

contained herein, defendant Sununu Youth Services Center (hereinafter “SYSC”), f/k/a Youth Development Center (hereinafter “YDC”), and defendant Youth Development Services Unit, (hereinafter “YDSU”) f/k/a State Industrial School and Adolescent Detention Center (hereinafter “ADC”), Philbrook Center, Tobey School, and any other State-run juvenile facility, (collectively, SYSC, YDC, YDSU, and ADC are referred to hereinafter as the “Youth Facility”)¹ each is/was a secure facility in which juveniles between the ages of seven (7) and eighteen (18) years old were committed by the State pursuant to or in furtherance of juvenile court proceedings, including following a delinquency adjudication or while awaiting a juvenile court disposition. At all times relevant to the allegations contained herein, the Youth Facility is/was under the purview and control of defendant DHHS. By statute, the programs and policies of the Youth Facility are administered by DHHS. *See* RSA 621:1, II. At all times relevant to the allegations contained herein, DHHS received and continues to receive federal funding for the operation of the Youth Facility.

3. Defendant Department of Youth Development Service (hereinafter “DYDS”), Division of Residential Services, is a New Hampshire State administrative agency with a mailing address of 129 Pleasant Street, Concord, New Hampshire 03301. At all times relevant to the allegations contained herein, DYDS was a subdivision of DHHS, and the Youth Facility is/was administered by DYDS.

4. Defendant Division of Children, Youth, and Families (hereinafter “DCYF”) is a New Hampshire State administrative agency with a mailing address of 129 Pleasant Street,

¹ For purposes of this Complaint, the definition of “Youth Facility” is intended to encompass all programs, services, and facilities appurtenant to the SYSC, YDC, YDSU, and ADC, including, by way of example, all educational programs and schools associated with the Youth Facility that provided educational services to children in the care, custody, and control of the State Defendants.

Concord, New Hampshire 03301. At all times relevant to the allegations contained herein, DCYF is/was a subdivision of DHHS, and the Youth Facility is/was administered by DCYF.

5. Defendant Division of Juvenile Justice Services (hereinafter “DJJS”) is/was a New Hampshire State administrative agency with a mailing address of 129 Pleasant Street, Concord, New Hampshire 03301. At all times relevant to the allegations contained herein, DJJS is/was a subdivision of DHHS, and the Youth Facility is/was administered by DJJS.

6. The “Youth Facility” Defendants (SYSC, YDC, YDSU, ADC, and adjuncts) together comprise a New Hampshire state administrative agency with a mailing address of 129 Pleasant Street, Concord, New Hampshire 03301 (DHHS, the Youth Facility, DYDS, DCYF, and DJJS are hereinafter collectively referred to as the “State Defendants”).

7. Defendant Nashua Children’s Home is a private agency which, at all times relevant to this complaint, was paid as a contractor and agent to carry out for the State of New Hampshire its duty to provide care, custody and protection to the Plaintiff, having a physical presence and address at 125 Amherst Street, Nashua, New Hampshire 03064.

8. Defendant Mount Prospect Academy is a private agency which, at all times relevant to this complaint, was paid as a contractor and agent to carry out for the State of New Hampshire its duty to provide care, custody and protection to the Plaintiff, having a physical presence at several locations in New Hampshire and a mailing address at 354 Main Street, Plymouth, New Hampshire 03264.

9. Defendant Easter Seals/Jolicoeur School a/k/a Gammon Academy, is a private social service agency which, at all times relevant to the allegations contained herein, was paid as a contractor and agent to carry out for the State of New Hampshire its duty to provide care,

custody and protection to the Plaintiff, having a physical location in Manchester, New Hampshire and a mailing address at 555 Auburn Street, Manchester, New Hampshire 03103.

10. Defendants Ron and Rhonda Roes 1-100 are/were, at all times relevant to the allegations contained in this Complaint, corporations, non-profits, group homes, foster parents, officers, directors, supervisors, employees, servants or agents of DHHS, DCYF, DJJS, the Youth Facility and other public or private agencies, businesses, facilities, and/or placements involved in the care, custody, and control of Plaintiff (Defendants Ron and Rhonda Roes 1-100 are hereinafter collectively referred to as the “Individual Defendants”; the State Defendants and Individual Defendants are hereinafter collectively referred to as the “Defendants” or “All Defendants”).

JURISDICTION AND VENUE

11. This Honorable Court may properly exercise personal jurisdiction over the Defendants because, at all times relevant to the allegations contained herein, the Defendants were residents of the State of New Hampshire, committed tortious acts in the State of New Hampshire, and/or were otherwise transacting business within or receiving money from the State of New Hampshire, including federal funds issued to the State of New Hampshire.

12. Pursuant to RSA 491:7, this Honorable Court has subject-matter jurisdiction over this action because this is a civil action arising out of acts that occurred in the State of New Hampshire.

13. Pursuant to RSA 507:9, this Honorable Court is a proper venue for this action because at least one of the parties resides in the County of Hillsborough, State of New Hampshire.

FACTS

14. The State of New Hampshire has, since at least 1913, operated the Youth Facility: a juvenile correctional facility known by many names, including the State Industrial School, the Adolescent Detention Center, the Youth Development Center, the Youth Detention Services Unit, Philbrook Center, Tobey School, and currently the Sununu Youth Services Center.

15. Pursuant to New Hampshire law, the juvenile courts of the State of New Hampshire commit juveniles to the custody and control of DHHS, and DHHS thereafter places those juveniles in residential facilities, such as the Youth Facility or State contractors, pursuant to the *parens patriae* powers of the State. The purpose of such placements is to care for, protect, and rehabilitate minor children who have come into the juvenile justice system, often because of Adverse Childhood Events (ACE), other trauma or crises, or lack of support. In taking custody and making these placements, the State removes these children from the physical custody, care and control of their parents, family members, and/or legal guardians and places them in the custody, care and control of State agencies who assume all duties of a parent to care for, control, and protect them, to the exclusion of others. DHHS also contracts with (and historically has contracted with) third parties to place children in its custody and control at other, privately-run residential facilities, including foster care facilities and group homes.

16. In this case, John Doe #402 was placed at Nashua Children's Home, Mount Prospect Academy, and the Jolicoeur School, all State contractors and State agents besides the Youth Facility. The State had a nondelegable duty of care to the plaintiff and is responsible for the abuse occurring at the contracting facilities, as well as its own facilities.

17. While minors were and are committed to the custody and charge of the State of New Hampshire and DHHS for a variety of reasons, the central purpose for committing children

has always been protective, rehabilitative, therapeutic, and developmental, not penal. *See*, RSA 169-B through F. By way of example, RSA 621:2, effective on June 30, 1981, codified the purposes and policies of residential facilities such as the Youth Facility:

The New Hampshire youth development center shall be administered to effect the following purposes and policies:

- I. To provide a wholesome physical and emotional setting for each child detained at or committed to the center;
- II. To provide protection, care, counseling, supervision, and rehabilitative services as required by the individual child;
- III. To assure that the child has not been deprived of those rights to which he or she is entitled by law;
- IV. To teach the child to accept responsibility for his or her actions;
- V. To recognize that the child's interests are of major importance while also acknowledging the interests of public safety;
- VI. To cooperate with the courts, law enforcement agencies, and other agencies in juvenile matters to ensure that the needs of each child who is involved with these agencies are met with minimum adverse impact upon the child; and
- VII. To return each child committed to the center to a community setting with an improved attitude toward society.

18. In fact, contrary to this statutory and common law duty to “provide a wholesome physical and emotional setting for each child,” “to provide protection, care ... and rehabilitative services,” and to “assure that the child has not been deprived of [his or her legal] legal rights,” the State-run and State-contracted facilities have been violent places in which physical, sexual and emotional abuse, and its attempted concealment from the outside world, was the norm for decades. Even today, the level of care continues to be sub-standard and falls short of the legal mandate contained in RSA 169 and 621:2.

The Disability Rights Center Blows the Whistle

19. By way of context for this claim, the Disability Rights Center (DRC), a federally-authorized protection and advocacy agency, did an investigation of violence at the YDC in 2008-2010 and again in 2017-18. They found “a pervasive pattern of inappropriate restraints and excessive use of force by facility staff.” In the cases sampled by the DRC investigation, they found the use of excessive force in 53% – a majority – of the incidents involving physical restraints. Of these violent incidents, the child was injured about 40% of the time. The violence and injuries reflected “a deep-rooted and pervasive culture of use of force to control residents” and “[w]idespread disrespectful behavior by staff towards youth at the facility.” “[E]xcept in rare instances,” the restraints and violent actions were “not justified.” https://drcnh.org/wp-content/uploads/2019/01/SYSC_Report_2_Oct_2010.pdf.”²

20. The DRC’s finding of habitual abuse of children at YDC, as well as its related finding that YDC personnel also habitually covered up the abuse and lied in its official reports, was met by the HHS/YDC bureaucracy with unprofessional hostility, deflection and denial of responsibility.

The ‘Code of Silence’

21. But it is now beyond dispute that the illegal violence was compounded by covering it up in reports and to the public, and by enforcing a ‘Code of Silence’ within the YDC. The suppression of the truth about abuse at YDC is illustrated in this case by the cover-up afforded one of the abusers of John Doe #402.

² The DRC’s reports included interviews with Dr. Eric Vance, the Medical Director of the NH Department of Juvenile Justice (DJJ). Dr. Vance reports that 68-80% of the children in the juvenile justice system have a diagnosed mental illness, ranging from autism and bi-polar disorder to clinical depression, ADHD and anxiety disorder. Additionally, 60-70% of the boys have been severely traumatized by physical or sexual abuse, or both; and 70-90% of the girls have been so traumatized. Most of those child victims suffer from PTSD in addition to their other mental illness. Accordingly, not only has the State normalized routine child abuse within its facilities, its victims are not only children, but children with serious mental handicaps. *Id.*

22. In 2017, a child reported to a YDC intern that he had been sexually abused by a counselor, Kirstie Bean. The intern recorded the abuse disclosure in handwritten notes and, as per (often-ignored) policy, in the official YDC database. The intern reported the disclosure to her supervisor, who in turn reported it to his supervisors. Shortly afterward, the supervisor directed the intern to destroy the intern's handwritten notes. The supervisor then accessed the database and deleted all references to the sexual abuse disclosure.

23. A federal statute, 34 U.S.C. § 303, requires juvenile residential facilities, including the YDC, to accurately report each sexual assault allegation to the federal Department of Justice (DOJ) each year. Truthful reporting is a condition for continued federal funding. Because the YDC had deleted the report of the abuse from its database, the official report of the YDC to the federal DOJ for 2017 (filed in 2018) failed to include the sexual assault disclosure, violating not only State records law, but also committing a federal false statement felony, in violation of 18 U.S.C. § 1001. (The intern secretly retained the handwritten notes memorializing the abuse).

JOHN DOE #402

24. Beginning about age 7, John Doe #402 was molested by an older family member for about three years. The abuse progressed to include anal rape multiple times a week. The perpetrator enforced silence by threatening John Doe #402 with death if he disclosed the abuse.

25. Eventually, John Doe #402 was able to disclose the abuse to a teacher at school. The school called DCYF, which did an investigation. Unfortunately, John Doe #402's mother sided with the abuser to "keep family peace." Based largely on his mother's lack of support for her son, DCYF closed the investigation as "unfounded."

26. John Doe #402 felt deeply betrayed by the abuse and the rejection he experienced in being disbelieved. He came to distrust adults and the State as a result.

27. Depressed and disoriented, John Doe #402's schoolwork began to suffer. Soon, he was skipping school. Eventually, he began to smoke marijuana, which led to his adjudication at approximately 11 years old as a "delinquent," a status he retained until age 17.

28. Between the years of approximately 2009 and 2015, Plaintiff was taken into the custody and control of the State of New Hampshire as a minor and was committed to facilities and placements as directed by DHHS including, but not limited to, the Youth Facility.

29. John Doe #402 was placed initially at Nashua Children's Home, where he spent much of his time in isolation, either in his cell or in "the quiet room," a special isolation room used for punishment and compliance enforcement. He was subject to frequent violent "take downs," in which he was tackled by adults, with his arms twisted high behind his back, pinned to the floor and verbally and physically abused despite being only 11 or 12 years old, all in violation of RSA 126-U and his constitutional and other rights.

30. Verbal abuse was a routine occurrence. John Doe #402 came out as gay while at Nashua Children's Home, which made him a target for anti-gay abuse by the staff, some of whom referred to him as "the faggot," as well as by other children who followed the staff's example.

31. John Doe #402 was placed next at Mount Prospect Academy. There, the anti-gay abuse and "faggot" label persisted. He was locked in isolation for lengthy periods, sometimes 8-10 days, with minimal bathing and irregular and arbitrary toileting. The staff beat him severely approximately six times, including punching him, banging his head against the bedframe, the wall or a tree; and wrenching his arms high up behind his back. This occurred for punitive

purposes or no purpose at all. John Doe #402 has never engaged in violent behavior, and has never been a threat to himself or another person.

32. The staff at Mount Prospect distributed the drug “spice” to favored minor residents, as well as cigarettes and alcohol. Some of the staff used heroin. The then and current president of Mount Prospect, Jeffrey Caron, has a criminal record, including illegal drug charges, yet continues to receive substantial State contracts to “care for” vulnerable children. *See* Kristen Carosa, *Treatment center president charged with DUI after crash*, WMUR9 (Oct. 27, 2016), <https://www.wmur.com/article/2-arrested-on-dui-drug-charges-after-slamming-into-pole-in-lebanon/7659846>; *see also* Tim Camerato, *Two Plead Guilty in Fall Crash*, Valley News (Aug. 7, 2017), <https://www.vnews.com/Jeffrey-Caron-Arraignment-11724561>.

33. Thereafter, the State placed John Doe #402 at the Jolicoeur School a/k/a Gammon Academy, run by Easter Seals in Manchester. Members of the staff mocked him routinely for being gay. Some of the minor residents imitated the staff and began making fun of John Doe #402 because of his sexual orientation.

34. One of those residents, who was larger and older than John Doe #402, cornered him in a bathroom alone and sexually assaulted him, referencing his orientation.

35. Thereafter, John Doe #402, terrified and alone, attempted to walk away from the Jolicoeur School. He was charged with “escape” and sent to YDC.

36. John Doe #402 was confined at YDC for several years. The persecution because of his sexual orientation followed him there and remained for the duration.

37. Kirstie Bean was assigned to John Doe #402 as his “YC3,” or counselor. Upon information and belief, Bean was never subjected to a background check before her employment working with vulnerable children in the custody of the State. At first, he liked Bean. That

changed when she brought up the topic of sex with him. She knew he was gay, but tried to explore with him the possibility of having sex with a woman. She asked him if he had “ever been with a woman?” He replied “no.” She said “maybe you’d be really good at it.” She then took his hand and slid it under her waist band to her crotch and pushed his finger into her vagina. She was giggling. John Doe #402, startled, pulled away. Bean admonished him: “Don’t be a pussy,” and laughed.

38. John Doe #402 was 15 or 16 years old during this encounter. It was entirely non-consensual on his part.

39. Later that night, Bean came to his cell. She warned him not to tell anyone what she had done and threatened his “level,” meaning his privileges, furloughs, and prospective release date if he disclosed the abuse.

40. John Doe #402, already depressed, became more so and declined to disclose the abuse because of Bean’s threats and the certainty that he would not be believed and would be punished instead.

41. Punishment for John Doe #402 at YDC was frequent, severe and often arbitrary. He was frequently tackled and assaulted by guards, including Sean Hallett, for “transgressions” as minimal as being slow to wake up in the morning or for nothing at all.

42. On one occasion, a guard claimed a cigarette lighter was missing and accused John Doe #402 of stealing it. The guard stripped him to his underwear and made him bend over. The guard yanked down his underwear and inserted, first, one finger, then a second, and finally a third finger on his gloved hand, all the while making an exaggerated, painful and highly invasive “search” of John Doe #402’s rectum. Then, as he stripped off the used glove, the guard jibed, “I

bet you really liked that didn't you?"—a mocking reference to John Doe #402's sexual orientation.

43. Besides routine physical and sexual abuse, John Doe #402 spent large periods of time locked in solitary confinement. These confinements ranged from three to four days to as long as eight to nine days with almost no human contact, fresh air, exercise, regular bathing or toileting. At times, John Doe #402 had to sit in his own waste because there was no toilet in the room and no guard would answer his requests to be let out to the bathroom.

44. John Doe #402 is religious, and a primary comfort while at the YDC was practicing his Christian faith. He attended every service and Bible study he could. Unfortunately, even this fundamental constitutional right was gravely impaired by a minister on staff employed by the State. Reverend Jose Luna, besides being a State employee at YDC, is also a Pastor of the Disciples of the Word Ministry. He was also a member of the Human Rights Commission and a member of the Governor's Advisory Council on Diversity and Inclusion until November 1, 2019.

45. After a Bible study at YDC, John Doe #402 disclosed to Reverend Luna that he was gay and struggling with his faith. Luna reacted negatively, immediately declaring to John Doe #402 that God "will never allow a homosexual into heaven. You will be going to Hell." John Doe #402 became emotional, saying he did not choose to be gay and that it was not something he could help. Luna replied that "it was not okay to be gay. You don't have to be gay." Luna then instructed John Doe #402 that he only "thought" he was gay because he had been sexually abused (John Doe #402 had previously disclosed his abuse history to Luna and another minister at YDC, and Luna now turned the disclosure against him). Luna said John Doe #402 was merely confused by the sexual abuse and could and should choose not to be gay to "save yourself from Hell."

46. John Doe #402 was deeply wounded and intimidated by what he considered malicious, inappropriate counseling from Luna. He ceased discussing the issue with him. Luna, however, continued to mock John Doe #402 about his sexual orientation, including in front of other residents at Chapel or religious services. For instance, on one occasion, John Doe #402 sat on a chair, which broke beneath him. Luna laughed at him, saying “You’ve been eating too many cock cakes, uh, I mean cupcakes!” The group erupted in laughter at Luna’s remark. (In fact, the Plaintiff’s only sexual contact at the Sununu Center was when state employees were molesting him).

47. During Plaintiff’s time in the custody and under the control of the Defendants, Plaintiff was subjected to all of the following by agents and employees of the State Defendants and Ron and Rhonda Roes 1-100: (a) physical abuse, (b) sexual abuse, (c) mental/emotional abuse, (d) deprivation of constitutional religious rights, (e) excessive solitary confinement, (f) unauthorized strip searches, (g) excessive restraints, and (h) discrimination in education and on the basis of sexual orientation.

48. On information and belief, multiple employees and agents of the State of New Hampshire, including the Individual Defendants, knew about the crimes and other unlawful actions of the individuals who perpetrated the above-described abuse and the violent, abusive culture, and not only failed to report this information as required pursuant to RSA 169-C:29, common law, and as agents of the State, but also concealed this information which resulted in these individuals’ continued retention by the State of New Hampshire, enabling them to further victimize minors, who were committed to the custody and charge of DHHS.

49. On information and belief, the individual perpetrators of the abuse and the officers, directors, supervisors, employees, servants or agents of the State of New Hampshire and

other public or private agencies or businesses involved in the care of Plaintiff, including the Individual Defendants, acted together, in a common plan or design, for the purpose of committing acts of physical, sexual, and emotional abuse and torture, and then acted together, in a common plan or design, to unlawfully and deliberately conceal those acts from disclosure so that they could continue to perpetrate those acts on Plaintiff and on other minors in the custody and under the control of the State of New Hampshire.

50. On information and belief, the occurrence of (a) physical abuse, (b) sexual abuse, (c) mental/emotional abuse, (d) deprivation of constitutional religious rights, (e) excessive solitary confinement, (f) unauthorized strip searches, (g) excessive restraints, and (h) discrimination in education and on the basis of sexual orientation suffered by Plaintiff, and by other minors, was so pervasive and severe that it was apparent to and known about by employees and agents of the State Defendants, including the Individual Defendants, and including, but not limited to, those in supervisory positions.

51. On information and belief, the State of New Hampshire, through its agents and employees, including the Individual Defendants, intentionally concealed the ongoing acts of abuse from law enforcement authorities. They did so by, *inter alia*, (a) “gaslighting” Plaintiff and the other victims by denying the abuse had even occurred, thereby creating an atmosphere in which Plaintiff and the other victims were made to understand that it was unsafe for them to attempt to report the abuse they were suffering, (b) communicating to Plaintiff and to the other victims that they would not be believed if they attempted to report the abuse to anyone inside or outside of the facility/facilities in which they were residing while in State custody, (c) threatening physical and other retaliation against Plaintiff and the other victims of abuse, their families, and their friends if they disclosed the abuse, (d) communicating to Plaintiff and to the

other victims of abuse that there was no recourse for their suffering, (e) threatening, intimidating, and coercing other employees and agents of the State (i.e., their co-workers and subordinates) to prevent or deter them from reporting the abuse or from taking other steps to stop or prevent the abuse, (f) accompanying victims to the hospital and directing them to falsely tell healthcare professionals that the injuries were the result of “accidents” or other non-abusive circumstances, (g) locking injured child-victims in solitary confinement until bruises and other visible signs of abuse had healed, and (h) routinely entering false and misleading information, into notes, records and reports at the Youth Facility or State contractors, or omitting truthful information.

52. The foregoing acts and omissions of these agents and employees of the State constituted, among other things, endangering the welfare of a child, contrary to RSA 639:3, and criminal violations of RSA Ch. 642, Obstructing Governmental Operations.

53. As a direct consequence of the deliberate acts of the Defendants, even after release from State custody, Plaintiff was too frightened to speak about the abuse.

54. As a direct consequence of the deliberate acts of the Defendants, even after release from State custody, Plaintiff was too frightened to seek legal counsel.

55. As a direct consequence of the deliberate acts of the Defendants, even after release from State custody, Plaintiff believed that Plaintiff was powerless against Plaintiff’s abusers.

56. As a direct consequence of the deliberate acts of the Defendants, even after release from State custody, Plaintiff believed that there was no way to prove that Plaintiff had been abused while in the custody and under the control of the State, so any action to seek redress would be futile.

57. At the time Plaintiff was released from State custody, as a child survivor of traumatic and brutal abuse, Plaintiff did not understand, and reasonably could not have understood, that he had been harmed by the State of New Hampshire as an entity, and its agencies, employees, and agents, in any legally cognizable sense. Further, Plaintiff did not understand, and reasonably could not have understood, that the abuse Plaintiff had suffered was caused by institutional negligence and malfeasance in addition to the intentional acts of the individual abusers, nor did Plaintiff understand, and reasonably could not have understood, that Plaintiff's abuse, and the fraudulent concealment of Plaintiff's abuse, was part of a coordinated effort and neglect by many State employees and State contractors, including by State employees and agents in supervisory positions.

58. In fact, Plaintiff did not understand that there was any potential recourse against the State for Plaintiff's abuse until sometime after July 25, 2019, when the New Hampshire Department of Justice issued a press release announcing that it was "...launching a comprehensive, multi-faceted investigation of [the Youth Facility] and the personnel employed at that agency..." relating to allegations of abuse of minor residents in its custody by agents and employees of the State, including whether the actions of State employees constituted endangering the welfare of a child, contrary to RSA 639:3, and criminal violations of RSA Ch. 642, Obstructing Governmental Operations.

59. This was the first time it occurred, or reasonably could have occurred, to Plaintiff that Plaintiff was harmed in ways that could be remedied at law. This was also the first time it occurred, or reasonably could have occurred to Plaintiff, that persons in positions of supervision and authority at the Youth Facility or at DHHS potentially knew or reasonably should have known about the misconduct of the Youth Facility personnel, that the State itself failed – as

opposed to individual abusers – as an entity and had breached its own duty to protect Plaintiff from the abuse, and that the State’s failures caused his injuries.

60. Plaintiff’s delayed appreciation that he might have legal claims against his abusers and against the State of New Hampshire and its agencies, employees, and agents is not surprising. First, as alleged herein, the Defendants engaged in a conspiracy to conceal, cover-up, and minimize the systemic child abuse perpetrated by the Defendants and their employees and agents. Additionally, as has now been recognized in a growing number of State legislatures and courts across the country, a victim’s delayed recognition and disclosure of child abuse, particularly sexual abuse, is the norm, not the exception. For example, as one leading study found, the average age at the time of reporting child sex abuse is approximately 52 years old. *See CHILD USA, Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf> (citing Spröber, N., et al., *Child sexual abuse in religiously affiliated and secular institutions: a retrospective descriptive analysis of data provided by victims in a government-sponsored reappraisal program in Germany*, BMC PUBLIC HEALTH, 14:282, doi: 10.1186/1471-2458-14-282 (2014)).

61. Sometime after the July 25, 2019 press release, Plaintiff began the process of inquiry, investigation, and exercise of reasonable diligence into how persons in positions of authority at the DHHS/Youth Facility could have known about the abuse and failed to protect Plaintiff, as well as to determine whether institutional negligence and malfeasance by the State caused or contributed to the harms suffered by Plaintiff.

62. Following this period of inquiry, investigation and exercise of reasonable diligence, Plaintiff discovered that, in fact, the acts and omissions of the Defendants caused or contributed to the abuse Plaintiff suffered.

CAUSES OF ACTION

COUNT I

(Breach of Fiduciary Duty—All Defendants)

63. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in this complaint as though fully and completely set forth herein.

64. Pursuant to the *parens patriae* powers of the State, Plaintiff was committed to the custody and charge of DHHS and was placed at facilities and placements, including the State Youth Facility.

65. At all times relevant to the allegations contained herein, Plaintiff was a minor and the State Defendants and their agents and employees, including the Individual Defendants, were charged with the custody, care, and protection of Plaintiff, and exercised control over Plaintiff to the exclusion of others.

66. A fiduciary relationship arose by virtue of the factual circumstances wherein the State removed Plaintiff, a minor, from the custody, care, and control of Plaintiff's parents or guardian, and then committed Plaintiff to the custody, care, and control of the Defendants, and their employees and agents. When the Defendants accepted Plaintiff's commitment to them, and they exercised a position of authority and control over Plaintiff to the exclusion of others, they thereby undertook nondelegable duties to protect, care for, and educate Plaintiff and they were required by common law to act at all times in Plaintiff's best interests. *See Schneider v. Plymouth State College*, 144 N.H. 458, 463 (1999) (holding that when plaintiff college student enrolled at defendant college, "she became dependent on [defendant college] for her education, thereby . . .

giv[ing] rise to a fiduciary duty on behalf of [defendant college] to create an environment in which the plaintiff could pursue her education free from sexual harassment by faculty members”). As a result, the Defendants were “bound to act in good faith and with due regard to the interests of” Plaintiff. *Id.* at 462 (internal quotation omitted).

67. In addition, the legislature has codified the State’s fiduciary duty. Pursuant to New Hampshire Revised Statutes, Chapter 621, the State Defendants and their agents and employees, including the Individual Defendants, had statutorily imposed duties with respect to Plaintiff and all other minors committed to their custody and control. Among other duties, the Defendants were required:

- I. To provide a wholesome physical and emotional setting for each child detained at or committed to the center;
- II. To provide protection, care, counseling, supervision, and rehabilitative services as required by the individual child;
- III. To assure that the child has not been deprived of those rights to which he or she is entitled by law[.]

RSA 621:2. *See also* RSA 169-B through F.

68. These statutory duties created a fiduciary relationship between the Defendants and all children, including Plaintiff, entrusted to their custody, care, and control.

69. Notwithstanding this fiduciary duty, during the time period that Plaintiff was entrusted to the custody, care, and control of the Defendants, Defendants subjected Plaintiff to the specific acts of child abuse alleged in the factual recitation of this Complaint.

70. Each of those acts of child abuse constitutes a breach of the Defendants’ fiduciary duties owed to Plaintiff.

71. Additionally, those acts of child abuse also constitute violations of Plaintiff’s constitutional rights, including Plaintiff’s due process right under the Fourteenth Amendment to

the United States Constitution to be free from bodily injury, unreasonable restraint, Plaintiff's right under the Eighth Amendment to the United States Constitution to be free from cruel and unusual punishment, and Plaintiff's religious rights under the First Amendment. A fiduciary's misconduct that rises to the level of a violation of the constitutional rights of its dependent is by itself a breach of fiduciary duty.

72. Furthermore, during the time Plaintiff was in the custody, care, and control of the State Defendants, the State of New Hampshire had a constitutional and statutory duty under New Hampshire law to provide Plaintiff, a school-aged minor, with a constitutionally adequate education. See *Claremont School Dist. v. Governor*, 138 N.H. 183, 184 (N.H. 1993) ("We hold that part II, article 83 [of the New Hampshire Constitution] imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding."). Inasmuch as the State removed Plaintiff from the custody, care, and control of his parents or guardian and committed him to an institutional setting, the State became obligated to ensure that Plaintiff was not deprived of this right to a constitutionally adequate education.

73. The State acknowledged this obligation. In order to comply with its obligation, at all times relevant to this complaint, the State of New Hampshire purported to provide educational facilities and resources on the premises of the State Youth Facility and its other residential facilities for minors, including but not limited to classrooms, teachers and the other accoutrements associated with a school.

74. But as a consequence of the Defendants' specific acts of child abuse, as alleged in the factual recitation of this Complaint, Plaintiff was deprived of a constitutionally adequate education. The child abuse Plaintiff suffered caused Plaintiff to miss school. An additional

consequence of the child abuse Plaintiff suffered was a diminished ability to concentrate and complete school work. Moreover, the Defendants at times placed Plaintiff in solitary confinement without justification, and during those periods of solitary confinement, Plaintiff was deprived of any opportunity for education. During those periods of confinement, Plaintiff received little or no educational instruction or schooling and no effort was made to assist Plaintiff in “catching up.” As a consequence of the abuse and confinement, Plaintiff was unable to attend classes and was unable to benefit from what little instruction was made available, and Plaintiff fell behind in school.

75. The deprivation of Plaintiff’s right to a constitutionally adequate education amounts to a further breach of Defendants’ fiduciary duty to Plaintiff, as does the discrimination against him on the basis of sexual orientation, and on the basis of his free exercise of religion.

76. As a direct and proximate cause and result of the foregoing, Plaintiff sustained substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future, all to the damage of Plaintiff, as Plaintiff says, within the minimum and maximum jurisdictional limits of the Superior Court, plus reasonable attorneys’ fees, expert fees, interest and costs, and enhanced compensatory damages.

COUNT II
(Breach of Nondelegable Duty—State Defendants)

77. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in this complaint as though fully and completely set forth herein.

78. Pursuant to the *parens patriae* powers of the State, including those set forth in the Child Welfare Acts and their antecedents, DHHS took custody of and control of Plaintiff and placed Plaintiff at facilities and placements, including the State Youth Facility governed by RSA Chapter 621 and Chapter 169.

79. At all times relevant to the allegations contained herein, Plaintiff was a minor, and State Defendants and their agents and employees, including the Individual Defendants, were charged with the custody, care, and protection of Plaintiff, over whom they exercised control to the exclusion of others.

80. When State Defendants took custody of Plaintiff, they accepted nondelegable statutory and common law duties to be responsible for Plaintiff's safety, care, and well-being, including those duties expressly set forth in the Child Welfare Acts and their antecedents. Because of the importance of these duties to the citizens of the State of New Hampshire, State Defendants were not at liberty to delegate liability for the breach of these duties to their employees, agents, or contractors.

81. The State chose to fulfill its custodial responsibility to Plaintiff by placing Plaintiff at the State Youth Facility and at State Contractors. In so doing, State Defendants specifically accepted the following duties, among others: “[t]o provide a wholesome physical and emotional setting” for Plaintiff; “[t]o provide protection, care, counseling, supervision, and rehabilitative services as required” for Plaintiff; “[t]o ensure that [Plaintiff] has not been deprived of those rights to which he or she is entitled by law;” and “[t]o cooperate with the courts, law enforcement agencies, and other agencies in juvenile matters to ensure that the needs of [Plaintiff] are met with minimum adverse impact upon” Plaintiff. RSA 621:2 and RSA 169.

82. State Defendants also owed Plaintiff the nondelegable statutory duty to report instances of suspected child abuse or neglect pursuant to RSA 169-C:29.

83. During the time period that Plaintiff was committed to the custody, care, and control of State Defendants, State Defendants subjected Plaintiff to the specific acts of child abuse alleged in the above factual recitation of this Complaint and failed to report or take corrective steps to prevent the abuse. Each of those acts of child abuse constitute intentional torts under New Hampshire common law.

84. Those acts of child abuse, and the conditions of confinement created by the abuse, also constitute violations of Plaintiff's state and federal constitutional rights. For example, Defendants violated Plaintiff's substantive due process and equal protection rights under the Fourteenth Amendment to the United States Constitution to be free from the use of excessive force and unreasonable restraint and other unjustified conditions of confinement. The Defendants' deliberate indifference to the risks of harm to Plaintiff also constitute a substantive due process violation, and the Defendants' unjustified punishments of Plaintiff without due process violated Plaintiff's right to procedural due process. In addition, or in the alternative, the Defendants' use of excessive isolation, excessive restraints, and excessive force also violated Plaintiff's right under the Eighth Amendment to the United States Constitution to be free from cruel and unusual punishment. The State Defendants also violated the Plaintiff's First Amendment rights. These constitutional violations by the employees and agents of State Defendants are themselves breaches of State Defendants' nondelegable duties to the Plaintiff.

85. Furthermore, during the time Plaintiff was in the custody, care, and control of State Defendants, the State of New Hampshire had a constitutional and statutory duty under New Hampshire law to provide Plaintiff, a school-aged minor, with a constitutionally adequate

education. The Equal Protection Clause of the Fourteenth Amendment also required that Plaintiff not be denied access to school and that Plaintiff be afforded equal educational opportunities regardless of race, ethnicity, background, religion, sex, or citizenship. Inasmuch as State Defendants removed Plaintiff from the custody, care, and control of Plaintiff's parents or guardian and committed Plaintiff to an institutional setting, State Defendants owed Plaintiff a nondelegable duty to ensure that Plaintiff was not deprived of a constitutionally adequate education.

86. The State acknowledged this obligation. In order to comply with its obligation, at all times relevant to this Complaint, the State of New Hampshire purported to provide educational facilities and resources on the premises of the State Youth Facility and its other residential facilities for minors, including, but not limited to, classrooms, teachers and the other accoutrements associated with a school.

87. As a consequence of the Defendants' specific acts of child abuse, as alleged in the above factual recitation of this Complaint, Plaintiff was deprived of a constitutionally adequate education. The child abuse Plaintiff suffered caused Plaintiff to miss school. Additionally, the Defendants at times placed Plaintiff in solitary confinement without justification, and during those periods of solitary confinement, Plaintiff received little or no educational instruction or schooling whatsoever. Even when attending school, the child abuse Plaintiff had suffered caused Plaintiff to struggle with a diminished capacity to concentrate and complete school work. As a consequence of the abuse and confinement, Plaintiff was unable to attend classes and was unable to benefit from what little instruction was made available, resulting in a constitutionally inadequate education.

88. The foregoing acts of child abuse and violations of Plaintiff's constitutional rights constitute breaches of the nondelegable duty that State Defendants owed to Plaintiff. Furthermore, State Defendants are liable for these breaches regardless of personal fault, regardless of foreseeability, and regardless of whether the agents or employees of State Defendants were acting within the scope of their employment when they abused Plaintiff and violated Plaintiff's rights.

89. As a direct and proximate cause and result of State Defendants' breaches of their nondelegable duties to Plaintiff, Plaintiff was subjected to the harm recounted above, and Plaintiff suffered substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future, all to the damage of Plaintiff, as Plaintiff says, within the minimum and maximum jurisdictional limits of the Superior Court, plus reasonable attorneys' fees, expert fees, plus interest and costs, and enhanced compensatory damages.

COUNT III

(Aiding and Abetting Breach of Fiduciary Duty—All Defendants)

90. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in this complaint as though fully and completely set forth herein.

91. As alleged in the preceding Count I, each Defendant owed a fiduciary duty to Plaintiff, who was a minor entrusted to their custody, care, and control.

92. As alleged in the preceding Count I, the Defendants, including their employees and agents, breached their fiduciary duties owed to Plaintiff by failing to protect Plaintiff from various forms of harm.

93. Upon information and belief, the agents and employees of the State Defendants, including each of the Individual Defendants, knew and understood that each of them individually, and each of their co-workers or other employees and agents of the State Defendants, as well as all the Individual Defendants and State Defendants collectively, owed fiduciary obligations to the minors committed to their custody, care, and control, including Plaintiff.

94. Upon information and belief, the agents and employees of the State Defendants, including each of the Individual Defendants, knew of at least some of the various forms of abuse and harm suffered by Plaintiff, and by the other minors committed to the custody, care, and control of the Defendants, and not only failed to report this information or take other corrective actions, but actively participated in the abuse and/or concealed this information.

95. Upon information and belief, the agents and employees of the State Defendants, including the Individual Defendants, acted together, in a common plan or design, for the purpose of committing acts of physical, sexual and emotional abuse and torture, and then acted together, in a common plan or design, to unlawfully and deliberately conceal those acts from disclosure so that they would evade consequences for those acts and could continue to perpetrate those acts on Plaintiff and on other minors entrusted to their custody, care, and control.

96. As a direct and proximate consequence of the Defendants' foregoing acts and omissions, Plaintiff was subjected to all of the following acts: (a) physical abuse, (b) sexual abuse, (c) mental/emotional abuse, (d) deprivation of constitutional religious rights, (e) excessive solitary confinement, (f) unauthorized strip searches, (g) excessive restraints, and (h) discrimination in education and on the basis of sexual orientation.

97. As a direct and proximate cause and result of the foregoing, Plaintiff sustained substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future, all to the damage of Plaintiff, as Plaintiff says, within the minimum and maximum jurisdictional limits of the Superior Court, plus reasonable attorneys' fees, expert fees, interest and costs, and enhanced compensatory damages.

COUNT IV
(Negligent Hiring, Training, Supervision and Retention—State and State Contractor Defendants)

98. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in this complaint as though fully and completely set forth herein.

99. Pursuant to the *parens patriae* powers of the State, Plaintiff was committed to the custody and charge of DHHS and was placed at facilities and placements, including the Youth Facility.

100. At all times relevant to the allegations contained herein, Plaintiff was a minor and the State Defendants and their agents and employees, including the Individual Defendants, were charged with the custody, care, and protection of Plaintiff and exercised control over Plaintiff to the exclusion of others.

101. At all times relevant to the allegations contained herein, the State Defendants owed Plaintiff a duty to exercise reasonable care in the hiring, training, supervision, and retention of their employees and agents, including, *inter alia*, the duty to properly supervise, train, and control the employees and agents working with minors at residential facilities, such as

the Youth Facility, and/or to ensure that programs were in place to provide proper hiring, training, supervision, and retention of their agents and/or employees so that they would comply with the State of New Hampshire's *parens patriae* powers and associated protective and rehabilitative duties, as required by common law, and as codified in Chapters 621 and 169 of the New Hampshire Revised Statutes.

102. Despite and in breach of the aforesaid duties, the Defendants, as organizations, agencies, and individuals charged under the common law and by statute with the rehabilitation and protection of minors committed to their custody and control, were negligent and breached minimum standards of care in failing to take reasonable measures to ensure the proper hiring, training, supervision, and retention of employees to promptly and effectively provide for the safety of the children in their care. Defendants' negligence includes, but is not limited to, failing to take reasonable measures to properly hire, train, supervise, and retain their workers, failing to report any indicia or precursors of suspected physical, sexual and/or emotional abuse, and failing to take affirmative steps to prevent the physical, and/or sexual and/or emotional abuse and/or solitary confinement and/or unauthorized strip-searches and/or excessive use of restraints of the children committed to their custody, care, and control thereby resulting in the abuse experienced by Plaintiff.

103. Upon information and belief, multiple employees and agents of the State and State Contractor Defendants, including the Individual Defendants, knew or reasonably should have known of the indicia of abuse or abusive tendencies of certain State employees or State contractor employees, including the Defendants; and knew or reasonably should have known the risk of abuse against Plaintiff and other child victims in the Defendants' custody and control, and not only failed to report or otherwise act on this information, but also concealed this information,

which resulted in the continued retention of these individuals as employees or agents of the State Defendants, and additional abuse of the Plaintiff and other child victims.

104. On further information and belief, when reports of suspected child abuse were made, employees and agents of the State and State Contractor Defendants, including the Individual Defendants, told the reporters to keep the reports to themselves; consequently, the perpetrators of abuse continued to work as the State Contractor Defendants' employees and agents.

105. As a direct and proximate cause and result of the negligent training and supervision and breaches of care by the Defendants, Plaintiff was subjected to one or more of the following while committed to the custody, care, and control of the State and State Contractor Defendants and their employees and agents, including the Individual Defendants: (a) physical abuse, (b) sexual abuse, (c) mental/emotional abuse, (d) deprivation of constitutional religious rights, (e) excessive solitary confinement, (f) unauthorized strip searches, (g) excessive restraints, and (h) discrimination in education and on the basis of sexual orientation.

106. As a direct and proximate cause and result of the foregoing, Plaintiff suffered substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future, all to the damage of Plaintiff, as Plaintiff says, within the minimum and maximum jurisdictional limits of the Superior Court, plus reasonable attorneys' fees, expert fees, plus interest and costs, and enhanced compensatory damages.

COUNT V
(Negligence—All Defendants)

107. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in this complaint as though fully and completely set forth herein.

108. Pursuant to the *parens patriae* powers of the State, Plaintiff was committed to the custody and charge of DHHS and was placed at facilities and placements, including the Youth Facility.

109. At all times relevant to the allegations contained herein, Plaintiff was a minor and the State Defendants and their agents and employees, including the Individual Defendants, were charged with the custody, care, and protection of Plaintiff and exercised control over Plaintiff to the exclusion of others.

110. By taking custody and control over Plaintiff, a minor, and by accepting the duty to care for and protect Plaintiff in the place of Plaintiff's parents, family, or legal guardian, who the State physically separated from Plaintiff and effectively barred from ensuring Plaintiff's care and protection, the Defendants entered into a special relationship with Plaintiff.

111. The special relationship between Plaintiff and the Defendants created a duty of care owed to Plaintiff, including, but not limited to, a duty of reasonable supervision and a duty to protect Plaintiff from reasonably foreseeable harm.

112. The Defendants also owed Plaintiff duties arising under statutory law, including, but not limited to, a duty to report instances of suspected child abuse or neglect pursuant to RSA 169-C:29, and duties under RSA 169-B through F and RSA 621.

113. During the time period that Plaintiff was committed to the custody, care, and control of the Defendants, Plaintiff was subjected to one or more of the following acts: (a) physical abuse, (b) sexual abuse, (c) mental/emotional abuse, (d) deprivation of protected

religious rights, (e) excessive solitary confinement, (f) unauthorized strip searches, (g) excessive restraints, and/or (h) discrimination in education and on the basis of sexual orientation.

114. The harm that Plaintiff suffered was reasonably foreseeable and preventable. Upon information and belief, agents and employees of the State Defendants, including the Individual Defendants, knew or reasonably should have known of at least some of the various forms of abuse and harm suffered by Plaintiff, and the other minors committed to the custody, care, and control of the Defendants, and not only failed to report this information or take other corrective actions, but actively participated in the abuse and/or concealed this information.

115. Inasmuch as the harm suffered by Plaintiff was reasonably foreseeable, the Defendants breached their duties owed to Plaintiff. Moreover, the Defendants also “per se” breached the statutory duties owed to Plaintiff, including, but not limited to, the duty to report suspected instances of child abuse or neglect, and under RSA 169-B through F and RSA 621.

116. As a direct and proximate cause and result of the Defendants’ negligent supervision, negligent failure to protect, and negligent failure to report instances of child abuse or neglect, Plaintiff was subjected to the harm recounted above.

117. As a direct and proximate cause and result of the foregoing, Plaintiff suffered substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future, all to the damage of Plaintiff, as Plaintiff says, within the minimum and maximum jurisdictional limits of the Superior Court, plus reasonable attorneys’ fees, expert fees, plus interest and costs, and enhanced compensatory damages.

COUNT VI
(Negligence—DHHS)

118. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in this complaint as though fully and completely set forth herein.

119. Pursuant to the State of New Hampshire's *parens patriae* powers and associated rehabilitative duties, as required by common law, and as codified in Chapter 621 and Chapter 169 of the New Hampshire Revised Statutes, the purpose of taking custody of minors and committing them to a residential setting, such as the Youth Facility, is to protect and care for the child and to give the child the opportunity to become a successful citizen. This imposes a duty on the State to adopt and implement reasonable rules governing the safety, proper care, supervision, treatment, education, confinement or discipline of the children committed to its custody and control, and to prevent harm to them, including at its residential facilities, such as the Youth Facility, and at other residential facilities and placements with which the State contracts. For the same reasons, the State also bears a duty to adopt and implement reasonable rules governing the training, supervision, hiring, retention, and discipline of agents and/or employees working at its residential facilities, such as the Youth Facility, and at other residential facilities and placements that the State contracts with.

120. DHHS has and has had rulemaking authority over the Youth Facility. Prior to July 6, 1999, RSA 621:35 provided that the Commissioner of the Department of Health and Human Services "...shall adopt rules, pursuant to RSA 541-A, relative to the proper administration of the center." In addition, pursuant to RSA 621:7, DHHS and its Commissioner have, at all relevant times, had the authority to adopt and amend bylaws for the governance of the Youth Facility, and to prescribe the powers and duties of the persons connected with the Youth Facility.

121. The Commissioner of DHHS knew or reasonably should have known that the failure to promulgate, adopt, and enforce reasonable rules or regulations governing (a) the safety, proper care, supervision, treatment, education, confinement, and discipline of the juveniles committed to the State and State Contractor Defendant's custody, care, and control, and (b) the training, supervision, hiring, retention, and discipline of agents and/or employees working at the State Defendants' residential facilities, such as the Youth Facility, and at other residential facilities and placements, would put the minors in the State's custody at great risk of harm. In 1980, for instance, then-Attorney General Tom Rath told the Associated Press: "There is no question that the potential exists for the YDC (Youth Development Center) to be the next Laconia [State School] in terms of litigation," referring to the appalling neglect and abuse of mentally challenged persons revealed in Laconia in the 1970s. "If there is an area where we have been deficient in this state, it has been in this regard," Rath continued. *Boston Globe*, 4/27/80 (1980 WLNR 64867). See also *State v. Guarardi*, 124 N.H. 93 (1983) (high-profile raid in 1981 by New Hampshire Attorney General and State Police on State-contracted and licensed child residential facility, followed by prosecutions for abuse and sexual assault on children in State custody). It was reasonably foreseeable that without such reasonable rules in place, and reasonably enforced by DHHS, the State Defendants would employ personnel not qualified or suited to the job of caring for and supervising vulnerable juveniles and that unqualified, untrained, unsupervised, and unregulated personnel would abuse their position of authority and trust to the great harm of the children placed in their custody, care, and control.

122. Notwithstanding this reasonably foreseeable harm to children committed to the State's custody, care, and control, DHHS and its Commissioner breached the aforementioned common-law and statutory duties, by negligently failing to promulgate, adopt, or enforce

reasonable rules governing (a) the safety, proper care, supervision, treatment, education, confinement, and discipline of the children committed to the State Defendant's custody, care, and control, who DHHS placed in the State's residential facilities, such as the Youth Facility, or in other residential facilities and placements, and (b) the training, supervision, hiring, retention, and discipline of agents and/or employees of the State Defendants entrusted with the care, custody, and control of minors placed in residential facilities, including the Youth Facility.

123. As a direct and proximate consequence of the negligent failure to promulgate, adopt, or enforce reasonable rules or regulations, at all times relevant to the allegations contained herein, there were insufficient or unreasonable policies in place at the various residential facilities used by the State Defendants, including the Youth Facility, to ensure the safety of minors committed to such facilities and for the prevention and, if necessary, reporting of abuse or neglect of the minors committed to such facilities. In fact, the lack of reasonable rules or regulations promulgated by DHHS and the Commissioner of DHHS communicated a *laissez-faire* attitude that the supervisors, employees, and agents of the State Defendants working at these residential facilities were free to behave as they pleased without fear of discovery or consequences.

124. As a direct and proximate cause and result of the negligent failure to promulgate, adopt, or enforce reasonable rules or regulations, and the breaches of care by DHHS and the Commissioner of DHHS, Plaintiff, a minor, was subjected to one or more of the following while committed to the custody, care, and control of the State Defendants and their employees and agents, including the Individual Defendants: (a) physical abuse, (b) sexual abuse, (c) mental/emotional abuse, (d) deprivation of constitutional religious rights, (e) excessive solitary

confinement, (f) unauthorized strip searches, (g) excessive restraints, and/or (h) discrimination in education and on the basis of sexual orientation.

125. As a direct and proximate cause and result of the foregoing, Plaintiff suffered substantial personal injuries of a disabling, debilitating and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future, all to the damage of Plaintiff, as Plaintiff says, within the minimum and maximum jurisdictional limits of the Superior Court, plus reasonable attorneys' fees, expert fees, plus interest and costs, and enhanced compensatory damages.

COUNT VII
(Civil Conspiracy—All Defendants)

126. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in this complaint as though fully and completely set forth herein.

127. During the time when Plaintiff was committed to the custody, care, and control of the State of New Hampshire, the Defendants, some of whom were, on information and belief, individuals with supervisory authority, knowingly agreed with one another, and others known and unknown, either explicitly or tacitly, on a common plan or design to perpetrate systemic child abuse, including through the physical, sexual, and emotional abuse of the minors committed to their custody and control.

128. In particular, the Defendants knowingly agreed to a course of action through which they would target Plaintiff, among other minors in their custody and under their control, for the purpose of committing intentional acts of physical and/or sexual and/or emotional abuse,

and to violate their fiduciary and special relationship duties of care and good faith to ward Plaintiff.

129. The Defendants then acted together, in furtherance of their common plan or design, to unlawfully and deliberately target Plaintiff, among other minors in their custody and under their control, knowingly carrying out acts of sexual and/or physical and/or emotional abuse on Plaintiff and/or aiding and abetting other Defendants, and other actors known and unknown, in carrying out such acts.

130. The Defendants further knowingly agreed with one another, and others known and unknown, either explicitly or tacitly, on a common plan or design to conceal those unlawful acts from discovery. They did so by, among other things, “gaslighting” Plaintiff, and other minors who were victims of the same conspiracy; denying the sexual, physical and/or emotional abuse had ever occurred, even when directly confronted; creating an atmosphere of intimidation at the Youth Facility or State Contractor in which Plaintiff, other minors who were victims of the same conspiracy, as well as other employees and agents of the State or State Contractor Defendants (i.e., co-workers and subordinates of the co-conspirators), were made to understand that it was unsafe to attempt to report abuse, misconduct, or malfeasance; and/or by communicating to Plaintiff, other minors who were victims of the same conspiracy, as well as other employees and agents of the State or State Contractor Defendants (i.e., co-workers and subordinates of the co-conspirators), that any attempt to report abuse, misconduct, or malfeasance to anyone would not be believed and/or might be met with retaliation; accompanying victims to the hospital and directing them to falsely tell healthcare professionals that the injuries were the result of “accidents” or other non-abusive circumstances; locking injured child-victims in solitary confinement until bruises and other visible signs of abuse had

healed; and by routinely entering false and misleading information into notes, records and reports at the Youth Facility or State contractors, or omitting truthful information.

131. Generally speaking, the purpose or goal of the conspiracy was the perpetuation of systemic physical, mental, and sexual abuse of minors who were committed to the custody, care, and control of the Defendants. More particularly, the co-conspirators acted in furtherance of specific unlawful purposes, some of which Plaintiff directly experienced and some of which were experienced by other minors who were victims of the same conspiracy, including, *inter alia*, the following crimes and intentional torts: (a) criminal sexual assault (RSA 632-A:4), (b) felonious sexual assault (RSA 632-A:3), (c) aggravated felonious sexual assault (RSA 632-A:2), (d) criminal simple assault (RSA 631:2-a), (e) criminal second degree assault (RSA 631:2), (f) criminal first degree assault (RSA 631:1), (g) common law assault and battery, and (h) criminal endangering the welfare of a child (RSA 639:3).

132. The foregoing unlawful purposes of the conspiracy were accomplished and preserved through various unlawful manners and means, some of which Plaintiff directly experienced and some of which were experienced by other minors who were victims of the same conspiracy, as well as by other employees and agents of the State or State Contractor Defendants. Those manners and means include, *inter alia*, the following crimes and intentional torts: (a) the same statutory crimes and common law torts identified in the paragraph immediately preceding this one, (b) criminal threatening (RSA 631:4), (c) false imprisonment (RSA 633:3), (d) fraud, (e) fraudulent concealment, (f) intentional infliction of emotional distress, (g) failure to report suspected child abuse or neglect (RSA 169-C:29, RSA 169-C:39), (h) obstructing government administration (RSA 642:1), (i) hindering apprehension or

prosecution (RSA 642:3), (j) witness tampering (RSA 641:5), and (k) obstructing report of crime or injury (RSA 642:10).

133. Several of the Individual Defendants, and agents of the State and State Contractors, and others known and unknown, knowingly committed numerous overt acts in furtherance of their common plans and designs to perpetrate systemic child abuse and conceal child abuse, including, *inter alia*, threatening, assaulting, and falsely imprisoning Plaintiff and other minors who were victims of the same conspiracy, as well as covering up and failing to report instances of known child abuse on myriad occasions. Additionally, several of the Individual Defendants, and others known and unknown, used threats and intimidation to silence their co-workers and subordinates who had observed abuse, violations of rules or protocols, and/or other forms of misconduct or malfeasance.

134. As a direct and proximate cause and result of the Defendants knowingly carrying out an unlawful conspiracy, systemic child abuse thrived throughout the time Plaintiff was in the custody, care, and control of the Defendants and Plaintiff, a minor, was subjected to all of the following during that time: (a) physical abuse, (b) sexual abuse, (c) mental/emotional abuse, (d) deprivation of constitutional religious rights, (e) excessive solitary confinement, (f) unauthorized strip searches, (g) excessive restraints, and (h) discrimination in education and on the basis of sexual orientation.

135. As a direct and proximate cause and result of the foregoing, Plaintiff sustained substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to sustain all of the foregoing losses and damages into the foreseeable future, all

to the damage of the Plaintiff, as Plaintiff says, within the minimum and maximum jurisdictional limits of the Superior Court, plus reasonable attorneys' fees, expert fees, interest and costs, and enhanced compensatory damages.

DEMAND FOR JURY TRIAL

136. Plaintiff demands a trial by jury on all issues so triable.

As discovery is ongoing, Plaintiff expressly reserves the right to amend and/or supplement this Complaint and Demand for Jury Trial.

Respectfully Submitted,

JOHN DOE #402

By and through counsel,

RILEE & ASSOCIATES, P.L.L.C.

Date: June 16, 2022

/s/ Cyrus F. Rilee, III

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via the Court's e-filing system on all parties of record on this 16th day of June, 2022.

/s/ David A. Vicinanza
David A. Vicinanza, Esq.