

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
SHOLOM LAINE and ESTHER LAINE, individually
and as parents and natural guardians of MCL

INDEX NUMBER: 520980/2018

Plaintiffs,

SUMMONS

-against-

EDUCATIONAL INSTITUTE OHOLEI TORAH,


Defendant.

-----X

YOU ARE HEREBY SUMMONED to answer the verified complaint in this action and to serve a copy of your verified answer on plaintiffs' attorney designated below within twenty (20) days after the service of this summons, exclusive of the date of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the verified complaint.

Plaintiffs designated Kings County as the place of trial. Venue is based on C.P.L.R. § 503(a), (c) because the parties' residence and defendant's principal office are located in the State of New York, County of Kings.

Dated: October 17, 2018


LINDSIE B. ALTERKUN, ESQ.
CHESNEY & NICHOLAS, LLP
Attorneys for Plaintiffs
Office & P.O. Address
485 Underhill Blvd., Suite 308
Syosset, New York 11791
(516) 378-17

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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SHOLOM LAINE and ESTHER LAINE, individually
and as parents and natural guardians of MCL

Plaintiffs,

INDEX NUMBER: 520980/2018

VERIFIED COMPLAINT

-against-

EDUCATIONAL INSTITUTE OHOLEI TORAH,

Defendant.

-----X

Plaintiffs SHOLOM LAINE and ESTHER LAINE ("Plaintiffs"), by their counsel
Chesney & Nicholas LLP, as for their Verified Complaint, alleges:

PARTIES

1. Plaintiffs are the parents of a four year old child and live in Brooklyn.
2. Defendant Educational Institute Oholei Torah ("OHOLIE TORAH" or "Defendant") is a private school located in Kings County.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action under New York Judiciary Law § 140-b and Article VI, § 7 of the Constitution of the State of New York. This Court has personal jurisdiction over Defendant under C.P.L.R. § 301(a)(1) because Defendant resides and transacts business in the State of New York. Venue is proper in this county pursuant to C.P.L.R. § 503(a), (c) because the parties' residence and Defendant's principal office are located in the State of New York, County of Kings.
4. Plaintiffs have attempted to submit a letter to OHOLEI TORAH advising the school of their sincerely held religious beliefs that are contrary to the practice of vaccination but OHOLEI TORAH has refused to accept same as required by New York State Law.

5. Plaintiffs began the enrollment process at OHOLEI TORAH at the end of March 2018. They intended to enroll their son MCL in preschool beginning in August 2018 for the 2018-2019 school year. Annexed hereto as **Exhibit "A"** is an affidavit from Mrs. Laine. Plaintiffs were informed by defendant that their son would need to meet the minimum New York State immunization requirements to enroll for the 2018-2019 school year. Exhibit "A" ¶ 3. In turn, plaintiffs asked that OHOLEI TORAH consider their application for an exemption to the vaccine requirement. Nevertheless, defendants refused to accept their request for an exemption. Exhibit "A" ¶ 5.

6. On August 13, 2018, Charles C. Nicholas, Esq., wrote a letter to Rabbi Sholom Rosenfeld, Director of Educational Institute Oholei Torah, in Brooklyn, New York advising that he had been retained on behalf of plaintiffs regarding their son's admission into OHOLEI TORAH. Annexed hereto as **Exhibit "B"** is a copy of said letter

7. Mr. Nicholas wrote that Public Health Law and specifically section 2164 requires educational institutions to accept non-vaccinated students who belong to families who hold sincere and genuine religious beliefs that prohibit the use of vaccinations. *See* Exhibit "B". Further, he wrote that plaintiffs "would be willing to submit a written statement explaining their interpretation of the Torah and why vaccines violate their faith." *Id.*

8. On August 22, 2018, Mr. Nicholas again wrote to Rabbi Rosenfeld, stating that he had not received a response to his previous letter dated August 13, 2018. Annexed hereto as **Exhibit "C"** is a copy of said letter.

9. On August 28, 2018, Ms. Baumgarten sent Mr. Nicholas an email in response to his request for OHOLEI TORAH'S policy regarding immunization requirements in

writing. Annexed hereto as **Exhibit “D”** is a copy of said email. Ms. Baumgarten explained that “all registration applications are subject to proof of immunization and review of records thereof.” See Exhibit “D”.

10. Additionally, Ms. Baumgarten attached a letter dated August 27, 2018 which purports to clarify the defendant’s policy regarding immunization of mandated vaccines.

Annexed hereto as **Exhibit “E”** is a copy of said letter. This letter informs plaintiffs that they must either immunize their son or select an alternate school. *See* Exhibit “E”.

Significantly, this letter does not permit plaintiffs to submit a letter requesting an exemption from New York State’s immunization requirements as directed by NY CLS Pub Health §2164 (9).

11. The letter further alludes to a previous policy that that permitted immunization exemptions but required those students to be excluded in the event of an outbreak. *See* Exhibit “E”. Plaintiffs take no issue with this requirement and would gladly comply should an outbreak occur.

12. Plaintiffs have had numerous conversations with administrators and board members of OHOLEI TORAH but no one has agreed to consider their request for a religious exemption pursuant to PHL Section 2164(9). The law allows for an exemption to the baseline mandate that all children must receive certain vaccinations before being admitted to school. More specifically, NY CLS Pub Health §2164 (9) states that said immunizations are not required where the parent(s) or guardian(s) hold “genuine and sincere religious beliefs” contrary to immunization.

13. During the first week of school beginning August 27, 2018, Ms. Laine had a discussion with Ms. Baumgarten in the school’s lounge regarding the admission of her son

MCL. See Exhibit "A". During this conversation Ms. Baumgarten stated that OHOLEI TORAH does not accept religious exemptions.

CAUSES OF ACTION

**COUNT I
PERMANENT INJUNCTION**

14. Plaintiffs repeats and re-alleges all foregoing paragraphs as if fully set forth herein.

15. Defendant has adopted a blanket policy of denying all religious exemptions from vaccination even if they comport with NY CLS Pub Health §2164 (9).

16. Defendant, based on this illegal policy has refused to admit plaintiffs' son for the 2018-2019 school year.

17. Defendant should therefore be enjoined from enforcing its policy of denying all religious exemptions pursuant to NY CLS Pub Health §2164 (9) and enjoined from precluding Plaintiffs' son from attending OHOLEI TORAH.

**COUNT II
DECLARATORY RELIEF**

18. Plaintiffs repeats and re-alleges all foregoing paragraphs as if fully set forth herein.

21. Defendant's blanket policy of denying all religious exemptions from vaccination violates NY CLS Pub Health §2164 (9).

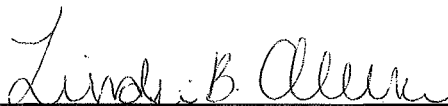
22. Plaintiffs therefore requests that the Court issue a declaration that Defendant's blanket policy of denying all religious exemptions violates NY CLS Pub Health §2164 (9).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment granting the following relief:

- A. A permanent injunction enjoining Defendant from enforcing its policy of denying all religious exemptions from vaccination pursuant to Section 2164(9) of the Public Health Law and enjoining Defendant from precluding Plaintiffs' son from attending OHOLEI TORAH;
- B. A declaration that Defendant's blanket policy of denying all religious exemptions violates Section 2164(9) of the Public Health Law;
- C. Attorney's fees; and
- D. Cost and such other and further relief as this Court may deem just and proper.

Dated: October 17, 2018



LINDSIE B. ALTERKUN, ESQ.
CHESNEY & NICHOLAS, LLP
Attorneys for Plaintiffs
Office & P.O. Address
485 Underhill Blvd., Suite 308
Syosset, New York 11791
(516)378-1700
l.alterkun@chesneynicholas.com

VERIFICATION

STATE OF NEW YORK)

)ss.:

COUNTY OF BROOKLYN)

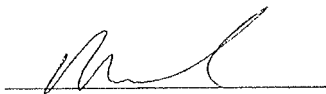
Sholom Laine being duly sworn, deposes and says:

I have read the foregoing Verified Complaint and the information stated therein is factually true and those factual matters which are stated upon information and belief are believed to be true.



SHOLOM LAINE

Sworn to before me this
17 day of October, 2018



Notary Public

MIREL HACKNER
Notary Public, State of New York
No. 01HA6259118
Qualified in Kings County
Commission Expires April 9, 2020

VERIFICATION

STATE OF NEW YORK)

)ss.:

COUNTY OF BROOKLYN)

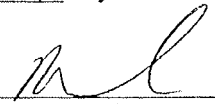
Esther Laine being duly sworn, deposes and says:

I have read the foregoing Verified Complaint and the information stated therein is factually true and those factual matters which are stated upon information and belief are believed to be true.



ESTHER LAINE

Sworn to before me this
17 day of October, 2018



Notary Public

MIREL HACKNER
Notary Public, State of New York
No. 01HA6259118
Qualified in Kings County
Commission Expires April 9, 2020

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
SHOLOM LAINE and ESTHER LAINE, individually
and as parents and natural guardians of MCL

INDEX NUMBER: 520980/2018

Plaintiffs,

-against-

**AFFIDAVIT OF
ESTHER LAINE**

EDUCATIONAL INSTITUTE OHOLEI TORAH,

Defendant.

-----X

AFFIDAVIT OF ESTHER LAINE

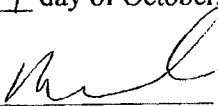
ESTHER LAINE , being duly sworn, deposes and says:

1. I am the mother of MCL, a wonderful four year old boy, and live in Brooklyn with my husband, Sholom Laine.
2. My husband and I began the application process to enroll our son in preschool at OHOLEI TORAH for the 2018-2019 school year at the end of March 2018.
3. We were told by OHOLEI TORAH that the two admission requirements for our son was that he be toilet trained and immunized according to New York State requirements.
4. As our son, MCL, is toilet trained, the only admission requirement that MCL lacks is the immunization requirement.
5. In response, we requested OHOLEI TORAH consider a religious exemption to their immunization requirement as proscribed by New York State Law. Nevertheless, OHOLEI TORAH refused to consider our request.
6. As such, we hired an attorney, Charles C. Nicholas, Esq. to write a letter to OHOLIE TORAH's director, Rabbi Sholom Rosenfeld, informing him that NY PHL section 2164(9) requires educational institutions to accept non-vaccinated students who belong

to families who hold sincere and genuine religious beliefs that prohibit the use of vaccinations. See Exhibit "B" annexed to my Verified Complaint. Further, he wrote that plaintiffs "would be willing to submit a written statement explaining their interpretation of the Torah and why vaccines violate their faith." *Id.*

- 7. On August 22, 2018, Mr. Nicholas again wrote to Rabbi Rosenfeld, stating that he had not received a response to his previous letter dated August 13, 2018. See Exhibit "C" to my Verified Complaint.
- 8. During the first week of school, beginning August 27, 2018, I met with Devi Baumgarten, an employee of OHOLEI TORAH. Ms. Baumgarten informed me that OHOLEI TORAH does not accept religious vaccination exemption requests.
- 9. I will also suffer irreparable injury because my constitutional right to exercise my religious beliefs, which my attorney has advised is enshrined in State law, is being violated because I am being asked to choose between vaccinating my child, which I won't do as it is against my religious beliefs, and being able to begin his yeshiva education.

Sworn to before me this
17 day of October, 2018



Notary Public

MIREL HACKNER
Notary Public, State of New York
No. 01HA8259118
Qualified in Kings County
Commission Expires April 8, 2020



ESTHER LAINE

Exhibit B

CHESNEY & NICHOLAS, LLP

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 485 UNDERHILL BLVD., SUITE 308
 SYOSSET, NEW YORK 11791
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 (516) 378-7633 (Fax)

chesneynicholas.com

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 PATRICIA A. MORGAN
 ELIZABETH KEADY

+ MANAGING PARTNER
 *ALSO MEMBER OF CT BAR

ANTHONY W. RUSSO*
 OF COUNSEL

CHARLES C. NICHOLAS
 RICHARD E. CHESNEY
 JOHN F. JANOWSKI
 HENRY D. NELKIN
 GREGORY E. BROWER +
 RUDOLPH P. PETRUZZI
 STEPHEN V. MORELLO

MICHAEL JENKS
 LYNN H. DELISA
 JEFFREY M. BURKHOFF
 KATHLEEN M. STAFFORD
 JAMES D. BRUCKNER
 WILLIAM J. CROWE
 DEBRA M. SILVERMAN
 GABRIEL D. RIVERA
 LINDSIE B. ALTERMAN
 SUSAN G. FAROOQI

August 13, 2018

RabbiSRosenfeld@Oholeitorah.com

Educational Institute Oholei Torah
 667 Eastern Parkway
 Brooklyn, New York 11213

Attn: Rabbi Sholom Rosenfeld
 Director

RE: Moshe Chaim Laine (DOB [REDACTED])

Dear Rabbi Rosenfeld:

Please be advised that I have been retained by Sholom and Esther Laine regarding their son's admission into your school.

The Laines hold genuine and sincere religious beliefs that prohibit the use of vaccinations. As you know, New York State Public Health Law Section 2164 and related case law permits parents to opt out of vaccinations based upon their genuine and sincere religious beliefs. The Public Health Law and specifically Section 2164 and its related case law requires educational institutions such as yours to accept non-vaccinated children who belong to families that hold such beliefs. I have spoken to the Laines at length and I can assure you that they meet the requirements of the law.

Should you require more information, we would be willing to submit a written statement explaining their interpretation of the Torah and why vaccines are in violation of their faith.

Obviously, we would like to avoid any legal entanglements and are hopeful that we can resolve this without the need for intervention in New York State courts. I remain open to discuss this with you

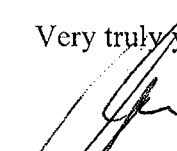
Educational Institute Oholei Torah

August 13, 2018

Page 2

at any time and should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,



Charles C. Nicholas

CCN/ss

cc: **Sholom.Laine@gmail.com**
Sholom D. and Esther Laine
1354 Carol Street
Brooklyn, New York 11213

Exhibit C

CHARLES C. NICHOLAS
 RICHARD E. CHESNEY
 JOHN F. JANOWSKI
 HENRY D. NELKIN
 GREGORY E. BROWER +
 RUDOLPH P. PETRUZZI
 STEPHEN V. MORELLO

CHESNEY & NICHOLAS, LLP

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 DEBRA M. SILVERMAN
 GABRIEL D. RIVERA
 LINDSIE B. ALTERMAN
 SUSAN G. FAROOQI

August 22, 2018

RabbiSRosenfeld@Oholeitorah.com

Educational Institute Oholei Torah
 667 Eastern Parkway
 Brooklyn, New York 11213

Attn: Rabbi Sholom Rosenfeld
 Director

RE: Moshe Chaim Laine (DOB [REDACTED])

Dear Rabbi Rosenfeld:

As you are aware, I sent a letter to you dated August 13, 2018 regarding Moshe Chaim Laine's registration and attendance in your school. I have not received any response. Moshe Chaim Laine has been registered, and upon receipt of a tuition invoice, it will be promptly paid.

Therefore, he will be attending school on Monday, August 27, 2018.

Thank you for your courtesy and cooperation.

Very truly yours,


 Charles C. Nicholas

CCN/eg

cc: Sholom.Laine@gmail.com
 Sholom D. and Esther Laine
 1354 Carol Street
 Brooklyn, New York 11213

Exhibit D

Charles Nicholas

From: Rabbi Sholom Rosenfeld
Sent: Tuesday, October 09, 2018 12:05 PM
To: c.nicholas@chesneynicholas.com
Subject: Fwd: immunization policy
Attachments: school policy.pdf

Rabbi Sholom Rosenfeld

Director



Educational Institute Oholei Torah
 667 Eastern Parkway
 Brooklyn, NY 11213
 Office: 718 774-5050 x 1150
 Fax: 718 778-0784
rabbisrosenfeld@oholeitorah.com

----- Forwarded message -----

From: **Devi Baumgarten** <devi@oholeitorah.com>
Date: Tue, Aug 28, 2018 at 6:04 PM
Subject: immunization policy
To: <c.nicholas@chesneynicholas.com>
Cc: Rabbi Sholom Rosenfeld <RabbiSRosenfeld@oholeitorah.com>

this email is in response to your request that we submit in writing our school policy regarding immunization requirements
 all registration applications are subject to proof of immuniation and review of records thereof

Exhibit E



EDUCATIONAL INSTITUTE OHOLEI TORAH

667 Eastern Parkway • Brooklyn, New York 11213 • 718-778-3340

ט"ב

August 27, 2018

To Whom This May Concern:

This letter will serve to clarify our schools policy regarding immunization of mandated vaccines.

❖ **MEDICAL FORMS & IMMUNIZATION RECORDS**

- All students entering **Preschool, Pre 1A** as well as all **new talmidim** must submit a current medical form along with an updated immunization record. *Full compliance with NYC DOH regulations is required.*
- **All students** must have 2 Varicella (chicken-pox) vaccines or medical documentation that child had chicken pox including date of diagnosis. Titers blood test results showing immunity can be submitted.
- **All preschool students** must have 1 dose of Influenza vaccine and documentation thereof.
- **Grade 6 talmidim** must have a Tdap (a.k.a. 11 yr. old booster) vaccination and documentation thereof.
- **Grade 7 talmidim** must have a Meningococcal conjugate (MenACWY) and documentation thereof.
- **Grade 12 talmidim** must have 2 Meningococcal conjugate (MenACWY) and documentation thereof.

This information was clearly communicated with the parents (Sholom and Esther Laine) with sufficient time for them to inoculate their son accordingly or give them the opportunity of selecting an alternate community school. In addition, the option of Titers blood work to verify immunization level was discussed at length.

Non-compliant children are subject to exclusion as mandated by the NYC Department of Health. Similarly students that have been accepted prior to the established policy were excluded in the event of outbreaks.

It is within the schools right to set and enforce said policies, and we will gladly accept Rabbi and Mrs. Laine's children if and when they agree to adhere to the school policies.

Respectfully yours,

Rabbi Sholom Rosenfeld
Administrator