SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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JOHN DOE,

Plaintiff,

-against-

EDWARD WARD, UNITED SYNAGOGUE OF CONSERVATIVE JUDAISM, UNITED SYNAGOGUE YOUTH, and THE USCJ SUPPORTING FOUNDATION,

Defendants.
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Index No.: 950113/2020

Motion Seq Nos.: 3 and 4

AFFIRMATION IN OPPOSITION TO DEFENDANTS USCJ AND USCJSF's PRE-DISCOVERY MOTIONS TO DISMISS

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PRELIMINARY STATEMENT

Christina R. Mercado, an attorney duly admitted to practice before the courts of this State, and associated with BLOCK O'TOOLE & MURPHY, LLP, attorneys for Plaintiff JOHN DOE, affirms the following to be true under penalties of perjury:

1. I am familiar with the pleadings and proceedings had in this matter previously and submit this Affirmation, and the annexed exhibit, in opposition to the motions by Defendants UNITED SYNAGOGUE OF CONSERVATIVE JUDAISM (hereinafter "USCJ") and THE USCJ SUPPORTING FOUNDATION, pursuant to CPLR §3211(a)(7), seeking pre-discovery dismissal of this case, which alleges various causes of action stemming from the sexual abuse of the minor Plaintiff between 1999 and 2004 by Defendant EDWARD WARD, who was provided access to Plaintiff through his employment as a 'youth leader' at USCJ's camps, schools and other events.

2. The USCJ Defendants' motions[1] argue, in brief: (1) that the allegations that they 'knew or should have known' of the abuse are insufficient to plead notice for any cause of action; and (2) that it is just true, despite submitting no evidence and no discovery having been exchanged, that the USCJ Defendants were not aware of the abuse.

3. However, (1) under the liberal pleading standards, the allegations *are* sufficient; and (2) *in arguendo*, the affidavit of Renee Arbitman, the mother of a minor sexually abused by Defendant WARD in 1989 (annexed hereto as **Exhibit "1"**) establishes the USCJ Defendants' actual knowledge of prior sexual abuse and cures any alleged defects in the Complaint. Specifically, the affidavit states that Defendant USCJ received **prior written notice**, in at least 2002, that WARD "*had sexually abused [a] minor [boy]*" and was "warned ... of [WARD's]

[1] Defendant USCJ's Motion (Seq. No. 3) is joined/reiterated by Defendant THE USCJ SUPPORTING FOUNDATION (Seq. No. 4) with no additional arguments; this Affirmation generally references the Defendant USCJ motion, unless necessary to address any distinct contention in the co-Defendant's motion.

propensity to sexually abuse minor children", including that he had "a history of sexually abusing a minor and posed a danger to minors under [USCJ's] care," and that WARD was terminated from his employment as a camp counselor in 2002 for sexually abusing a minor in 1989. (**Exhibit "1"**).

4. As such, Defendants' §3211 motions to dismiss must, respectfully, be denied.

5. *In arguendo,* in the event that the Court does not find Plaintiff's Complaint is 'particular' enough, Plaintiff respectfully requests that he should be permitted leave[2] to correct any insufficiency, particularly as evidence emerges in discovery to enable him to plead more specifics.

I. The Amended Complaint Is Sufficient To State A Cause of Action

6. Overall[3], the USCJ Defendants' Motions are premised on the erroneous argument that Plaintiff fails to sufficiently particularize notice in his Complaint. More specifically, these Defendants incorrectly contend that Plaintiff's allegations that these Defendants "knew or reasonably should have known" of the abuse are insufficient to allege notice, since they are "conclusions" and not "facts." (USCJ Memorandum of Law, page 6).

7. However, "[o]n a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction" (Schneiderman v. Credit Suisse Sec. (USA) LLC, 31 N.Y.3d 622, 642 (2018)), "so that cases may be disposed of ***on the merits***" (Brusco v. Miller, 167 Misc. 2d 54, 55 (App. Term 1995) (emphasis added))). *See* Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994) ("We accept the facts ... in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory").

8. And "[a] motion to dismiss pursuant to CPLR 3211(a)(7) ***will fail*** if ... the complaint states in some recognizable form ***any cause of action*** known to our law." 106 N. Broadway, LLC

2. Either at this juncture or in response to a subsequent motion by Plaintiff for such leave.
3. The specific causes of action and particular arguments towards each are addressed in more detail, below.

v. Lawrence, 189 A.D.3d 733 (2d Dept. 2020) (emphases added).

9. Contrary to the USCJ Defendants' contentions, Plaintiff's allegation that they "knew or reasonably should have known" is not only standard language in a complaint, but is actually required for the causes of action alleged herein. *See, e.g.,* Kenneth R. v. R.C. Diocese of Brooklyn, 229 A.D.2d 159, 161 (2d Dept. 1997) ("a necessary element of such causes of action is that the employer knew or should have known of the employee's propensity for the conduct which caused the injury").

10. In fact, on all fours with the instant action, the Appellate Division has held that an allegation that the defendant "knew or reasonably should have known" of the abuser-defendant's propensity for abuse is sufficient to allege notice. To wit, in George v. Windham, 169 A.D.3d 876 (2d Dept. 2019), the Second Department held that "[t]he complaint **sufficiently alleged** that [defendant] had **notice** of the dangerous conduct at issue such that the abuse could reasonably have been anticipated" (id. at 877) where the complaint alleged "[t]hat [defendant] ***knew or reasonably should have known*** of the risk to [plaintiffs] of sexual abuse in the foster home it placed them in" (George v. Windham, Complaint, Kings County Index No. 523270/2016, NYSCEF Doc. No. 1)).

11. Here, as in George, Plaintiff has alleged, as the USCJ Defendants concede, that Defendant USCJ "***knew or reasonably should have known***" that Defendant WARD "posed a threat of sexual abuse to children", among other things. (*See* USCJ Memorandum of Law, page 6).

12. The cases cited by the USCJ Defendants do not support their position that "knew or reasonably should have known" is insufficient to plead notice. *See* Kenneth R. v. R.C. Diocese of Brooklyn, 229 A.D.2d 159, 162 (2d Dept. 1997) (not addressing sufficiency of alleging notice); JFK Holding Co., LLC v City of New York, 68 A.D.3d 477 (1st Dept. 2009) (involving a lease agreement, not notice); Gordon v Dino De Laurentiis Corp., 141 A.D.2d 435, 436 (1st Dept. 1988)

(regarding pleading damages in a breach of contract Complaint, not notice).

13. Quite simply, Plaintiff's Amended Complaint was sufficient to allege notice for the causes of action brought against the USCJ Defendants.

14. And, at this pre-discovery stage, the complaint need only "state[] in some recognizable form any cause of action known to our law." 106 N. Broadway, LLC, *supra*. The law does not require every cause of action in the complaint be vetted to survive the motion, but only that one or "any" cause of action be stated for the entire motion to be denied. Id.

15. As such, Defendants' Motions should, respectfully, be denied ***in their entirety***.

II. The Arbitman Affidavit Unequivocally Demonstrates That Plaintiff 'Has A Cause of Action', And Clearly Requires Denial Of the Motion

16. Even if, *in arguendo*, Plaintiff's Amended Complaint were defective, Plaintiff submits an Affidavit that clearly cures any alleged defects and utterly invalidates every single 'factual' argument Defendants make. (*See* **Exhibit "1"**).

17. "When considering an application to dismiss a cause of action pursuant to CPLR 3211(a)(7), 'the criterion is whether the proponent of the pleading **has a cause of action, not whether he has stated one**.' ... ***Evidentiary material*** *may be considered to 'remedy defects in the complaint.*'" Kenneth R., *supra,* 229 A.D.2d at 161-62 (emphases added).

18. And "[i]n assessing a motion under CPLR 3211(a)(7) ... a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint." Doe v. Ascend Charter Schools, 181 A.D.3d 648 (2d Dept. 2020); *see also* Rovello v. Orofino Realty Co., Inc., 40 N.Y.2d 633, 635-36 (1976) ("affidavits may be used freely to preserve inartfully pleaded, but *potentially* meritorious, claims. Modern pleading rules are 'designed to focus attention on whether the pleader has a cause of action rather than on whether he has properly stated one.'").

19. Here, there was no 'defect' in the Amended Complaint. However, *in arguendo*,

Plaintiff submits the Arbitman Affidavit, which the Court, must, respectfully, consider and which utterly invalidates every single argument Defendants make which, in various forms, all boil down to the claim that there are not enough 'facts' alleged to plead notice. (*See* **Exhibit "1"**).

20. The Arbitman Affidavit absolutely refutes Defendant USCJ's baseless contention that "nothing ... supports Plaintiff's speculative conclusion that USCJ knew of any behavior by Ward that would have given it reasonable cause to suspect abuse. As such, ... USCJ [is not] liable for Ward's alleged misconduct under any legal theory"; and, more specifically, that the Amended Complaint should be dismissed for failing to allege "any facts that would suggest" the following:

a. "that USCJ knew, or reasonably should have known, of ... sexual abuse";

b. "that USCJ was made aware of sexual abuse by Ward at any time of any other child, prior to or while Ward was employed by USCJ"; or

c. "that Ward had a history of sexual abuse" or

d. "that any such history was made known to USCJ."

(USCJ Memorandum of Law, pages 4, 5-6).

21. However, the Affidavit demonstrates all four:

a. that Defendant USCJ at least should have known of abuse (**Exhibit "1"**);

b. that USCJ was made aware of sexual abuse by WARD of another child, at least two times, while WARD was employed and still abusing Plaintiff. (*see* **Exhibit "1"**, paragraphs 3-5 ("In ... 2002 .... I ... contacted USCJ/USY and advised them that Edward Ward had sexually abused my minor son .... I emailed Bruce Varon .... I [also] advised Gila Ward");

c. that WARD had a history of sexual abuse of minors (*see, e.g.,* **Exhibit "1"**, paragraph 2 ("Ward was a counselor at [Surprise Lake Camp]. ... Ward sexually

abused my son, who was only twelve")); and

d. that WARD's history of abuse was made known to USCJ, multiple times, at least as early as 2002 (*see* **Exhibit "1"**, paragraphs 3-5, 7).

22. More specifically, the Affidavit demonstrates that Defendants had **prior written notice**, in at least 2002, that Defendant EDWARD WARD "had sexually abused [a] minor [boy]" in 1989 and USCJ was "warned ... of [WARD's] **propensity to sexually abuse minor children**", including "that Edward Ward had a history of sexually abusing a minor and posed a danger to minors under [USCJ's] care"; and that WARD was terminated from his employment as a camp counsel in 2002 for sexually abusing a minor in 1989. (**Exhibit "1"**).

23. Furthermore, the Arbitman Affidavit contains proof that the USCJ Defendants' agent responded to the prior written notice. And it contains proof that additional prior written notice was sent to another person of authority at USCJ, WARD's wife, Gila Ward. (**Exhibit "1"**, paragraphs 4, 5, 7).

24. And this is just based on one affidavit, prior to any discovery being conducted and with a good faith basis to believe that more, further evidence will be uncovered if discovery is permitted to proceed in this case that is clearly, at the very least, "potentially meritorious" even if, *in arguendo*, the complaint were 'inartfully pleaded,' which it was not. *See* Rovello, *supra,* 40 N.Y.2d at 635-36; Thaw v. N. Shore Univ. Hosp., 129 A.D.3d 937, 942 (2d Dept. 2015) ("Any party is permitted, however, to submit evidentiary material in connection with a motion pursuant to CPLR 3211(a)(7). A plaintiff may submit affidavits 'to preserve inartfully pleaded, but ***potentially*** meritorious, claims.' Nevertheless ... a plaintiff 'will not be penalized because he ... has not made an evidentiary showing in support of his ... complaint'" (emphasis added)); *see also* Tsatskin v. Kordonsky, 189 A.D.3d 1296 (2d Dept. 2020) ("Evidentiary material submitted by the

plaintiff in opposition to such a motion may be considered to remedy defects in the complaint").

25. As such, this Affidavit goes above and beyond what is needed to defeat Defendants' CPLR §3211 motions. Respectfully the Affidavit would even be sufficient enough to raise an issue of fact to defeat a summary judgment motion, however, that is not the standard here.

26. "Whether the complaint will later survive a motion for summary judgment, or **whether the plaintiff will ultimately be able to prove [his or her] claims, of course, plays no part in the determination of a prediscovery CPLR 3211 motion to dismiss**." Doe v. Ascend Charter Schools, 181 A.D.3d 648 (2d Dept 2020) (emphasis added) ("since 'the burden does not shift to the nonmoving party on a motion made pursuant to CPLR 3211(a)(7), a plaintiff has 'no obligation to show evidentiary facts to support [his or her] allegations' ... Where evidentiary material is submitted and considered ... the criterion is whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and, *unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all, dismissal should not eventuate*" (emphasis added)); *see also* Karen S. v. Streitferdt, 172 A.D.2d 440, 440-41 (1st Dept. 1991) ("defendants-appellants are ... a religious corporation .... The plaintiff minors ... sue on various causes of action based on their allegation that defendant Thomas Streitferdt ... sexually abused them while they were under his religious guidance. ... there is a likelihood that discovery would yield essential facts otherwise in the exclusive control of the defendants. Such discovery is necessary before the arguments of the defendants can be tested on a motion for summary judgment.").

27. Here, it is abundantly clear that Plaintiff's actions against the USCJ Defendants cannot be dismissed based on Plaintiff's Amended Complaint, along with the Affidavit submitted herewith, under the CPLR §3211(a)(7) standards at this pre-discovery stage.

28. As such, Defendants' Motions, in their entirety, must, respectfully be denied.

29. While, respectfully, it is not required to defeat the Motions, Plaintiff does further respond to and oppose the details of the USCJ Defendants' lengthy arguments to each cause of action, as listed Defendant USCJ's Memorandum of Law, in order, below.

III. Counterarguments To Defendant USCJ's Specific Arguments

A. Negligent Hiring, Retention, Supervision And/Or Direction

30. Defendant USCJ argues: "Plaintiff's cause of action for negligent hiring, retention, supervision and/or direction against USCJ ... fails because it lacks any ... allegations ... of Ward's propensity to engage in sexual abuse such that his conduct should have been foreseeable to USCJ"; and "Plaintiff ... did not ... plead factual allegations 'that the employer ... failed to investigate a prospective employee notwithstanding knowledge of facts that would lead a reasonably prudent person to investigate that prospective employee." (USCJ Memorandum of Law, pages 7-8; *see* page 10 ("For example, ... that Ward engaged in sexual abuse of minors prior to USCJ hiring him that should have led USCJ ... to investigate Ward; that USCJ was ever informed by anyone that Ward had sexually abused children; or that ... anyone ... had ever complained of sexual abuse by Ward to USCJ. ... that USCJ had notice of anything concerning Ward's alleged misconduct *before* Ward became an employee ... while he was an employee ... or ... prior to ... this ... Complaint.").

31. However, the CPLR does not require such specific allegations as identifying names, means and dates. Rather, in Ascend Charter Schools, the Second Department held that "plaintiffs adequately pleaded their negligent supervision cause of action against Ascend [via] ... allegations that Ascend: '**had a duty to supervise** the children within its custody,' '**had contracted** for bus services with' [the abuser] Jofaz, and '**had obtained prior written notice of similar sexual conduct** that the infant plaintiff ... had been subjected to.'" Ascend Charter Schools, *supra,* 181 A.D.3d 648 (2d Dept. 2020). There, the complaint was not dismissed and plaintiff was permitted

to pursue a negligent supervision cause of action despite that the defendant there, unlike the USCJ Defendants here, who submit no evidence, had "submitted ... affidavit of ... chief financial officer ... who averred ... that on the date of the subject incident, Ascend had no contract with Jofaz, did not hire, contract with, retain, employ, supervise or in any way control Jofaz ... and, ... had no knowledge, written or otherwise, of inappropriate sexual behavior on the school bus." Id.

32. Here, Plaintiff sufficiently alleged that the USCJ Defendants "hired Defendant EDWARD WARD for a position that required him to work closely with, mentor, and counsel minor boys," "had a duty to supervise and prevent known risks of harm to the children of its program by its agents, servants, and/or employees", and the "duty to prevent, intervene with, and/or stop the improper conduct that resulted in Plaintiff being sexually abused by Defendant EDWARD WARD." (**Exhibit A** to USCJ Motion, paras. 141, 62, 63). Plaintiff additionally sufficiently alleged that the USCJ Defendants "knew, or should have known through the exercise or reasonable care, of Defendant ... WARD's propensity to develop inappropriate relationships with children in his charge," "knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up the inappropriate and unlawful sexual activities of ... WARD, who sexually abused Plaintiff", and that Defendants "knew and/or reasonably should have known that ... WARD had a history of sexually abusing children", and that WARD was still sexually abusing children, including Plaintiff. (**Exhibit A**, paras. 142, 64, 65, 66, 67). Plaintiff further sufficiently alleged that the USCJ Defendants "failed to prevent, intervene with and/or stop the improper conduct that resulted in Plaintiff being sexually abused by ... WARD", and "failed to prevent, intervene with and/or stop ... WARD from sexually abusing Plaintiff." (**Exhibit A**, paras. 69, 70).

33. Moreover, the Affidavit submitted by Plaintiff specifically demonstrates prior written notice, including by email to specific agents at USCJ at approximate dates. (**Exhibit "1"**)

34. Defendants' argument again rests on the mistaken notion that alleging that they "knew or should have known" is insufficient for notice. As above, the cases cited by the USCJ Defendants are either inapplicable or do not support their position. For example, in Shu Yuan Huang v St. John's Evangelical Lutheran Church, 129 A.D.3d 1053, 1054 (2d Dept. 2015), the complaint was dismissed "since it failed to sufficiently allege that the *defendants knew or should have known* of a propensity on the part of their employee to commit the alleged wrongful acts," whereas here, Plaintiff alleged (and has now submitted proof) that the USCJ Defendants knew or should have known of WARD's propensity to abuse children. Naegele v. Archdiocese of New York, 39 A.D.3d 270 (1st Dept. 2007) is completely inapplicable, as it held that it was not foreseeable that a priest would accept money and things of value from the parishioners because he was "modestly paid," and Moore v First Fed. Sav. and Loan Ass'n of Rochester, 237 A.D.2d 956, 957 (4th Dept. 1997) gives no context for its decision other than the dissent, which indicates that the case involved an employee subjecting a patron to peril by calling the police because he believed the patron had a gun. Finally, in Doe v. Alsaud, 12 F Supp. 3d 674, 680 (SDNY 2014), the complaint failed to allege—let alone submit proof as Plaintiff does here—that there was any "prior act or allegation of sexual misconduct committed by [the abuser]; or ... that [the defendant entity] knew or should have known of any such prior acts," whereas here, Plaintiff's Amended Complaint specifically alleged "[a]t all times relevant herein, [USCJ] and/or its alter ego, USCJ Foundation, knew and/or reasonably should have known, that Defendant ... WARD had a history of sexually abusing children" and submits proof of notice of that prior act of sexual misconduct. (**Exhibit A** to USCJ Motion, para. 66; **Exhibit "1"**).

35. Defendants additionally cite MS v. Arlington Cent. School Dist., 128 A.D.3d 918 (2d Dept. 2015) for the proposition that—in Defendants' words, not the case's—it is "a fatal

pleading defect" if some of the allegations concern abuse that occurred 'off of USCJ property' and/or 'over a computer communication system.' (USCJ Memorandum of Law, page 12).

36. However, MS v. Arlington Cent. School Dist., did not consider pleading standards as it was a summary judgment motion, made after discovery was conducted in the case.

37. Here, in contrast to MS v. Arlington Cent. School Dist., no discovery has been conducted and the USCJ Defendants submit no evidence at all.

38. In any event, the USCJ Defendants oversimplify the law cited, which, again, dealt with evidence and not pre-discovery dismissal. The law does not parcel out and dismiss episodes of abuse that occurred 'off site' and leave other episodes of abuse in the complaint, but rather is based on a showing of lack of proximate cause between the defendant's conduct and the abuse. *See* MS, *supra,* 128 A.D.3d at 919 ("Although KS first met Perna through the marching band, KS's injuries were not proximately caused by any negligent retention or supervision by the appellants (citing "John Doe 1" v. Board of Educ. of Greenport Union Free Sch. Dist., 100 A.D.3d 703 (2d Dept. 2012); S.C. v. New York City Dept. of Educ., 97 A.D.3d 518, 520 (2d Dept. 2012); Farrell v. Maiello, 38 A.D.3d 592 (2d Dept. 2007); Anonymous v. Dobbs Ferry Union Free School Dist., 290 A.D.2d 464 (2d Dept. 2002)); *see also* Bell v. Bd. of Educ. of the City of New York, 90 N.Y.2d 944, 946-47 (1997) (reversing dismissal of negligent supervision claims against a school where plaintiff was raped in a single assault, off-site, at the home of the abusers).

39. That is, the law permits defendants, based on *evidence,* following discovery, to "show[] that any *nexus* between their employment and supervision of [the abuser] and [the abuser]'s sexual abuse of [the plaintiff] was *severed by time, distance, and the intervening independent actions* [including] of [the plaintiff]." S.C., *supra,* 97 A.D.3d at 520 ("defendants established ... that any nexus between their employment and supervision of Hammond and

Hammond's sexual abuse of S.C. was severed by time, distance, and the intervening independent actions of S.C. in running away from home and Hammond in taking S.C. in and sexually abusing him"); Farrell, *supra,* 38 A.D.3d at 593 ("Because Maiello **was no longer employed** as the youth director **at the time he abused the plaintiff** ... and because the abuse occurred in Maiello's apartment, there was no nexus between Maiello's employment and the abuse of the plaintiff, as it was severed by time, place, and the intervening independent acts of Maiello"); Anonymous, *supra,* 290 A.D.2d at 464-65 ("Nowicki was the teacher .... The infant plaintiffs' parents hosted a ... party and invited Nowicki. Nowicki allegedly became intoxicated ... infant plaintiffs' father invited him to stay ... [and] sleep on the couch .... The next morning, ... infant plaintiff told his parents that he was sexually molested by Nowicki. .... plaintiffs alleged ... appellants were negligent in their hiring and supervising of Nowicki. ... The appellants made a prima facie showing ... by establishing that any nexus between Nowicki's employment at the District and his alleged sexual molestation of the infant plaintiffs was severed by time, distance, and the intervening independent actions of their parents"); Doe 1 v. Bd. of Educ. of Greenport Union Free School Dist., 100 A.D.3d 703, 704-06 (2d Dept. 2012) ("infant plaintiff ... was a student ... when the defendant [abuser], a teacher's aide ... allegedly engaged in an inappropriate sexual relationship with him. ... infant plaintiff ... testified that he first met [abuser] [through] his friendship with her son, with whom he shared some classes, and that both the development of his relationship with [abuser], as well as **all of their sexual trysts**, occurred ***off of school grounds*** and outside of school hours. ... the *evidentiary material* ... demonstrated that the plaintiffs did not have a cause of action ... in ... negligent hiring and supervision. Indeed, the infant plaintiff's own testimony ... established that **all of the improper acts** by [abuser] took place **off school premises** and/or outside of school hours, when the school defendants had no custody or control of the infant plaintiff and no duty to monitor or supervise the

conduct of [abuser]. .... Additionally, the ***evidence*** established that [abuser] ***was properly investigated prior to being hired***, **and that the school defendants had no notice** of any propensity on her part to sexually assault students, and the plaintiffs did not allege that the school defendants knew or had reason to know of any improper behavior by [abuser]. Similarly, there was ***no nexus*** between [abuser]'s employment and the sexual assaults, ***since they were separated by time, place, and the intervening independent acts*** of [abuser]. Accordingly, the school defendants indisputably proved, through the submission of evidentiary material, that the plaintiffs did not have a cause of action against them. ... [And] [t]he plaintiffs did not demonstrate that further discovery might lead to relevant evidence sufficient to oppose the school defendants' motion.")).

40. Here, although *some* of the episodes of specific abuse occurred on property not owned by the USCJ Defendants, misconduct/tortious activity did also occur at Defendants' sites and organized events. (*See* **Exhibit A** to USCJ Motion, paragraph 82 ("Plaintiff was sexually abused by ... WARD at the homes of Plaintiff and ... WARD, ***as well as*** **summer camps, offices, classrooms, religious spaces, conventions, meetings, classes and/or events, run, owned, sponsored, and/or supervised by Defendant** [USCJ] and/or its alter ego, USCJ Foundation, while ... WARD was an agent, servant, and/or employee of Defendant [USCJ] and/or its alter ego, USCJ Foundation." (emphasis added)), *compare to* Estevez-Yalcin v. The Children's Vil., 01-CV-8784 (KMK), 2006 WL 1643274, at *6 (SDNY 2006) ("CV first argues that none of N.M.'s sexual abuse occurred on CV premises and therefore, the negligent supervision and retention claims should be dismissed. However, Plaintiffs note that ***at least on one occasion*** Toffel rubbed N.M.'s shoulder and leg while on CV premises, and N.M. testified that on another occasion Toffel sexually molested him in his car in CV's parking lot." (emphasis added)).

41. More importantly, the USCJ Defendants were not merely owners of the

organization that placed the minor Plaintiff under the care of abuser Defendant WARD. Advancements within the USCJ Defendants' organization were offered—and provided—in exchange for engaging in the sexual acts with the abuser Defendant WARD. (*See* **Exhibit A** to USCJ Motion, paragraph 52 ("WARD promised, offered, or otherwise insinuated that Plaintiff would **gain increased power, influence, political favor, and other benefits and favoritism within Defendant [USCJ]** and/or its alter ego, USCJ Foundation, **if he engaged in sexual acts** and/or sexual performance with and/or for ... WARD.")).

42. Furthermore, as stated in the Amended Complaint, and as expected to be expounded upon further in discovery, the USCJ Defendants' sites and events served as a means for the abuser, Defendant WARD, to gain access to Plaintiff, both at said events as well as immediately prior to and after same. The abuse here was not attenuated from the USCJ Defendants' conduct and physical space, as might be said in a completely 'off campus' abuse case.

43. And again, here, no discovery has taken place. No witnesses have testified, no documents have been produced. *See, e.g.,* Estevez-Yalcin, *supra,* 01-CV-8784 (KMK), 2006 WL 1643274, at *6 (SDNY 2006) ("N.M. ***testified*** that on another occasion Toffel sexually molested him in his car in [defendant]'s parking lot." (emphasis added)).

44. The USCJ Defendants also cite Pratt, which involves the completely inapposite situation of a child being physically injured by a non-defendant owned vehicle after departing a defendant school bus—multiple blocks away. Pratt v. Robinson, 39 N.Y.2d 554, 560-61 (1976) ("struck by a truck while crossing Plymouth Avenue ... She had alighted ... school bus at its regular bus stop on the sidewalk .... Before reaching the point of the accident, as she usually did she had then walked ... three ... blocks, ... she had crossed two intersecting streets. ... Where a child is discharged from the bus at a concededly safe and scheduled stop, and is then injured several blocks

away from the stop, no interference with parental control could be found").

45. The USCJ Defendants further cite Ehrens, which itself cites only one case—which has since been rejected—for the 'rule' that the tort must have occurred on the defendant's property. *Compare* Ehrens v. Lutheran Church, 385 F3d 232, 235 (2d Cir. 2004) ("To state a claim for negligent supervision or retention under New York law, in addition to the standard elements of negligence, a plaintiff must show: ...and (3) that the tort was committed on the employer's premises or with the employer's chattels (citing D'Amico v. Christie, 518 N.E.2d 896, 901-02 (1987)), *with* Krystal G. v. R.C. Diocese of Brooklyn, 34 Misc. 3d 531, 539 (Sup. Ct. 2011) ("[defendant]'s argument that New York law requires that a negligent supervision claim involves tortious conduct committed with the defendant's chattels or on the defendant's property is unpersuasive. *D'Amico v. Christie,* 71 N.Y.2d 76 (1987), cited by [defendant], concerns the specialized duty to control and supervise intoxicated persons, rather than the more ***general negligent supervision claim*** at issue in the present case. There, the Court of Appeals refused to extend a landowner's duty to supervise subordinates to alcohol providers and their inebriates in light of the Dram Shop Act. This case does not involve a third-party's duty to supervise inebriants, and *D'Amico* does not control the present case, and **it is thus unnecessary for plaintiffs to allege that Cortez's tort was committed on his employer's premises** or with his employer's chattels. In summary, a sufficient relationship exists between Cortez and [defendant] to create [defendant]'s duty to supervise Cortez, and plaintiffs' amended complaint and supporting papers adequately allege that [defendant] knew or should have known of Cortez's propensity to engage in the alleged tortious conduct. Consequently, plaintiff has a cause of action sounding in negligent supervision and negligent retention."); Papiro v. The Roman Catholic Diocese of Rockville Centre, Nassau County Index No. 900036/2019, NYSCEF Doc. No. 44, Decision & Order, Jaeger, J., page 18 (May 15,

2020) ("The **employer's negligence lies in having placed the employee in a position to cause foreseeable harm**, harm which would most probably have been spared the injured party had the employer taken reasonable care in making decisions respecting the hiring and retention of the employee. ***Assertions that New York law requires*** that a negligent supervision claim involves tortious conduct committed with the defendant's chattels or ***on the defendant's property is unpersuasive***." (citing Johansmeyer, *infra*; Krystal G., *supra*).

46. Again, the law does not require that every single act of abuse occur on the defendant site. Moreover, the Amended Complaint here does include allegations of misconduct on the USCJ Defendants' property, including at their summer camps, offices, classrooms, religious spaces, conventions, meetings, classes and/or events, run, owned, sponsored, and/or supervised by Defendants. In addition, the off-site abuse in this case was preceded by inappropriate conduct, making dismissal of the negligent hiring, retention and supervision and/or direction claims, especially at this pre-discovery juncture, completely unwarranted. *See* Johansmeyer v. New York City Dept. of Educ., 165 A.D.3d 634, 636 (2d Dept. 2018) ("Generally, liability may not be imposed upon school authorities where ***all of the improper acts*** against a student occurred off school premises and outside school hours. Here, however, the DOE defendants' submissions demonstrated that, although the sexual abuse ultimately occurred in the infant plaintiff's home, it was preceded by time periods when the infant plaintiff was alone with Denice during school hours on a regular basis. During these times, Denice engaged in inappropriate behavior, including physical touching. Thus, triable issues of fact exist regarding, inter alia, whether the DOE knew or should have known of such behavior and Denice's propensity for sexual abuse. Accordingly, we agree with the Supreme Court's denial of ... DOE defendants' motion ... for summary judgment dismissing the complaint" (emphases added)); *see also* Werner v. Taconic Hills CSD, Index No.

E012020015760, NYSCEF Doc No. 35, Decision, Mackey, J. (Oct. 21, 2020) ("where there is evidence that those acts [by an employee] were preceded by inappropriate behavior that occurred in school, a question of fact is presented for the jury").

47. As such, Plaintiff has a cause of action sounding in negligent hiring, retention and supervision and/or direction against the USCJ Defendants.

B. Negligence And Recklessness

48. Regarding the negligence claim, the USCJ Defendants argue that "Plaintiff does not articulate what further duty was owed by USCJ outside of its alleged duty to use reasonable care supervising Ward .... Absent any allegation of some duty of care other than a failure to supervise, Plaintiff's negligence claim fails", despite admitting that Plaintiff alleged "that USCJ had a duty to '... prevent known risk of harm' to Plaintiff ... and to intervene with and/or stop the improper conduct." (USCJ Memorandum of Law, page 13).

49. As Defendant USCJ acknowledges, Plaintiff's negligence claim against it does allege more than just the duty, and failure, to supervise its employee Defendant WARD. Plaintiff alleges that the USCJ Defendants owed a duty to Plaintiff to prevent and to stop the harm, this includes "to intervene," even after the abuse had already started. This goes beyond just failing to investigate and negligently hiring WARD, and even stands apart from negligently retaining and supervising WARD, which suggest a duty to take actions such as terminating his employment and/or watching him more closely. Rather, these negligence allegations involve separate breaches of duties, in failing to protect Plaintiff including to 'intervene' to stop the abuse that Defendants had already negligently permitted to commence, which might suggest a duty to take different actions such as informing authorities, ensuring physical separation from WARD, informing the minor Plaintiff's parents and other actions that may be borne out by the evidence when this case

proceeds to discovery. *See* Papiro, *supra,* Nassau County Index No. 900036/2019, NYSCEF Doc. No. 44, Decision & Order, Jaeger, J., page 21 (May 15, 2020).

50. Defendant USCJ also reiterates its debunked claim that the negligence claim "is legally insufficient" because "there simply are no factual allegations to establish that USCJ knew, or reasonably should have known, of Ward's propensity to abuse minors such that USCJ could have intervened and/or prevented Ward's misconduct." (USCJ Memorandum of Law, page 14).

51. To the contrary, not only did the Amended Complaint plead notice, but the Affidavit submitted herewith *proves* it. The Affidavit demonstrates that the USCJ Defendants at least should have known of abuse and were made aware of sexual abuse by WARD of another child, at least two times, while WARD was employed. (**Exhibit "1"**, paragraphs 3-5 ("In ... 2002 .... I ... contacted USCJ/USY and **advised them that Edward Ward had sexually abused my minor son** .... I emailed Bruce Varon .... I [also] advised Gila Ward"); paragraph 2 ("Ward was a counselor at [Surprise Lake Camp]. ... Ward sexually abused my son, who was only twelve"); paragraphs 3-5, 7 ("warned ... of ... **propensity to sexually abuse minor children**", including "history of **sexually abusing a minor** and posed a danger to minors under [USCJ's] care")).

52. Regarding the reckless claim, the USCJ Defendants argue "Plaintiff ... does not allege that anyone reported abuse by Ward to USCJ; ... Plaintiff also does not allege facts showing that USCJ had actual or constructive notice of a propensity by Ward to sexually abuse minors or that Ward's conduct took place out in the open, for others to observe, or that anyone alerted USCJ to Ward's conduct taking place behind closed doors .... There are simply no allegations coming even remotely close to deliberate conduct by USCJ in conscious disregard of a known risk to Plaintiff sufficient to constitute recklessness." (Memorandum of Law, page 15).

53. However, again, the Affidavit submitted in opposition more than sufficiently

establishes the requisite notice—including that prior abuse was reported to the USCJ Defendants and that USCJ had actual notice of WARD's propensity to sexually abuse minors—and, when discovery proceeds as it should, it is expected that more such evidence will emerge. (**Exhibit "1"**).

54. Moreover, advancements within the USCJ organization were offered, and provided, in exchange for engaging in the sexual abuse. Any involvement, including notice, by USCJ in this arrangement could surely come within the ambit of recklessness by the USCJ Defendants' own definition. (*See* Memorandum of Law, page 15 (citing Ingrao v. County of Albany, N.Y., 1:01-CV-730, 2006 WL 2827856, at *8 (NDNY 2006) ("The Second Circuit has often equated gross negligence with recklessness, and [has] defined it as the 'kind of conduct ... where [the] ***defendant has reason to know of facts creating a high degree of risk of physical harm to another and deliberately acts or fails to act in conscious disregard or indifference to that risk***." (emphasis added)); Karen S., *supra,* 172 A.D.2d at 441 ("there is a reasonable probability that the specific conduct of such defendants ['religious entities'] alleged constitutes gross negligence.'").

55. The Affidavit submitted herewith presents proof that a USCJ Defendant agent cloaked with authority "acknowledged [the] warning [of WARD's propensity for sexual abuse of minor boys], but told [a victim's mother] ... that the Jewish New Year was coming, and that [she] should 'move on with [her] life.'" (**Exhibit "1"**, paragraph 4).

56. This evidence shows that the USCJ Defendants not only had reason to know of a high degree of physical harm to the children it placed within Defendant WARD's 'care', but deliberately failed to act in conscious disregard or indifference to that risk—an attempt to truly sweep that risk under the rug with utter lack of concern for the children at risk.

57. Again, these defense motions are made *pre-discovery*. Plaintiff has not yet had any opportunity to depose Defendants, request documents, and otherwise prove additional notice,

which Plaintiff anticipates will happen.

58. As such, Plaintiff has negligence and reckless claims that, respectfully, should not be dismissed at this early, pre-discovery juncture.

C. Breach of Fiduciary Duty, Nondelegable Duty and In Loco Parentis

59. The USCJ Defendants argue that the "breach of fiduciary duty claim ... should be dismissed because ... as a matter of law, USCJ did not stand in a fiduciary relationship with Plaintiff", that the allegations are not specific enough and that the Complaint "does not allege facts that the misconduct was ever reported or known to USCJ." (USCJ Memorandum of Law, page 16 (citing, e.g., Doe v. Holy See (State of Vatican City), 17 A.D.3d 793, 795 (3d Dept. 2005)).

60. First, it bears noting that Defendants rely on pre-CVA cases in which a plaintiff, often an adult, was attempting to use 'fiduciary duty' to extend an otherwise blown Statute of Limitations. *See e.g.,* Holy See (State of Vatican City), *supra,* 17 A.D.3d at 795-96 ("it was incumbent upon plaintiffs to come forward with facts in support of equitable estoppel. Plaintiffs have relied solely upon ... allegations ... which, *in our view*, do not demonstrate ... a fiduciary relationship .... plaintiffs allege only that defendants provided pastoral services to plaintiffs and their immediate families and that defendants held themselves out as religious educational institutions and maintained instructional programs for children, in which three of the four plaintiffs participated. The record is wholly devoid of any indication that plaintiffs' relationships with defendants were unique or distinct from defendants' relationships with other parishioners. ... Inasmuch as plaintiffs have failed to demonstrate the existence of fiduciary relationships ..., defendants are not equitably estopped from asserting the statute of limitations defense.").

61. And, in the main case that Defendants rely upon—a Third Department pre-CVA decision from 2005—a concurrence/dissent indicates it was a very close call where plaintiffs

received religious education and instruction, separating them from the general congregants. *See* Holy See (State of Vatican City), *supra,* 17 A.D.3d at 797-98, Peters, J., concurring in part and dissenting in part ("While I agree with the majority that a fiduciary relationship cannot be grounded solely upon a parishioner's attendance at weekly mass at a local church ..., I find that plaintiffs in action Nos. 1, 2 and 4 have sustained their burden of demonstrating that their relationship with defendants ... was unique from that shared by other parishioners generally. ... those ... plaintiffs received religious instruction from a church-sponsored school where they were taught by either nuns or priests from such churches. Each was singled out for individualized instruction or specialized attention and each of their families allowed them to participate in the church-sponsored or extracurricular activities. As the preanswer motion before us is addressed solely to 'a skeletal record' due to the procedural posture of these actions, I find, upon assessing the intent of the allegations in these complaints, that plaintiffs in action Nos. 1, 2 and 4 have demonstrated the existence of a relationship different from that of the other parishioners.").

62. Here, the minor Plaintiff was not merely a congregant at Defendants' synagogue. And, in fact, Plaintiff was even more than 'just' a student under Defendants' care. Rather, Plaintiff attended sleep-away camps, was offered advancements in the Defendant organization and was encouraged by the Defendants to undergo 'initiation' with the abuser Defendant (WARD) in order to receive specialized treatment and recognition within the Defendants' organization. (*See, e.g.,* **Exhibit A** to USCJ Motion, paragraph 82 ("Plaintiff was sexually abused ... at ... summer camps, offices, classrooms, religious spaces, conventions, meetings, classes and/or events, run, owned, sponsored, and/or supervised by Defendant [USCJ] and/or its alter ego, USCJ Foundation")).

63. Respectfully, this separates Plaintiff's claims and relationship from that of an ordinary parishioner who attends weekly services. And Plaintiff was 'uniquely vulnerable' in this

relationship. (*See* **Exhibit A** to USCJ Motion, paragraphs 75-76, 74 ("By holding ... WARD out as safe to work with children and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, Defendant [USCJ] and/or its alter ego, USCJ Foundation, entered into a fiduciary relationship with the minor Plaintiff. ... undertaking the care and guidance of the vulnerable minor Plaintiff, Defendant [USCJ] ... held a position of empowerment over Plaintiff.")).

64. And, at this early stage, this is a proper case to preserve the claim and permit discovery to go forward; if the evidence does not support the claim, Defendants are certainly entitled to seek dismissal on a summary judgment motion based on proper evidence. *See* Doe v. R.C. Diocese of Rochester, 12 N.Y.3d 764, 765-66 (2009) ("in order to demonstrate the existence of a fiduciary duty between a cleric and a congregant ..., 'a congregant must set forth facts and circumstances in the complaint demonstrating that the congregant became ***uniquely vulnerable and incapable of self-protection*** regarding the matter at issue' ... to show that the parties had a relationship characterized by ***control and dominance***."); Holy See (State of Vatican City), *supra,* 17 A.D.3d at 797-98, Peters, J., concurring in part and dissenting in part ("relationship with defendants ... was unique from that shared by other parishioners generally").

65. Lastly, as repeatedly stated above, the Affidavit submitted herewith more than adequately disproves the USCJ Defendants' contention that "the misconduct was [n]ever reported or known to USCJ." (USCJ Memorandum of Law, page 16).

66. Regarding the *In Loco Parentis* and non-delegable duty, to the extent that the Court may, *in arguendo,* find that these allegations of breaches of duties are not separate causes of action, Plaintiff submits that the allegations that the USCJ Defendants had these duties and breached them should not, respectfully, be struck. Even if these breaches of duty are encompassed within the negligence causes of action (broadly encompassing the breach of *a* duty of care) or other causes

of action, the allegations should not be struck; rather, Plaintiff should be permitted to find and use such facts to show that the USCJ Defendants breached a duty to him to support a finding of negligence, recklessness or other properly stated cause of action.

D. Sexual Abuse, Negligent And Intentional Infliction of Emotional Distress

67. As to sexual abuse, the USCJ Defendants argue that sexual abuse can never be within the scope of employment "and as such, recovery based on *respondeat superior* liability is not available to Plaintiff." (USCJ Memorandum of Law, page 21).

68. It is true that sexual abuse is generally not within the scope of employment; this is so because sexual abuse is typically solely personally motivated. *See* Doe v. Rohan, 17 A.D.3d 509, 512 (2d Dept. 2005) ("[where] the bus driver's acts of sexual abuse and molestation were a clear departure from the scope of his employment, committed *solely for personal reasons*, and *unrelated to the furtherance of his employer's business*, neither the bus company nor the School District can be held vicariously liable for his acts").

69. However, at this early, pre-discovery state, it is respectfully submitted that the sexual abuse claims in this case were properly pled and contain specific allegations of a *quid pro quo* arrangement whereby advancements within the USCJ Defendants' organization were offered and provided in exchange for engaging in the abuse; this separates the instant case from other cases of abuse that are completely personally motivated without any allegation of cooperation or complicity by the defendant organization. *See* Rich v. Fox News Network, LLC, 939 F.3d 112, 129-30 (2d Cir. 2019) ("employee ... acting within the scope of his or her employment; ... the employer would only be liable ... vicariously under the theory of *respondeat superior* .... Under New York law, an employee's tortious acts fall within the scope of his employment if 'done while the servant was doing his master's work, no matter how irregularly, or with what disregard of

instructions.' But 'an employer will not be held liable under [*respondeat superior*] ... for actions which were ... undertaken by the employee for wholly personal motives. ... The [plaintiffs] may be alleging that Zimmerman (and Wheeler) were acting within the scope of their employment and, therefore, Fox News is vicariously liable. Or they may be alleging that, although their conduct fell outside the scope of their employment, there was negligence on the part of Fox News in hiring and supervising them. Or they ***may be alleging both***, leaving it up to the jury to decide the scope of employment question. ... A simple amendment would clarify the issue. ... either theory of liability—negligent supervision or vicarious liability—appears to be one that the complaint, if amended, could readily allege. ... we believe a clarifying amendment as to the negligence claim should ... be permitted. ... we instruct the District Court to allow the [plaintiffs] to amend their negligent supervision or retention count.").

70. As to the infliction of emotional distress claims, it must again be stressed that this case is at a pre-discovery stage where Plaintiff has not yet had the opportunity to seek and obtain evidence of the specific conduct by the USCJ Defendant organizations.

71. In general, "[u]nder New York law, a cause of action alleging intentional infliction of emotional distress 'has four elements: (i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress.' Leff v Our Lady of Mercy Academy, 150 A.D.3d 1239, 1241-42 (2d Dept. 2017) ("where severe mental pain or anguish is inflicted through a deliberate and malicious campaign of harassment or intimidation, a remedy is available in the form of an action for the intentional infliction of emotional distress").

72. Whereas, "extreme and outrageous conduct is not an essential element of a cause of action to recover damages for negligent infliction of emotional distress." Stephanie L. v House

of the Good Shepherd, 186 A.D.3d 1009, 1013 (4th Dept. 2020), *rearg denied,* 189 A.D.3d 2171 ("we reject defendants' contention that the court erred in denying the motions with respect to the negligent infliction of emotional distress cause of action. Contrary to defendants' assertion, 'extreme and outrageous conduct is not an essential element of a cause of action to recover damages for negligent infliction of emotional distress'").

73. Here, the USCJ Defendants unfairly contend that the inflection of emotional distress claims should be dismissed at this early stage because "Plaintiff has asserted various negligence claims", and yet also seeks to dismiss every one of those negligence claims. (USCJ Memorandum of Law, pages 23-24).

74. Respectfully, if the USCJ Defendants' rationale, that the infliction of emotional distress claims must be dismissed because they are duplicative of the negligence claims, is accepted then the USCJ Defendants cannot fairly seek to dismiss the negligence claims too.

75. Moreover, Plaintiff has adequately pled infliction of emotional distress claims and the USCJ Defendants certainly retain their right to seek dismissal via summary judgment or a voluntary discontinuance by Plaintiff, should the evidence demonstrate there is no viable cause of action for infliction of emotional distress against them. At this pre-discovery juncture, only Plaintiff stands to be prejudiced by prohibiting discovery on relevant issues.

E. Breach of Statutory Duty to Report Abuse (Social Services Law §413 and §420)

76. Defendant USCJ argues that Plaintiff's statutory duty claim should be dismissed because USCJ did not have "'reasonable cause' to suspect that a child ... was abused." (USCJ Memorandum of Law, page 27).

77. However, as detailed *ad nauseum* above, the Affidavit submitted herewith, along with the Amended Complaint, provide more than adequate allegations and proof of 'reasonable

cause' of abuse to the USCJ Defendants. (*See* **Exhibit "1"**; Bartels v. Westchester County, 76 A.D.2d 517, 521 (2d Dept. 1980) ("The statute ... creates a liability which, under the rule directing the liberal construction of pleadings, would require us to sustain the amended complaint here. One of the claims alleged ... is that the appellants had actual notice of conduct by the [abuser] constituting maltreatment prior to the time that the infant plaintiff was scalded. Whether the nature of the conduct or other circumstances observed by the appellants amounted to a violation of the statute ... are, of course, matters of proof to be determined at a trial. Accordingly, we think that the statutory duties which the appellants are required to discharge are sufficient foundation for the cause of action asserted in the complaint.")

78. The USCJ Defendants further argue that the statute "imposes the obligation to report abuse on ... reporters and not institutions. Under SSL §413, institutions have no independent mandate to report abuse." (USCJ Memorandum of Law, page 27).

79. To the contrary, "New York Social Services Law §413 ... **impose[s] the reporting obligation on the** ... **agency** which employs [the individual]." Ingrao, *supra,* 1:01-CV-730, 2006 WL 2827856, at *6-7 (NDNY Oct. 2, 2006) ("an independent right of action exists under [SSL] §420(2) where a mandated reporter willfully and knowingly fails to report ... suspected child abuse .... [SSL] §413 appears to impose the reporting obligation on the ... agency which employs an offending [individual]. ... Defendant's motion ... is denied. ... a genuine question of material fact exists as to whether any representative ... failed to report such a case. Indeed, there is evidence ... that, when presented with reports of abuse ..., the agency engaged in investigative efforts. Further, where no report was made or investigation conducted, a jury question exits as to whether the omission amounted to a knowing and willful failure to report suspected child abuse").

80. The issue of whether the USCJ Defendants, or any of their employees, were a

'mandated reporter' under the statute, respectfully, should remain at least through discovery.

81. As the USCJ Defendants conceded, the statute contains a "long list" of mandatory reporters. (USCJ Memorandum of Law, page 28). This 'long list' includes certain roles within camps, which is where Plaintiff has alleged abuse occurred in this case, and other child care situations that may apply to the USCJ Defendants here. *See* SSL §413 ("director of a children's overnight camp, summer day camp or traveling summer day camp, ... school-age child care worker; provider of family or group family day care; ... or any other child care ... worker...").

82. Here, no discovery has been conducted into the roles, certifications and obligations of these USCJ Defendant entities. A basic website search suggests that current camp counselors at least have an obligation to report child abuse, consistent with the statutory list. And certainly it would only be fair to permit Plaintiff to explore whether the statutory rule applies to the USCJ Defendants, their employees and agents, and how their own reporting rules, even if an internal rule, came to be imposed and why and how the rules may have been violated in this case.

83. As such, Plaintiff has stated a claim for breach of statutory duty and should, respectfully, be permitted to pursue discovery.

F. Punitive Damages

84. Contrary to the USCJ Defendants' contentions, there is not sufficient reason at this juncture to strike Plaintiff's demand for punitive damages, given Plaintiff has pled claims for recklessness/gross negligence.

WHEREFORE, Plaintiff respectfully requests that the Motions of Defendant THE UNITED SYNAGOGUE OF CONSERVATIVE JUDAISM (Seq. No. 3) and Defendant THE USCJ SUPPORTING FOUNDATION (Seq. No. 4) be denied in their entirety; together with such other, further, and different relief as this Court deems just and proper.

DATED: New York, New York
March 26, 2021

Christina R. Mercado
CHRISTINA R. MERCADO

WORD COUNT CERTIFICATION

Pursuant to Uniform Civil Rules for the Supreme Court § 202.8-b(b) and (c), I hereby certify that the accompanying **AFFIRMATION IN OPPOSITION**, was prepared a computer using Microsoft Word, with a proportionally-spaced typeface, as follows:

Name of typeface:	Times New Roman
Point size:	12
Line Spacing:	Double

Word Count. The total number of words in this Affirmation, inclusive of point headings and footnotes and exclusive of the caption, table of contents, signature block and this Certification is 8,820. This exceeds the 7,000 word limit; however, permission has been requested from the Court to exceed the word limit due to the fact that Defendants made their motions to dismiss Plaintiff's Amended Complaint prior to the implementation of the new uniform rules (AO 270/20) and the memorandum of law is 37 pages long (including table of contents/authorities), addressing each cause of action brought by Plaintiff, at length, and it is therefore necessary for Plaintiff to address each argument at an at least comparable length to fully address each argument.

DATED: New York, New York
March 26, 2021

Christina R. Mercado
Christina R. Mercado