STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
YORK COUNTY)	SIXTEENTH JUDICIAL CIRCUIT
John Doe # 1, individually, and now over the age of eighteen (18) and James Roe # 1 and Jane Roe # 1, as the parents and natural guardians, individually, and as the parents and natural guardians of John Doe # 1 while he was under the age of eighteen (18),)	Civil Action No. 2024-CP46-03171
Plaintiffs,)	**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS MORNINGSTAR FELLOWSHIP CHURCH, RICHARD JOYNER, DAVID YARNES, AND DOUGLAS LEE'S MOTION TO DISMISS**
v.)	
Morningstar Fellowship Church, Richard Joyner, David Yarns, Douglas Lee, Erickson Lee, Chase Portello, and unidentified defendants James Smith 1-10,)	
Defendants.)	

Plaintiffs John Doe # 1, James Roe # 1, and Jane Roe # 1 respectfully submit their memorandum of law in opposition to the motion to dismiss filed by Defendants Morningstar Fellowship Church, Richard Joyner, David Yarnes, and Douglas Lee.

INTRODUCTION

This motion tests whether a church and its leaders may use the First Amendment's "Free Exercise" clause as a liability shield for facilitating, overlooking, and concealing a church representative's repeated sexual abuse of a teenage boy. James and Jane Roe allege that, starting when he was just 13-years-old, a Morningstar Fellowship Church ("Morningstar") program leader targeted their son (Plaintiff John Doe # 1), plied him with alcohol, and sexually assaulted him on multiple occasions. Despite a history of sexual misconduct within its ranks, Morningstar never trained its program leaders on managing interactions with children and never supervised John Doe

1's attacker as he repeatedly traveled alone with a large group of kids on out-of-town overnight trips.

Defendants' attempt to portray this egregious behavior as constitutionally-protected religious conduct is unnerving. There is certainly no religious text or doctrinal stance Morningstar could cite supporting the condonation and facilitation of child sexual abuse. That is because liability for negligently training an organization's representative and negligently supervising that representative's behavior is not a church versus state issue. Every organization—secular or religious—has a responsibility for the conduct of its agents and a responsibility to the vulnerable children taken into its care. In other words, what Morningstar and its leaders did here would be just as wrong if they were school officials supervising a field trip or scoutmasters planning a nature hike. At its core, Defendants' motion misses what the South Carolina Supreme Court has long held. Courts do not get involved in religious doctrinal disputes, but they dare not let tortious misconduct go unanswered simply because it was perpetrated in a religious setting.

COMPLAINT ALLEGATIONS

Twelve-year-old John Doe # 1 moved with his parents to Fort Mill, SC in July 2018 and began participating in activities associated with Defendant Morningstar Fellowship Church ("Morningstar"). (Compl. ¶ 162). Morningstar (and related entities bearing the "Morningstar" moniker) is a religious organization founded by Defendant Richard Joyner in 1995 which operates a variety of missions and educational programs in addition to more traditional worship activities. (Compl. ¶¶ 34-35). For all times relevant to this case, Morningstar's operations were controlled by a small group of individuals including Defendants David Yarnes (Vice President of Morningstar Ministries) and Douglas Lee (Compl. ¶¶ 36-37).

John Doe # 1 was intrigued by a newly-developed Morningstar group called "Young Special Forces" ("YSF"), a program that adopted military-style iconography and jargon in the name of leadership training for tween and teen boys. (Compl. ¶ 165). Morningstar chose Douglas Lee's son, Defendant Erickson Lee, as YSF's leader. (Compl. ¶ 168). Erickson Lee was portrayed as a U.S. Marine and aspiring law enforcement officer with a passion for training boys to become the next generation of leaders. (Compl. ¶ 169). However, he had no training or experience in leading a program like YSF and no business being alone with young boys. (Compl. ¶ 190).

Similar to organizations like the Boy Scouts of America, YSF's activities included often days-long nature trips where children, away from their parents, were under the supervision of Erickson Lee and his assistant Defendant Chase Portello. (Compl. ¶¶ 39, 166-67). Erickson Lee began targeting John Doe # 1 shortly after he joined YSF. It began in 2019 with outings to the movies and playing video games together. (Compl. ¶ 183). During one such outing, Erickson Lee took John Doe # 1 to an apartment at the Lee family home and served John Doe # 1 alcohol and e-cigarettes, both of which were illegal for a thirteen-year-old child. (Compl. ¶¶ 184-86). Similar misconduct continued during YSF trips to a whitewater park in August 2019 and a North Carolina state park in December 2019. (Compl. ¶¶ 179-89). During this later trip, Erickson Lee invited along a friend who supplied alcohol to a number of YSF participants. (Compl. ¶¶ 191-94).

Erickson Lee's misconduct escalated sharply in September 2020. During a multi-day YSF trip to Camp Lejeune, Lee and the YSF participants lodged in beach cabins near the base. (Compl. ¶¶ 203-06). Erickson Lee chose to share a bed with one of the YSF participants and the two drank heavily and watched pornography. (Compl. ¶¶ 207-08). Lee also showed porn to the larger group. (Compl. ¶ 208). Later at same evening, Lee's bedmate was discovered naked and unconscious in

Lee's bed. (Comp. ¶¶ 212-13). Also on this trip, Lee served John Doe # 1 hard liquor and later required the YSF participants disrobe in his presence and shower as a group. (Compl. ¶¶ 214-15).

Then, during an April 2021 YSF trip, Erickson Lee got John Doe # 1 alone, plied him with alcohol, and sexually assaulted him. (Compl. ¶¶ 224-29). From there, Lee's sexual abuse became more frequent, more widespread, and more blatant. Multiple YSF participants were targeted (Compl. ¶ 230), and Lee's abuse of John Doe # 1 worsened. Erickson Lee even sexually assaulted John Doe # 1 on Morningstar's premises during a December 29-30, 2021 event. (Compl. ¶ 231). In September 2022, Erickson Lee took his sexual depravity to his parents' home. Douglas Lee (Erickson's father and a high-ranking Morningstar official) saw Erickson providing John Doe # 1 alcohol but did nothing to stop or even discourage this behavior. (Compl. ¶¶ 232-36). After a night of drinking tacitly approved by his father, Erickson again sexually assaulted John Doe # 1. (Compl. ¶ 237).

Erickson Lee's spree of child sexual abuse continued unabated by Morningstar until January 2023 when he was asked to resign as YSF leader after sexually-explicit messages with another YSF participant came to light. (Compl. ¶¶ 243-46). Even then, Erickson Lee and his assistant Chase Portello continued to harm his victims. They sent the boys threatening notes and text messages in an effort to keep the full scale of their misconduct from being discovered by police. (Compl. ¶¶ 249-63). In September 2024, Erickson Lee pled guilty to multiple counts of criminal sexual conduct with a minor, first degree assault and battery, and dissemination of obscene material to a minor. He is currently serving a nine-year prison term.

Unfortunately, Erickson Lee's actions were not the first instances of sexual misconduct within Morningstar's ranks. There were at least two previous occasions when women studying in Morningstar's education programs were sexually assaulted by a Morningstar employee. (Compl.

¶¶ 128-39). Morningstar failed to take any meaningful steps to improve training or monitoring for the organization's representatives after these incidents and before the attacks on John Doe # 1.

John Doe # 1 and his parents (Plaintiffs James and Jane Roe # 1) initiated this civil action on August 7, 2024, by filing a Complaint against Morningstar, its leaders (Joyner, Yarnes, Douglas Lee) as well as Erickson Lee and Chase Portello. The Complaint alleges claims for recklessness/gross negligence (Compl. ¶¶ 269-86), civil conspiracy (¶¶ 288-97), intentional/reckless infliction of emotional distress (Compl. ¶¶ 314-22), and to recover John Doe # 1's claim-related medical expenses. (Compl. ¶¶ 323-28). The Complaint further alleged claims against Erickson Lee for assault and battery. (Compl. ¶¶ 308-12).

The recklessness/gross negligence claim does not challenge any of Morningstar's religious teachings, doctrinal stances, or worship practices. Instead, it alleges Morningstar failed as an institution by deploying one poorly-trained individual to be the sole chaperone of teenage boys during multiple overnight trips despite actual or constructive knowledge of a culture of sexual abuse within the organization. (Compl. ¶¶ 272-74). John Doe # 1 and his parents further allege Morningstar and its leaders continued to leave Erickson Lee alone with YSF participants even as the size and scope of his sexual misconduct became evident. (Compl. ¶¶ 117-21). Whether this situation arose in a school, a scout troop, or a religious organization, the allegations of institutional tortious misconduct would be the same. Morningstar and its leaders were negligent in training Erickson Lee for the role of YSF leader, negligent in supervising Lee's interactions with YSF participants, and negligent in failing to protect the vulnerable children entrusted by their parents to Morningstar's care. (Compl. ¶¶ 20, 105, 123-47, 285).

Defendants Morningstar, Joyner, Yarnes, and Douglas Lee answered the Complaint on October 24, 2024. In a separate filing that same day, these defendants moved to dismiss Plaintiffs'

claims arguing primarily that they are immune from suit for the misconduct Plaintiffs allege because of the religious nature of the Morningstar organization. For the reasons discussed below, there is no First Amendment protection for allowing a child sex abuser to operate unimpeded within a religious organization. Accordingly, the motion to dismiss should be denied.

LEGAL STANDARD

A defending party may assert in its answer or in a pre-answer motion a defense alleging the complaint against the defending party fails to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCP. When reviewing a 12(b)(6) motion, a court must view a complaint in the light most favorable to the plaintiff and every doubt must be resolved in the plaintiff's favor. Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case," then the court may not grant a 12(b)(6) motion. Sloan Constr. Co. v. Southco Grassing Co., 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008). A court may not dismiss a complaint merely because the court doubts the plaintiff will prevail. Plyler, 373 S.C. at 645, 647 S.E.2d at 192.

ARGUMENT

1. **The First Amendment does not shield Defendants from liability for failing to supervise a sexual abuser on their staff and to protect vulnerable children in their care.**

Defendants' subject-matter jurisdiction arguments are essentially claims for immunity. Defendants argue that even if they failed to reasonably train Erickson Lee or to monitor his conduct as YSF leader, the U.S. Constitution immunizes them from liability simply because of Morningstar's status as a religious entity. South Carolina law does not support that argument, and courts from many other states have expressly rejected it. As many of these courts recognize,

Defendants read the First Amendment's Free Exercise Clause in a way that would violate the Establishment Clause and that would unjustly shield religious entities for secular torts.

Training an employee to respect boundaries with children in their care, monitoring an adult volunteer's one-on-one interactions with teenagers, and establishing strong rules against illicit activity during events sponsored by the organization are basic components of the professional environment. They do not become shrouded in constitutional immunity simply because the employer is a religious organization. The intricate push and pull of the First Amendment's dual religion clauses requires that, while government may not invade a church's "free exercise" of religion by mandating or punishing doctrinal positions, the law also must not place a church's secular activities beyond legal reach, thereby granting the religious institution a favored position over its similarly situated secular counterpart in violation of the Establishment Clause. Redwing v. Catholic Bishop for Diocese of Memphis, 363 S.W.3d 436, 451 (Tenn. 2012).

The First Amendment does not grant religious organizations absolute immunity from liability. For example, claims against religious organizations have long been recognized for premises liability, breach of a fiduciary duty, and negligent use of motor vehicles. Carl H. Esbeck, Tort Claims Against Churches and Ecclesiastical Officers: The First Amendment Considerations, 89 W.Va. L.Rev. 1, 76 (1986); Moses v. Diocese of Colorado, 863 P.2d 310, 319 (Colo.Sup.Ct.1993), cert. denied 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994). Indeed, the "[a]pplication of a secular standard to secular conduct that is tortious is not prohibited by the Constitution." Moses, 863 P.2d at 320; see also Employment Div., Dept. of Human Res. v. Smith, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) (finding that even religiously motivated conduct does not have complete immunity from neutral laws which are generally applied). The dispositive question is whether resolution of the legal claim requires the court to interpret or weigh

church doctrine. If not, the First Amendment is not implicated and neutral principles of law are properly applied to adjudicate the claim. See Serbian Eastern Orthodox Diocese for United States of America and Canada v. Milivojevich, 426 U.S. 696, 710, 96 S.Ct. 2372, 2381, 49 L.Ed.2d 151, 163 (1976).

South Carolina courts balance these First Amendment principles by holding that, while there are instances where church-related disputes fall outside their jurisdiction, those instances must be limited and the limits aggressively enforced. A leading South Carolina Supreme Court ruling on the issue states plainly that "a tortfeasor is not shielded from liability simply by committing his torts within the walls of a church or under the guise of church governance." Banks v. St. Matthew Baptist Church, 406 S.C. 156, 162, 750 S.E.2d 605, 608 (2013). A church-related claim still lies within the courts' jurisdiction so long as its resolution will not require "extensive inquiry into religious law." McCain v. Brightharp, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012). Courts must assiduously avoid sweeping secular disputes into the legal protection afforded purely ecclesiastical matters. Pearson v. Church of God, 325 S.C. 45, 52, 478 S.E.2d 849, 853 (1996) ("courts cannot avoid adjudicating rights growing out of civil law"). Therefore, it is important for courts to look beyond a religious institution's depiction of the claim against it to determine whether the limited constitutional protection is actually implicated. First Baptized Holiness Church of God of Americas v. Greater Fuller Tabernacle Fire Baptized Holiness Church, 323 S.C. 418, 423-24, 475 S.E.2d 767, 770 (Ct. App. 1996) (citing Turbeville v. Morris, 203 S.C. 287, 26 S.E.2d 821 (1943) ("the court will make sure that the civil right is in fact dependent upon an ecclesiastical matter" before declining jurisdiction).

While Defendants insist the claims against them are purely ecclesiastical matters, the only pleading in the case to date—Plaintiffs' complaint—plainly alleges claims that will require no

extensive inquiry into religious law. Erickson Lee's alleged provision of alcohol and e-cigarettes to thirteen-year-old boys (Compl. ¶ 184), sharing of pornography with YSF participants (Compl. ¶¶ 187, 208), and repeated sexual assault of John Doe # 1 (Compl. ¶¶ 229-37) do not involve religious doctrine in any way. Plaintiffs' claims alleging Morningstar and its leaders failed to act even though they knew or should have known Erickson Lee was engaged in such behavior in his role as YSF leader do not involve religious doctrine in any way. (Compl. ¶¶ 139, 159, 237, 248, 292). The Complaint alleges Morningstar and its leaders did not adequately train Erickson Lee before placing a large group of teenage boys in his care for days at a time. (Compl. ¶ 285(b)-(c)). What's worse, Morningstar and its leaders did not assign adequate additional chaperones to the trips Erickson Lee led or take any substantive action to monitor his one-on-one interactions with YSF participants even after reports of Lee's inappropriate conduct arose. (Compl. ¶ 285(d)-(e)) Addressing these allegations will not require any extensive inquiry into what Morningstar believes about religious matters as reasonable training and supervision of employees is a reasonable expectation for *all* employers. (Compl. ¶ 48) (alleging employee training, supervision, and monitoring standards apply equally to churches and "secular organizations"); Degenhart v. Knights of Columbus, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992) (recognizing negligent supervision claim regarding actions of insurance agent); Holcombe v. Helena Chem. Co., 238 F. Supp. 3d 767, 773 (D.S.C. 2017) (recognizing training-based negligent supervision claim against chemical company).

Jane Doe's complaint also challenges other routine components of the relationship organizations have with workers. Organizations in every field have a responsibility for (1) instituting policies and procedures to avoid sexual abuse (Compl. ¶ 48); (2) investigating reports that an individual within the organization has committed acts of sexual misconduct (Compl. ¶¶ 92-

94); and (3) monitoring the behavior of a suspected abuser to prevent repeated victimization of innocent children (Compl. ¶ 97). Defendants' basic oversight failures were not the product of some strong doctrinal stance. That is, Defendants do not suggest Morningstar doctrine favors or condones sexual misconduct toward teen boys or that it opposes investigating and overseeing the activities of individuals who supervise teenagers' overnight camping trips. In fact, at this early procedural stage, the only explanation for Defendants' alleged errors is the Complaint's allegation that Defendants turned a blind eye to sexual misconduct within their ranks because the perpetrator was the son of a high-ranking Morningstar official. (Compl. ¶ 293).

At this procedural stage, the Court need not go any further than these allegations to deny Defendants' motion to dismiss. South Carolina courts do not inherently reject jurisdiction over church-related claims and will not extend First Amendment protection to secular activities that happen to take place under a church's roof. Plaintiffs' Complaint alleges basic training and supervision issues that are as wrong for Defendants as they would be for any secular organization. The complaint further alleges Defendants' misconduct was motivated by secular concerns rather than religious doctrine. While Defendants disagree with these assertions, that disagreement is not enough to prevail at the motion to dismiss stage. See e.g. McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc., 966 F.3d 346, 349 (5th Cir. 2020) (reversing district court's dismissal claims against Southern Baptist entity since, "[a]t this early stage of the litigation, it is not clear that any of these determinations will require the court to address purely ecclesiastical questions" and "on the face of the complaint, [the suit] involves a civil rather than religious dispute").

Even if the Court were to look past the complaint allegations, South Carolina's "neutral principles of law" approach to church-related disputes supports this court's jurisdiction over Plaintiffs' claims. Banks emphasized the Supreme Court's rejection of Defendants' overly broad

view of First Amendment protection for religious institutions facing civil litigation. The Free Exercise Clause is not to be read to immunize religious actors or leave helpless the victims of their torts. 406 S.C. at 163, 750 S.E.2d at 608 (rejecting church's argument that would "grant tort law immunity to religious practitioners"). When an otherwise secular tort takes place in a religious setting, courts can and must exercise jurisdiction to resolve it. Id. Banks used the "neutral principles of law" analysis to determine whether resolving a legal claim would interfere with church doctrine. Id. at 160-62, 750 S.E.2d at 607-08. That analysis consisted of (1) listing the elements of the alleged tort; (2) asking whether liability for the alleged tort would "require delving into religious issues." Id.

Here, Plaintiffs' negligence-based claims allege Morningstar and its leaders failed to train Erickson Lee to be YSF leader, a role that would inevitably place him in contact with teen boys without parent supervision. Morningstar and its leaders also failed to supervise Erickson Lee's conduct while he worked as YSF leader, even after they knew or should have known he was supplying YSF participants with illegal substances and pornography. Negligent supervision and training claims focus largely on two elements—the defendant's actual or constructive knowledge of the perpetrator's propensity toward abusive behavior and the defendant's failure to exercise control over the perpetrator's activities. Doe v. Bishop of Charleston, 407 S.C. 128, 139, 754 S.E.2d 494, 500 (2014); Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447 (Ct. App. 2005) (quoting Restatement (Second) of Torts § 317 cmt. c). Applying those elements to these facts will not require "delving into religious issues." Plaintiffs specifically allege Morningstar and its leaders knew of past sexual abuse incidents by Morningstar employees and knew Erickson Lee was engaging in inappropriate behavior with YSF participants (Compl. ¶ 139, 159, 273, 275, 281), and Defendants' denial of that allegation presents a purely factual dispute with no doctrinal overtones.

The same is true for whether Morningstar and its leaders failed to supervise Erickson Lee's interactions with YSF participants. At no point will a factfinder be asked to rule on the propriety of a Morningstar religious tenet.

As such, Banks warns that declining jurisdiction would be untenable because it would effectively create a legal wrong without a remedy simply because John Doe # 1 suffered that wrong in a "religious setting." 406 S.C. at 162, 750 S.E.2d at 608. While Banks specifically addressed a defamation claim, it used a very apt analogy to show the error in Defendants' position. No court, Banks reasoned, would hold that a battery claim was beyond a court's jurisdiction simply because it took place in a church meeting. Id. Likewise, Erickson Lee's sexual assault of John Doe # 1 and the torts related to it are not beyond this court's jurisdiction simply because they occurred in a church youth group.

Courts from around the country have also rejected Defendants' jurisdictional argument. The Tennessee Supreme Court's ruling in Redwing applied the "neutral principles of law" approach to find courts should exercise jurisdiction over some negligent supervision and training claims arising from child sexual abuse in a church setting. 363 S.W.3d at 450-52. Drawing on a host of precedent, Redwing recognized that First Amendment protection from civil litigation applies only where the alleged improper conduct is "rooted in religious belief." Id. at 450 (citing Bryce v. Episcopal Church in the Diocese of Colo., 289 F.3d 648, 657 (10th Cir. 2002) and McKelvey v. Pierce, 800 A.2d 840, 851 (N.J. 2002)). Claims arising from a priest's alleged sexual assault of a teenage boy were not protected by the First Amendment because no religious belief was cited to justify this misconduct. The same principle applied to claims against religious entities responsible for overseeing the offending priest. 363 S.W.3d at 452 ("Claims against a religious institution asserting the negligent hiring of a member of the clergy do not inevitably enmesh the

courts in religious doctrine or dogma"). Tennessee joined Ohio's Supreme Court and other states in recognizing "even the most liberal construction of the First Amendment will not protect a religious organization's decision to hire someone who it knows is likely to commit criminal or tortious acts." Id. (quoting Byrd v. Faber, 565 N.E.2d 584, 590 (Ohio 1991)).

Mississippi's Supreme Court reached the same conclusion in Roman Catholic Diocese of Jackson v. Morrison, 905 So.2d 1213 (Miss. 2005). A Catholic church could not claim First Amendment immunity for alleged failures in overseeing a priest who molested three children. Morrison rejected the church's argument that claims by the children's parents presented purely ecclesiastical questions for the court to resolve. Id. at 1226 (finding "[t]here is nothing remotely religious or ecclesiastical about" the reprehensible act of sexual molestation of a child). Nothing about what the priest alleged did was grounded in Catholic doctrine or religious practice. Id. Morrison was also concerned about the larger implications of the church's immunity claim. Id. at 1237 ("the cloak of religion . . . surely cannot serve to shield" churches "from civil responsibility for . . . abhorrent conduct such as sexual molestation of a child. Nor should it shield those who fail in their duty to protect children from it").

Morrison cited as further support the Florida Supreme Court ruling in Malicki v. Doe, which surveyed cases from around the country before concluding

> Substantial authority in both the state and federal courts concludes that the right to religious freedom and autonomy protected by the First Amendment is not violated by permitting the courts to adjudicate tort liability against a religious institution based on a claim that a clergy member engaged in tortious conduct such as sexual assault and battery in the course of his or her relationship with a parishioner.

814 So.2d 347, 358 (Fla. 2002). Malicki found these cases consistently held that only neutral principles of law were required to resolve these disputes despite the religious settings in which they arose. See also Bandstra v. Covenant Reformed Church, 913 N.W.2d 19, 42-43 (Iowa 2018)

("any burden that may result from imposing a secular duty to inquire into the whereabouts and potential misconduct of a pastor is no more than an incidental effect of a generally applicable tort principle, which does not offend the First Amendment"). Malicki made special note of opinions finding the underlying sexual misconduct was not committed in furtherance of some purported religious purpose. 814 So.2d at 358 (citing Sanders v. Casa View Baptist Church, 134 F.3d 331, 338 (5th Cir. 1998) and Destefano v. Grabrian, 763 P.2d 275, 284 (Colo. 1988)).

Malicki, like Redwing, also noted the constitutional peril and public policy worry that would arise from allowing a church to use its religious status to gain immunity for non-religious torts. 814 So.2d at 358 (citing Smith v. O'Connell, 986 F. Supp. 73, 80 (D.R.I. 1997) (holding that to grant immunity under these circumstances would "have the impermissible effect of recognizing a religion in violation of the Establishment Clause"); Bandstra, 913 N.W.2d at 43 ("failing to hold religious employers accountable for their failure to supervise their employees would grant immunity to religious figures, which the state may not do"). For similar reasons, North Carolina's appellate courts have rejected churches' immunity assertions for negligent retention and supervision claims arising out of clergy sexual abuse. Doe v. Diocese of Raleigh, 776 S.E.2d 29, 38 (N.C. App. 2015) ("determining whether the church defendants knew or had reason to know of its employee's proclivities for sexual wrongdoing required only the application neutral principles of tort law"); Smith v. Privette, 495 S.E.2d 395 (N.C. App. 1998).

Finally, Defendants' argument is rejected by legal commentators who see such an overly broad application of First Amendment immunity as untenable especially in the context of child sexual abuse. Just four years ago, a South Carolina Law Review article traced the origins of the First Amendment's "ecclesiastical abstention doctrine" and concluded it "should not immunize religious institutions or their officials from the torts of . . . negligent hiring, retention, or

supervision . . . especially in cases involving child molestation." Alexander J. Lindvall, *Forgive Me, Your Honor, For I Have Sinned: Limiting the Ecclesiastical Abstention Doctrine to Allow Suits for Defamation and Negligent Employment Practices*, 72 S.C. L. REV. 25, 29 (Autumn 2020). Elsewhere, scholars have found the concerns that animate the ecclesiastical abstention doctrine are at their "lowest ebb" in circumstances where religious institutions or their employees "harm innocent and unconsenting third parties." Redwing, 363 S.W.3d at 451 (quoting Marci A. Hamilton, *Religious Institutions, the No-Harm Doctrine, and the Public Good*, 2004 B.Y.U. L. REV. 1099, 1115 (2004)).

In sum, the Court should reject Defendants' arguments that they are immune from suit for allegedly facilitating and overlooking repeated sexual assaults of a teenage boy. Erickson Lee's misconduct and the remaining Defendants' oversight errors are not grounded in religious doctrine and resolving Plaintiffs' claims will not entangle the Court in resolving religious disputes. Under the "neutral principles of law" approach applied by Banks and a host of other states, this court has subject-matter jurisdiction, and Defendants' motions should be denied.

2. Defendants' alleged campaign to conceal Erickson Lee's misconduct supports Plaintiffs' civil conspiracy claim.

A civil conspiracy claim is sufficiently pled when the complaint alleges (1) the combination or agreement of two or more persons; (2) to commit an unlawful act or a lawful act by unlawful means; (3) together with the commission of an overt act in furtherance of the agreement; and (4) damages proximately resulting to the plaintiff. Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). Defendants argue Plaintiffs' conspiracy allegations are insufficient because they seek liability based on the same misconduct alleged in Plaintiffs' other

claims. (Defs.' Mot. at 2) (citing Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000)).

However, Defendants' acts in furtherance of the conspiracy are substantively different from the training and supervision errors underlying Plaintiffs' negligence-based claims. Plaintiffs allege Morningstar, its leaders, and others acted in tandem to prevent Erickson Lee's sexual misconduct from being discovered by law enforcement and by others within its organization. (Compl. ¶ 296). Specifically, Plaintiffs allege Erickson Lee worked with his YSF assistant Chase Portello in an attempt to intimidate John Doe # 1 and other victims as they prepared to report the assaults they had suffered to Morningstar leaders. (Compl. ¶¶ 253, 259-63). This type of pressure campaign was not unusual at Morningstar as its leaders—including Joyner, Yarnes, and Douglas Lee—have a history of intervening to prevent sex abuse victims from reporting crimes to law enforcement. (Compl. ¶¶ 137-39). Thus, there is a clear distinction between the culpable conduct for the negligence-based and conspiracy claims. While the former focuses on training and supervision errors contributing to sexual assault incidents, the latter also addresses actions post-incident actions by Morningstar and its leaders to conceal the assaults and protect the perpetrator.[1]

3. Plaintiffs have properly alleged an intentional infliction of emotional distress claim based on Defendants' intentional or reckless misconduct.

Defendants also error in seeking dismissal of Plaintiffs' intentional infliction of emotional distress ("IIED") claim. This tort applies where (1) the defendant intentionally or recklessly

[1] Defendants also misapply Kuznik, which holds only that a plaintiff may not pursue a civil conspiracy claim if he/she "has obtained relief through other avenues." 342 S.C. at 610, 538 S.E.2d at 31. While it may be true that Plaintiffs could not recover on both her negligence-based and conspiracy claims for the same conduct, that does not prevent her from pleading both claims. Rule 8(a), SCRCP ("Relief in the alternative or of several different types may be demanded"); Harper v. Ethridge, 290 S.C. 112, 118, 348 S.E.2d 374, 377 (Ct. App. 1986) ("a plaintiff may join as alternate claims as many claims, legal or equitable, as he has against the opposing party, even if the claims are inconsistent").

inflicted emotional distressed or acted knowing such distress was substantially certain to occur; (2) the defendant's conduct was sufficiently extreme to exceed all possible bounds of decency; (3) this conduct caused the plaintiff's emotional distress; and (4) that distress was so severe that no reasonable person could be expected to endure it. Williams v. Palmetto Health Alliance, 358 S.C. 388, 401, 596 S.E.2d 42, 48 (2004). Defendants argue Plaintiffs may not pursue "reckless infliction of emotional distress" ("RIED") as that claim is not recognized by South Carolina law. (Defs.' Mot. at 2). As the South Carolina Supreme Court recently recognized, many jurisdictions acknowledge intentional and reckless infliction of emotional distress as the same cause of action. Gore v. Dorchester Cnty. Sheriff's Office, 442 S.C. 438, 440, 900 S.E.2d 423, 424 (2024) (collecting cases). Gore held that, for purposes of South Carolina law, RIED is a "subset" of IIED. 442 S.C. at 440, 900 S.E.2d at 424.

That does not, however, mean IIED requires proof that the defendants' distress-causing conduct was intentional. The IIED tort remains viable for instances of "recklessly inflicted severe emotional distress." Gore, 442 S.C. at 440, 900 S.E.2d at 424 (citing Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981)). Plaintiffs meet this requirement by alleging Defendants "recklessly or intentionally" caused Plaintiffs severe emotional distress by hiding Erickson Lee's misconduct after promising to protect their son and in the post-incident intimidation campaign designed to prevent Lee's misconduct from coming to light. (Compl. ¶¶ 315-16).

4. Plaintiffs James and Jane Roe's "Necessaries" claim is valid under South Carolina law.

Finally, the court should reject Defendants' contention that Plaintiffs' sixth cause of action, identified as a "Necessaries Claim," is unrecognized by South Carolina law. (Defs.' Mot. at 2). Plaintiffs James and Jane Roe assert this claim to recover past and future expenses related to the physical, emotional, and psychological damages John Doe # 1 has suffered. (Compl. ¶¶ 323-28).

Those losses include expenses for medical services and other care their son has required and will require during his minority. (Compl. ¶ 324(a), (e)). South Carolina law recognizes a cause of action owned by a minor's parents to collect for these losses. Hughey v. Ausborn, 249 S.C. 470, 475, 154 S.E.2d 839, 841 (1967) ("When a minor receives personal injuries proximately caused by the actionable negligence, recklessness, and willfulness of another . . . the parent has a cause of action for the recovery of the medical expenses which [the parent] has incurred for the care and treatment of such minor").

CONCLUSION

Based on the arguments stated above, Plaintiffs respectfully request the court deny Defendants' motion to dismiss. The First Amendment's religion clauses do not immunize Morningstar and its leaders from liability for the torts Plaintiffs allege here because they have no bearing on and do not in any way implicate Morningstar's religious doctrine. Negligent training and supervision are long-recognized torts in South Carolina law that should be applied equally in religious and secular settings. Plaintiffs' complaint also properly alleges all required elements to state a claim for civil conspiracy, IIED, and recovery of John Doe # 1's medical expenses. Accordingly, Defendants' motion should be denied.

Respectfully submitted,

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