to hold her because it was
7 swinging and that's how it happened.

8 Q And that was the only time you did that?

9 A That's the only time.

10 Q Did Janet (sic) ever bring this touching to
11 your attention, or Jeanette?

12 A They know about it, yes.

13 Q How did they find out about it?

14 A The daughter, the daughter told her mother.

15 Q And did the daughter describe the event as
16 you just did today?

17 A I have no idea what the daughter said to her
18 mother.

19 Q Well, did the mother explain to you what
20 her daughter said?

21 A The mother didn't explain anything to me.

22 Q She was upset with you?

23 A I don't know whether she was or not because it was
24 so long ago and we're very good friends to this very day.

25 Q Now, one thing I didn't understand, you

1 were talking about Perando yesterday in which you
2 indicated you touched Perando's chest less than ten times,
3 correct?

4 A That's right.

5 Q And the mother, Mrs. Perando, contacted the
6 Prosecutor's Office?

7 A That's right.

8 Q And did police come to your house and
9 arrest you?

10 A No.

11 Q They didn't, squad cars from your local law
12 enforcement didn't come to your house?

13 A No.

14 Q And take you from your home?

15 A No.

16 Q You drove yourself down to the police
17 station?

18 A Yes.

19 Q And who drove you to the police station?

20 A I drove myself.

21 Q At the police station did they do anything
22 to you such as take your photograph, fingerprint you?

23 MR. TASHJIAN: Are you referring to a
24 particular police department by the way, I thought
25 it was the Prosecutor's Office.

1 Q Well, was it the Prosecutor's Office or was
2 it local law enforcement came?

3 A Prosecutor's Office.

4 Q So you went down to the Prosecutor's
5 Office?

6 A That's right.

7 Q You never went to the local police station?

8 A No.

9 Q And the Prosecutor's Office didn't come to
10 your home and discuss this matter with you?

11 A No.

12 Q And you didn't leave your home handcuffed?

13 A No.

14 Q Were you ever handcuffed?

15 A No.

16 Q Now, you indicated... Well, when you were
17 touching CP-1's chest and vagina that apparently a number
18 of these occasions were when she was sitting on your lap,
19 correct?

20 A Yes.

21 Q Both in her home, in your home and I think
22 you indicated in the van?

23 A In their van.

24 Q That's right, your son's van.

25 Now, how did it come about that CP-1 was on your

1 lap?

2 A She always came to me.

3 Q She came to you, you didn't call her over?

4 A No.

5 Q And while you were caressing her breast,
6 what were you saying to her, if anything?

7 A Probably nothing.

8 Q You weren't talking to her?

9 A No.

10 Q And correct me if I'm wrong, from your
11 testimony yesterday your wife was in the house?

12 A Absolutely.

13 Q While your granddaughter was sitting on
14 your lap and while you were caressing her chest?

15 A That's true. This also happened in their house
16 when their mother and father was in the house.

17 Q Um hm.

18 A And their brothers were in the house.

19 Q And everyone was watching you caress CP-1's
20 chest and vagina?

21 A I can't say that because when you go to somebody's
22 house does everybody watch each other?

23 Q Well, if you saw.

24 A We were there as company, we were there as company.

25 Q I don't want to cut you off, I apologize.

1 MR. TASHJIAN: Yeah, just for the record,
2 you can't speak when he's speaking and he'll show
3 you the same courtesy, so try to keep it one voice
4 at a time.

5 THE WITNESS: All right, all right.

6 Q Now, when someone walked in the room did
7 you continue to caress CP-1's breasts and vagina?

8 A At times I did and at times I didn't.

9 Q How old was CP-1 when you started caressing
10 her breasts and vagina?

11 A Exact date I couldn't tell you.

12 Q Her age, was she five years old, 13 years
13 old?

14 A Her actual age I couldn't tell you.

15 Q You have no idea?

16 A I couldn't tell you, you want me to be truthful, I
17 couldn't tell you.

18 Q I want you to be truthful.

19 A I couldn't tell you.

20 Q Did you ever have any conversations with
21 CP-1 while you were touching all her private parts, her
22 chest and her vagina, did you ever say anything to her?

23 A I imagine so. What we talked about I have no idea,
24 there were times she sat on my lap watching T.V., maybe
25 talked about the T.V. show or maybe things that took place

1 in the yard.

2 Q Well, you stated yesterday and correct me
3 if I'm wrong that you knew what you were doing was wrong?

4 A Absolutely.

5 Q Why didn't you stop?

6 A That's the \$64,000 question, I told you that
7 yesterday, too.

8 Q So you have no idea why you couldn't stop?

9 A No.

10 Q You just couldn't?

11 A These were compulsions that I had.

12 Q And you could not stop yourself?

13 A Oh, I could stop myself because there were times
14 when I did stop. It wasn't every single time that they
15 came over where I fondled her. There were many times that
16 she came over where I didn't fondle her.

17 Q And you were able to control your urges.
18 Is that correct?

19 A For periods of time, yes.

20 Q And other times you could not control your
21 urges?

22 A Well, other times they overcome me.

23 Q And since you've received medical treatment
24 as a result of the plea bargain you're able to control
25 your urges?

1 A Well, I haven't fondled any young girl since.

2 MR. FRIEDRICH: Would you like to ask some
3 questions?

4 MR. LEVITT: You're finished?

5 MR. FRIEDRICH: Yes.

6

7 CROSS-EXAMINATION BY MR. LEVITT:

8 Q Mr. CP-3, my name is Ronald Levitt and I
9 represent Mrs. OP-1 with regard to this litigation.
10 There's just a few things that you testified to yesterday
11 and a few additional things that I wanted to just clear up
12 for the record.

13 When you used the word fondle or caress in talking
14 about your touching of CP-1 or any of these other women,
15 can you tell me what you mean by fondle or caress?

16 A That I would put my hand across their chest or that
17 I would pick them up by the crotch.

18 Q The Perando girl who lived next door, what
19 was her first name?

20 A Melissa.

21 Q You testified yesterday that you always
22 touched Melissa above her clothing, that is you never, no
23 skin to skin contact?

24 A That's true.

25 Q Is that also true with any touching you had

1 with regard to CP-1?

2 A No, there were a few occasions when I touched her
3 skin to skin.

4 Q And were those touchings both of her vagina
5 and breasts or only one or the other?

6 A Most of the time it was her breast but it was very
7 rare.

8 Q How about Stacy, did you ever have any
9 touching of Stacy's breasts, skin to skin?

10 A Yes.

11 Q And how about Stacy's vagina?

12 A Yes.

13 Q Yesterday in talking about the incident
14 with Melissa Perando and the fact that you apologized, you
15 said you apologized to her and she dropped the charges?

16 A I apologized to her mother.

17 Q To her mother, that's the she you were
18 talking about.

19 Do you recall when that took place?

20 A It happened the same day that I had gone down to
21 the Prosecutor's Office because when I was at the
22 Prosecutor's Office and I admitted what had taken place to
23 the Prosecutor he called Mrs. Perando on the telephone to
24 let her know that I had confessed to it and she was
25 satisfied that I had confessed to it and she said she

1 would drop the charges because she didn't want it to go
2 any further than that.

3 Q Do you recall what year that was or
4 approximately what year that was?

5 A I believe it was in '88, I'm not sure.

6 Q If I were to tell you that the last
7 incident with CP-1 that led to your first disfellowship
8 was in August of '88, was the incident with Melissa before
9 or after that?

10 A It was before.

11 Q Can you tell me approximately how long
12 before?

13 A It was a matter of maybe a few months.

14 Q This inappropriate touching to use a more
15 delicate phrase, did that only involve females?

16 A Yes.

17 Q Now, you also talked yesterday about an
18 incident involving Dorothy Edwards where you said that
19 there was one occasion where she touched your genitals,
20 can you give me some idea of when that took place and if
21 that's difficult, if you can tell me either your age or
22 her age at that time?

23 A Well, I believe that was before I got married and I
24 got married in November of '47 and I was 20 at the time or
25 21 at the time.

1 Q And how much younger than you approximately
2 was Dorothy Edwards at that time?

3 A I thought she was about four years younger than me.

4 Q Okay. Now, you testified yesterday that
5 you told your son that you had fondled Stacy?

6 A That's true.

7 Q Was the son you were talking about that was
8 Richard?

9 A That's right.

10 Q I'm just trying to get the record clear,
11 that's all.

12 After the incident that brought all this to light
13 with CP-1, you went down to the Prosecutor's Office and
14 gave a statement to Detective Biagini, remember that?

15 A I don't remember if it was Biagini or...

16 Q But some detective?

17 A There was two of them there.

18 Q Okay. When you gave that statement, during
19 the course of that, immediately before or immediately
20 after it did they either read to you the statement that
21 CP-1 had given or did they allow you to read a transcript
22 of the statement that CP-1 had given?

23 A No.

24 Q Have you ever read the statement that CP-1
25 gave on August 24th, 1988?

1 A Since then I have.

2 Q Okay. On page 5 of that statement she
3 relates an incident which occurred in the kitchen of your
4 house and she says "I went into the sink and my
5 grandfather came in and he touched my breast under my
6 pajamas."

7 A That's true.

8 Q Did that occur?

9 A That occurred.

10 Q During the course of this litigation have
11 you had an opportunity to read all or any part of the
12 journal that CP-1 prepared for Mr. St. Jean?

13 A I've read most of it, couldn't understand 90
14 percent of it, but...

15 Q Okay. Yesterday you described an incident
16 when you told your wife about your actions and you
17 described how she slapped you and the things that she said
18 to you, was that, do you believe that that was the first
19 time that your wife ever knew that any of these things
20 happened?

21 A I know that was the first time she knew about it.

22 Q I have no further questions.

23 MS. FRANKLAND: I have some questions, just
24 give me one second.

25 MR. LEVITT: Take your time.

1 CROSS-EXAMINATION BY MS. FRANKLAND:

2 Q When you went down to the Prosecutor's
3 Office regarding Melissa Perando, did the Prosecutor's
4 Office ever send anything to your house?

5 A The reason I went down there was because I found a
6 note in my mailbox telling me to call that number which I
7 did, and told that the Prosecutor told me that they wanted
8 to see me down there and I went down the following day.

9 Q Did they ever send anything else to your
10 home, any statement saying the case had been dismissed or
11 withdrawn?

12 A No, they did not.

13 Q Yesterday when you were testifying you
14 mentioned a conversation that you believe Dorothy Edwards
15 had with your son CP-2, do you have any idea when that
16 conversation would have taken place?

17 A I have no idea when they spoke.

18 Q Do you know what Dorothy and CP-2
19 discussed?

20 A I have no idea, all I know is that from what I've
21 been hearing is that Dorothy told him that he should keep
22 an eye on his father and so evidently he was aware of this
23 but yet he continued to bring his daughter over to my
24 house.

25 Q Did you ever discuss this conversation with

1 Dorothy Edwards?

2 A Dorothy Edwards and I and my family aren't on
3 speaking terms and haven't been for a long time.

4 Q Do you have any idea the last time you
5 spoke to Dorothy Edwards?

6 A That I spoke to her?

7 Q Right.

8 A I could say, well, I was on probation five years so
9 four of the five year probation. I'd say it's got to be
10 at least nine years.

11 Q How do you know that Dorothy Edwards and
12 CP-2 had this conversation?

13 A Because my son Richard told me.

14 Q Do you know if Richard was there during the
15 conversation?

16 A No, but Richard had a meeting with my son CP-2 and
17 told him that Dorothy had told you you ought to watch the
18 old man because he's got sticky, he's got wondering
19 fingers or words to that affect, that he's been touching
20 the girls so both of them were aware of it.

21 Q And you believe that Dorothy told CP-2
22 and/or Richard that he was touching girls?

23 A That's my understanding.

24 Q That you were touching the girls?

25 A I wasn't there, I couldn't tell you what the actual

1 conversation was.

2 Q Did you ever touch any other girls or women
3 that belonged to your church, the Jehovah Witnesses, to
4 your congregation?

5 A Yes.

6 Q Who else did you touch?

7 A None of your business.

8 Q Did you have any, were there any incidents
9 where you touched Robyn Permisky (Ph.)?

10 A That's again, none of your business because it
11 doesn't concern this case and if I have to go into that
12 I'll take the Fifth Amendment.

13 Q Were there any incidents where you touched
14 Vicky Fisher?

15 A Same answer.

16 Q Do you know if there's any investigation by
17 the church prior to 1988 of any touching incidents that
18 were claimed that you had touched?

19 A Do I know of them?

20 Q Right, before 1988, before CP-1 told
21 anyone.

22 MR. TASHJIAN: Again, you can't speak at
23 the same time.

24 A No, the answer is no.

25 Q When Mr. Levitt was questioning you you

1 said you had told Richard that you had fondled Stacy, do
2 you remember when you told Richard that?

3 A I told Richard not only that but I also told that I
4 was fondling CP-1.

5 Q Do you remember when you told him that?

6 A It was right after the incident with CP-1 when I
7 was brought up to be disfellowshipped when I had --

8 Q So...

9 A Back in 1988 but I couldn't tell you the exact.

10 Q But it was after CP-1 told her parents,
11 that was August of '88, it was after that?

12 A Yes, yes.

13 MS. FRANKLAND: Just one second.

14 I don't have any other questions.

15

16 REDIRECT EXAMINATION BY MR. FRIEDRICH:

17 Q You stated that you know your wife did not
18 know until after your disfellowship?

19 A That's true.

20 Q Now, what is a disfellowship?

21 A Do you know what an ex-communication is in the
22 church?

23 Q Yes.

24 A Disfellowshipping is basically ex-communicated from
25 the congregation, no member of the congregation will have

1 anything to do with me when you're in that state.

2 Q Now, to get to that point what did your
3 congregation have to do?

4 A I don't understand that question.

5 Q Before they disfellowshipped you, all
6 right, they had to do something, they just don't say today
7 you're disfellowshipped, correct?

8 MR. TASHJIAN: They, excuse me, they
9 meaning?

10 Q I'm referring to the elders, the
11 congregation?

12 A They have to examine what charges were brought
13 against me.

14 MR. TASHJIAN: They meaning who?

15 A The elders.

16 MR. FRIEDRICH: I think both of us
17 understand the elders.

18 MR. LEVITT: But the record should be
19 clear.

20 MR. TASHJIAN: Pardon me.

21 A The elders in the congregation. Charges were
22 brought against me, they have to investigate those charges
23 and then they act upon them.

24 Q All right. Who brought the charges against
25 you?

1 A My son, I believe.

2 Q I don't understand, they don't tell you who
3 is confronting you, who is bringing charges against you?

4 A I said my son.

5 Q Well, you said I believe.

6 A Well, my son brought the charges that I had fondled
7 his daughter.

8 Q Now, but your wife didn't know what was
9 going on at this time?

10 A That's when she found out about it.

11 Q Oh, okay.

12 And she had no idea about the Perando incident?

13 A Absolutely none.

14 Q And you never discussed it with her?

15 A No.

16 Q And your neighbor never said anything to
17 her?

18 A Not that I know of, you can ask my neighbor.

19 Q Did your wife ever find out about your
20 having -- did you ever have CP-2 -- did you have any
21 sexual relations with either of your wife's two sisters?

22 MR. TASHJIAN: Sexual relations meaning?

23 Q Meaning sex?

24 A No.

25 MR. TASHJIAN: Meaning penetration?

1 MR. LEVITT: Intercourse.

2 MR. TASHJIAN: Intercourse, you mean?

3 THE WITNESS: No, no, no.

4 Q When did your wife find out about your
5 having physical contact with her two sisters?

6 A I don't know.

7 Q Did you ever discuss it with your wife?

8 A We've discussed it but I still don't have any idea
9 as to when she found out about it.

10 Q After your marriage?

11 A This was after I'm married.

12 MR. TASHJIAN: Wait for him to finish the
13 question. He may have something else in mind.

14 Q Did you have, did you ever touch your
15 sister-in-law's breasts or vagina after your marriage?

16 MR. TASHJIAN: Skin to skin?

17 MR. FRIEDRICH: It doesn't make any
18 difference, if he says yes or no then we'll go on.

19 A No.

20 Q No. So everything was before your
21 marriage?

22 A Yes.

23 Correction, correction.

24 Q All right.

25 A I remember one time when Dorothy Edwards had come

1 to our house and she was baby-sitting my kids and I felt
2 her breasts.

3 MR. TASHJIAN: Skin to skin, outer?

4 THE WITNESS: Outer.

5 Q How old was she?

6 A I had three kids at the time so I was at least 23,
7 24 and like I say, I think she's about four years younger
8 than me, I don't know.

9 Q You, from your knowledge you have no idea
10 whether the three sisters discussed your conduct?

11 A To my knowledge I do know that my three sisters did
12 not discuss that with my wife because she became angry
13 when she found out about it that the two sisters had kept
14 it to themselves.

15 Now, the reason they kept it to themselves was that
16 my wife has always been a very sickly person and they
17 didn't want to do anything that would harm my wife, as I
18 stated before, that my son when he found out about it...

19 MR. TASHJIAN: Son meaning who?

20 THE WITNESS: CP-2.

21 A Called up my other son Richard to tell him about it
22 and they decided to keep it a secret from my wife but
23 still knowing this they continued to bring their daughter
24 over to my house.

25 Q So it's your belief, your opinion that if

1 they didn't bring your granddaughters over to visit you
2 nothing would have happened?

3 MR. TASHJIAN: Object, object.

4 A No, no.

5 MR. TASHJIAN: You're not here to give
6 opinions.

7 I object to the question. If you have a
8 factual question ask it.

9 You're not giving opinions here.

10 Go ahead.

11 MR. FRIEDRICH: No further questions.

12 MR. LEVITT: I have no further questions.

13 MS. FRANKLAND: I just have a couple of
14 other just follow-up questions.

15

16 RECROSS-EXAMINATION BY MS. FRANKLAND:

17 Q You may have said yesterday and if you did
18 I apologize if I missed it, were there any other members
19 of your family that you had ever touched?

20 A Of my family?

21 Q Besides the people you just discussed, not
22 your sisters, not your sisters-in-law, not CP-1, not
23 Stacy, were there any other relatives?

24 A I mentioned Judy we brought up before.

25 Q Okay. Did you ever touch Allison P.?

1 A No.

2 Q Did you ever touch Jamie P.?

3 A No.

4 Q Did you ever touch a woman named Sharon
5 Gretsky?

6 A Yes.

7 Q And when was that, do you remember?

8 A A long time ago.

9 Q And just how did that happen if you could
10 just tell me general?

11 A We had sexual relations, she was married and we
12 were two adults having consensual sex and I broke it up at
13 the time.

14 Q Do you know how old Sharon Gretsky was at
15 the time?

16 A She was over 18.

17 Q Do you have any idea what year that was?

18 A I haven't the foggiest.

19 Q You said before you were talking about a
20 conversation that you think CP-2 and Richard had when CP-2
21 found out about it, what do you think CP-2 found out about
22 that you discussed with Richard?

23 MR. TASHJIAN: That was asked and answered
24 but go ahead.

25 MS. FRANKLAND: I'm sorry.

1 A I had mentioned before that he knew that I was
2 touching girls, he was to be on a watch for me touching
3 the girls.

4 Q At that time do you think that CP-2 or
5 Richard knew that you were touching CP-1 and Stacy?

6 A At that time when he was talking about this he was
7 told to be aware and to be on the watch for it. Whether
8 he knew or not, I have no idea.

9 Q Other than this conversation with Richard
10 do you have any other reason to believe that CP-2 knew
11 that you had touched young girls?

12 A Do I have reason to believe?

13 Q Right.

14 A I think that he knew.

15 Q But do you have any other reason to believe
16 besides this conversation with Richard and what you said
17 about Dorothy Edwards?

18 A It wasn't because of the conversation he had with
19 Richard, it was because of the conversation he had with
20 Dorothy Edwards.

21 Q Besides that conversation with Dorothy
22 Edwards do you believe there was any other reason?

23 A Not that I know of, no.

24 Q Do you have any personal knowledge to
25 believe that BP knew?

1 A Whatever CP-2 knew she knew.

2 MR. TASHJIAN: CP-2 meaning?

3 THE WITNESS: CP-2.

4 Q CP-2.

5 Do you have any personal knowledge that BP knew you
6 were touching women or young girls?

7 A If her husband knew, she knew, that's the only
8 knowledge I have.

9 Q But do you yourself have any knowledge that
10 she did or did not know?

11 A How could I tell you that, I don't have any
12 knowledge what your next question is going to be.

13 Q Well, I have no other questions, so...

14 MR. TASHJIAN: I have one or two.

15 MR. LEVITT: Go ahead.

16
17 CROSS-EXAMINATION BY MR. TASHJIAN:

18 Q Mr. CP-3, you previously stated as to CP-1
19 that a few times you had touched her breasts skin to skin,
20 what did you intend to mean by a few times, can you put a
21 number on that?

22 A I'd say overall less than five times.

23 Q All right. And Mr. Levitt asked the same
24 question as to Stacy, he said how many times skin to skin
25 with Stacy but he didn't get to the times factor with

1 Stacy, can you tell me how many times approximately you
2 touched Stacy on the breast skin to skin?

3 A I'd say less than five times.

4 Q All right. Now, again, as to CP-1, in all
5 the time that you were touching her can you estimate the
6 number of times that you touched her skin to skin in the
7 vaginal area as to CP-1?

8 A I vaguely remember only once, I don't remember more
9 than that.

10 Q And you touched the outer vagina or did you
11 make penetration?

12 A I never made penetration.

13 Q Did you ever make penetration and have
14 sexual intercourse with CP-1 at any time in her lifetime?

15 A No, I never did.

16 Q Now, as to Stacy, can you tell me in all
17 the times that you touched Stacy did you ever touch her
18 skin to skin on the vagina, the vaginal area?

19 A Once.

20 Q Did you ever penetrate Stacy either penilely
21 or with your finger at any time in her lifetime?

22 A Never.

23 MR. TASHJIAN: I have no further questions.

24

25

(Proceedings concluded)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, LYNANN DRAGONE, License No. XIO1388, a
Certified Shorthand Reporter and Notary Public of the
State of New Jersey, certify that the foregoing is a true
and accurate transcript of the deposition of CP-3 who was
first duly sworn by me at the time and the date
hereinbefore set forth.

I further certify that I am neither attorney nor
Counsel for, nor related to or employed by any of the
parties to the action in which this deposition was taken.

I further certify that I am not a relative or
employee of any attorney or Counsel employed in this case,
nor am I financially interested in this action.

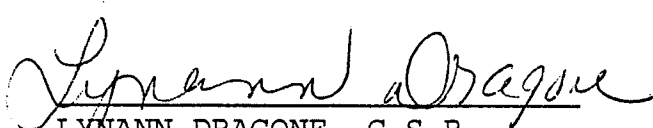

LYNANN DRAGONE, C.S.R.
Certified Shorthand Reporter

EXHIBIT O

2016 WL 10585998

Only the Westlaw citation is currently available.

NOT FOR PUBLICATION

United States District Court, D. New Jersey.

Peter MOCCO, Lorraine Mocco and First
Connecticut Holding Group LLC, IV, Plaintiffs,

v.

Aegis FRUMENTO and Chicago
Title Insurance Company, Defendants.

Civil Action No. 12-1458 (ES) (JAD)

|

Filed 04/14/2016

Attorneys and Law Firms

[Bruce Daniel Vargo](#), [James A. Scarpone](#), Scarpone & Vargo LLC, [John Boatner Nance](#), City of Newark Department of Law, Newark, NJ, for Plaintiffs.

[James J. DiGiulio](#), O'Toole Fernandez Weiner Van Lieu, LLC, Cedar Grove, NJ, [Joseph P. Lasala](#), [William F. O'Connor, Jr.](#), McElroy, Deutsch, Mulvaney & Carpenter, LLP, [Michael R. O'Donnell](#), Riker, Danzig, Scherer, Hyland, & Perretti, PA, Morristown, NJ, for Defendants.

REPORT AND RECOMMENDATION

[JOSEPH A. DICKSON](#), U.S.M.J.

*1 This matter comes before the Court upon Defendants Aegis Frumento and Chicago Title Insurance Company's motions to dismiss pursuant to the entire controversy doctrine. (ECF Nos. 65, 71). The Hon. Esther Salas, U.S.D.J. referred Defendants' motions to this Court for a Report and Recommendation. The Court conducted oral argument on Defendants' motions on June 4, 2015. Upon careful consideration of the parties' submissions and arguments, and for the reasons stated below, it is the recommendation of this Court that the District Court stay or administratively terminate this case pending resolution of the related matters currently pending in the New Jersey Superior Court. Once the those related matters have concluded, the District Court should dismiss this case with prejudice as a sanction for Plaintiffs' previous violation of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#).¹

I. BACKGROUND

The United States Court of Appeals' April 24, 2014 Opinion in [Mocco v. Frumento](#), 564 Fed.Appx. 668 (3d Cir. 2014), contains a succinct explanation of the pertinent factual background of this case, and the Court incorporates the following information from that Opinion:

This case stems from a protracted dispute concerning the ownership of certain real estate assets. According to the Moccas and FCHG IV, lawyer Aegis Frumento and Chicago Title Insurance Company ("Chicago Title") engaged in misconduct by assisting in the transfer of title to those assets from FCHG IV to third parties. The present lawsuit is just one front in a war dating back to 1998 between the Moccas and their former business associate, James Licata, over the ownership of those and other assets. Several other lawsuits (the "Consolidated Cases") involving the Moccas and Licata were earlier filed and consolidated in the Superior Court of New Jersey.

In June 2011, the Moccas filed a motion for leave to amend their claims in the Consolidated Cases 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. 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 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.²

*2 In January 2012, the Moccas and FCHG IV filed the present suit against Frumento and Chicago Title in the Superior Court of New Jersey, asserting civil-conspiracy and aiding-and-abetting claims. The defendants removed the action to federal court in March 2012. Frumento and Chicago Title filed separate motions to dismiss for failure to state a claim, with Frumento arguing that the [Entire Controversy Doctrine ("ECD")] bars this action and Chicago Title noting its joinder in that argument. The District Court granted the motions to dismiss on ECD grounds.

Id. at 669-70 (internal citations omitted).

The Court of Appeals determined that “the District Court did not distinguish between claims-joinder ECD and party-joinder ECD in its memorandum opinion”, and that, in fact, certain aspects of the District Court’s analysis “suggest that the court actually applied a claims-joinder analysis instead of a party-joinder one.” *Id.* at 671. For instance, the Court of Appeals took note that the District Court’s decision “lack[ed] any findings regarding whether there had been a failure to timely identify Frumento and Chicago Title in the state court proceeding, whether any failure was inexcusable, and whether such a failure caused Frumento and Chicago Title substantial prejudice, which are all required considerations under [Rule 4:5-1\(b\)\(2\)](#) before a court may impose dismissal as a sanction.” *Id.* The Court of Appeals also found it significant that the District Court “made no mention of the discretionary nature of sanctions for a violation of party-joinder ECD, failing to consider at all whether lesser sanctions were available before dismissing the complaint.” *Id.* The Court of Appeals therefore vacated the District Court’s dismissal and remanded the case “with instructions that the District Court apply a party-joinder ECD analysis when reviewing the sufficiency of the Complaint.” *Id.*

By Orders dated May 2, 2014, the Hon. Esther Salas, U.S.D.J. granted Defendants leave to file renewed motions to dismiss in light of the Court of Appeals’ decision. (ECF Nos. 45, 46). Defendants filed their renewed motions seeking dismissal pursuant to the ECD on May 23, 2014. (ECF Nos. 50, 51). On June 5, 2014, this Court entered an Order administratively terminating those motions and setting a briefing / filing schedule for resubmission of the ECD motions, as well as for briefing / re-filing Plaintiffs’ motion for leave to amend and for briefing / filing Defendants’ separate, anticipated motions to dismiss for failure to state a claim. (ECF No. 56). In compliance with that Order, Defendants filed their fully-briefed motions to dismiss on ECD grounds on August 27, 2014. (ECF Nos. 65, 71).³ This Court scheduled oral argument on Defendants’ ECD motions for June 4, 2015. On the eve of that argument, Defendant Chicago Title Company filed a letter advising that, “[f]ollowing a four-month bench trial [in the State Court Matters], the Honorable James S. Rothschild [of the New Jersey Superior Court] issued a June 2, 2015 Trial Court Opinion.” (ECF No. 87). Chicago Title also attached a copy of that Trial Court Opinion, which exceeded 200 pages in length, to its letter. (*Id.*). Following oral argument, and at this Court’s direction, the parties submitted supplemental letter briefing regarding the legal impact of Judge Rothschild’s June 2, 2015 Trial Court Opinion (particularly with regard to whether the Court should

stay this matter pending resolution of any appeals in the State Court Matters). (ECF Nos. 88-90). The parties have not provided any further updates regarding the status of the State Court Matters since that time.

II. DISCUSSION

A. The Impact of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#)

*3 Pursuant to the Court of Appeals’ instructions, this Court must determine whether the requirements imposed under [New Jersey Court Rule 4:5-1\(b\)\(2\)](#) might operate to bar Plaintiffs’ claims in this case. That Rule, together with [New Jersey Court Rule 4:30A](#) (“Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims ...”) dictates the parameters of New Jersey’s ECD. See [700 Highway 33 LLC v. Pollio](#), 23 A.3d 446, 449-450 (N. J Super. Ct. App. Div. 2011) (noting that “[t]he entire controversy doctrine refers to [the New Jersey] Supreme Court’s ‘approach to joinder of claims and parties’ that has ‘evolved through a series of decisions’ and rule amendments” and including both [Rule 4:5-1\(b\)\(2\)](#) and [Rule 4:30A](#) in its discussion of the ECD) (citations omitted). This Court need not and will not chronicle the full history of that doctrine here. Indeed, the New Jersey Supreme Court, the ultimate authority on the interpretation of New Jersey law, discussed the relevant portions of the evolution of the ECD in its opinion in [Kent Motor Cars, Inc. v. Reynolds and Reynolds, Co.](#), 25 A.3d 1027, 1035-37 (N.J. 2011). As the New Jersey Supreme Court observed, “[o]riginally a claim preclusion rule, over time, the [ECD] evolved to require joinder of parties as well, and culminated in the 1990 adoption of [Rule 4:30A](#). In its first formulation, [Rule 4:30A](#) was broad, requiring joinder of claims and parties and imposing preclusion as a penalty to ensure compliance with that mandate.” *Id.* at 1036 (emphasis added). In the years following that amendment, the New Jersey Supreme Court interpreted the ECD expansively, drawing scholarly criticism and prompting the court to scale the doctrine back somewhat via two amendments to the New Jersey Court Rules: “First, [Rule 4:30A](#) was amended to limit its scope to mandatory joinder of claims. Second, [Rule 4:5-1\(b\)\(2\)](#) was adopted to address joinder of parties.” *Id.* In its opinion in [Tutta Italia, Inc. v. Dir., Div. of Taxation, Art & San, LLC](#), No. A-0460-12T1, 2014 WL 2560611, at *6-7 (N.J. Super. Ct. App. Div., June 9, 2014), the New Jersey Superior Court, Appellate Division described the significance of the 1998 amendments:

The comment to [Rule 4:30A](#) clearly explains that the 1998 amendment of the rules “eliminated mandatory party joinder under the entire controversy doctrine,” because of “both practical and conceptual difficulties in the implementation of a party-preclusion rule and too many perceived instances of injustice.” [Pressler & Verniero](#), Current N.J. Court Rules, comment 1 on [R. 4:30A](#) (2014). Therefore, after the rule amendment, “preclusion of a successive action against a person not a party to the first action has been abrogated except in special situations involving both inexcusable conduct ... and substantial prejudice to the non-party resulting from omission from the first suit.” [Id.](#)

Now that the mandatory party joinder requirement has been abolished, it has “been replaced by clarification of the parties’ disclosure obligations and of the range of appropriate court responses to failure of compliances therewith.” [Id.](#)

(citations in original). Those disclosure obligations are set forth in [New Jersey Court Rule 4:5-1\(b\)\(2\)](#). “Taken together, both [Rule 4:30A](#) and [Rule 4:5-1\(b\)\(2\)](#) advance the same underlying purposes. As it relates to claims and to parties, they express a strong preference for achieving fairness and economy by avoiding piecemeal or duplicative litigation.” [Kent Motor Cars, Inc.](#), 25 A.3d at 1037.

[New Jersey Court Rule 4:5-1\(b\)\(2\)](#), which governs actions pending in the New Jersey Superior Court, requires each party to include, with its first pleading, a certification disclosing “the names of any non-party who should be joined in the action ... because of potential liability to any party on the basis of the same transactional facts.” Moreover, parties “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.” [N.J. Ct. R. 4:5-1\(b\)\(2\)](#); [Potomac Ins. Co. of Illinois ex rel. OneBeacon Ins. Co. v. Pennsylvania Mfrs. Ass’n Ins. Co.](#), 41 A.3d 586, 599 (N.J. Super. Ct. App. Div. 2012), [aff’d](#), 73 A.3d 465 (N.J. 2013) (citations omitted). The Rule further provides that “[i]f 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”, but clarifies that “[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. 4:5-2\(b\)](#); [Santander Bank, N.A. v. Friedman, Schuman, Appelbaum, Nemeroff & McCaffery, P.C.](#), No. CIV. 14-413 (JBS), 2014 WL 1621792, at *3 (D.N.J. Apr. 17, 2014) (“[f]ailure to comply with the disclosure obligations of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#) may ... result in the dismissal of a successive action against an undisclosed party” or the imposition of other sanctions for noncompliance).

*4 Taking the various provisions of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#) together, a court may only dismiss a case for violation of that Rule’s disclosure requirements (i.e., the relief Defendants seek here) if it finds that: “(1) the suit is a ‘successive action’; (2) the plaintiff’s failure to disclose the existence of other potentially liable parties in the earlier litigation was ‘inexcusable’; and (3) the undisclosed parties’ right to defend the successive action was ‘substantially prejudiced’ by their omission.” [Ricketti v. Barry](#), 775 F.3d 611, 615 (3d Cir. 2015) (citing [Kent Motor Cars, Inc.](#), 25 A.3d at 1038). If, however, a court finds that a party has violated [New Jersey Court Rule 4:5-1\(b\)\(2\)](#), but that the circumstances of that conduct do not satisfy the aforementioned, necessary elements so as to justify dismissal, the court may remedy the violation using other appropriate sanctions. [See Kent Motor Cars, Inc.](#), 25 A.3d at 1037 (“Although the Rule specifies dismissal and imposition of litigation costs as two enforcement mechanisms, they are not the only sanctions available to the court. Rather, the clear language also broadly authorizes the court to impose an appropriate sanction.”); [id.](#) at 1041 (after recognizing a violation of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#), but declining to find the level of “substantial prejudice” necessary to support dismissal under that rule, the New Jersey Supreme Court wrote: “there is a wide array of sanctions available to the trial court to address any injustice. The trial court should not hesitate to impose any and all sanctions it concludes are needed to ensure that a just remedy is achieved between these parties.”); [Schneider v. United States](#), No. 06-3200 (JBS), 2008 WL 408420, at *3, n. 4 (D.N.J. Feb. 13, 2008) (“In the absence of substantial prejudice, suitable sanctions for noncompliance with [Rule 4:5-1\(b\)\(2\)](#) include “monetary sanctions and/or counsel fees later incurred that would have been avoidable by disclosure.”) (internal citations omitted).

In light of the foregoing, in resolving Defendants’ motions, the Court must first determine whether Plaintiffs violated [New Jersey Court Rule 4:5-1\(b\)\(2\)](#) by failing to properly identify Defendants in the State Court Matters. If the Court finds that

Plaintiffs have committed such a violation, the Court must then determine whether the circumstances of their failure merit dismissal under the plain language of the Rule and the relevant case law, or if some other, lesser sanction would be appropriate.

B. Plaintiffs Violated New Jersey Court Rule 4:5-1(b)(2)

As an initial matter, it is undisputed that Plaintiffs never updated their [Rule 4:5-1\(b\)\(2\)](#) disclosure in the State Court Matters to identify Defendants Frumento and Chicago Title. Plaintiffs' counsel expressly acknowledged this fact during the June 4, 2015 oral argument in this matter. (Tr. of June 4, 2015 Argument at 15:10-16:6). Plaintiffs instead argue, without citation, that they complied with their disclosure obligations under the Rule by moving to amend their pleading to add Frumento and Chicago Title as defendants. (Pl. Br. in Opp. to Frumento Motion at 22-23, ECF No. 66).⁴ In determining whether Plaintiffs' modified effort at disclosure was adequate under [Rule 4:5-1\(b\)\(2\)](#), the Court examines that effort in light of the purpose of the Rule.

[Rule 4:5-1\(b\)\(2\)](#) disclosures are intended to permit the court to make informed determinations regarding the joinder of interested parties so as to avoid the prospect of piecemeal or duplicative litigation. [Kent Motor Cars, Inc.](#), 25 A.3d at 1037 (“[Rule 4:5-1\(b\)\(2\)](#) requires that names of potentially liable or relevant parties be disclosed to the court, leaving to it the decision about whether to join them or not.”). There is no question that a timely motion seeking leave to add parties and claims via amendment would likely convey even more information than that required under the Rule, thereby serving the purpose of the Rule's disclosure requirement. In the wake of filing an appropriate motion for leave to amend providing such information, a party's failure to file a separate, updated [Rule 4:5-1\(b\)\(2\)](#) disclosure identifying the same potential parties would be nothing more than a technical oversight with no impact on the litigation, and imposing sanctions in such a situation would be to elevate form over substance. This Court will therefore assume, without deciding, that a motion to amend can potentially satisfy a party's obligations under [New Jersey Court Rule 4:5-1\(b\)\(2\)](#).

*5 The Court must now turn to the timing of Plaintiffs' proposed amendment to determine whether it comported with the purpose of the Rule. While Defendants address Plaintiffs' alleged delay in arguing that Plaintiffs' failure to comply with [Rule 4:5-1\(b\)\(2\)](#) was “inexcusable”, (Frumento Br. at

19-22, ECF No. 65-1; Chicago Title Br. at 35-37, ECF No. 71-1), their arguments assume that Plaintiffs violated the Rule notwithstanding their efforts to amend to add Defendants Frumento and Chicago Title as parties in the State Court Matters, vaulting over the threshold issue in the analysis. Of course, if Plaintiffs' proposed amendment satisfied their disclosure obligations under [Rule 4:5-1\(b\)\(2\)](#), that is the end of the analysis and the Court must deny Defendants' motions. The Court finds that the timing of Plaintiffs' motion for leave to amend is critical to that determination. Plaintiffs take a different position regarding the importance of the timing of their proposed amendment, arguing that “[t]he test is not whether plaintiffs ‘inexcusably delayed’ in complying with the disclosure rule but rather, [Defendants] must prove that plaintiffs’ ‘failure of compliance was inexcusable.’ ” (Pl. Br. in Opp. to Frumento Motion at 23-24, ECF No. 66) (emphasis in original). Plaintiffs therefore suggest that [Rule 4:5-1\(b\)\(2\)](#) has no timing component, and that an updated disclosure, regardless of when it is made, is all that the Rule requires. In support of their argument, Plaintiffs cite to the Appellate Division's opinion in [Jiorle v. Maenza](#), No. A-5420-11T1, 2013 WL 5879507 (N.J. Super. Ct. App. Div. Nov. 4, 2013). The Court finds that the [Jiorle](#) case actually cuts directly against Plaintiffs' position here.

In [Jiorle](#), the plaintiff deposed Phillip Maenza (at the time a non-party fact witness) on February 7, 2006. [Id.](#) at *1. Just weeks later, on March 14, 2006, the plaintiff filed a supplemental [Rule 4:5-1\(b\)\(2\)](#) certification identifying Maenza as a person who may be subject to joinder (based on his deposition testimony). [Id.](#) The plaintiff also stated, in the same certification, that while he did not intend to move to join Maenza in the case, he reserved the right to file a separate action against him. [Id.](#) “Neither the court nor any party in the [original] action sought to join [Maenza] in the litigation”, [id.](#), which the court tried to judgment in May and June of 2006. [Id.](#) The plaintiff then filed a separate suit against Maenza, and the Superior Court entered summary judgment in favor of the defendant, finding that “plaintiff violated the ECD and ‘R. 4:5-1.’ ” [Id.](#) On appeal, when considering the propriety of the trial court's [Rule 4:5-1](#) dismissal, the Appellate Division wrote:

Here, dismissal of plaintiffs complaint was improper because plaintiff complied with the continuing obligation to amend his original [Rule 4:5-1\(b\)\(2\)](#) certification. It is undisputed that within weeks of deposing defendant, plaintiff filed the required amended certification. Defendant argues, however, that the filing was untimely,

since plaintiff knew the essential facts supporting his claim of legal malpractice before he deposed Maenza.

In order to accept defendant's argument as justification for the dismissal of plaintiff's complaint, we would need to conclude that plaintiff was so tardy that the filed supplemental certification was the equivalent of non-compliance. That is so because, pursuant to [Rule 4:5-1\(b\)\(2\)](#), dismissal was only appropriate if there were a “*failure of compliance*” that was “inexcusable” and “substantially prejudiced” defendant. In our minds, it is not at all clear that plaintiff had sufficient information before the deposition upon which to form a good-faith belief that he had a potential cause of action against defendant. And, we certainly cannot conclude that plaintiff failed to comply.

Id. at *3 (citations omitted) (emphasis in original). This language confirms the Appellate Division's understanding that a supplemental [Rule 4:5-1](#) disclosure can be “so tardy that [it becomes] the equivalent of non-compliance.” *Id.* Indeed, if, as Plaintiffs suggest, the timing of a supplemental disclosure is immaterial, the Appellate Division would have simply said so and ended its inquiry, rather than analyzing whether the disclosure in question was, in fact, unreasonably delayed when determining whether Mr. Jiorle had complied with [Rule 4:5-1\(b\)\(2\)](#). *Id.*

The factual situation at issue in [Jiorle](#) also serves as a helpful basis of comparison for this case. First, unlike in [Jiorle](#), in which the Appellate Division determined that the plaintiff updated his [Rule 4:5-1\(b\)\(2\)](#) disclosure just weeks after obtaining information that provided a basis for doing so, *id.*, the New Jersey Superior Court, which has presided over the State Court Matters for years and is therefore well-acquainted with the factual and procedural circumstances at issue there, determined that Plaintiffs obtained information (through deposition testimony and otherwise) sufficient to serve as a basis for their claims against Defendants Frumento and Chicago Title at least a year before moving to add them as parties. (July 11, 2014 Cert. of Bruce D. Vargo, Ex. A at 57:6-59:22, 69:1-70:15, ECF No. 66-1). Moreover, unlike in [Jiorle](#), where the plaintiff timely filed a supplemental [Rule 4:5-1](#) disclosure and the trial court nevertheless declined to sua sponte order joinder of the persons identified therein, [2013 WL 5879507 at *1](#), the judge in the State Court Matters denied Plaintiffs' motion to add Frumento and Chicago Title as defendants in light of Plaintiffs' delay in seeking such relief and the fact that, in light of that delay, Plaintiffs sought to add new parties on what the judge perceived to be the eve of trial. (July 11, 2014 Cert. of Bruce D. Vargo, Ex. A at 70:4-71:16,

ECF No. 66-1). In short, there is a significant, fundamental difference between a situation in which a court receives a timely [Rule 4:5-1\(b\)\(2\)](#) supplement and simply declines to order joinder and one in which a court finds that joinder would be inappropriate given the plaintiffs' delay in raising the issue and the detrimental effect (based on that delay) that joinder would have on the existing proceedings. In the former, the court is able to make an informed decision and manage its docket accordingly. In the latter, the tardy litigant, through its delay, essentially forces the court's hand, in that the court must deny joinder in fairness to other litigants. In that latter situation, the tardy supplemental disclosure utterly fails to serve its intended purpose and is therefore “the equivalent of non-compliance.” [Jiorle](#), [2013 WL 5879507 at *3](#).

*6 By Plaintiffs' interpretation of [Rule 4:5-1\(b\)\(2\)](#), taken to the extreme, a litigant would be able to fully discharge its obligations under the Rule by submitting an updated disclosure identifying additional parties for joinder mere moments before a jury returned its verdict or a court entered its judgment. Such conduct would defeat the purpose of the Rule. Where, as here, a party's delay in updating its disclosure is so substantial that it actually serves as the basis for the Court's decision to deny joinder, that disclosure is functionally useless and akin to no disclosure at all. In these circumstances, this Court has no trouble finding that Plaintiffs violated [Rule 4:5-1\(b\)\(2\)](#) in connection with the State Court Matters.

C. The Propriety of Dismissal as a Sanction for Plaintiffs' Violation

Having found that Plaintiffs 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, this Court must now consider whether Plaintiffs' conduct merits dismissal, as opposed to some lesser sanction, under that Rule. As noted above, that analysis requires the Court to determine whether Plaintiffs' failure was “inexcusable,” whether Plaintiffs' violation caused Defendants to suffer “substantial prejudice” (and, if so, whether any sanction short of dismissal might adequately address that prejudice), and whether this suit may fairly be categorized as a “successive action” to the State Court Matters. [N.J. Ct. R. 4:5-1\(b\)\(2\)](#).

a. Plaintiffs' Failure to Disclose Was Inexcusable

The Court next examines whether Plaintiffs' violation of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#) should be deemed “inexcusable” and notes, at the outset, the relative dearth of case law providing a meaningful analysis of this prong. Indeed, even in the Appellate Division's opinion in [Hobart Bros. Co. v. National Union Fire Ins. Co.](#), 806 A.2d 810 (N.J. Super. Ct. App. Div. 2002), which one court in this District has described as, “[t]he leading New Jersey case addressing the concepts of inexcusable conduct and substantial prejudice”, [Ctr. for Prof'l Advancement v. Mazzie](#), 347 F. Supp. 2d 150, 156 (D.N.J. 2004), the non-exhaustive list of factors that the Appellate Division flagged for consideration skew heavily toward the issue of substantial prejudice, focusing on potential harm to the unjoined / late-named party. See [id.](#) at 156-57 (citing [Hobart Bros.](#), 806 A.2d at 818-19). This is likely due to the Appellate Division's acknowledgement that “the factors of inexcusable conduct and substantial prejudice are, in a sense, inter-related. They are different points along a graded spectrum, but it is the final result they produce which must be weighed in deciding whether fairness requires that a party be precluded from presenting its claim.” [Hobart Bros.](#), 806 A.2d at 819. Therefore, “the existence of substantial prejudice will often serve to render the underlying conduct inexcusable.” [Ctr. for Prof'l Advancement](#), 347 F. Supp. 2d at 156. Nevertheless, a number of the considerations that the Appellate Division identified in [Hobart Bros.](#) bear on whether Plaintiffs' violation of [Rule 4:5-1\(b\)\(2\)](#) in the State Court Matters should be considered “inexcusable.”

First, and most importantly, the Court will consider “whether [Plaintiffs'] failure to join or identify [Defendants in the State Court matters] was unreasonable under the circumstances.” [Id.](#) at 156-57 (citing [Hobart Bros.](#), 806 A.2d at 818-19). For the reasons discussed in Section II(B), above, the Court finds that it was.

Second, the Court will examine “the extent to which judicial resources were employed in the earlier litigation.” [Id.](#) at 157. Here, the New Jersey Superior Court has already committed a tremendous level of judicial resources to the State Court Matters, which have been pending in that court for the better part of a decade. Indeed, the Superior Court presided over a lengthy bench trial to resolve the first “phase” of that litigation and issued a Trial Court Opinion spanning over 200 pages. The Superior Court will continue to expend significant resources on that litigation, as the parties advise that the Superior Court will also conduct trials on the final two phases of the State Court Matters, and it appears inevitable that at

least some of the trial court's determinations will end up before the Appellate Division.

*7 Third, the Court acknowledges that the extent to which Defendants have been “substantially prejudiced” by Plaintiffs' violation of [Rule 4:5-1\(b\)\(2\)](#) also bears on whether Plaintiffs' violation should be deemed “inexcusable.” [Id.](#) at 156. As set forth in Section II(C)(b), below, the Court has determined that Defendants suffered substantial prejudice as a result of Plaintiffs' actions.

Finally, the Court must consider the possibility that Plaintiffs strategically delayed seeking leave to amend in the State Court Matters. [Id.](#) Here, Chicago Title argues that “Plaintiffs waited until they lost their summary judgment motion against the other parties, and only then did they seek to assert their claims against Chicago Title. Such improper litigation tactics are inexcusable under [Rule 4:5-1\(b\)\(2\)](#).” (Chicago Title Br. at 36-37, ECF No. 71-1). In addressing the timing of their proposed amendment before the Superior Court, Plaintiffs argued that they previously lacked the complete information necessary to justify amendment, as it took a long time to pour over the many documents produced in the State Court Matter. (July 11, 2014 Cert. of Bruce D. Vargo, Ex. A at 57:6-59:5, ECF No. 66-1). While this Court acknowledges that the timing of Plaintiffs' proposed amendment is suspect and may suggest some level of strategic behavior, the Court need not make such an explicit finding to resolve the “inexcusability” prong of its [Rule 4:5-1\(b\)\(2\)](#) analysis given the other facts discussed in this subsection (i.e., even the Court found that Plaintiffs did not delay for strategic purposes, it would still find Plaintiffs' violation of [Rule 4:5-1\(b\)\(2\)](#) to be inexcusable in light of those other circumstances) and, therefore, declines to do so.

The Court finds that, on balance, the foregoing factors necessitate a finding that Plaintiffs' violation of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#) was inexcusable.

b. Substantial Prejudice to Defendants / Propriety of Lesser Sanctions

As the Court has already concluded that Plaintiffs' violation of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#) in the State Court Matters was inexcusable, the Court must now determine whether the Defendants will suffer substantial prejudice if Plaintiffs' claims in this case are not barred under that Rule. For the following reasons, the Court finds that both

Defendant Frumento and Defendant Chicago Title would be substantially prejudiced if the Court were to allow Plaintiffs to litigate their claims in this case.

It is well-established that the “ ‘substantial prejudice’ prong of Rule 4:5-1(b)(2) requires a showing of more than mere inconvenience to the parties.” [Ricketti](#), 775 F.3d at 615. In examining the concept of “substantial prejudice” in the context of late notices of claim under the Tort Claims Act, and applying those principles when discussing “substantial prejudice” under Rule 4:5-1(b)(2), the Appellate Division observed that mere delay will not, in itself, constitute the sort of “substantial prejudice” necessary to justify dismissal under the Rule. [Mitchell v. Charles P. Procini, D.D.S., P.A.](#), 752 A.2d 349, 353-354 (N.J. Super. Ct. App Div. 2000). Rather, the Appellate Division observed, “[s]ubstantial prejudice 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.” [Id.](#) (internal citations omitted); accord [DiFalco v. Merlino](#), No. A-6059-11T3, 2013 WL 3940983, at *4 (N.J. Super. Ct. App. Div. Aug. 1, 2013). While the New Jersey Supreme Court has since declined to definitively resolve “whether the meaning of the phrase ‘substantial prejudice’ in [Rule 4:5-1(b)(2)] is entirely coextensive with its meaning in the Tort Claims Act,” it did find that the Tort Claims Act jurisprudence “provides a useful starting point”, [Kent Motor Cars, Inc.](#), 25 A.3d at 1037, thereby implicitly suggesting that other sorts of prejudice may prove “substantial” enough to justify dismissal under Rule 4:5-1(b)(2). Indeed, the Appellate Division has found that “[t]he running of a period of limitations or the bar of a claim for contribution or indemnification may constitute substantial prejudice in certain contexts.” [Hobart Bros. Co.](#), 806 A.2d at 819. The Court will now address the various sources of prejudice Defendants have identified.

i. Inability to Participate in the State Court Matters

*8 First, both Defendants argue that they will suffer substantial prejudice as a result of their inability to participate in, and influence the outcome of, the State Court Matters. (Frumento Br. at 25, ECF No. 65-1; Chicago Title Br. at 37-38, ECF No. 71-1). The Court notes that, in this case, Plaintiffs have alleged that Defendants participated in a conspiracy with certain defendants involved in the State Court Matter (both Defendants), or are vicariously liable for the actions of certain of those defendants (Chicago Title). (See generally Compl. ECF No.1, Ex. A). Defendants’ fates

are therefore inextricably tied to the resolution of Plaintiffs’ claims in the State Court Matters. Indeed, Plaintiffs’ counsel has admitted that “it may well be that this case will be disposed of if [Plaintiffs are] unsuccessful in the state court ... depending on what specific issues go to trial and what kind of judgment or verdict we get.” (Tr. of June 4, 2015 Oral Arg. at 24:11-14). Plaintiffs clearly should have timely identified their claims against Chicago Title and Frumento so that they could be litigated alongside Plaintiffs’ similar claims against other parties in the State Court Matters. The Court finds that Defendants have been substantially prejudiced by virtue of their inability to directly participate in that litigation.

Plaintiffs argue that Defendant Chicago Title’s interests are already well-represented in the State Court Matters, as Chicago Title has obtained counsel for certain of its insureds who are parties in those cases, and that its interests are aligned with those of the insureds. (Pl. Opp. to Chicago Title Motion at 31-32, ECF No. 72). First, those counsel represent various insureds and not Chicago Title, and would not, therefore, be in a position to raise facts and issues unique to Chicago Title. This is particularly problematic in light of the fact that Chicago Title’s potential liability in this case is vicarious in nature, and based on the alleged actions of Horizon Title Agency, Inc., a defendant in the State Court Matters. Second, the Court notes that, after conducting a lengthy trial in “phase one” of the State Court Matters, the Superior Court made a number of findings that appear to have absolved both Chicago Title and Horizon Title Agency, Inc. of wrongdoing. (See June 2, 2015 Trial Court Opinion at 188-91, ECF No. 87). Chicago Title argues that those determinations should preclude Plaintiffs’ claims herein. (ECF No. 88). Plaintiffs contend that such findings go beyond those the Superior Court was required to make during the “phase one” trial and, as such, may not be afforded such preclusive effect. (ECF No. 90 at 2-4). Plaintiffs note that “the clarification we expect from the Appellate Division will, we believe, be of considerable help to this Court’s understanding of just what was necessarily decided by the state court.” ([Id.](#) at 4). Chicago Title, a non-party to the State Court Matters, has thus been deprived of the ability to participate directly in the appeal of an issue that would be dispositive of Plaintiffs’ claims against it.

Defendant Frumento identified three specific issues that, he argued, will necessarily be decided in the State Court Matters and “may significantly impact [his] ability to present a defense in this belated action.” (Frumento Br. at 25, ECF No. 65-1). He claims that those issues “will proceed to a final adjudication on the merits without any input or participation

from Frumento, depriving him of his day in Court.” (*Id.*). Plaintiffs do not dispute that those issues will be tried to judgment in the State Court Matters or that they may impact Frumento in this litigation. (Pl. Opp. to Frumento Motion at 30-31, ECF No. 66). Instead, Plaintiff argues that Frumento brought any resulting prejudice upon himself by removing this case to federal court, in turn “depriv[ing] the State Court of the opportunity to consolidate it with the [State Court Matters] when it became clear years ago that the ‘ownership’ trial would not occur as planned.” (*Id.*). This Court disagrees with Plaintiffs’ suggestion that Defendants contributed to their prejudice by invoking federal subject matter jurisdiction. Considering that the Superior Court refused to permit Plaintiffs to add these claims to the State Court Matters in August 2011 due to concerns of delay, nothing before this Court suggests that the Superior Court would have granted what would have amounted to functionally identical relief, albeit via different procedural means, by ordering consolidation when Plaintiffs commenced this matter more than five months later. (See generally Not. of Removal, ECF No. 1) (reflecting that Plaintiffs commenced this matter in the New Jersey Superior Court in February 2012). It is far more likely that Plaintiffs would simply be opposing a similar motion to dismiss in a different forum. Plaintiffs’ argument that the Superior Court might have one day brought their claims against Defendants Frumento and Chicago Title into the State Court Matters after the “phase one” trial was adjourned ignores the fact that Superior Court already expressly declined to do so at a time when the projected start of that trial was still four months away.

ii. Loss of Claims

*9 Defendants also argue that, because they were not joined in the State Court Matters, they lost the opportunity to bring cross-claims against the other defendants in those cases (and ostensibly believed it unnecessary to commence stand-alone cases against those persons and entities in light of their status as non-parties). Defendants contend that such claims would now be barred by the applicable statute of limitations and, potentially, other legal doctrines. (Frumento Br. at 24-25, ECF No. 65-1; Chicago Title Br. at 39, ECF No. 71-1). Plaintiffs suggest that Defendants’ argument is inaccurate, as the limitations period on claims for indemnification and contribution will not even begin running unless and until Plaintiffs obtain a judgment against Defendants. (See Pl. Opp. to Frumento Motion at 28-29, ECF No. 66). As Defendants correctly note, however, notwithstanding the

availability of claims for indemnification and contribution, the applicable limitations periods for Defendants’ potential affirmative contract and tort claims regarding the events in question, which occurred in 2005 and 2006, have long since run. (Frumento Reply Br. at 11, ECF No. 67; Chicago Title Reply Br. at 15, ECF No. 73). The Court finds that those lost causes of action constitute another form of substantial prejudice.

iii. Potential Loss of Discovery

The Court also recognizes that Defendants will be substantially prejudiced by the effects of the passage of time, as the events underlying Plaintiffs’ claims took place approximately a decade ago. Chicago Title has advised that one fact potential fact witness has passed away, (Chicago Title Br. at 39, ECF No. 71-1), and while Plaintiffs may be correct that the witness was already deposed for several hours in connection with what appears to be an ex parte investigation that coverage counsel for Chicago Title conducted, (Pl. Opp. to Chicago Title Motion at 33-34), the fact remains that, to the extent that witness could have testified regarding the specific claims at issue in this case, that testimony is now lost. More generally, witness’ memories of the events in question are likely to have dulled (while evidence may also have been lost, nothing in the record supports making such a finding at this time). Even if much of the evidence and witness testimony necessary to resolve Plaintiffs’ claims in this case overlaps to some degree with that preserved in the discovery process during the State Court Matters, that overlap will not be complete, given the fact that the specific claims at issue here were not part of the state court matters. The Court notes that this constitutes another form of substantial prejudice associated with Plaintiffs’ violation of New Jersey Court Rule 4:5-1(b)(2). Ctr. for Prof’l Advancement, 347 F. Supp. 2d at 156 (“Substantial prejudice, as contemplated by Rule 4:5-1(b)(2), means that a person not joined in an earlier action will be seriously harmed in his or her ability to maintain an adequate defense in a subsequent action. Such harm might come about through ‘loss of witnesses, loss of evidence, fading memories, and the like.’”) (internal citations omitted).

iv. Potential Prejudice to Plaintiffs

Finally, the Court addresses Plaintiffs’ argument that it “must also consider any prejudice to the plaintiffs and, in particular, whether they “had a fair and reasonable opportunity to have

fully litigated [their claims ...] in the original action.” (Pl. Opp. to Frumento Motion at 32, ECF No. 66; Pl. Opp. to Chicago Title Motion at 35, ECF No. 72) (brackets in original) (citations omitted). Plaintiffs argue that the Superior Court deprived them of that opportunity by denying their motion to amend in the State Court Matters. (*Id.*). This Court disagrees. Plaintiffs certainly had a fair and reasonable opportunity to bring their claims against Defendants Frumento and Chicago Title in the State Court Matters, they simply failed to do so in a timely fashion, prompting the Court to deny their motion for leave to amend.

v. No Sanction Short of Dismissal Would Be Appropriate

The Court finds that no sanction, short of dismissal, would adequately address the various types of prejudice set forth above. No sanction could alter Defendants' inability to participate in the State Court matters, revive Defendants' lost claims or restore witnesses' dulled memories. Indeed, in identifying those sources of prejudice, the Court focused exclusively on harm that could not be suitably cured through an award of counsel fees or via careful case management herein. The Court did not include in its analysis other obvious types of prejudice (e.g., costs that Defendants would incur in taking duplicative discovery, the cost-efficiencies that could have been realized through a joint-defensive effort, etc.) that it might have remedied. In short, the Court has not identified, and no party has proposed, a suitable, less severe sanction that might cure the substantial prejudice that Plaintiffs caused through their violation of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#).

c. This Case Will Inevitably Become a “Successive Action” Under [New Jersey Court Rule 4:5-1\(b\)\(2\)](#)

*10 The next question in the Court's analysis is whether this suit may fairly be characterized as “successive” to the State Court Matters. *See* [N.J. Ct. R. 4:5-1\(b\)\(2\)](#). If the Court finds that it may, then it must recommend that the District Court dismiss this matter pursuant to [Rule 4:5-1\(b\)\(2\)](#). This Court finds that, regardless of its current status, this case will instantly become a successive action upon the conclusion of the State Court Matters.

Plaintiffs argue that the instant action is a “simultaneous” action, rather than a “successive” case. (Pl. Br. in Opp. to Frumento Motion at 19-22, ECF No. 66). Accordingly, Plaintiffs maintain that the “the NJ-ECD does not prohibit

simultaneous actions—even where the two actions involve the same core set of facts.” (*Id.* at 19-20). Conversely, Defendant Frumento asserts that the instant action is successive and that it is “the law of New Jersey that a second lawsuit, related to one currently pending, that meets the conditions for application of the entire controversy doctrine should be dismissed.” (ECF No. 67 at 7). Defendant Chicago Title takes a different position in arguing that the successive action requirement for party-joinder ECD is met. (ECF No. 73 at 13). Specifically, Chicago Title contends that “for ECD purposes, their litigation against Chicago Title in the state court action ended when [Plaintiffs'] motion for leave to amend was denied.” (*Id.* at 14).

As an initial matter, this Court notes that, when determining whether cases are “successive” in the context of a [Rule 4:5-1\(b\)\(2\)](#) analysis, “ ‘the central consideration is whether the claims against the different parties arise from related facts or the same transaction or series of transactions.’ ” [Millennium Bcpbank, N.A. v. First Am. Title Ins. Co., No. A-1172-10T3, 2011 WL 6412128, at *5](#) (N.J. Super. Ct. App. Div. Dec. 22, 2011) (quoting [DiTrollo v. Antiles, 142 N.J. 253, 267 \(1995\)](#)). After reviewing the record for this matter, including Plaintiffs' Complaint, the parties' descriptions of the State Court Matters and the Hon. James S. Rothschild, J.S.C.'s June 2, 2015 Trial Court Opinion, this Court is satisfied that both pieces of litigation concern the same overarching facts and transactions. Plaintiffs do not legitimately challenge this point, relying instead on their argument that the State Court Matters and the case at bar should be considered “simultaneous” rather than “successive” in nature.

It appears that no court has addressed the “successive action” factor by applying the plain and ordinary meaning of the word “successive.” The American Heritage College Dictionary defines “successive” as “following in uninterrupted order; consecutive.” (American Heritage College Dictionary (3d ed. 1997)). Here, Plaintiffs commenced the State Court Matters first, and subsequently filed this action. Consequently, under normal usage, this case is a successive action. Although Plaintiffs argue that the cases are “simultaneous” (which is correct), nothing about the plain and ordinary meaning of “successive” refutes the conclusion that this action is also successive for the purposes of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#). No one can predict with certainty when a lawsuit will end. On the other hand, where, as here, a litigant has knowledge of a potential claim, that litigant is in complete control of when a lawsuit will begin. This Court suggests that the word “successive” should therefore be analyzed in

connection with the time a lawsuit begins (as opposed to the current focus on when a previously filed action ends) in order to serve the purpose of [Rule 4:5-1\(b\)\(2\)](#), as discussed above. As Plaintiffs filed this action long after the State Court Matters, it should be deemed successive.

*11 Notwithstanding this Court's belief regarding the proper method for determining whether an action is "successive" under [Rule 4:5-1\(b\)\(2\)](#), this Court finds that the eventual conclusion of the State Court Matters⁵ will render this question academic. In [Youssef v Dept. of Health And Senior Services](#), 524 Fed.Appx. 788, 791 (3d Cir. April 24, 2013), the United States Court of Appeals for the Third Circuit remarked that the New Jersey Superior Court had provided "further guidance" on the simultaneous suit issue since the Court of Appeals had last addressed it: "The state court clarified that its rulings that stated or implied that the entire controversy doctrine precluded only successive suits about related claims ... did not foreclose the application of the doctrine after one of two simultaneously pending suits concluded." (citing [Archbrook Laguna, L.L.C. v. Marsh](#), 997 A.2d 1035, 1041 (N.J. Super Ct. App. Div. 2010)).⁶ In [Youssef](#), cases arising from the same set of facts were pending simultaneously in both state and federal court. [Id.](#) at 790, n. 3. After determining that the plaintiff could have asserted the claims raised in his federal suit during the state court proceeding, and that the state court reached a judgment on the merits of its action during the pendency of the federal case, the Court of Appeals found that the ECD could apply to preclude the plaintiff's claims in the federal action. [Id.](#) at 791. While both [Youssef](#) and the New Jersey Superior Court, Appellate Division's decision on which it is based, [Archbrook](#), concern claims-joinder ECD rather than the disclosure requirements imposed under [Rule 4:5-1\(b\)\(2\)](#), see [Archbrook](#), 997 A.2d at 1038-42., this Court has no reason to find that the New Jersey Supreme Court would apply different definitions to the concept of "successive actions" when considering different aspects of the ECD. Indeed, such an outcome would be nonsensical, in light of the court's guidance that "both [Rule 4:30A](#) and [Rule 4:5-1\(b\)\(2\)](#) advance the same underlying purposes" of preventing "piecemeal and duplicative litigation." [Kent Motor Cars, Inc.](#), 25 A.3d at 1037. As the Court relies on [Youssef](#) and [Archbrook](#) solely for the purpose of determining how New Jersey courts would interpret "successive actions" under [New Jersey Court Rule 4:5-1\(b\)\(2\)](#), the factual and procedural differences between those cases and the case at bar are of no consequence. The Court therefore finds that, regardless of its current status, this

case will become "successive" for the purposes of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#) immediately upon the conclusion of the State Court Matters.

This finding is significant in that, while this matter is in its relative infancy (despite its age), the State Court Matters have reportedly been on the verge of trial for approximately five years. As of June 2015, the first phase of those trifurcated cases had been tried to judgment over the course of four months. The Superior Court had not yet scheduled a trial for the second phase, and "some small amount of open discovery" remained with regard to the third phase. (Tr. of June 4, 2015 Oral Arg. at 20:11-24). The parties have not provided the Court with an update since that time, and one or both of the remaining phases may have been tried in the interim. Even if they have not, those cases will undoubtedly conclude long before this matter can be resolved on its merits.

The upshot of this analysis is that, the instant the State Court Matters are resolved, this action will become "successive" and should be dismissed pursuant to [New Jersey Court Rule 4:5-1\(b\)\(2\)](#). It would be a pointless and inexcusable waste of both the parties' and the Court's resources to continue litigating this matter in the interim. The Court therefore respectfully recommends that the District Court administratively terminate this case pending resolution of the State Court Matters. Upon conclusion of the State Court Matters (the parties should be required to so advise the Court), the District Court should reinstate this case for the limited purpose of dismissing it with prejudice pursuant to [New Jersey Court Rule 4:5-1\(b\)\(2\)](#).

III. CONCLUSION

*12 Based on the foregoing, this Court respectfully recommends that the District Court:

- (1) Administratively terminate this case pending resolution of the State Court Matters;
- (2) Require the parties to advise the District Court once the State Court Matters have been fully and finally adjudicated;
- (3) Upon confirmation that the State Court Matters have been fully resolved, dismiss this matter with prejudice as a sanction for Plaintiffs' violation of [New Jersey Court Rule 4:5-1\(b\)\(2\)](#); and
- (4) Deny Plaintiffs' motion for leave to file an amended pleading, (ECF No. 60), and Defendants' motions to

dismiss on other (i.e., non-entire controversy doctrine) grounds, (ECF Nos. 68 and 74), as moot.

All Citations

Not Reported in Fed. Supp., 2016 WL 10585998

Footnotes

- 1 The Hon. Esther Salas, U.S.D.J. has also referred Plaintiffs' motion for leave to file an amended pleading, (ECF No. 60), and Defendants' motions to dismiss on other (i.e., non-entire controversy doctrine) grounds, (ECF Nos. 68 and 74), to this Court. As noted below, and based on this Court's determination regarding the impact of the entire controversy doctrine, this Court recommends that the District Court **DENY** these motions as moot.
- 2 The record for this matter indicates that the related cases pending in the Superior Court of New Jersey (the "State Court Matters") did, in fact, proceed to a four-month long bench trial, following which the Hon. James S. Rothschild, J.S.C. issued a 216 page Trial Court Opinion, dated June 2, 2015. (See ECF No. 87). For the purposes of clarity, the Court notes that the Superior Court previously entered a trifurcation order in the State Court Matters and that this trial/opinion pertained only to the first "phase" of those proceedings. (Tr. of June 4, 2015 Oral Arg. at 20:1-21:5, ECF No. 91).
- 3 On the same date, and also in compliance with this Court's June 5, 2014 Order, Plaintiffs filed their fully briefed motion for leave to amend, (ECF Nos. 60-64), and Defendants filed their fully briefed motions to dismiss for failure to state a claim. (ECF Nos. 68-70; 74-76).
- 4 In opposing Defendant Chicago Title's motion to dismiss, Plaintiffs incorporate by reference ECD arguments made in opposition to Defendant Frumento's motion, (Pl. Br. in Opp. to Chicago Title Motion at 22, ECF No. 72), while making certain additional arguments specific to Chicago Title's position. (Id. at 23-29). For the purposes of clarity, the Court will refer to Plaintiff's opposition to Defendant Frumento's motion when addressing such overlapping arguments.
- 5 As the Court noted above, the record reflects that, to date, only the first phase of the trifurcated State Court Matters has been tried to judgment.
- 6 In Archbrook, the Appellate Division also explained the earlier jurisprudence suggesting that the entire controversy doctrine would not apply to simultaneously pending actions, 997 A.2d at 1041, noting that, in certain circumstances involving limitations on federal subject matter jurisdiction, litigants may have no choice but to commence actions in both state and federal courts to ensure that their claims are heard in some forum. Id. The Archbrook court clarified that the risk that an application of the ECD in such circumstances might foreclose on a litigant's ability to seek full relief anywhere "provides a sound basis for permitting multiple pending actions arising out of the same operative facts without offending the objectives of the entire controversy doctrine. It is in that context that we said the entire controversy doctrine applies only to 'successive' suits." Id. (emphasis added). The ability to maintain multiple lawsuits in such circumstances is therefore a limited exception to the ECD, and not, as Plaintiffs seem to suggest, the rule.

EXHIBIT P

BRESLIN AND BRESLIN, P.A.
41 Main Street
Hackensack, New Jersey 07601
(201) 342-4014
Attorneys for Plaintiffs

RECEIVED
MAY 22 1996
DR. CONRAD J. MONCAGNI
DEPUTY CLERK

C.P.

SUPERIOR COURT OF NEW JERSEY

Plaintiff,

LAW DIVISION :
DOCKET NO: BER-L-516-94

v.

C.P. (2), C.P. (3), B.P.
and O.P.

Defendants.

ORDER

v.

Fireman's Fund

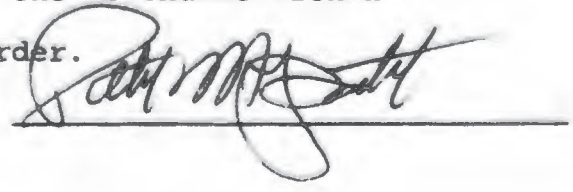
Third Party Defendant.

This matter having been opened to the Court by the law firm of Breslin and Breslin, P.A., attorneys for the plaintiff herein, on a Motion pursuant to R. 1:6-2 with a request for a ruling on the papers and the court having reviewed the papers and for good cause shown;

IT IS on this 24 day of May, 1996,

ORDERED that the complaint be amended to name C.P. (2) and B.P. as party defendants.

IT IS FURTHER ORDERED that a copy of this Order be served upon the attorneys for the defendant within days of the signing of this Order.



- () Opposed
- () Unopposed

Handwritten initials or mark

EXHIBIT Q

GOLDEN, ROTHSCHILD & SPAGNOLA, P.C.
1011 Route 22 West, P.O. Box 897
Somerville New Jersey 08876
(908) 722-6300
Attorneys for Defendant, OP-1

1-29-97
433 454
23869
 (CK) CG MO CG
 AYOR
 ACCOUNT 1/10.00
 OVER

SUPERIOR COURT BERGEN COUNTY

CP-1,

FILED

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Plaintiff,

JAN 30 1997

DOCKET NO. BER L 516-94

-vs-

Carroll J. Rucato

CIVIL ACTION

DEPUTY CLERK

CP-2, BP, CP-3 and OP-1,

ANSWER TO SECOND AMENDED
COMPLAINT, SEPARATE DEFENSES,
CROSSCLAIMS FOR CONTRIBU-
TION AND INDEMNIFICATION,
ANSWER TO ALL CROSSCLAIMS,
JURY DEMAND AND DEMAND
FOR STATEMENT OF DAMAGES

Defendants,

and

CP-3, OP,

Defendant/Third Party
Plaintiffs.

-vs-

FIREMAN'S FUND INSURANCE
COMPANY,

Third Party Defendant.

Defendant, OP-1, by way of Answer to Plaintiff's Second Amended Complaint
herein, says.

FIRST COUNT

1. Defendant, OP-1, admits the allegations contained in Paragraph 1 of the First
Count of Plaintiff's Second Amended Complaint.
2. Defendant, OP-1, admits the allegations contained in Paragraph 2 of the First

Count of Plaintiff's Second Amended Complaint.

3. Defendant, OP-1, admits the allegations contained in Paragraph 3 of the First Count of Plaintiff's Second Amended Complaint.

4. Defendant, OP-1, neither admits nor denies the allegations contained in Paragraph 4 of the First Count of Plaintiff's Second Amended Complaint and, therefore, leaves Plaintiff to her proofs.

5. With respect to the allegations contained in Paragraph 5 of the First Count of Plaintiff's Second Amended Complaint, Defendant, OP-1, neither admits nor denies same as the allegations do not pertain to her.

6. Defendant, OP-1, denies the allegations contained in Paragraph 6 of the First Count of Plaintiff's Second Amended Complaint.

7. Defendant, OP-1, denies the allegations contained in Paragraph 7 of the First Count of Plaintiff's Second Amended Complaint.

The assertions contained within the WHEREFORE clause of the First Count of Plaintiff's Second Amended Complaint do not apply to this Defendant.

SECOND COUNT

1. Defendant, OP-1, repeats each and every Answer to the allegations contained in the First Count of Plaintiff's Second Amended Complaint and incorporates same herein as if set forth at length.

2. Defendant, OP-1, denies the allegations contained in Paragraph 2 of the Second Count of Plaintiff's Second Amended Complaint.

3. Defendant, OP-1, denies the allegations contained in Paragraph 3 of the Second Count of Plaintiff's Second Amended Complaint.

WHEREFORE, Defendant, OP-1, demands judgement dismissing Plaintiff's Second Amended Complaint, for reasonable attorneys fees, costs of suit and for such other relief as the Court may deem proper and just.

THIRD COUNT

1. Defendant, OP-1, repeats each and every Answer to the allegations contained in the First and Second Counts of Plaintiff's Second Amended Complaint and incorporates same herein as if set forth at length.

2. With respect to the allegations contained in Paragraph 2 of the Third Count of Plaintiff's Second Amended Complaint, Defendant, OP-1, neither admits nor denies same as the allegations do not pertain to her.

3. Defendant, OP-1, neither admits nor denies the allegations contained in Paragraph 3 of the Third Count of Plaintiff's Second Amended Complaint and, therefore, leaves Plaintiff to her proofs.

4 Defendant, OP-1, denies the allegations contained in Paragraph 4 of the Third Count of Plaintiff's Second Amended Complaint.

5. Defendant, OP-1, denies the allegations contained in Paragraph 5 of the Third Count of Plaintiff's Second Amended Complaint.

WHEREFORE, Defendant, OP-1, demands judgement dismissing Plaintiff's Second Amended Complaint, for reasonable attorneys fees, costs of suit and for such other relief as the Court may deem proper and just.

FOURTH COUNT

1. Defendant, OP-1, repeats each and every Answer to the allegations contained in the First, Second and Third Counts of Plaintiff's Second Amended Complaint and

incorporates same herein as if set forth at length.

2. The allegations contained in Paragraph 2 of the Fourth Count of Plaintiff's Second Amended Complaint are denied as to the Defendant, OP-1 only. This Defendant neither admits nor denies the allegations contained in said Paragraph with respect to the remaining Defendants.

3. The allegations contained in Paragraph 3 of the Fourth Count of Plaintiff's Second Amended Complaint are denied as to the Defendant, OP-1 only. This Defendant neither admits nor denies the allegations contained in said Paragraph with respect to the remaining Defendants.

4. The allegations contained in Paragraph 4 of the Fourth Count of Plaintiff's Second Amended Complaint are denied as to the Defendant, OP-1 only. This Defendant neither admits nor denies the allegations contained in said Paragraph with respect to the remaining Defendants.

5. Defendant, OP-1, denies the allegations contained in Paragraph 5 of the Fourth Count of Plaintiff's Second Amended Complaint.

WHEREFORE, Defendant, OP-1, demands judgement dismissing Plaintiff's Second Amended Complaint, for reasonable attorneys fees, costs of suit and for such other relief as the Court may deem proper and just, as to Defendant, OP-1.

FIFTH COUNT

1. Defendant, OP-1, repeats each and every Answer to the allegations contained in the First, Second, Third and Fourth Counts of Plaintiff's Second Amended Complaint and incorporates same herein as if set forth at length

2. With respect to the allegations contained in Paragraph 2 of the Fifth Count

of Plaintiff's Second Amended Complaint, Defendant, OP-1, neither admits nor denies same as the allegations do not pertain to her.

3. With respect to the allegations contained in Paragraph 3 of the Fifth Count of Plaintiff's Second Amended Complaint, Defendant, OP-1, neither admits nor denies same as the allegations do not pertain to her.

The assertions contained within the WHEREFORE clause of the Fifth Count of Plaintiff's Second Amended Complaint do not pertain to this Defendant.

SIXTH COUNT

1. Defendant, OP-1, repeats each and every Answer to the allegations contained in the First, Second, Third, Fourth and Fifth Counts of Plaintiff's Second Amended Complaint and incorporates same herein as if set forth at length.

2. The allegations contained in Paragraph 2 of the Sixth Count of Plaintiff's Second Amended Complaint are denied as to the Defendant, OP-1 only. This Defendant neither admits nor denies the allegations contained in said Paragraph with respect to the remaining Defendants.

3. Defendant, OP-1, denies the allegations contained in Paragraph 3 of the Sixth Count of Plaintiff's Second Amended Complaint.

WHEREFORE, Defendant, OP-1, demands judgement dismissing Plaintiff's Second Amended Complaint, for reasonable attorneys fees, costs of suit and for such other relief as the Court may deem proper and just, as to Defendant, OP-1

SEVENTH COUNT

1. Defendant, OP-1, repeats each and every Answer to the allegations contained in the First, Second, Third, Fourth, Fifth and Sixth Counts of Plaintiff's Second Amended

Complaint and incorporates same herein as if set forth at length.

2. Defendant, OP-1, denies the allegations contained in Paragraph 2 of the Seventh Count of Plaintiff's Second Amended Complaint

WHEREFORE, Defendant, OP-1, demands judgement dismissing Plaintiff's Second Amended Complaint, for reasonable attorneys fees, costs of suit and for such other relief as the Court may deem proper and just

EIGHTH COUNT

1 Defendant, OP-1 repeats each and every Answer to the allegations contained in the First, Second, Third, Fourth, Fifth, Sixth and Seventh Counts of Plaintiff's Second Amended Complaint and incorporates same herein as if set forth at length.

2. The allegations contained in Paragraph 2 of the Eighth Count of Plaintiff's Second Amended Complaint are denied as to the Defendant, OP-1, only. This Defendant neither admits nor denies the allegations contained in said Paragraph with respect to the remaining Defendants.

3. Defendant, OP-1, denies the allegations contained in Paragraph 3 of the Eighth Count of Plaintiff's Second Amended Complaint.

4. Defendant OP-1, denies the allegations contained in Paragraph 4 of the Eighth Count of Plaintiff's Second Amended Complaint.

5. Defendant, OP-1, denies the allegations contained in Paragraph 5 of the Eighth Count of Plaintiff's Second Amended Complaint.

WHEREFORE, Defendant, OP-1, demands judgement dismissing Plaintiff's Second Amended Complaint, for reasonable attorneys fees, costs of suit and for such other relief as the Court may deem proper and just.

NINTH COUNT

1. Defendant, OP-1, repeats each and every Answer to the allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Counts of Plaintiff's Second Amended Complaint and incorporates same herein as if set forth at length.

2. With respect to the allegations contained in Paragraph 2 of the Ninth Count of Plaintiff's Second Amended Complaint, Defendant, OP-1, neither admits nor denies same as the allegations do not pertain to her.

WHEREFORE, Defendant, OP-1, demands judgement dismissing Plaintiff's Second Amended Complaint, for reasonable attorneys fees, costs of suit and for such other relief as the Court may deem proper and just, as to Defendant, OP-1.

FIRST SEPARATE DEFENSE

The Defendant, OP-1, violated no legal duty owing to the Plaintiff.

SECOND SEPARATE DEFENSE

The incident occurred as a result of the carelessness and negligence of third persons over whom the Defendant, OP-1, had no control.

THIRD SEPARATE DEFENSE

Plaintiff is barred from recovery for failure to state a cause of action.

FOURTH SEPARATE DEFENSE

Plaintiff is barred by the doctrine of collateral estoppel and res judicata as one or more of the issues and/or relief sought within this cause of action were previously raised and decided on the action entitled State v. Pandelo, Accusation No. 0215-89

FIFTH SEPARATE DEFENSE

Defendant, CP-1, was convicted of criminal sexual contact in violation of N.J.S.

2C-24-4a and 2C:14-3b. which findings are res judicata in this matter

CROSSCLAIM

Defendant, OP-1, by way of Crossclaim against the Co-Defendants, CP-2, BP, and CP-3, says:

FIRST COUNT

The Defendant, OP-1, denies that she was negligent and states that the accident was the direct and proximate result of the actions of the Defendants, CP-2, BP and CP-3, and that they were solely responsible for the injuries sustained by the Plaintiff, but in the event this Defendant is found guilty of contributory negligence, Defendant, OP-1, demands contribution under and by reason of the Joint Tort Feasors Contribution Act, N.J.S.A. 2A:53-1, et seq., and as provided by the provisions of the Comparative Negligence Act, N.J.S.A. 2A:15-5.3, for a proportionate share of all of which the Plaintiff may recover

SECOND COUNT

The Defendant, OP-1, further demands and makes a claim for indemnity against the Defendants, CP-2, BP, and CP-3, in the event it be deemed that the damages claimed in the Plaintiff's Second Amended Complaint were occasioned by the primary negligence of the said Co-Defendants, should the Defendant, OP-1, be found secondarily liable to the Plaintiff herein.

ANSWER TO ALL CROSSCLAIMS

Defendant, OP-1, by way of Answer to any Crossclaims filed, or to be filed herein, says:

This Defendant denies any and all allegations contained in any Crossclaims filed

or to be filed in this matter; denies the Co-Defendants are entitled to contribution and/or indemnification; and holds the Co-Defendants to their proofs.

JURY DEMAND

The Defendant, OP-1, hereby demands a trial by jury on all issues in the above-captioned matter.

DEMAND FOR STATEMENT OF DAMAGES

PLEASE TAKE NOTICE that pursuant to Rule 4:5-2, the Defendant filing this Answer to Plaintiff's Second Amended Complaint requires that within five days you furnish her attorneys with a Statement of the amount of damages claimed.

CERTIFICATION

I hereby certify that the within Answer to Plaintiff's Second Amended Complaint, Separate Defenses, Crossclaim for Contribution and Indemnification, Answer to all Crossclaims, Jury Demand and Demand for Statement of Damages, was filed within the time prescribed by Rule 4:6, and that a true copy of same has been served upon all counsel of record by first class mail on even date hereof.

GOLDEN, ROTHSCHILD & SPAGNOLA, P.C.
Attorneys for Defendant, OP-1

By: _____


RONALD S. LEVITT

Dated: January 27, 1997

EXHIBIT R

2011 WL 92957

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

GORJUICE WRAP, INC. (d/b/a Computer
World), a New Jersey Corporation and Young
Kang (a/k/a Jasmine Kang), Plaintiffs-Appellants,

v.

OKIN, HOLLANDER & DE LUCA, LLP,
a New Jersey Partnership and James De
Luca, individually, Defendants-Respondents.

Argued Dec. 14, 2010.

|

Decided Jan. 12, 2011.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Docket No. L-2150-07.

Attorneys and Law Firms

Charles M. Yoon (Yoon & Kim LLP) of the New York
bar, admitted pro hac vice, argued the cause for appellants
(Jennifer Chung (Yoon & Kim LLP) and Mr. Yoon, attorneys
and on the briefs).

Robert B. Hille argued the cause for respondents (Kalison,
McBride, Jackson & Robertson, P.C., attorneys; Mr. Hille, of
counsel and on the briefs; John W. Kaveney, on the briefs).


Before Judges WEFING, PAYNE and BAXTER.

Opinion

PER CURIAM.

*1 This is a legal malpractice case in which plaintiffs
asserted that their lawyer negligently failed to seek emergent
relief when plaintiffs' commercial landlord locked them out
of the leased premises. Plaintiffs Gorjuice Wrap, Inc., d/
b/a Computer World (Gorjuice), and its president, Young
Kang, appeal from an April 15, 2009 Law Division order that
granted summary judgment to defendant James De Luca and
to his law firm, Okin, Hollander & De Luca LLP (OH & D),
thereby dismissing the legal malpractice case with prejudice.
Plaintiffs also appeal from a second order entered the same

day, which denied their cross-motion for summary judgment
on liability.

We disagree with the motion judge's conclusion that plaintiffs'
malpractice complaint was barred by the *Puder* doctrine,
see  *Puder v. Buechel*, 183 N.J. 428 (2005), judicial
estoppel and the entire controversy doctrine. We therefore
reverse the dismissal of plaintiffs' claim for damages related
to the disposal of their personal and commercial property
after Gorjuice's landlord locked Gorjuice out of the leased
premises, and we remand for trial on that issue.

In contrast, we affirm the judge's grant of summary judgment
dismissing Gorjuice's claim for lost profits, although we
do so for different reasons than those expressed by the
judge. Viewing the evidence in the light most favorable
to plaintiffs, as required in the summary judgment context,
we are nonetheless satisfied that: 1) the alleged malpractice
was not a proximate cause of Gorjuice's failure, as Gorjuice
was already failing before defendants' involvement; and 2)
any such lost profit damages were purely speculative and
therefore prevented under the "new business rule."

We also affirm the dismissal of plaintiffs' claim for punitive
damages, as plaintiffs failed to raise a genuine issue of
material fact on whether defendants' conduct was willfully
and wantonly reckless or malicious. We also affirm the
denial of plaintiffs' cross-motion on liability, as defendants
presented a genuine issue of material fact on the question of
proximate cause that was sufficient to entitle them to a denial
of plaintiffs' cross-motion.

We thus affirm in part and reverse in part.

I.

In the fall of 1998, while she was a graduate student in
Education at Columbia University, plaintiff Kang established
a company known as Edreamcom, Inc. (Edream), which
offered a series of computer-aided educational courses for
children and adults. Edream operated from a small retail
space located in Closter. According to Kang, Edream was
relatively successful, earning a total of \$150,000 in gross
revenue during its first two years of operation.¹ Toward the
end of 1999, Kang decided to expand Edream by offering
a greater variety of courses and activities, incorporating the
new venture as Gorjuice Wrap, Inc. According to Kang, like

Edream, “Gorjuice’s core business” was “a computer lounge and facility that offered educational services.” However, the new business was designed

*2 to provide various other services to create a new family-oriented, community center combining educational, recreational and entertainment services for children, teens, and adults in one modern facility. In addition, Gorjuice would provide computer access and training at all levels of sophistication, classrooms for lectures, workshops, and tutoring in English, math, science and other subjects; recreational rooms with billiards, table tennis and other games; auditorium rental space for parties and other gatherings; a snack bar that specialized in healthy fare such as smoothies and sandwich wraps; and a tea room with special Korean ... premium teas.... Gorjuice [was intended] to be the first in a new franchise of “family centers” in other affluent, family-oriented neighborhoods.

The space occupied by Edream at 211 Closter Dock Road in Closter consisted of only 1,500 square feet. Because the expanded activities of Gorjuice required considerably more space, Gorjuice entered into a lease for a 10,000 square foot property on three levels located at 40 Homans Avenue in Closter with a ten-year lease term beginning January 1, 2000. The building was owned by Robert and Sylvia Talmo, t/a Talmo Real Estate Partnership. The Homans Avenue property had formerly been used as a sports bar, and needed considerable renovation, but it had several parking spaces immediately adjacent to the building, with additional parking available “contiguous” to the building.

Gorjuice was represented in the lease negotiations by David Watkins, a lawyer whom the Talmos had recommended. Kang asked both the Talmos and Watkins whether they had an attorney-client relationship, but neither disclosed that Watkins had been a longtime attorney for the Talmos and had represented them when they acquired the Homans Avenue property.

During the lease negotiations, Watkins advised Kang that the lease had to be executed immediately to expedite the zoning process. In deciding to lease the premises, Gorjuice relied on Watkins’s advice and the Talmos’ assurances that the premises were suitable for Kang’s intended purposes.

Kang also retained Watkins to petition the Closter Planning Board for site plan approval so Gorjuice could commence its business operations. Despite his representations that he would file the required applications, Watkins failed to do so in a

timely manner, causing Kang to fire Watkins and retain new counsel to obtain the necessary site plan approval.

By letter dated March 2, 2000, the Closter Planning Board advised Kang that its Site Plan Subcommittee had approved her site plan application, contingent upon “the stipulation that no food, alcohol or beverages be served, no live entertainment be offered, the word ‘lounge’ be removed from the sign currently in the window and that the premises not be used as a video game arcade.” After receiving partial zoning approval, Gorjuice began making repairs and renovations, installing the fixtures and equipment necessary to convert the premises to the uses Gorjuice intended.

*3 On May 11, 2000, the Talmos sold the parking lot contiguous to the premises to Bergen Food Enterprises, Inc., d/b/a Nathan’s Hot Dogs. Kang learned about the sale after it had occurred, and also discovered that Watkins had represented the Talmos in the transaction. As a result of that sale, the Closter Planning Board determined that the remaining parking spaces available to Gorjuice were insufficient to support Gorjuice’s business. Consequently, Gorjuice was unable to obtain full zoning approval.

When Gorjuice opened for business in June 2000, it began to experience significant problems from leaks and structural problems in the building. According to Kang, the Talmos assured Gorjuice they would make the necessary repairs, but never did.

Gorjuice failed to make its initial and second monthly rent payments, which were due on May 1 and June 1, 2000. On June 11, 2000, the Talmos threatened collection and eviction proceedings. On June 24, 2000, Gorjuice paid the Talmos a portion of the overdue rent.

Gorjuice also defaulted on its July and August rent. By letter dated August 4, 2000, the Talmos again threatened litigation if the past due rent was not paid immediately. In response, Kang advised the Talmos that because of the reduction in parking spaces available to Gorjuice, the Planning Board had refused to issue Gorjuice full zoning approval. She also told the Talmos that the Board had limited the number of pool tables in the basement, and prohibited Gorjuice from offering classes for adults and from renting a party room or offering entertainment. She told the Talmos that in light of these restrictions, she did not believe she was able to develop a profitable business plan for Gorjuice. She explained that the

restrictions imposed by the Planning Board had caused her to fall behind in her rent. In an undated letter, she wrote:

If I can't have [a] profitable plan, or even I can't have any sort of make-up for the loss ..., there is no reason for me to keep working to death. Specially now, my baby is most important to me. I do not want to get myself stressed out.

Gorjuice remained in arrears on its payment of rent. On November 16, 2000, the Talmos' counsel advised Gorjuice that it was “habitually in arrears” on its rent obligations, and specifically in breach of its lease for its failure to pay rent due on November 1, 2000. On January 5, 2001, Kang wrote to Sylvia Talmo and advised her of Gorjuice's financial problems, stating:

As you know well, it has been impossible to survive here. I have been borrowing a lot of money to pay rent and make this place nice. So, I tried to get money from Korea to purchase this building as you offered back in April, but Warren said you do not want to sell the building any more, then there seems like no other way to survive within those business restriction caused by parking limit from town [sic]. Then, I would like to get business partner, or loan to payoff debt and pay rent and expenses to settle down.

*4 Gorjuice's inadequate revenue stream continued to impact the payment of its rent. On February 7, 2001, the Talmos' counsel again advised Gorjuice that its rent was past due and as a result a late charge had been assessed for the February 2001 rent. Gorjuice responded, blaming its inability to pay rent on the condition of the property, specifically, the interior and the roof, even though the lease placed on Gorjuice all responsibility for maintaining and repairing the interior and the roof. The Talmos sent additional letters on February

28, and March 22, 2001, again complaining that Gorjuice's rent was past due.

On April 3, 2001, Kang met with defendant De Luca to discuss the possibility of retaining OH & D to represent Gorjuice against the Talmos in its lease disputes. Although no retainer agreement had been executed at that time, De Luca drafted, for submission by Gorjuice, a proposed standstill agreement regarding the parties' various lease disputes.

That same day, April 3, 2001, a leak from the water heater and drain pipes in an adjacent property, the Greek Grill, caused serious flooding in the basement of the Talmos' building, damaging plaintiffs' property. Thereafter, Gorjuice filed a claim with its insurance carrier, Zurich-US Commercial Insurance Co. (“Zurich”) for loss of business revenue and damage to its property. Gorjuice also sought reimbursement from Zurich for rental trucks and three self-storage units. Gorjuice was forced to rent as a result of the flooded basement. Kang would later testify at her deposition that Gorjuice's last day of operations was April 3, 2001, the day of the flood. In her correspondence with Zurich, Kang advised the claims representative that Gorjuice was in the process of obtaining another location “to relocate our business” and hoped to be able to reopen by November 1, 2001.

Gorjuice remained in arrears, not paying any rent in March or April 2001. On April 6, 2001, the Talmos made a proposal to Gorjuice to resolve its default. Gorjuice never responded.

On the evening of April 10, 2001, pursuant to the requests of the insurance adjuster, and to facilitate the assessment of the property damage, Kang removed some equipment and files. Warren Talmo, the Talmos' son and agent for Talmo Real Estate Partnership, saw Kang removing property from the building.

The next day, Warren returned and spoke with Hamin Kang, plaintiff Kang's father. Citing reports of recent burglaries in the area, he told Hamin that all of the locks in the building needed to be replaced. After changing the locks, Warren forcibly removed Hamin from the premises without allowing him to reenter, and without giving him keys to the new locks. At his deposition, however, Warren insisted that before changing the locks, he inspected the premises and saw no computer equipment, disks, books, records, safe or jewelry left behind. The building “was just abandoned”; “[n]othing of value remained.”

That afternoon, April 11, 2001, Kang faxed to De Luca a handwritten list of items that she alleged remained in the building. Later that evening, she filed a complaint with the Closter Police Department against Warren Talmo alleging an unlawful lockout.

*5 Although OH & D still had not been officially retained by Gorjuice, on April 12, 2001, De Luca drafted a second letter for Gorjuice, this time demanding immediate reentry into the premises and access to Gorjuice's corporate, and Kang's personal, property. Kang's sister and father attempted to enter the building to retrieve her personal property, but they were stopped and ordered out by the police.

On April 16, 2001, Kang met with De Luca and with Peter A. Ouda, of the law firm Voorhees & Ouda, to discuss the handling of Gorjuice's claims against Watkins and the Talmos. The next day, De Luca forwarded a retainer agreement to Kang, which specified that De Luca's firm was being retained to, among other things, secure the "return of personal property currently at the Closter Property." A few days later, Ouda forwarded a retainer agreement to Kang governing his firm's representation of Gorjuice in a legal malpractice suit against Watkins. Ouda confirmed that while his firm would be handling the malpractice case against Watkins, De Luca and OH & D would be responsible for the lease dispute concerning the Talmos.

A few days later, Kang executed the OH & D retainer agreement on behalf of Gorjuice. The agreement noted that Gorjuice had advised OH & D it was "no longer interested in operating its business at the [premises], since the conditions at the [premises], including a recent flood, ha[d] made the [premises] unusable for Gorjuice's intended purposes."

According to Kang, during her discussions with De Luca regarding the lockout, both before and after the execution of the retainer agreement, she had repeatedly urged him to take immediate legal action to retrieve or protect Gorjuice's and her property that remained in the building. She asserted De Luca had repeatedly assured her that the Talmos could not dispose of plaintiffs' property and, in any case, plaintiffs would be compensated for any loss in the lawsuit he was preparing.

At approximately the same time, Kang began hearing rumors that the Talmos were attempting to sell the building. She contacted De Luca to advise him of the rumors and to again request that he take immediate action to retrieve or protect

the property that remained in the building. De Luca advised her "that he was working on the matter" and she should "wait until he called [her]." According to De Luca, on June 13, 2001, Warren notified him that Gorjuice could enter the building to remove any personal or corporate property. That same day, De Luca contacted Kang's husband, A.J. Chon, and told him arrangements should be made directly with Warren; however, when De Luca spoke with Warren on June 22, 2001, Warren advised him he had not been contacted by Kang or her husband. That same day, De Luca spoke to Kang, advising her to remove her property as soon as possible.

Kang disputed De Luca's assertion that he informed her and her husband in June and July of 2001 that she could re-enter the premises to retrieve her property. According to Kang, it was not until November 7, 2001, when the new owners allowed her into the building, that she learned that all of the property she left in the premises was gone.

*6 On July 19, 2001, Gorjuice filed a six-count complaint against Watkins, the Talmos and their real estate partnership. Kang was not a plaintiff. In light of the trial judge's later conclusion that plaintiffs' malpractice complaint against De Luca and his firm was barred, we shall describe in their entirety the allegations against Watkins and the Talmos. The first count, against Watkins, alleged that Watkins's representation of Gorjuice deviated from accepted professional standards because Watkins: failed to disclose his prior and ongoing attorney/client relationship with the Talmos; failed to disclose that he represented the Talmos in the purchase of the Closter Property and therefore knew of the various defects in the building that ultimately caused Gorjuice to suffer financial harm; negotiated a lease between Gorjuice and the Talmos that was not in the interests of Gorjuice; failed to file the request for site plan approval with the Closter Planning Board that he had assured Gorjuice he would pursue; failed to disclose to Gorjuice that he would be representing the Talmos in the sale of the very parking lot that Gorjuice understood was a part of the property it was leasing from the Talmos; failed to advise Gorjuice of its rights and remedies against the Talmos, such as termination of the lease, after the Talmos sold the parking lot; and committed numerous violations of the Rules of Professional Conduct.

The second and third counts of the Watkins/Talmos complaint pertained to the Talmos' false statement concealing their relationship with Watkins; the fourth count alleged that the Talmos misrepresented the condition of the building by concealing the poor condition of the basement and roof; and

the sixth count sought return of the security deposit. The fifth count, which alleged that the Talmos illegally locked Gorjuice out of the property, provided as follows:

31. On or about April 11, 2001, Warren Talmo, property manager of ... 40 Homans Avenue, Closter, New Jersey ... on behalf of the Talmos, entered the Closter Property. At the time, the father of Ms. Kang was at the Closter Property waiting for insurance adjusters....

32. Warren Talmo forcibly removed Ms. Kang's father from the Closter Property and then changed the locks.... Since that time, the Talmos have denied Plaintiff access to the Closter Property and Plaintiff's personal property contained therein.

33. Plaintiff has made attempts to gain access ... in order to recover the personal property which is being improperly detained by the Talmos. The Talmos have denied Plaintiff access ... and [Plaintiff] has been unable to recover its personal property.

34. Upon information and belief, the Talmos have removed all of Plaintiff's personal property from the Closter Property, including but not limited to, all corporate books and records, machinery, equipment and other assets, including jewelry.

35. Despite due demand, the Talmos have failed to turn over possession of Plaintiff's property.

*7 36. As a result of the Talmos' actions, Plaintiff has suffered damages.

A few weeks after filing its complaint against Watkins and the Talmos, Gorjuice settled its insurance claim with Zurich concerning the flooding of the basement. In exchange for payment of \$152,000 from Zurich, Kang, as president of Gorjuice, signed a proof of loss in which she agreed that "the whole loss and damage" was \$152,000. She acknowledged at her later deposition that a portion of that amount was reimbursement for the "business loss" Gorjuice had incurred.

On September 26, 2002, the Talmos filed a bankruptcy petition in the District of Nevada. Although Gorjuice retained Nevada counsel to represent its interests in the bankruptcy proceeding, ultimately Gorjuice filed no objection to the petition, and on September 15, 2003, the Bankruptcy Court granted the Talmos bankruptcy, thereby discharging any and all claims Gorjuice had against them. Shortly thereafter,

Gorjuice dismissed the portion of its complaint directed against the Talmos without prejudice.²


On April 11, 2006, Gorjuice settled its malpractice case against Watkins for the sum of \$250,000, and signed a general release, which stated:

It is expressly understood and agreed that this release extends only to Watkins and his carrier with respect to the claim against Watkins asserted in this lawsuit [under Docket No. BER-L-6072-01] and to no other person, party or entity.

We now describe the malpractice action Kang and Gorjuice instituted against De Luca and OH & D. Their March 23, 2007 complaint alleges that De Luca and OH & D breached their duty of care by not obtaining immediate injunctive relief to gain reentry into the building to permit plaintiffs to retrieve their property, or to prohibit the Talmos from discarding or selling it. They alleged that the lost property included computer equipment, commercial furniture, business records, "a vast library of educational materials [including] over 3,000 research-related books and internet content being ... developed both for Computer World and for outside providers," materials for Kang's doctoral thesis and Kang's jewelry and antiques. Although Kang was not specifically named as a client in the retainer agreement Gorjuice signed with De Luca, Kang maintained that "De Luca had an implied attorney-client and contractual relationship" with her.

In addition to plaintiffs' claim for damages resulting from the loss of the personal and corporate property that remained in the building, Gorjuice also sought damages for lost profits. In particular, Gorjuice asserted that because De Luca failed to secure Gorjuice's access to the building, Gorjuice was unable to retrieve from the premises the educational materials that were to be provided pursuant to Gorjuice's contract with a Korean company, known as Digital IMI, Inc. (Digital). Pursuant to that contract, Gorjuice was responsible for forwarding curriculum materials to Digital no later than April 1, 2001, which was prior to the flooding of the premises and prior to the alleged illegal lockout. Gorjuice never provided any educational materials to Digital.

*8 Even though Gorjuice's relationship with Digital never proceeded past the signing of the contract documents, Gorjuice maintained it was entitled to damages for lost profits, and presented an expert report from a certified public accountant assessing Gorjuice's lost profits at \$6,411,000. The expert also concluded that Gorjuice's lost profits from Gorjuice's regular business, unrelated to Digital, was an additional \$1,671,000.

After the completion of discovery, defendants moved for summary judgment, arguing they were entitled to judgment as a matter of law pursuant to *Puder v. Buechel*, *supra*. They argued that the *Puder* doctrine establishes that a client, after entering into a settlement agreement for less than a claim is purportedly worth, may not attempt to recoup the difference by filing a legal malpractice action against his or her attorney on the theory that the attorney's malpractice resulted in a less favorable settlement.  *Puder*, *supra*, 183 N.J. at 438-43. Plaintiffs cross-moved for partial summary judgment on liability, supporting their liability argument with an expert report alleging that De Luca deviated from the applicable duty of care he owed to Gorjuice and Kang.

In a written decision and order of April 15, 2009, the judge granted summary judgment to defendants, and denied plaintiffs' cross-motion. The court reasoned:


Plaintiffs' current counsel settled the Watkins/Talmos litigation and certainly should have been aware of any possible malpractice claim against Defendants prior to that settlement. The damages requested in the present action are the very same damages asserted in the underlying action against Watkins and the Talmos. Therefore, Plaintiffs seek, after settling one legal malpractice suit arising out of the same lease agreement, to recover in a second legal malpractice suit for the same damages to personal property recovered in the first suit. Pursuant to the Entire Controversy Doctrine and *Rule 4:28-1*, mandatory joinder, the Court will not provide a double recovery for Plaintiffs.

Moreover, like *Puder*, the Court is presented here with a plaintiff who is seeking to profit from litigation positions that are clearly inconsistent and uttered to obtain judicial advantage. If plaintiff was dissatisfied with the payouts they received for their personal property under the Watkins/Talmos action or the Zurich insurance proceeds, then plaintiffs should have addressed such issues at the onset of those actions. Therefore, under *Puder*, Plaintiffs

are precluded from bringing the present claims against defendants. Plaintiffs were free to join the defendants in the previous action but they chose not to join them. Furthermore, under the doctrine of judicial estoppel, plaintiffs are prevented from asserting the damage claims against Watkins and the Talmos in one suit and asserting the same claims against [OH & D] and De Luca in another action.


On appeal, plaintiffs raise the following claims: 1) the trial court misapplied the summary judgment standard by failing to construe the facts in the light most favorable to them as the non-moving parties, and by ignoring the genuine issues of material fact that were present in the record; 2) even if no genuine issues of material fact exist, the grant of summary judgment was inappropriate because neither the *Puder* doctrine, judicial estoppel nor the entire controversy doctrine, upon which the judge relied, entitled defendants to judgment; and 3) the judge erred by denying plaintiffs' cross-motion for summary judgment on liability because the proofs established that defendants were negligent as a matter of law.

II.

*9 We review the trial court's grant of summary judgment de novo.  *Prudential Prop. & Cas. Ins. Co. v. Boylan*, 307 N.J. Super. 162, 167 (App.Div.), *certif. denied*, 154 N.J. 608 (1998). Employing the same standard the trial court uses, *ibid.*, we review the record to determine whether there are material factual disputes and, if not, whether the undisputed facts viewed in the light most favorable to plaintiff nonetheless entitle defendant to judgment as a matter of law.


 *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 540 (1995).

In point one, plaintiffs maintain that the judge misapplied the *Brill* standard because, rather than construe the facts in the light most favorable to them as the party opposing the motion, the judge instead adopted a version of the facts consistent only with defendants' version of the events, ignoring evidence to the contrary. Gorjuice points to a portion of the judge's opinion in which he specifically found that defendants successfully negotiated for Gorjuice "to have access to the [building]." In so finding, the judge ignored plaintiffs' assertion in their verified complaint that De Luca never negotiated access to the premises prior to the disposal of their property by the Talmos, and that not until November

7, 2001, when the new owners took over, were they permitted to enter the building, but by then all their property was already gone. Unquestionably, there was a sharp dispute on this issue, and the *Brill* standard does not authorize a judge to adopt the moving party's version of the facts. Instead, it requires the opposite, namely, that the judge construe the facts in the light most favorable to the party opposing the motion.  *Brill, supra*, 142 N.J. at 539-41.

Even though we agree with plaintiffs' argument that the judge misapplied the *Brill* standard, this error does not entitle plaintiffs to reversal of the order granting summary judgment. We reach this conclusion because the judge's erroneous adoption of defendants' claim that they successfully negotiated access to the building had no bearing on the ultimate grant of summary judgment. Stated differently, the judge did not grant defendants' motion because he concluded that defendants negotiated access to the building and therefore were not negligent. Instead, the judge granted the motion based upon the *Puder* doctrine, the entire controversy doctrine and judicial estoppel. We turn now to an analysis of those issues.

III.

In point two, plaintiffs maintain that even if there were no genuine issues of material fact, the judge's legal conclusions were wrong. As we have already noted, relying on *Puder*, the judge held that Gorjuice was “seeking to profit from litigation positions that were clearly inconsistent and uttered to obtain judicial advantage,” and that if they were “dissatisfied with the payouts they received for their personal property under the Watkins/Talmos [litigation] or the Zurich proceeds,” they should have addressed those issues then. Therefore, the judge held that plaintiffs were precluded, under  *Puder, supra*, 183 N.J. at 438-43, from bringing a malpractice claim against their attorneys.

A. The *Puder* doctrine

*10 In *Puder*, the Supreme Court was presented with the question of whether a matrimonial litigant should be permitted to sue her first attorney for malpractice after she retained new counsel and settled her case on terms virtually identical to those negotiated by the first attorney. *Puder, supra*, 182 N.J. at 432-33. The client stated on the record that the second settlement was “acceptable” and a “fair



compromise of the issues” in her matrimonial case, even though she believed otherwise and had expressly reserved the right to continue her malpractice case against her former attorney. *Id.* at 433-35. The Court held that under those circumstances the plaintiff was barred from suing her first attorney for malpractice because she was bound by her statement under oath to the judge approving the divorce settlement that the settlement was “acceptable” and “fair.” *Id.* at 437. The Court noted that “a client should not be permitted to settle a case for less than it is worth ... and then seek to recoup the difference in a malpractice action against [the] attorney.” *Id.* at 443.


We agree with plaintiffs' argument that *Puder* is entirely inapplicable because Gorjuice has never contended that it was the malpractice of De Luca and his firm that caused them to accept an insufficient settlement from Zurich and Watkins. Indeed, De Luca and his firm were not involved either in the settlement of the Watkins/Talmos litigation or the resolution of the Gorjuice insurance claim. Nothing in *Puder* prevents Gorjuice from asserting a malpractice claim against De Luca that does not arise out of legal services provided in connection with the settlement of those prior matters.


Finally, and of greater importance, the equitable concerns implicated in *Puder* are not present here. Unlike the plaintiffs in *Puder*, Gorjuice made no representations to any court that they were satisfied with the settlement in the Watkins/Talmos litigation, or that it was “fair” or “adequate.” We thus conclude that the trial court erred when it relied upon the *Puder* doctrine in dismissing plaintiffs' complaint.

B. Judicial estoppel


As we have noted, the judge also relied upon the doctrine of judicial estoppel, holding that plaintiffs were prevented from asserting damages against Watkins and the Talmos in one suit, and asserting the same damages against defendants in the present action. Gorjuice and Kang contend that judicial estoppel was inapplicable because the damages they claimed and recovered in the malpractice action against Watkins were different from those damages claimed against De Luca and OH & D.

“The purpose of the judicial estoppel doctrine is to protect ‘the integrity of the judicial process.’”  *Kimball Int'l, Inc. v. Northfield Metal Prods.*, 334 N.J.Super. 596, 606 (App.Div.2000) (quoting  *Cummings v. Bahr*, 295 N.J.Super. 374, 387 (App.Div.1996)), *certif. denied*, 167

N.J. 88 (2001). It operates to “bar a party to a legal proceeding from arguing a position inconsistent with one previously asserted.”  *Cummings, supra*, 295 *N.J.Super.* at 385 (internal quotation marks and citation omitted).

*11 “Because the doctrine of judicial estoppel only applies when a court has accepted a party’s position, a party ordinarily is not barred from taking an inconsistent position in successive litigation if the first action was concluded by a settlement.”  *Kimball, supra*, 334 *N.J.Super.* at 607 (citation omitted). See also Pressler & Verniero, *Current N.J. Court Rules*, comment 15 .2.1 on R. 4:5-4 (2010) (“[A] party will not be deemed to have prevailed in asserting a litigation position and hence will not be barred by judicial estoppel if the action in which that position was taken was settled without judicial determination.”).




Applying these principles, we conclude that the trial judge’s reliance on judicial estoppel was error for several reasons. First, none of plaintiffs’ positions or arguments were decided by a court in the Watkins/ Talmos litigation. Instead, the matter was settled without judicial determination as to Watkins, and dismissed, without judicial determination, as to the Talmos and Talmo Real Estate Partnership.

Second, the position plaintiffs have asserted against De Luca and his firm is not contrary to the position Gorjuice took against the Talmos and Talmos Real Estate Partnership in the Watkins/Talmos litigation. Plaintiffs’ attempt to recover from both the Talmos and defendants does not establish that the positions plaintiffs took in the two lawsuits are contrary to each other. Accordingly, allowing plaintiffs to sue De Luca and his firm, after they took a certain position in the Watkins/ Talmos litigation, would not result in a miscarriage of justice or otherwise jeopardize the integrity of the judicial process, which is a required element of a judicial estoppel claim. See  *Kimball, supra*, 334 *N.J.Super.* at 606. We therefore conclude that the trial judge’s reliance on judicial estoppel in granting defendants’ summary judgment motion was error.



C. Entire controversy doctrine

We turn next to the trial judge’s conclusion that plaintiffs’ complaint against defendants was barred by the entire controversy doctrine, namely, they settled the Watkins/ Talmos litigation “and certainly should have been aware of any possible malpractice claim against defendants prior to that settlement.” The judge also reasoned that “[t]he damages

requested in the present action are the very same damages asserted in the underlying action against Watkins and the Talmos” and such “double recovery” is prohibited by the entire controversy doctrine.

The entire controversy doctrine compels litigants, at the risk of preclusion, to assert all claims in a single action.  *Prevratil v. Mohr*, 145 *N.J.* 180, 190 (1996). The reasons behind it are threefold: “(1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay.”  *DiTrollo v. Antiles*, 142 *N.J.* 253, 267 (1995) (citing  *Cogdell v. Hosp. Ctr. at Orange*, 116 *N.J.* 7, 15 (1989)).

*12 Defendants never raised the entire controversy doctrine in their answer to the verified complaint. Nor did they raise or argue the doctrine in their summary judgment motion. Indeed, they defended this case for nearly two years without raising or even mentioning the entire controversy doctrine. Rather, the entire controversy doctrine was raised, sua sponte, by the trial judge in his written opinion.

The entire controversy doctrine is an affirmative defense required to be pleaded by a party or otherwise timely raised, and the failure to do so results in a waiver of any entire controversy defense to which that party would otherwise have been entitled. See  *Brown v. Brown*, 208 *N.J.Super.* 372, 384 (App.Div.1986). See also *Aikens v. Schmidt*, 329 *N.J.Super.* 335, 339-40 (App.Div.2000); *Kopin v. Orange Prods., Inc.*, 297 *N.J.Super.* 353, 375-76 (App.Div.), certif. denied, 149 *N.J.* 409 (1997)). Consequently, having never raised the defense, defendants waived it,  *Brown, supra*, 208 *N.J.Super.* at 384, and because defendants waived any right to rely upon the entire controversy doctrine, the judge erred by applying that doctrine in defendants’ favor.

We have thus concluded that the trial court improperly applied the *Brill* standard, and improperly relied upon the *Puder* doctrine, judicial estoppel, and the entire controversy doctrine. Nonetheless, for the reasons we shall shortly explain, we do not accept plaintiffs’ argument that the summary judgment order should be reversed in its entirety. In particular, we conclude that plaintiffs’ claim for damages arising from the disposal of Kang’s personal, and Gorjuice’s corporate, property should have survived defendants’ motion,

as plaintiffs raised a genuine issue of material fact and their claims related to the disposal of their property were not barred by any of the doctrines upon which the judge relied. We therefore reverse the grant of summary judgment in relation to the damages Kang and Gorjuice asserted from the disposal of their property. We reach a different result on plaintiffs' remaining claims, which we discuss below.

IV.


In light of his reliance on the *Puder* doctrine, judicial estoppel and the entire controversy doctrine, the judge dismissed the verified complaint in its entirety. He therefore did not specifically address Gorjuice's claims for lost profits. On appeal, defendants argue that even if the judge's reasons for dismissing Gorjuice's lost profits claims were incorrect, there are other, correct, reasons for sustaining the result the judge reached. Defendants' argument is two-fold: 1) the alleged malpractice was not a proximate cause of Gorjuice's failure, as the company was already failing before defendants became involved; and 2) Gorjuice's claim for economic loss is speculative and therefore barred under the "new business rule."³

We turn first to defendants' causation argument, that any alleged malpractice was not a proximate cause of the failure of Gorjuice. They maintain that Gorjuice was forced to shut down its business due to the flooding in the basement and the numerous significant restrictions imposed by the Closter Planning Board. As to the latter, defendants point to Gorjuice's inability to obtain site plan approvals on the terms and conditions necessary, and to Kang's statement to the Talmos that because of the parking restrictions imposed by the Closter Planning Board, she did not believe she was able to develop a profitable business plan for Gorjuice at the Talmos' building, and it was impossible for Gorjuice to "survive" there. Defendants also argue that as early as April 16, 2001, prior to the execution of the retainer agreement with OH & D, Kang advised them that Gorjuice was "no longer interested in operating its business at the [premises], since the conditions at the [premises], including a recent flood, ha[d] made the [premises] unusable for Gorjuice's intended purposes."

*13 Defendants also point to evidence in the record showing Gorjuice ceased its operations after the April 3, 2001 flooding of the basement, namely, Kang's deposition testimony that Gorjuice's last day of operations was April 3, 2001, the day of the flood. Thus, defendants maintain, and we agree,

Gorjuice was not open for business at the time of the April 11, 2001 lockout, and it was therefore not the lockout, or defendants' purported lack of response to the lockout, that caused Gorjuice to cease business operations.

We recognize that plaintiffs also maintain that they would have been able to reopen their operation after the flood if defendants had arranged for them to reenter the building to retrieve their property, and defendants' negligence was the cause, or at least a cause, of their inability to reopen their business in the Talmos' building. This claim lacks any support in the record. As a result of the April 3 flood, Gorjuice was not operating at the time of the lockout, and there is no evidence in the record that Gorjuice could have reopened for business between April 23, 2001 when the retainer agreement was signed, and May 1, 2001, when Gorjuice terminated its lease. Indeed, Gorjuice had admittedly removed much of its property from the premises and placed it into storage prior to the lockout. There is no evidence that Gorjuice intended, or was even able, to reopen for business in the Talmos' building prior to its voluntary termination of its lease. We therefore agree with defendants' argument that Gorjuice failed to raise a genuine issue of material fact on the question of causation.

We turn to defendants' second argument, namely, they were entitled to summary judgment on Gorjuice's claim for future lost profits because any alleged damages are purely speculative and prevented under the "new business rule." Under the "new business rule," prospective profits of a new business are considered too remote and speculative to meet the legal standard of reasonable certainty.  *Seaman v. U.S. Steel Corp.*, 166 N.J.Super. 467, 468-75 (App.Div.), certif. denied, 81 N.J. 282 (1979). In *Seaman*, the plaintiffs operated a marine business, specializing in marine salvage. *Id.* at 469. The plaintiffs sought to construct a 100-ton-capacity floating crane. *Ibid.* The plaintiff had purchased steel plates from the defendant to build it, but the plates were unacceptable for the plaintiff's stated purpose. *Id.* at 469-70. The plaintiff sued for lost profits, *id.* at 470, identified as "resulting from their inability to bid on an Army contract which required the use of the crane and, alternatively, loss of rental value of the floating crane at \$25,000 a month." *Id.* at 472.

We held that the jury award in favor of the plaintiffs was not supported by the evidence, explaining that the plaintiffs had

never operated a crane of this size in their business, nor had they ever rented such a crane to others. It was to be a new operation in their business, without prior experience

as to the floating crane's potential as profit-producing equipment.... It is where it is certain that damages have resulted and the evidence affords a basis for estimating the damages with some degree of certainty that recovery is allowed.... We conclude that here ... the alleged loss of rental value was ... incorrectly considered by the jury ..., because it was not shown that plaintiffs suffered any loss of profits or that they had previously engaged in the floating-crane rental business and, finally, it was not shown that they had lost any opportunity to rent the floating crane.

*14 [*Id.* at 475.]

We reached the same result in [Bell Atlantic Networks Services, Inc. v. P.M. Video Corp.](#), 322 N.J.Super. 74, 101 (App.Div.) (internal quotation marks and citation omitted), *certif. denied*, 162 N.J. 130 (1999), when we held that alleged lost profits that are dependent on “entry into unknown ... markets, or the success of a new and unproved enterprise, cannot be recovered” because the business venture is so “risky” as to “preclude recovery of lost profits in retrospect.”

Gorjuice was a new company which, prior to the lockout, had been in operation for only two and one-half years, even if we include its predecessor, Edream. Gorjuice's claims to the contrary notwithstanding, Edream's tax returns demonstrate that Edream's expenses exceeded its revenue, and it had no taxable income in either 1998 or 1999. From the outset of its own operation in January 2000, Gorjuice struggled to pay its rent. The combination of the flood, and the restrictions imposed by the Planning Board, had made it, in Kang's own words, “impossible to survive.” Gorjuice was therefore “a new and unproved enterprise.” [Bell Atlantic](#), *supra*, 322 N.J.Super. at 101.

Gorjuice's alleged damages from its intended joint venture with Digital are likewise too remote and speculative to satisfy the legal standard of “reasonable certainty” established in *Seaman* and *Bell Atlantic*. Gorjuice concedes that its joint venture with Digital never progressed past the execution of the initial contract. The record also demonstrates that Gorjuice never provided Digital with any of the educational content that the contract with Digital contemplated, and there is no evidence that Gorjuice ever earned any profits under the joint venture agreement. The undertaking was a start-up business with no operational history.

Moreover, the record demonstrates that Gorjuice had actually defaulted under its agreement with Digital prior to the lockout

or defendants' alleged malpractice. Pursuant to the joint venture agreement, Gorjuice was to provide Digital with the materials “beginning with the second quarter of year 2001”; and Digital's membership service under the agreement “beg[an] from the second quarter of the year 2001.” However, Gorjuice failed to provide the promised materials to Digital on or before April 1, 2001.

We thus conclude that Gorjuice's alleged lost profits are too remote and speculative to satisfy the damages threshold established by the caselaw. We affirm the grant of summary judgment dismissing Gorjuice's complaint for lost profits, although we have done so on grounds different from those articulated by the trial judge. We affirm judgments, not reasons. [Isko v. Planning Bd. of Tp. of Livingston](#), 51 N.J. 162, 175 (1968).

V.

We turn next to plaintiffs' argument that the judge erred when he dismissed their punitive damages claim. “The purpose of punitive damages is to punish a wrongdoer and deter others.” [Gennari v. Weichert Co. Realtors](#), 148 N.J. 582, 610 (1997). “To be subject to liability for punitive damages, a defendant's conduct must be willfully and wantonly reckless or malicious.” *Ibid.* Indeed, in [Nappe v. Anshelewitz, Barr, Ansell & Bonello](#), 97 N.J. 37, 49 (1984), the Supreme Court explained that to warrant the imposition of punitive damages, “the defendant's conduct must have been wantonly reckless or malicious. There must be an intentional wrongdoing in the sense of an ‘evil-minded act’ or an act accompanied by a wanton and willful disregard of the rights of another.”




*15 “Mere negligence, no matter how gross, will not suffice as a basis for punitive damages.” [Smith v. Whitaker](#), 160 N.J. 221, 242 (1999). “Rather, [a] plaintiff must prove by clear and convincing evidence a ‘deliberate act or omission with knowledge of a high degree of probability of harm and reckless indifference to the consequences.’ “ *Ibid.* (quoting [Berg v. Reaction Motors Div.](#), 37 N.J. 396, 414 (1962)).


Plaintiffs have alleged nothing remotely resembling wanton, reckless or malicious acts on the part of defendants sufficient to warrant the imposition of punitive damages. At best, defendants' actions were merely negligent. The failure to

seek immediate injunctive relief after the lockout is, without more, an entirely insufficient basis for an award of punitive damages. We thus affirm the dismissal of plaintiffs' punitive damages claim.

VI.

Last, we turn to plaintiffs' contention that the judge committed an error of law when he denied their cross-motion for partial summary judgment on liability. Plaintiffs argue the evidence overwhelmingly demonstrated that defendants breached the duty of care arising from their attorney-client relationship with plaintiffs by failing to recognize and weigh the various remedies available in order to retrieve plaintiffs' wrongfully distrained property, which proximately caused their damages.

“The requisite elements of a cause of action for legal malpractice are: (1) the existence of an attorney-client relationship creating a duty of care upon the attorney; (2) the breach of that duty; and (3) proximate causation.”  *Conklin v. Hanoach Weisman*, 145 N.J. 395, 416 (1996) (quoting  *Lovett v. Estate of Lovett*, 250 N.J.Super. 79, 87 (Ch. Div.1991)). “Proximate cause is a factual issue, to be resolved by the jury...”  *Scafidi v. Seiler*, 119 N.J. 93, 101 (1990). As we have already noted, we do not agree with the judge's

conclusions respecting the *Puder* doctrine, judicial estoppel and the entire controversy doctrine. Nonetheless, we conclude that the judge was correct when he denied plaintiffs' cross-motion. Plaintiffs were not entitled to summary judgment on liability because the issue of proximate cause could not be decided by motion, as it is a question of fact for a jury to decide. *Ibid.* In particular, there was a genuine issue of material fact on the question of whether De Luca advised Kang's husband, A.J. Chon, in late June 2001 that Gorjuice and Kang could reenter the premises to retrieve their property. There was also a question of fact based upon Warren Talmo's testimony that plaintiffs had already removed all of their property before the lockout even occurred. Accordingly, genuine issues of material fact present in the record required the judge to deny plaintiffs' cross-motion on liability.  *Brill, supra*, 142 N.J. at 540. We thus affirm the denial of plaintiffs' cross-motion.

VII.

Affirmed in part, reversed in part, and remanded.

All Citations

Not Reported in A.3d, 2011 WL 92957

Footnotes

- 1 Even though Gorjuice argues that Edream was “relatively successful in its nascent years [1998 and 1999] earning revenues totaling more than \$150,000,” Edream's tax return for 1998 shows taxable income of “-\$47,184.” Its 1999 income tax return shows taxable income of “-\$10,679.”
- 2 By then, De Luca was no longer representing Gorjuice. A different firm had been retained.
- 3 Defendants also contend that summary judgment was appropriate because: (1) plaintiffs lacked the requisite expert testimony as the report of their liability expert constituted an impermissible net opinion; (2) defendants' decision to negotiate with the Talmos was a legitimate exercise of legal judgment as a matter of law; and (3) by subrogating its rights to Zurich, Gorjuice lacked standing. In light of our conclusion that any economic loss was barred by the “new business rule,” we need not address these additional arguments.

EXHIBIT S

CARON, CONSTANTS & WILSON
201 Route 17 North, 2nd Floor
Rutherford, New Jersey 07070
(201) 507-3710
Attorneys for Third Party Defendant
Fireman's Fund Insurance Company

FILED

JAN 13 2000

CHARLES J. WILSON
J.S.C.

CARL PANDELO,

Third Party Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO: BER-L-516-94

vs.

CIVIL ACTION

FIREMAN'S FUND INSURANCE
COMPANY,

ORDER OF DISMISSAL WITHOUT
PREJUDICE

Third Party Defendant.

Third Party Plaintiff Carl Pandelo and Third Party Defendant Fireman's Fund Insurance Company ("FFIC") hereby agree as follows:

Plaintiff's Third Party Complaint in this action against Third Party Defendant FFIC is hereby dismissed without prejudice and without costs to either party subject to the following conditions:

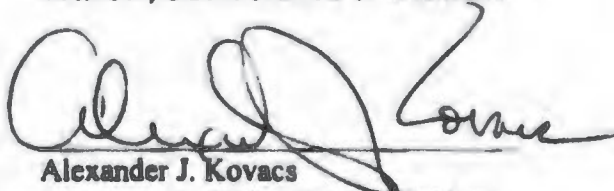
- 1. Carl Pandelo will refile the exact same Third Party Complaint with this court within 20 days of receipt of the Order signed by the court.**
- 2. FFIC's attorney, Alexander J. Kovacs, will accept service in lieu of personal service on FFIC.**
- 3. FFIC will file its Answer to the newly filed Third Party Complaint within 20 days**

of receipt of the refiled Complaint.

at 8:30 a.m.

4. The parties will meet with the court on March 2, 2000 to discuss outstanding issues, to set a motion schedule and to set a trial date.

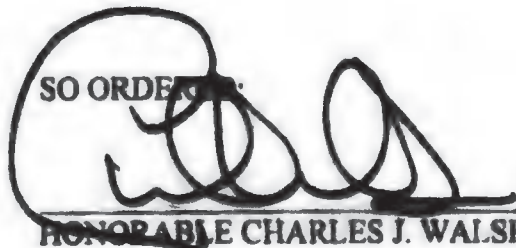
CARON, CONSTANTS & WILSON



Alexander J. Kovacs
Attorneys for Third Party Defendant,
Fireman's Fund Insurance Company

DATED: January 13, 2000

SO ORDERED:



HONORABLE CHARLES J. WALSH, J.S.C.

L:\1974\Pleading StipDis 01-12-00.doc

EXHIBIT T



MarKorLaw LLC
COUNSELLORS AT LAW

Margaret T. Korgul, Esq. (ID# 025272004)

One Bridge Plaza North, Suite 275

Fort Lee, NJ 07024

P: (973) 986-0372

mkorgul@markorlaw.com

www.markorlaw.com

Attorney for Defendant Fairlawn

Congregation of Jehovah's Witnesses

CORINNE PANDELO

Plaintiff,

vs.

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

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

DOCKET NO.: MID-L-006543-21

Civil Action

CERTIFICATION OF SERVICE

I, Margaret T. Korgul, hereby certify as follows:

On June 29, 2022, I caused to be served via electronic filing and service through e-Courts and e-mail on all counsel of record the following: (1) Defendant Fairlawn Congregation of Jehovah's Witnesses' Answer to Plaintiff's Complaint and Affirmative Defenses.

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: Fort Lee, New Jersey

MARKORLAW LLC

By: /s/ Margaret T. Korgul

Margaret T. Korgul (Atty. ID: 025272004)

One Bridge Plaza North, Suite 275

Fort Lee, New Jersey 07024

P: (973) 986-0372

Email: mkorgul@markorlaw.com

Attorney for Defendant Fairlawn

Congregation of Jehovah's Witnesses

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-005508-21

Case Caption: PANDELO CORINNE VS THE GOVERNING
BODY O F JEHOVA

Case Initiation Date: 08/18/2021

Attorney Name: MARGARET T KORGUL

Firm Name: MARKORLAW LLC

Address: ONE BRIDGE PLAZA NORTH STE 275
FORT LEE NJ 07024

Phone: 9739860372

Name of Party: DEFENDANT : FAIRLAWN
CONGREGATION OF JEHOV

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: PERSONAL INJURY

Document Type: Answer W/Jury Demand

Jury Demand: YES - 12 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: CORINNE PANDELO? YES
Plaintiff's date of birth: 06/14/1974
Est. date of first incident of abuse: 01/01/1979

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

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)

06/29/2022
Dated

/s/ MARGARET T KORGUL
Signed



MarKorLaw LLC
COUNSELLORS AT LAW

Margaret T. Korgul, Esq. (ID# 025272004)
One Bridge Plaza North, Suite 275
Fort Lee, NJ 07024
P: (973) 986-0372
mkorgul@markorlaw.com
www.markorlaw.com

*Attorney for Defendant Fairlawn
Congregation of Jehovah’s Witnesses*

CORINNE PANDELO

Plaintiff,

vs.

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

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

DOCKET NO.: BER-L-005508-21

Civil Action

**DEFENDANT FAIRLAWN
CONGREGATION OF JEHOVAH’S
WITNESSES’ ANSWER TO
PLAINTIFF’S COMPLAINT AND
AFFIRMATIVE DEFENSES**

Defendant Fairlawn Congregation of Jehovah’s Witnesses (the “Congregation”) by their counsel Margaret Korgul, Esq., of MarKorLaw LLC, as and for its answer to the Verified Complaint, herein states upon information and belief as follows:

ANSWERING AS TO INTRODUCTION AND MATTER BEFORE THE COURT

1. The Congregation denies the allegations contained in Paragraph 1.
2. The Congregation denies the allegations contained in Paragraph 2 in the form alleged, and refers all questions of law and fact to this Honorable Court and jury.

ANSWERING AS TO PARTIES

3. As Paragraph 3 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 3 and leaves Plaintiff to her proofs.

4. As Paragraph 4 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 4 and leaves Plaintiff to her proofs.

5. As Paragraph 5 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 5 and leaves Plaintiff to her proofs.

6. As Paragraph 6 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 6 and leaves Plaintiff to her proofs.

7. The Congregation denies the allegations contained in Paragraph 7.

8. The Congregation denies the allegations contained in Paragraph 8 except admits that it operates in Fairlawn, New Jersey.

9. The Congregation denies the allegations in Paragraph 9.

10. The Congregation denies the allegations in Paragraph 10, except admits that it is a religious organization.

11. The Congregation denies the allegations in Paragraph 11.

12. As Paragraph 12 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 12 and leaves Plaintiff to her proofs.

13. As Paragraph 13 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 13 and leaves Plaintiff to her proofs.

14. As Paragraph 14 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 14 and leaves Plaintiff to her proofs.

15. As Paragraph 15 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 15 and leaves Plaintiff to her proofs.

16. As Paragraph 16 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 16 and leaves Plaintiff to her proofs.

17. As Paragraph 17 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 17 and leaves Plaintiff to her proofs.

18. As Paragraph 18 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 18 and leaves Plaintiff to her proofs.

19. As Paragraph 19 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 19 and leaves Plaintiff to her proofs.

20. As Paragraph 20 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 20 and leaves Plaintiff to her proofs.

21. As Paragraph 21 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the

extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 21 and leaves Plaintiff to her proofs.

22. As Paragraph 22 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 22 and leaves Plaintiff to her proofs.

23. As Paragraph 23 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 23 and leaves Plaintiff to her proofs.

24. As Paragraph 24 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 24 and leaves Plaintiff to her proofs.

25. As Paragraph 25 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 25 and leaves Plaintiff to her proofs.

26. As Paragraph 26 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 26 and leaves Plaintiff to her proofs.

27. As Paragraph 27 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 27 and leaves Plaintiff to her proofs.

28. As Paragraph 28 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 28 and leaves Plaintiff to her proofs.

29. As Paragraph 29 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 29 and leaves Plaintiff to her proofs.

30. As Paragraph 30 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 30 and leaves Plaintiff to her proofs.

31. As Paragraph 31 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 31 and leaves Plaintiff to her proofs.

32. As Paragraph 32 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the

extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 32 and leaves Plaintiff to her proofs.

33. As Paragraph 33 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 33 and leaves Plaintiff to her proofs.

34. As Paragraph 34 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 34 and leaves Plaintiff to her proofs.

ANSWERING AS TO FACTUAL BACKGROUND

35. As Paragraph 35 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 35 and leaves Plaintiff to her proofs.

36. As Paragraph 36 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 36 and leaves Plaintiff to her proofs.

37. As Paragraph 37 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 37 and leaves Plaintiff to her proofs.

38. As Paragraph 38 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 38 and leaves Plaintiff to her proofs.

39. As Paragraph 39 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 39 and leaves Plaintiff to her proofs.

40. As Paragraph 40 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 40 and leaves Plaintiff to her proofs.

41. As Paragraph 41 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 41 and leaves Plaintiff to her proofs.

42. As Paragraph 42 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 42 and leaves Plaintiff to her proofs.

43. As Paragraph 43 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the

extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 43 and leaves Plaintiff to her proofs.

44. As Paragraph 44 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 44 and leaves Plaintiff to her proofs.

45. As Paragraph 45 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 45 and leaves Plaintiff to her proofs.

46. As Paragraph 46 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 46 and leaves Plaintiff to her proofs.

47. As Paragraph 47 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 47 and leaves Plaintiff to her proofs.

48. As Paragraph 48 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 48 and leaves Plaintiff to her proofs.

49. As Paragraph 49 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 49 and leaves Plaintiff to her proofs.

50. As Paragraph 50 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 50 and leaves Plaintiff to her proofs.

51. As Paragraph 51 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 51 and leaves Plaintiff to her proofs.

52. As Paragraph 52 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 52 and leaves Plaintiff to her proofs.

53. As Paragraph 53 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 53 and leaves Plaintiff to her proofs.

54. As Paragraph 54 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the

extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 54 and leaves Plaintiff to her proofs.

55. As Paragraph 55 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 55 and leaves Plaintiff to her proofs.

56. The Congregation has no knowledge or information as to the allegations contained in Paragraph 56, therefore it denies the allegations in this Paragraph and leaves Plaintiff to her proofs.

57. As Paragraph 57 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 57 and leaves Plaintiff to her proofs.

ANSWERING AS TO JURISDICTION

58. The Congregation denies the allegations contained in Paragraph 58 in the form alleged, and refers all questions of law and fact to this Honorable Court and jury.

59. The Congregation denies the allegations contained in Paragraph 59 in the form alleged, and refers all questions of law and fact to this Honorable Court and jury.

60. The Congregation denies the allegations contained in Paragraph 60 in the form alleged, and refers all questions of law and fact to this Honorable Court and jury.

ANSWERING AS TO CAUSES OF ACTION AGAINST DEFENDANTS

ANSWERING AS TO COUNT I: NEGLIGENCE AND/OR GROSS

NEGLIGENCE

61. The Congregation repeats and reiterates each admission or denial as though fully set forth herein.

62. The Congregation denies the allegations in Paragraph 62.

63. The Congregation denies the allegations in Paragraph 63.

64. The Congregation denies the allegations in Paragraph 64.

65. The Congregation denies the allegations in Paragraph 65.

66. The Congregation denies the allegations in Paragraph 66.

67. The Congregation denies the allegations in Paragraph 67.

68. The Congregation denies the allegations in Paragraph 68.

69. The Congregation denies the allegations in Paragraph 69.

70. The Congregation denies the allegations in Paragraph 70.

71. The Congregation denies the allegations in Paragraph 71.

72. The Congregation denies the allegations in Paragraph 72.

73. The Congregation denies the allegations in Paragraph 73.

ANSWERING AS TO COUNT II: NEGLIGENT AND/OR GROSSLY

NEGLIGENT SUPERVISION

74. The Congregation repeats and reiterates each admission or denial as though fully set forth herein.

75. As Paragraph 75 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 75 and leaves Plaintiff to her proofs.

76. The Congregation denies the allegations in Paragraph 76.

77. The Congregation denies the allegations in Paragraph 77.

78. The Congregation denies the allegations in Paragraph 78.

79. The Congregation denies the allegations in Paragraph 79.

80. As Paragraph 80 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 80 and leaves Plaintiff to her proofs.

81. The Congregation denies the allegations in Paragraph 81.

82. The Congregation denies the allegations in Paragraph 82.

83. The Congregation denies the allegations in Paragraph 83.

84. The Congregation denies the allegations in Paragraph 84.

85. The Congregation denies the allegations in Paragraph 85.

86. As Paragraph 86 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 86 and leaves Plaintiff to her proofs.

87. As Paragraph 87 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 87 and leaves Plaintiff to her proofs.

88. As Paragraph 88 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the

extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 88 and leaves Plaintiff to her proofs.

89. As Paragraph 89 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 89 and leaves Plaintiff to her proofs.

90. As Paragraph 90 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 90 and leaves Plaintiff to her proofs.

91. As Paragraph 91 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 91 and leaves Plaintiff to her proofs.

92. As Paragraph 92 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 92 and leaves Plaintiff to her proofs.

93. As Paragraph 93 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 93 and leaves Plaintiff to her proofs.

94. As Paragraph 94 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 94 and leaves Plaintiff to her proofs.

95. As Paragraph 95 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 95 and leaves Plaintiff to her proofs.

96. As Paragraph 96 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 96 and leaves Plaintiff to her proofs.

97. As Paragraph 97 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 97 and leaves Plaintiff to her proofs.

98. As Paragraph 98 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 98 and leaves Plaintiff to her proofs.

99. As Paragraph 99 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the

extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 99 and leaves Plaintiff to her proofs.

100. As Paragraph 100 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 100 and leaves Plaintiff to her proofs.

101. As Paragraph 101 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 101 and leaves Plaintiff to her proofs.

102. As Paragraph 102 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 102 and leaves Plaintiff to her proofs.

103. As Paragraph 103 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 103 and leaves Plaintiff to her proofs.

104. As Paragraph 104 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 104 and leaves Plaintiff to her proofs.

105. As Paragraph 105 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 105 and leaves Plaintiff to her proofs.

106. As Paragraph 106 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 106 and leaves Plaintiff to her proofs.

107. As Paragraph 107 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 107 and leaves Plaintiff to her proofs.

108. As Paragraph 108 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 108 and leaves Plaintiff to her proofs.

109. As Paragraph 109 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 109 and leaves Plaintiff to her proofs.

110. As Paragraph 110 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 110 and leaves Plaintiff to her proofs.

111. As Paragraph 111 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 111 and leaves Plaintiff to her proofs.

112. As Paragraph 112 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 112 and leaves Plaintiff to her proofs.

113. As Paragraph 113 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 113 and leaves Plaintiff to her proofs.

114. As Paragraph 114 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 114 and leaves Plaintiff to her proofs.

115. As Paragraph 115 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 115 and leaves Plaintiff to her proofs.

116. As Paragraph 116 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 116 and leaves Plaintiff to her proofs.

117. As Paragraph 117 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 117 and leaves Plaintiff to her proofs.

118. As Paragraph 118 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 118 and leaves Plaintiff to her proofs.

119. As Paragraph 119 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 119 and leaves Plaintiff to her proofs.

120. As Paragraph 120 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 120 and leaves Plaintiff to her proofs.

121. As Paragraph 121 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 121 and leaves Plaintiff to her proofs.

122. As Paragraph 122 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 122 and leaves Plaintiff to her proofs.

123. As Paragraph 123 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 123 and leaves Plaintiff to her proofs.

124. As Paragraph 124 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 124 and leaves Plaintiff to her proofs.

125. As Paragraph 125 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 125 and leaves Plaintiff to her proofs.

126. As Paragraph 126 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 126 and leaves Plaintiff to her proofs.

127. As Paragraph 127 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 127 and leaves Plaintiff to her proofs.

128. As Paragraph 128 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 128 and leaves Plaintiff to her proofs.

129. As Paragraph 129 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 129 and leaves Plaintiff to her proofs.

130. As Paragraph 130 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 130 and leaves Plaintiff to her proofs.

131. As Paragraph 131 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 131 and leaves Plaintiff to her proofs.

132. As Paragraph 132 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 132 and leaves Plaintiff to her proofs.

133. As Paragraph 133 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 133 and leaves Plaintiff to her proofs.

134. As Paragraph 134 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 134 and leaves Plaintiff to her proofs.

135. As Paragraph 135 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 135 and leaves Plaintiff to her proofs.

136. As Paragraph 136 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 136 and leaves Plaintiff to her proofs.

137. As Paragraph 137 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 137 and leaves Plaintiff to her proofs.

138. As Paragraph 138 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 138 and leaves Plaintiff to her proofs.

139. As Paragraph 139 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 139 and leaves Plaintiff to her proofs.

140. As Paragraph 140 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 140 and leaves Plaintiff to her proofs.

141. As Paragraph 141 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 141 and leaves Plaintiff to her proofs.

142. As Paragraph 142 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 142 and leaves Plaintiff to her proofs.

143. As Paragraph 143 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 143 and leaves Plaintiff to her proofs.

144. As Paragraph 144 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 144 and leaves Plaintiff to her proofs.

145. As Paragraph 145 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 145 and leaves Plaintiff to her proofs.

146. As Paragraph 146 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 146 and leaves Plaintiff to her proofs.

147. As Paragraph 147 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 147 and leaves Plaintiff to her proofs.

148. As Paragraph 148 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 148 and leaves Plaintiff to her proofs.

149. As Paragraph 149 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 149 and leaves Plaintiff to her proofs.

150. As Paragraph 150 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 150 and leaves Plaintiff to her proofs.

151. As Paragraph 151 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 151 and leaves Plaintiff to her proofs.

152. As Paragraph 152 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 152 and leaves Plaintiff to her proofs.

153. As Paragraph 153 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 153 and leaves Plaintiff to her proofs.

154. As Paragraph 154 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 154 and leaves Plaintiff to her proofs.

155. As Paragraph 155 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 155 and leaves Plaintiff to her proofs.

156. As Paragraph 156 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 156 and leaves Plaintiff to her proofs.

157. As Paragraph 157 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 157 and leaves Plaintiff to her proofs.

158. As Paragraph 158 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 158 and leaves Plaintiff to her proofs.

159. As Paragraph 159 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 159 and leaves Plaintiff to her proofs.

160. As Paragraph 160 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 160 and leaves Plaintiff to her proofs.

161. As Paragraph 161 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 161 and leaves Plaintiff to her proofs.

162. As Paragraph 162 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 162 and leaves Plaintiff to her proofs.

163. As Paragraph 163 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 163 and leaves Plaintiff to her proofs.

164. As Paragraph 164 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 164 and leaves Plaintiff to her proofs.

165. As Paragraph 165 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 165 and leaves Plaintiff to her proofs.

166. As Paragraph 166 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 166 and leaves Plaintiff to her proofs.

167. As Paragraph 167 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 167 and leaves Plaintiff to her proofs.

168. As Paragraph 168 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 168 and leaves Plaintiff to her proofs.

169. As Paragraph 169 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 169 and leaves Plaintiff to her proofs.

170. As Paragraph 170 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 170 and leaves Plaintiff to her proofs.

171. As Paragraph 171 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 171 and leaves Plaintiff to her proofs.

172. As Paragraph 172 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 172 and leaves Plaintiff to her proofs.

173. As Paragraph 173 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 173 and leaves Plaintiff to her proofs.

174. As Paragraph 174 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 174 and leaves Plaintiff to her proofs.

175. As Paragraph 175 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 175 and leaves Plaintiff to her proofs.

176. As Paragraph 176 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 176 and leaves Plaintiff to her proofs.

177. As Paragraph 177 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 177 and leaves Plaintiff to her proofs.

178. As Paragraph 178 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 178 and leaves Plaintiff to her proofs.

179. As Paragraph 179 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 179 and leaves Plaintiff to her proofs.

180. As Paragraph 180 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 180 and leaves Plaintiff to her proofs.

181. As Paragraph 181 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 181 and leaves Plaintiff to her proofs.

182. As Paragraph 182 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 182 and leaves Plaintiff to her proofs.

183. As Paragraph 183 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 183 and leaves Plaintiff to her proofs.

184. As Paragraph 184 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 184 and leaves Plaintiff to her proofs.

185. As Paragraph 185 contains allegations As Paragraph 75 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 185 and leaves Plaintiff to her proofs.

186. As Paragraph 186 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 186 and leaves Plaintiff to her proofs.

187. As Paragraph 187 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 187 and leaves Plaintiff to her proofs.

188. As Paragraph 188 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 188 and leaves Plaintiff to her proofs.

189. As Paragraph 189 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 189 and leaves Plaintiff to her proofs.

190. As Paragraph 190 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 190 and leaves Plaintiff to her proofs.

191. As Paragraph 191 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 191 and leaves Plaintiff to her proofs.

192. As Paragraph 192 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 192 and leaves Plaintiff to her proofs.

193. As Paragraph 193 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 193 and leaves Plaintiff to her proofs.

194. As Paragraph 194 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 194 and leaves Plaintiff to her proofs.

195. As Paragraph 195 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 195 and leaves Plaintiff to her proofs.

196. As Paragraph 196 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 196 and leaves Plaintiff to her proofs.

197. As Paragraph 197 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 197 and leaves Plaintiff to her proofs.

198. As Paragraph 198 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 198 and leaves Plaintiff to her proofs.

199. As Paragraph 199 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 199 and leaves Plaintiff to her proofs.

200. As Paragraph 200 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 200 and leaves Plaintiff to her proofs.

201. As Paragraph 201 contains allegations related As Paragraph 75 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 201 and leaves Plaintiff to her proofs.

202. As Paragraph 202 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 202 and leaves Plaintiff to her proofs.

203. As Paragraph 203 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 203 and leaves Plaintiff to her proofs.

204. The Congregation denies the allegations in Paragraph 204.

205. The Congregation denies the allegations in Paragraph 205.

206. As Paragraph 206 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 206 and leaves Plaintiff to her proofs.

207. The Congregation denies the allegations in Paragraph 207.

208. The Congregation denies the allegations in Paragraph 208.

209. As Paragraph 209 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 209 and leaves Plaintiff to her proofs.

210. As Paragraph 210 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 210 and leaves Plaintiff to her proofs.

211. As Paragraph 211 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 211 and leaves Plaintiff to her proofs.

212. As Paragraph 212 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 212 and leaves Plaintiff to her proofs.

213. As Paragraph 213 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 213 and leaves Plaintiff to her proofs.

214. As Paragraph 214 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 214 and leaves Plaintiff to her proofs.

215. The Congregation denies the allegations in Paragraph 215.

216. The Congregation denies the allegations in Paragraph 216.

217. The Congregation denies the allegations in Paragraph 217.

218. The Congregation denies the allegations in Paragraph 218.

219. The Congregation denies the allegations in Paragraph 219.

220. The Congregation denies the allegations in Paragraph 220.

221. As Paragraph 221 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 221 and leaves Plaintiff to her proofs.

222. As Paragraph 222 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 222 and leaves Plaintiff to her proofs.

223. As Paragraph 223 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 223 and leaves Plaintiff to her proofs.

224. As Paragraph 224 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 224 and leaves Plaintiff to her proofs.

225. As Paragraph 225 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 225 and leaves Plaintiff to her proofs.

226. As Paragraph 226 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 226 and leaves Plaintiff to her proofs.

227. As Paragraph 227 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 227 and leaves Plaintiff to her proofs.

228. As Paragraph 228 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 228 and leaves Plaintiff to her proofs.

229. As Paragraph 229 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 229 and leaves Plaintiff to her proofs.

230. As Paragraph 230 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 230 and leaves Plaintiff to her proofs.

231. As Paragraph 231 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 231 and leaves Plaintiff to her proofs.

232. As Paragraph 232 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 232 and leaves Plaintiff to her proofs.

233. As Paragraph 233 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 233 and leaves Plaintiff to her proofs.

234. As Paragraph 234 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 234 and leaves Plaintiff to her proofs.

235. As Paragraph 235 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 235 and leaves Plaintiff to her proofs.

236. As Paragraph 236 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 236 and leaves Plaintiff to her proofs.

237. As Paragraph 237 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 237 and leaves Plaintiff to her proofs.

238. As Paragraph 238 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 238 and leaves Plaintiff to her proofs.

239. The Congregation denies the allegations in Paragraph 239.

240. The Congregation denies the allegations in Paragraph 240.

241. The Congregation denies the allegations in Paragraph 241.

242. The Congregation denies the allegations in Paragraph 242.

243. The Congregation denies the allegations in Paragraph 243.

ANSWERING AS TO COUNT III: NEGLIGENT AND/OR GROSSLY

NEGLIGENT RETENTION

244. The Congregation repeats and reiterates each admission or denial as though fully set forth herein.

245. The Congregation denies the allegations in Paragraph 245.

246. The Congregation denies the allegations in Paragraph 246.

247. The Congregation denies the allegations in Paragraph 247.

248. The Congregation denies the allegations in Paragraph 248.

249. The Congregation denies the allegations in Paragraph 249.

250. The Congregation denies the allegations in Paragraph 250.

251. The Congregation denies the allegations in Paragraph 251.

ANSWERING AS TO COUNT IV: NEGLIGENT AND/OR GROSSLY

NEGLIGENT FAILURE TO TRAIN RELATING TO CHILD ABUSE

252. The Congregation repeats and reiterates each admission or denial as though fully set forth herein.

253. As Paragraph 253 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 253 and leaves Plaintiff to her proofs.

254. As Paragraph 254 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 254 and leaves Plaintiff to her proofs.

255. As Paragraph 255 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 255 and leaves Plaintiff to her proofs.

256. As Paragraph 256 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 256 and leaves Plaintiff to her proofs.

257. As Paragraph 257 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 257 and leaves Plaintiff to her proofs.

258. As Paragraph 258 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 258 and leaves Plaintiff to her proofs.

259. As Paragraph 259 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 259 and leaves Plaintiff to her proofs.

260. As Paragraph 260 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 260 and leaves Plaintiff to her proofs.

261. As Paragraph 261 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 261 and leaves Plaintiff to her proofs.

262. As Paragraph 262 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 262 and leaves Plaintiff to her proofs.

263. As Paragraph 263 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 263 and leaves Plaintiff to her proofs.

264. The Congregation denies the allegations in Paragraph 264.

265. The Congregation denies the allegations in Paragraph 265.

266. The Congregation denies the allegations in Paragraph 266.

267. The Congregation denies the allegations in Paragraph 267.

268. The Congregation denies the allegations in Paragraph 268.

269. As Paragraph 269 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that

Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 269 and leaves Plaintiff to her proofs.

270. As Paragraph 270 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 270 and leaves Plaintiff to her proofs.

271. As Paragraph 271 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 271 and leaves Plaintiff to her proofs.

272. As Paragraph 272 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 272 and leaves Plaintiff to her proofs.

273. As Paragraph 273 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 273 and leaves Plaintiff to her proofs.

274. As Paragraph 274 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 274 and leaves Plaintiff to her proofs.

275. As Paragraph 275 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 275 and leaves Plaintiff to her proofs.

276. As Paragraph 276 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 276 and leaves Plaintiff to her proofs.

277. As Paragraph 277 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 277 and leaves Plaintiff to her proofs.

278. As Paragraph 278 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 278 and leaves Plaintiff to her proofs.

279. The Congregation denies the allegations in Paragraph 279.

280. The Congregation denies the allegations in Paragraph 280.

281. The Congregation denies the allegations in Paragraph 281.

282. The Congregation denies the allegations in Paragraph 282.

ANSWERING AS TO COUNT V—INTENTIONAL INFLICTION OF

EMOTIONAL DISTRESS

283. The Congregation repeats and reiterates each admission or denial as though fully set forth herein.

284. The Congregation denies the allegations in Paragraph 284.

285. The Congregation denies the allegations in Paragraph 285.

286. The Congregation denies the allegations in Paragraph 286.

287. The Congregation denies the allegations in Paragraph 287.

288. The Congregation denies the allegations in Paragraph 288.

289. The Congregation denies the allegations in Paragraph 289.

ANSWERING AS TO COUNT VI—NEGLIGENT INFLECTION OF

EMOTIONAL DISTRESS

290. The Congregation repeats and reiterates each admission or denial as though fully set forth herein.

291. The Congregation denies the allegations in Paragraph 291.

292. The Congregation denies the allegations in Paragraph 292.

293. The Congregation denies the allegations in Paragraph 293.

294. The Congregation denies the allegations in Paragraph 294.

295. The Congregation denies the allegations in Paragraph 295.

296. The Congregation denies the allegations in Paragraph 296.

297. The Congregation denies the allegations in Paragraph 297.

ANSWERING AS TO COUNT VII—SEXUAL ABUSE AND BATTERY

298. The Congregation repeats and reiterates each admission or denial as though fully set forth herein.

299. As Paragraph 299 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 299 and leaves Plaintiff to her proofs.

300. As Paragraph 300 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 300 and leaves Plaintiff to her proofs.

301. As Paragraph 301 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 301 and leaves Plaintiff to her proofs.

302. The Congregation denies the allegations in Paragraph 302.

303. The Congregation denies the allegations in Paragraph 303.

304. As Paragraph 304 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 304 and leaves Plaintiff to her proofs.

305. As Paragraph 305 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 305 and leaves Plaintiff to her proofs.

306. As Paragraph 306 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 306 and leaves Plaintiff to her proofs.

307. As Paragraph 307 contains allegations related to a party other than the Congregation, the Congregation can neither admit nor deny the allegations set forth in that Paragraph. To the extent a response is nevertheless required, the Congregation denies the allegations in Paragraph 307 and leaves Plaintiff to her proofs.

308. The Congregation denies the allegations in Paragraph 308.

309. The Congregation denies the allegations in Paragraph 309.

310. The Congregation denies the allegations in Paragraph 310.

WHEREFORE, the Congregation demands judgment in their favor and against Plaintiff denying Plaintiff's claims with prejudice and providing the Congregation with such other and further relief as the Court may deem equitable and just.

ANSWERING AS TO COUNT VIII—PUNITIVE DAMAGES

311. The Congregation repeats and reiterates each admission or denial as though fully set forth herein.

312. The Congregation denies the allegations in Paragraph 312.

313. The Congregation denies the allegations in Paragraph 313.

314. The Congregation denies the allegations in Paragraph 314.

315. The Congregation denies the allegations in Paragraph 315.

WHEREFORE, the Congregation demands judgment in their favor and against Plaintiff denying Plaintiff's claims with prejudice and providing the Congregation with such other and further relief as the Court may deem equitable and just.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim against the Congregation upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

If and only if Plaintiff's allegations are accurate, then the Congregation asserts its entitlement to an apportionment of fault by the trier of fact between any person (legal or natural) to whom apportionment of fault may be made under statutory and common law principles.

THIRD AFFIRMATIVE DEFENSE

The applicable statute or statutes of limitations or other applicable law, rule, statute or regulation controlling or requiring the institution of suit within a certain period of time following its accrual, was not complied with by Plaintiff, and Plaintiff's claims are barred as a matter of law.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by reason of laches, estoppel, waiver, consent, unclean hands, res judicata, and/or other equitable defenses.

FIFTH AFFIRMATIVE DEFENSE

The Congregation had no duty and/or breached no duty to Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of Charitable Immunity.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the Establishment Clause of the First Amendment and/or Article I Section 4 of The Constitution of the State of New Jersey.

EIGHTH AFFIRMATIVE DEFENSE

The acts or omissions of third parties, individuals, or entities for which the Congregation has no responsibility or control, either directly or indirectly, whether or not presently named parties to this action, were the sole, intervening, or contributing cause of Plaintiff's claimed damages, if there are any. Such acts or omissions bar and/or proportionately reduce recovery, if any, by Plaintiff against the Congregation.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to join all necessary and indispensable persons for a full and just adjudication of the purported causes of action asserted in the Complaint.

TENTH AFFIRMATIVE DEFENSE

The Congregation expressly reserves the right to assert any additional affirmative defenses and defenses as may appear applicable during the course of this litigation.

ELEVENTH AFFIRMATIVE DEFENSE

The claim for punitive damages violates Congregation's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and/or Article I (due process and equal protection) of The Constitution of the State of New Jersey.

TWELFTH AFFIRMATIVE DEFENSE

The imposition of punitive damages in this case would violate the Commerce Clause of the United States Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

The imposition of punitive damages in this case would violate the First, Fifth, Sixth, Eighth and/or Fourteenth Amendments to the United States Constitution.

FOURTEENTH AFFIRMATIVE DEFENSE

With respect to the claim for punitive damages, the Congregation specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damages awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *Williams v. Phillip Morris*, 549 U.S. 336 (2007); and *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008).

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff has not pleaded and proved sufficient facts to support an award of punitive damages against the Congregation under applicable law including, but not limited to, the failure to plead and prove conduct by an officer, director or managing agent of the Congregation that would entitle her to recover punitive damages against them.

SIXTEENTH AFFIRMATIVE DEFENSE

The Congregation is not a proper defendant in this action.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Congregation had no notice of the alleged wrongful conduct.

Dated: June 23, 2022

MarKorLaw LLC
MARGARET T. KORGUL, ESQ.

By: s/ *Margaret Korgul*
Margaret T. Korgul, Esq.
One Bridge Plaza North, Suite 275

Fort Lee, NJ 07024

(973) 986-0372

mkorgul@markorlaw.com

Attorney for Defendant Fairlawn

Congregation of Jehovah's Witnesses

DESIGNATION OF TRIAL COUNSEL

Margaret T. Korgul is hereby designated as trial counsel.

Dated: June 23, 2022

MarKorLaw LLC
MARGARET T. KORGUL, ESQ.

By: s/ *Margaret Korgul*

Margaret T. Korgul, Esq.
One Bridge Plaza North, Suite 275
Fort Lee, NJ 07024
(973) 986-0372
mkorgul@markorlaw.com
*Attorney for Defendant Fairlawn
Congregation of Jehovah's Witnesses*

DEMAND FOR STATEMENT OF DAMAGES

The Congregation hereby requests pursuant to R. 4:5-2 that Plaintiff furnishes to the undersigned within five days a written statement of the amount of damages claimed in each and every count of Plaintiff's Complaint.

Dated: June 23, 2022

MarKorLaw LLC
MARGARET T. KORGUL, ESQ.

By: s/ *Margaret Korgul*

Margaret T. Korgul, Esq.
One Bridge Plaza North, Suite 275
Fort Lee, NJ 07024
(973) 986-0372
mkorgul@markorlaw.com
*Attorney for Defendant Fairlawn
Congregation of Jehovah's Witnesses*

**NOTICE OF INTENT TO SEEK ALLOCATION OF PERCENTAGE OF NEGLIGENCE
AND/OR TO SEEK CREDIT PURSUANT TO R. 4:7-5(c)**

Pursuant to New Jersey Rules of Court, R. 4:7-5(c), and Young v. Latta, 123 N.J. 584 (1991), the Congregation hereby advises that if any party settles the within matter with Plaintiff at any time prior to the conclusion of trial, the liability of any settling party shall remain an issue and the Congregation shall seek an allocation and/or percentage of negligence by the finder of fact against such settling party, and/or a credit in favor of the Congregation consistent with such allegation.

Dated: June 23, 2022

MarKorLaw LLC
MARGARET T. KORGUL, ESQ.

By: s/ *Margaret Korgul*

Margaret T. Korgul, Esq.
One Bridge Plaza North, Suite 275
Fort Lee, NJ 07024
(973) 986-0372
mkorgul@markorlaw.com
*Attorney for Defendant Fairlawn
Congregation of Jehovah's Witnesses*

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that to the best of my knowledge, based on information available to me at this office, the matter in controversy is not the subject of any other action pending in any other court or any pending arbitration proceeding. I further certify that no other party should be joined in this action at this time to the best of my knowledge, information and belief.

Dated: June 23, 2022

MarKorLaw LLC
MARGARET T. KORGUL, ESQ.

By: s/ *Margaret Korgul*

Margaret T. Korgul, Esq.
One Bridge Plaza North, Suite 275
Fort Lee, NJ 07024
(973) 986-0372
mkorgul@markorlaw.com
*Attorney for Defendant Fairlawn
Congregation of Jehovah's Witnesses*

EXHIBIT U

ROBINS KAPLAN LLP

RAYNA E. KESSLER, ESQ.
NJ ID No. 031782010
1325 Sixth Ave, Suite 2600
New York, New York 10019
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

THE ZALKIN LAW FIRM, P.C.

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

Attorneys for Plaintiff Corinne Pandelo

CORINNE PANDELO

Plaintiff,

vs.

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

Defendant(s).

SUPERIOR COURT OF NEW
JERSEY LAW DIVISION
BERGEN COUNTY

DOCKET NO.: BER-L-005508-21

Civil Action

**PLAINTIFF CORINNE PANDELO’S
OBJECTIONS AND RESPONSES
TO DEFENDANT FAIRLAWN
CONGREGATION OF JEHOVAH’S
WITNESSES’ FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

TO: Margaret Korgul, Esq.
MarKorLaw
One Bridge Plaza North, Suite 275
Fort Lee, NJ 07024
Telephone: (973) 986-0372
mkorgul@markorlaw.com
Attorneys for Defendant Fairlawn Congregation of Jehovah's Witnesses

PLEASE TAKE NOTICE that the undersigned, Plaintiff Corinne Pandelo ("Plaintiff"), hereby responds to Defendant Fairlawn Congregation's ("Congregation" or "Defendant") First Request for Production of Documents.

Dated: August 26, 2022

THE ZALKIN LAW FIRM, P.C.

By: /s/ Elizabeth A. Cate, Esq.
Elizabeth A. Cate, Esq. (admitted *pro hac vice*)
10 Times Square
1441 Broadway, Suite 3147
New York, NY 10018
Telephone: (858) 259-3011
Email: elizabeth@zalkin.com
Attorneys for Plaintiff Corinne Pandelo

GENERAL OBJECTIONS

The general objections listed below are considered applicable to and are incorporated into each and every response by Plaintiff, and each response is made without waiving any of the general objections. The assertion of these general objections in response to individual Requests shall not be considered a waiver of the remaining general objections.

1. Plaintiff objects to these Requests to the extent that they seek information not in Plaintiff's possession, custody, or control.

2. Plaintiff objects to these Requests to the extent that they seek information in the possession, custody, or control of third parties.

3. Plaintiff objects to these Requests to the extent that they seek documents and information protected by Rule 4:10-2(c), the work product doctrine, and the attorney-client privilege.

4. Plaintiff objects to these Requests to the extent that they seek information prepared in anticipation of litigation or after the commencement of this litigation.

5. Plaintiff objects to these Requests to the extent that they seek legal opinions or conclusions.

6. Plaintiff objects to these Requests to the extent that they seek documents or information beyond the scope of information which Plaintiff is required to provide pursuant to the New Jersey Court Rules.

7. Plaintiff objects to these Requests to the extent that they are overly broad, unduly burdensome, or impose unreasonable expense.

8. Plaintiff objects to these Requests to the extent that they are vague and ambiguous.

9. Plaintiff objects to these Requests to the extent that they seek documents or information which are not relevant to the lawsuit and which are not reasonably calculated to lead to the discovery of admissible evidence.

10. Plaintiff objects to these Requests to the extent that they seek documents or information to which Defendant has equal access.

11. Plaintiff objects to these Requests to the extent that they require the production of publicly available materials, as the burden of locating, identifying, and producing such documents is substantially the same or less for Defendant as it is for Plaintiff.

12. Plaintiff objects to these Requests to the extent that they request information found in documents or responses previously produced or obtained by authorizations and can be derived or ascertained as easily by Defendant as by Plaintiff from those documents.

13. Plaintiff objects to these Requests to the extent that they are duplicative and cumulative to discovery already answered.

14. Pursuant to N.J.S.A. 2A:61B-1(f)(1), all materials referencing names of child sexual abuse victims will be redacted in Plaintiff's responses and supplemental responses.

These responses to the Requests are based upon the information available at the present time from Plaintiff's present knowledge, information, and belief, and are subject to additional or different information that further investigation may disclose. Discovery and investigation are ongoing in this matter. Accordingly, Plaintiff's responses to these Requests are made without prejudice to Plaintiff's right to amend these responses further as information is acquired and to make use of, or proffer at any hearing or at trial, subsequently discovered or acquired documents, knowledge, or information obtained in discovery in this action.

These discovery responses are directed to Defendant and are answered by and on behalf of Plaintiff, not any other party. Nothing stated herein shall be construed as an admission by Plaintiff regarding the admissibility or relevance of any fact or document or as an admission of the truth or accuracy of any characterization of any document of any kind contained in Defendant's requests.

OBJECTIONS TO DEFINITIONS

1. Plaintiff objects to the definitions of “communicate” or “communication” as overly broad, unduly burdensome, and vague to the extent that they are defined as including face-to-face and telephone communications to the extent that such communications may not have been reduced to written form and are therefore not responsive to these requests. Plaintiff will produce any documents responsive to these requests.

2. Plaintiff objects to the definition of the term “Identify” as overbroad and unduly burdensome in that it requests information about individuals outside of Plaintiff’s custody and control and violates these individuals’ rights to privacy. Plaintiff will provide the full name, present or last known home or business address, telephone number, and occupation of individuals she identifies, to the extent that she possesses this information.

3. Plaintiff objects to the scope of the definition of “identify, when used with respect to a document” because it is overbroad, vague, ambiguous, and unduly burdensome to the extent that it requires Plaintiff to specify, state, describe, and/or identify aspects of documents that are equally available and/or identifiable to Defendant. In the responses below, Plaintiff has interpreted “identify” to mean that she will provide information sufficient to identify documents, which may be limited to bates numbers of produced documents.

OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

1. All documents and/or other writings that refer to, relate to, concern or discuss any of the facts or events underlying the claims, defenses and allegations set forth in the Complaint or any Defendant’s Answer to the Complaint, including, but not limited to, your investigation of the facts or events.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time and without reasonable

limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant's possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

2. All documents that reflect, refer to, or relate to any admission that you contend has been made at any time by any party to this action regarding the facts or events underlying the claims and allegations set forth in the Complaint or any Defendant's Answer to the Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, indefinite as to time and without reasonable limitation in its scope. For instance, Clement Pandelo has admitted to being Plaintiff's grandfather, and as such, producing "all documents that reflect" this allegation would be unduly burdensome. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and

burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

3. All documents that reflect, refer to, or relate to any declaration against interest that you contend has been made at any time by any party to this action regarding the facts or events underlying the claims and allegations set forth in the Complaint or any Defendant's Answer to the Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

4. All photographs, videotapes, audio tapes or other forms of electronic recording, sketches, or reproductions, which refer to or relate to the subject matter of this litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

5. All documents that you intend to use as an exhibit at trial or any evidentiary hearing in this litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, and vague. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that, as this action is in its early stages, Plaintiff will provide a supplemental response pursuant to the applicable Court Rules.

6. All documents prepared by each and every expert identified by you during discovery in this litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, vague, indefinite as to

time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests documents outside the scope of permitted discovery in New Jersey.

Subject to and without waiving any of these objections, Plaintiff states that, as this action is in its early stages, Plaintiff will provide a supplemental response disclosing documents reflecting facts known and opinions held by any expert that Plaintiff intends to call at trial and/or who conducted an examination of Plaintiff pursuant to R. 4:19.

7. All documents produced to or received from any potential expert who may testify on your behalf at trial.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests documents outside the scope of permitted discovery in New Jersey.

Subject to and without waiving any of these objections, Plaintiff states that, as this action is in its early stages, Plaintiff will provide a supplemental response disclosing documents reflecting facts known and opinions held by any expert that Plaintiff intends to call at trial and/or who conducted an examination of Plaintiff pursuant to R. 4:19

8. All documents that refer to or relate to any communications between any such expert and you or any of your representatives.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests documents outside the scope of permitted discovery in New Jersey.

Subject to and without waiving any of these objections, Plaintiff states that, as this action is in its early stages, Plaintiff will provide a supplemental response disclosing documents reflecting facts known and opinions held by any expert that Plaintiff intends to call at trial and/or who conducted an examination of Plaintiff pursuant to R. 4:19.

9. All documents produced by you to any other party to this litigation in response to any interrogatory, document request and/or request for admission.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests.

Subject to and without waiving any of these objections, Plaintiff currently has no documents responsive to this Request. Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that if she receives documents from any other party, she will produce these documents in a supplemental response

pursuant to the applicable provisions of the New Jersey Court Rules.

10. All documents related in any way to your first discovery of your injuries related to the alleged abuse.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff objects to the use of the terms “first,” “discovery” and “injuries” as vague, ambiguous, and undefined. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this Request to the extent it requires expert testimony, which will be provided at the appropriate time.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant’s possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

11. All documents supporting, indicating, or proving that any act of unlawful sexual conduct by Pandelo was committed against you as referenced in your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff

further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant's possession. Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

12. All documents supporting, indicating, or proving where and when any act of unlawful sexual conduct Pandelo was committed against you.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time and without reasonable limitation in its scope. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges

under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant's possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

13. All documents supporting, indicating, or proving that Defendant knew or should have known that Pandelo committed an act of unlawful sexual conduct against a minor child before his alleged act or acts of unlawful sexual conduct against you as alleged in your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

14. All documents relating to your relationship with perpetrator Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to the undefined term “relationship.” Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Clement Pandelo was her grandfather. Plaintiff further refers Defendant to the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant’s possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

15. Any document or communications between you and any other person, or organization (except your attorneys of record) about any of the allegations in your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, and without reasonable limitation in its scope. Plaintiff objects to this request on the ground

that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant's possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

16. Written or electronic information showing or referring to your affiliation with any church, religious organization, spiritual organization, or any anti-religious organization at any time.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she is standing on her objections and will not produce information responsive to this Request.

17. Any diaries, notes, or any other printed or recorded material prepared by or for you

relating to the incidents alleged in your Complaint or the alleged harm stated in your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague as to the phrase “for you,” unduly burdensome, without reasonable limitation in its scope, and not relevant or calculated to lead to the discovery of relevant evidence in this action. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

18. Any written or electronic information in your possession, custody, or control about alleged child sexual abuse by, or claims against, religious entities and members of Jehovah’s Witnesses, including newspapers, magazines, books, the internet, or information from counselors, therapists, or other mental health professionals about those subjects.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff further objects to this request on the

ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff objects to this request as unintelligible.

Subject to and without waiving any of these objections, to the extent the Request asks Plaintiff to produce documents in her possession, custody, and control related to child sexual abuse of Jehovah's Witnesses, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant's possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

19. Any correspondence, including emails, letters, notes, memorandums, diaries, or any other printed, written, or electronically recorded or audio recording, or communications:
- a. Between you and the alleged perpetrator Pandelo;
 - b. Between any member of your family and the alleged perpetrator Pandelo;
 - c. Between you and Defendant or any person affiliated with it; and
 - d. Between you and any other person or entity affiliated with Jehovah's Witnesses.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff will produce correspondence or communications in her possession, custody, or control that

relate to the allegations in her Complaint.

Subject to and without waiving any of these objections, Plaintiff refers Defendant to her response to Request Number 15.

20. Copies of any materials in your possession from Defendant or any other organization of Jehovah's Witnesses.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff will produce documents in her possession, custody, or control from any Jehovah's Witness Congregation that relate to the allegations in her Complaint. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

21. Any and all documents or records showing or referring to your baptism in any religion, including as one of Jehovah's Witnesses (if any) and marriage(s) (if any) including certificates from each of those events and photographs from those events.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of

relevant evidence in this action. Photographs of Plaintiff's baptism and marriage are not relevant to her claims in this action and Plaintiff will not produce these photographs. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she is standing on her objections and will not produce documents responsive to this Request.

22. All notes, memoranda, correspondence, or other documents pertaining to Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff will produce documents in her possession, custody, or control that relate to the allegations in her Complaint.

Subject to and without waiving any of these objections, Plaintiff refers Defendant to her response to Request Number 14.

23. Any and all documents containing or memorializing statements made by any third party about you and the alleged perpetrator Pandelo, and about any other member of your immediate family and the alleged perpetrator Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of

Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff objects to this Request to the extent it requires Plaintiff will produce documents in her possession, custody, or control that relate to the allegations in her Complaint.

Subject to and without waiving any of these objections, Plaintiff refers Defendant to her response to Request Number 15.

24. Documents containing or referring to allegations of sexual abuse of any minor by the alleged perpetrator Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant's possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

25. All documents which reflect any discussions or communications between you and any other person (other than your attorneys of record) which relate to interactions between Pandelo and you

or with any member or your family.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims or calculated to lead to the discovery of relevant evidence in this action. Clement Pandelo was Plaintiff's grandfather, and as phrased, this Request would demand Plaintiff produce any conversation regarding Clement Pandelo and his relatives, irrespective of the relevance to Plaintiff's claims. Plaintiff will produce documents in her possession, custody, or control that relate to the allegations in her Complaint. Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests.

Subject to and without waiving any of these objections, Plaintiff refers Defendant to her responses to Request Numbers 14 and 15.

26. All documents showing when Defendant first became aware of your alleged abuse by Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, duplicative, and cumulative of other requests. Plaintiff objects to the use of the term "aware" as vague, ambiguous, and undefined. As phrased, this Request requires Plaintiff to determine Defendant's awareness and/or understanding of her abuse, which only Defendant can do. Alternatively, Plaintiff will produce documents to support her notice claims against Defendant. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this

matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

27. All documents related to your allegations that Pandelo was disfellowshipped.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff further objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff objects to the term “disfellowshipped” as vague, ambiguous, and undefined. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

28. All documents related to your allegations that Pandelo was reinstated.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to the use of the term “reinstated” as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

29. All documents related to your allegations that Pandelo admitted to sexual misconduct

involving minor girls.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff objects to the term “admitted” as vague, ambiguous, and undefined. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant’s possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

30. All documents related to your allegations that the misconduct by Pandelo was reported to Defendant.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff objects to the term “the misconduct” as vague, ambiguous, and undefined, as Clement Pandelo unlawfully sexually abused several minor children, and this Request does not specify

to which misconduct the reporting relates. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

31. All documents related to your allegations that Pandelo was reproofed.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff objects to the term “reproofed” as vague, ambiguous, and undefined. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

32. All documents related to any reports of Pandelo’s sexual abuse to the law enforcement.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff

objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff objects to the term “the law enforcement” as vague, ambiguous, and undefined. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

33. All documents related to your allegations that Defendant learned that Pandelo was sexually abusing children.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, duplicative, and cumulative of other requests. Plaintiff objects to the use of the term “learned” as vague, ambiguous, and undefined. As phrased, this Request requires Plaintiff to determine Defendant’s awareness and/or understanding of her abuse, which only Defendant can do. Plaintiff will produce documents to support her notice claims against Defendant. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this

matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

34. All documents related to your allegations that Carl Pandelo reported the child abuse allegations to Defendant.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

35. All documents related to your allegations that no action was taken to discipline reproof of this fellowship Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff objects to this request as unintelligible, as she does not know what Defendant means by “to discipline reproof of this fellowship Pandelo.” Plaintiff further objects to the terms “discipline,” “reproof,” and “fellowship” as vague, ambiguous, and undefined. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client

privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, to the extent the Request asks for documents related to Plaintiff's allegation that no action was taken by Defendant(s) to discipline, reproof, or subject Clement Pandelo to disfellowship, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

36. All documents related to the 1994 lawsuit filed in the Superior Court of New Jersey Law Division Bergen County as alleged in paragraph 54 of your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant's possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right

to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce additional documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

37. All documents related to the jury trial as referenced in paragraph 57 of your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff refers Defendant to her response to Request Number 36.

38. All documents identifying each and every person who allegedly provided notice to any of the Defendants of your alleged sexual abuse, or the sexual abuse of any other minor child, by Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is duplicative and cumulative of other requests. Plaintiff objects to this request as vague and undefined, including in its use of the undefined term “notice.” Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff objects to this request to the extent that it calls for legal conclusions.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental

response pursuant to the applicable provisions of the New Jersey Court Rules.

39. All documents related to in person meetings and agreements between Defendant and any other person to further the alleged unlawful acts.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is duplicative and cumulative of other requests. Plaintiff objects to this request as vague and undefined, particularly as to the use of the undefined terms “agreements,” “further,” and “acts.” Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff objects to this Request to the extent it misrepresents allegations in her Complaint. Plaintiff objects to this Request to the extent it calls for legal conclusions.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

40. All documents related to Defendant’s alleged negligent willful and wanton conduct and intervention.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is duplicative and cumulative of other requests. Plaintiff objects to this request as vague and undefined, including in its use of the undefined terms “negligent,” “willful,” “wanton,” and “intervention.” Plaintiff objects to this request to the extent that it calls for legal conclusions. Plaintiff objects to this Request to the extent it misrepresents allegations in her Complaint.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental

response pursuant to the applicable provisions of the New Jersey Court Rules.

41. All state and federal tax returns from 2020 to present.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is not relevant to the claims or calculated to lead to the discovery of admissible evidence in this action and is therefore unduly burdensome. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she is standing on her objections and will not produce documents responsive to this Request.

42. All documents related in any way to lawsuits you filed by you against any person or entity from 1980 to present.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, not reasonably limited as to time, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff refers Defendant to the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant's possession. Other than the above-referenced file, Plaintiff has no documents responsive to this Request.

43. All documents related to any judicial committees as referenced in paragraph 41 of your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad and vague, specifically as to the word “any” because as phrased, it would require Plaintiff to produce documents related to any judicial committee, not necessarily those related to the allegations in Plaintiff’s Complaint. Plaintiff objects to this Request as duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

44. All documents related to Pandelo’s arrests as referenced in paragraph 44 of your Complaint.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, vague, and duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

45. All documents related to relationship or association between Pandelo and Defendant.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to the undefined terms “relationship” and “association.” Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff further objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Clement Pandelo was her grandfather. Plaintiff further refers Defendant to the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant’s possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

46. All documents related to Padnelo's position within the Jehovah's Witnesses faith.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, unduly burdensome, indefinite as to time, and without reasonable limitation in its scope. Clement Pandelo was a member of the Jehovah's Witnesses for decades, and "any" document related to his position within the Jehovah's Witnesses could encompass hundreds of documents irrelevant to Plaintiff's claims. Plaintiff will produce documents related to the allegations in her Complaint. Plaintiff further objects to the terms "position" and "faith" as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff. Plaintiff objects to the term "Padnelo," as Plaintiff is unaware of the identity of this individual.

Subject to and without waiving any of these objections, to the extent this Request asks for documents related to Clement Pandelo, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

47. All documents related to Pandelo's retention.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request as overly broad, vague, indefinite as to time, and without limitation in its scope. Plaintiff objects to the term "retention" as vague, ambiguous, and undefined. Clement Pandelo was a member of the Jehovah's Witnesses for decades, and "any" document related to his retention within the Jehovah's Witnesses could encompass hundreds of documents irrelevant to Plaintiff's claims. Plaintiff will produce documents related to the allegations in her Complaint. Plaintiff further objects to this

request on the ground that it is duplicative and cumulative of other requests. Plaintiff objects to this request on the ground that it requests information that is available to all parties equally and/or in the possession of Defendant and is therefore oppressive and burdensome to Plaintiff.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

48. Any documents relating to your allegations in your Complaint or otherwise relevant to your claims that relate to allegations that you suffered significant physical, mental and emotional injuries. **RESPONSE:** Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad and vague, specifically as to the undefined term “significant.” Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law. Plaintiff objects to this request to the extent that it seeks expert testimony, which will be provided at the appropriate time.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant’s possession. Plaintiff further states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions

of the New Jersey Court Rules.

49. Complete copies of all records of any counseling, diagnosis, examination, or treatment by any psychologist, psychiatrist, counselor, social worker, medical doctor or any other practitioner in the mental health or medical field with you or involving you at any time.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, including to the extent that it requests records of counseling, diagnosis, examination, or treatment of third parties not relevant to the claims in this action. Plaintiff will only produce her own records in this action. Plaintiff also objects to this request on the ground that it is vague, including in its use of the undefined terms “counseling,” “diagnosis,” “examination,” “treatment,” “counselor,” “practitioner,” and “mental health or medical field.” Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

50. Complete copies of all of your medical records not included in the answers to the requests above, including all notes and records of examination, diagnosis, or treatment by any medical doctor, naturopath, osteopath, or any other member of the healings arts.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, including to the extent that it requests records

not relevant to the claims in this action. Plaintiff will only produce medical records of treatment for injuries claimed as a result of the allegations in this action. Plaintiff also objects to this request on the ground that it is vague, including in its use of the undefined terms “diagnosis,” “examination,” “treatment,” “naturopath,” and “any other member of the healings arts.” Plaintiff objects to this request on the ground that it is duplicative and cumulative of other requests. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental response pursuant to the applicable provisions of the New Jersey Court Rules.

51. Complete copies of all of your school records.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, including to the extent that it requests records not relevant to the claims in this action. Plaintiff objects to this Request as indefinite as to time. Plaintiff also objects to this request on the ground that it is vague and undefined. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that Discovery in this matter is ongoing, and Plaintiff reserves the right to revise and/or supplement this answer, if necessary. As such, Plaintiff states that she will produce documents responsive to this Request in a supplemental

response pursuant to the applicable provisions of the New Jersey Court Rules.

52. All documents relating to any prior lawsuit, civil action, criminal action, dissolution or divorce proceeding, child custody proceeding, restraining order proceeding, small claims proceeding, unemployment benefits proceeding, workers' compensation claim, or insurance claim, or any other administrative or tribunal proceeding to which you have been a party.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, please see the court file in the matter *Carl Pandelo, Guardian Ad Litem v. Clement Pandelo*, BER-L-516-94, which was ordered to be produced by this Court on February 9, 2022 to all parties in this action, including Defendant, and which was produced by the Bergen County Superior Court on April 13, 2022, and is therefore in Defendant's possession. Other than the above-referenced file, Plaintiff has no documents responsive to this Request.

53. All social networking postings by you or between you and any other person, including photographs, written posts, social media contacts (e.g., "Friends"), and indications of interest in people, places, things or issues.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff objects to the use of the undefined terms "postings," "contacts," "Friends," "indications of

interest,” “things,” and “issues.” Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she is standing on her objections to this Request.

54. Any and all photographs that include you and Pandelo.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, unduly burdensome, without reasonable limitation in its scope, and not relevant to the claims in this action. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she is standing on her objections to this Request and will not produce pictures of herself and Clement Pandelo, as he was her grandfather, without relevance to the allegations asserted in the Complaint.

55. To the extent not addressed above, all other documents verifying or otherwise relating to your allegations of damages in your Complaint in this case, including all medical bills.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, and vague. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff refers Defendant to her Response to Request Number 48.

56. Records of any treatment for substance abuse or other addiction received by you at any

time.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff also objects to this request on the ground that it seeks documents and/or information protected by the attorney-client privilege, work-product privilege, therapist/patient privilege, social worker/patient privilege, doctor/patient privilege, and/or other applicable privileges under federal or state statutes, regulations, or other applicable law.

Subject to and without waiving any of these objections, Plaintiff states that she has no documents responsive to this Request.

57. Your Facebook account from its inception to present, including but not limited to status updates, messages, wall comments, causes joined, groups joined, activity streams and third party communications that reveal, refer, or relate to any emotion, feeling, or mental state, including, but not limited to, communications that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state, and/or any content or communication that refers or relates to any claim or allegation raised in your operative Complaint including but not limited to any reference to or communication with any witness identified in discovery so far in this underlying litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff objects to the terms “status updates,” “messages,” “wall comments,” “causes joined,” “groups joined,” “activity streams,” “significant,” “emotion,” “feeling,” and “mental state” as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it invades Plaintiff’s and third parties’ rights

to privacy, is impermissibly overbroad and therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information without regard to its relevance to Plaintiff's claims. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action. As phrased, the Request expressly requests "third party communications that reveal, refer, or relate to any emotion, feeling, or mental state." Defendant's Request could encompass almost anything, including communications that are wholly irrelevant to the allegations in Plaintiff's Complaint.

Subject to and without waiving any of these objections, Plaintiff is standing on her objections and will not produce her full Facebook account. Plaintiff further states that she will produce responsive documents related to the allegations in her Complaint, of which there are none.

58. Your Snapchat account from its inception to present, including but not limited to, all postings by yourself and all third parties that reveal, refer, or relate to any emotion, feeling, or mental state, including, but not limited to, communications that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state, and/or any content or communication that refers or relates to any claim or allegation raised in your operative Complaint, including but not limited to, any reference to or communication with any witness identified in discovery so far in this underlying litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff objects to the terms "postings" as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it invades Plaintiff's and third parties' rights to privacy, is impermissibly overbroad and therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information without regard to its relevance to Plaintiff's claims.

Plaintiff without relevance to the claims in this action. As phrased, the Request expressly requests “third party communications that reveal, refer, or relate to any emotion, feeling, or mental state.” Defendant’s Request could encompass almost anything, including communications that are wholly irrelevant to the allegations in Plaintiff’s Complaint. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she does not have a Snapchat account to produce in response to this Request.

59. Your LinkedIn account from its inception to present, including but not limited to, all postings by yourself and all third parties that reveal, refer, or relate to any emotion, feeling, or mental state, including communications that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state, and/or any content or communication that refers or relates to any claim or allegation raised in your operative Complaint, including but not limited to, any reference to or communication with any witness identified in discovery so far in this underlying litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff objects to the terms “postings” and “reveal” as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it invades Plaintiff’s and third parties’ rights to privacy, is impermissibly overbroad and therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information without regard to its relevance to Plaintiff’s claims. Plaintiff without relevance to the claims in this action. As phrased, the Request expressly requests “third party communications that reveal, refer, or relate to any emotion, feeling, or mental state.” Defendant’s Request could encompass almost anything, including communications that are

wholly irrelevant to the allegations in Plaintiff's Complaint. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she does not have a LinkedIn account to produce in response to this Request.

60. Your WhatsApp account from its inception to present, including but not limited to, all postings by yourself and all third parties that reveal, refer, or relate to any emotion, feeling, or mental state, including communications that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state, and/or any content or communication that refers or relates to any claim or allegation raised in your operative Complaint, including but not limited to, any reference to or communication with any witness identified in discovery so far in this underlying litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff objects to the terms "postings" and "reveal" as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it invades Plaintiff's and third parties' rights to privacy, is impermissibly overbroad and therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information without regard to its relevance to Plaintiff's claims. Plaintiff without relevance to the claims in this action. As phrased, the Request expressly requests "third party communications that reveal, refer, or relate to any emotion, feeling, or mental state." Defendant's Request could encompass almost anything, including communications that are wholly irrelevant to the allegations in Plaintiff's Complaint. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she does not have a

WhatsApp account to produce in response to this Request.

61. Your ClassMates account from its inception to present, including but not limited to, all postings by yourself and all third parties that reveal, refer, or relate to any emotion, feeling, or mental state, including, but not limited to, communications that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state, and/or any content or communication that refers or relates to any claim or allegation raised in your operative Complaint, including but not limited to, any reference to or communication with any witness identified in discovery so far in this underlying litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff objects to the terms “postings” and “reveal” as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it invades Plaintiff’s and third parties’ rights to privacy, is impermissibly overbroad and therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information without regard to its relevance to Plaintiff’s claims. Plaintiff without relevance to the claims in this action. As phrased, the Request expressly requests “third party communications that reveal, refer, or relate to any emotion, feeling, or mental state.” Defendant’s Request could encompass almost anything, including communications that are wholly irrelevant to the allegations in Plaintiff’s Complaint. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she does not have a ClassMates account to produce in response to this Request.

62. Your Meetup account from its inception to present, including but not limited to, all postings by yourself and all third parties that reveal, refer, or relate to any emotion, feeling, or mental

state, including communications that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state, and/or any content or communication that refers or relates to any claim or allegation raised in your operative Complaint, including but not limited to, any reference to or communication with any witness identified in discovery so far in this underlying litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff objects to the terms “postings” and “reveal” as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it invades Plaintiff’s and third parties’ rights to privacy, is impermissibly overbroad and therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information without regard to its relevance to Plaintiff’s claims. Plaintiff without relevance to the claims in this action. As phrased, the Request expressly requests “third party communications that reveal, refer, or relate to any emotion, feeling, or mental state.” Defendant’s Request could encompass almost anything, including communications that are wholly irrelevant to the allegations in Plaintiff’s Complaint. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she does not have a Meetup account to produce in response to this Request.

63. Your Tinder account from its inception to present, including but not limited to, all postings by yourself and all third parties that reveal, refer, or relate to any emotion, feeling, or mental state, including communications that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state, and/or any content or communication that refers or relates to any claim or allegation raised in your operative Complaint, including but not limited

to, any reference to or communication with any witness identified in discovery so far in this underlying litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff objects to the terms “postings” and “reveal” as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it invades Plaintiff’s and third parties’ rights to privacy, is impermissibly overbroad and therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information without regard to its relevance to Plaintiff’s claims. Plaintiff without relevance to the claims in this action. As phrased, the Request expressly requests “third party communications that reveal, refer, or relate to any emotion, feeling, or mental state.” Defendant’s Request could encompass almost anything, including communications that are wholly irrelevant to the allegations in Plaintiff’s Complaint. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she does not have a Tinder account to produce in response to this Request.

64. Your Instagram account from its inception to present, including but not limited to, all postings by yourself and all third parties that reveal, refer or relate to any emotion, feeling, or mental state including communications that reveal, refer or relate to events that could reasonably be expected to produce a significant emotion feeling or mental state and/or any content or communication that refers or relates to any claim or allegation raised in your operative Complaint, including but not limited to, any reference to or communication with any witness identified in discovery so far in this underlying litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff

objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff objects to the terms “postings” and “reveal” as vague, ambiguous, and undefined. Plaintiff further objects to this request on the ground that it invades Plaintiff’s and third parties’ rights to privacy, is impermissibly overbroad and therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information without regard to its relevance to Plaintiff’s claims. Plaintiff without relevance to the claims in this action. As phrased, the Request expressly requests “third party communications that reveal, refer, or relate to any emotion, feeling, or mental state.” Defendant’s Request could encompass almost anything, including communications that are wholly irrelevant to the allegations in Plaintiff’s Complaint. Plaintiff will not produce her Instagram account, or any information related to it, without relevance to the allegations asserted in the Complaint. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff is standing on her objections and will not produce her full Instagram account. Plaintiff further states that she will produce responsive documents related to the allegations in her Complaint, of which there are none.

65. Your YouTube account from its inception to present, including but not limited to, status updates, messages, wall comments causes joined groups joined, activity streams and third party communications that reveal refer, or relate to any emotion, feeling, or mental state, including communications that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state, and/or any content or communication that refers or relates to any claim or allegation raised in your operative Complaint, including but not limited to, any reference to or communication with any witness identified in discovery so far in this underlying litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff

objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff objects to the terms “status updates,” “messages,” “wall comments,” “causes joined[,]” “groups joined,” “activity streams,” and “reveal” as vague, ambiguous, and undefined. Plaintiff further objects to this Request as it expressly requests Plaintiff to provide information that is not even available on the YouTube platform. Plaintiff further objects to this request on the ground that it invades Plaintiff’s and third parties’ rights to privacy, is impermissibly overbroad and therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information without regard to its relevance to Plaintiff’s claims. As phrased, the Request expressly requests “third party communications that reveal, refer, or relate to any emotion, feeling, or mental state.” Defendant’s Request could encompass almost anything, including communications that are wholly irrelevant to the allegations in Plaintiff’s Complaint. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she does not have a YouTube account to produce in response to this Request.

66. Your Twitter account from its inception to present, including but not limited to, status updates, messages, wall comments causes joined groups joined, activity streams and third party communications that reveal refer, or relate to any emotion, feeling, or mental state, including communications that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state, and/or any content or communication that refers or relates to any claim or allegation raised in your operative Complaint, including but not limited to, any reference to or communication with any witness identified in discovery so far in this underlying litigation.

RESPONSE: Plaintiff incorporates by reference all of the General Objections set forth above. Plaintiff objects to this request on the grounds that it is overly broad, indefinite as to time, vague, and not relevant

to or reasonably calculated to lead to the discovery of relevant evidence to this case. Plaintiff objects to the terms “status updates,” “messages,” “wall comments,” “causes joined[,]” “groups joined,” “activity streams,” and “reveal” as vague, ambiguous, undefined. Plaintiff further objects to this Request as it expressly requests Plaintiff to provide information that is not even available on the Twitter platform. Plaintiff further objects to this request on the ground that it invades Plaintiff’s and third parties’ rights to privacy, is impermissibly overbroad and therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information without regard to its relevance to Plaintiff’s claims. As phrased, the Request expressly requests “third party communications that reveal, refer, or relate to any emotion, feeling, or mental state.” Defendant’s Request could encompass almost anything, including communications that are wholly irrelevant to the allegations in Plaintiff’s Complaint. Plaintiff further objects to this request on the ground that it is intended to harass and annoy Plaintiff without relevance to the claims in this action.

Subject to and without waiving any of these objections, Plaintiff states that she does not have a Twitter account to produce in response to this Request.

THE ZALKIN LAW FIRM, P.C.

Dated: August 26, 2022

By: /s/ Elizabeth A. Cate, Esq.
Elizabeth A. Cate, Esq.
Attorneys for Plaintiff Corinne Pandelo

CERTIFICATION

I hereby certify that I have reviewed the document production request and that I have made or caused to be made a good faith search for documents responsive to the request. I further certify that as of this date, to the best of my knowledge and information, the production is complete based on my personal knowledge and/or information provided by others. I acknowledge my continuing obligation to make a good faith effort to identify additional documents that are responsive to the request and to promptly serve a supplemental written response and production of such documents, as appropriate, as I become aware of them. I certify that I did not speak to anyone outside my attorneys for the preparation of these Responses.

Dated: August 30, 2022

Signed:  _____

ROBINS KAPLAN LLP

Rayna E. Kessler, Esq.
NJ ID No. 031782010
1325 Avenue of the Americas, Suite 2601
New York, New York 10019
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

THE ZALKIN LAW FIRM, P.C.

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

Attorneys for Plaintiff Corinne 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-5508-21
:

CIVIL ACTION

CERTIFICATE OF SERVICE

I, Rayna E. Kessler, Esq., certify that a copy of Plaintiff's Opposition to Defendants Watchtower Bible and Tract Society of New York, Inc. and East Hackensack Congregation of Jehovah's Witnesses' Motion for Summary Judgment, and to Defendant Fairlawn Congregation of Jehovah's Witnesses' Cross-Motion for Summary Judgement, as well as all supporting papers, were electronically filed with the Clerk of Court for Bergen County *via* the New Jersey eCourts electronic filing system, and served upon all counsel of record.

In addition, a courtesy copy is being sent *via* overnight mail to the Hon. Gregg A. Padovano, J.S.C., Superior Court of New Jersey, Bergen County Courthouse, 10 Main Street, Room 331, Hackensack, NJ 07601.

ROBINS KAPLAN LLP

Dated: September 13, 2022

By: /s/Rayna E. Kessler
Rayna E. Kessler, Esq.
NJ ID No. 031782010
1325 Avenue of the Americas, Suite 2601
New York, New York 10019
Telephone: (212) 980-7431
Facsimile: (212) 980-7499
Email: RKessler@RobinsKaplan.com

Attorneys for Plaintiff Corinne Pandelo