STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS
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), Plaintiffs, v. Morningstar Fellowship Church, Richard Joyner, David Yarns, Douglass Lee, Erickson Lee, Chase Portello, and unidentified defendants James Smith 1-10, Defendants.	Civil Action No. 2024-CP-46-03171 **REPLY IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS MORNINGSTAR FELLOWSHIP CHURCH, RICHARD JOYNER, DAVID YARNES, AND DOUGLAS LEE**

Defendants MorningStar Fellowship Church, Richard Joyner, David Yarnes (incorrectly referenced in the Complaint as "David Yarns") and Douglas Lee (incorrectly referenced in the Complaint as "Douglass Lee") (collectively, "these Defendants"), through their undersigned counsel, submit the following reply in support of their motion to dismiss (the "Motion").

ARGUMENT

On December 13, 2024, the Plaintiffs in *John Doe #3 et al. v. Morningstar Fellowship Church et al.*, Civil Action No. 2024-CP-46-03533—an action involving different plaintiffs (represented by the same counsel) but similar factual allegations and identical theories of liability—filed a supplemental memorandum in that case which their counsel asserted via email to the court is equally applicable to this case. In that memorandum, the Plaintiffs effectively concede that the Complaint does not allege an employment relationship between Erickson Lee

and these Defendants, but they nevertheless argue that their claims for negligent hiring, supervision, or training are viable based on the purported existence of a "master-servant" relationship, which they assert is distinct from an "employer-employee" relationship and can exist even if the ostensible "servant" is a volunteer rather than an employee. This argument fails.

South Carolina law is clear that the phrase "master-servant relationship" is synonymous with the phrase "employer-employee relationship," the latter simply representing a modern update to older, anachronistic terminology. See, e.g., Allen v. Columbia Fin. Mgmt., Ltd., 297 S.C. 481, 488, 377 S.E.2d 352, 356 (Ct. App. 1988) ("The words 'employer' and 'employee' are outgrowths of the older terms 'master' and 'servant.' The word 'servant' is generally synonymous with the word 'employee.'") (citations omitted). Indeed, as shown in the side-by-side comparison below, when the Supreme Court adopted Restatement (2d) of Torts § 317[1] in Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2d 495 (1992), the court used brackets to replace all instances of the word "master" with "employer" and all instances of the word "servant" with "employee," plainly reinforcing the synonymity of the terms.

Restatement (2d) of Torts § 317	**Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2d 495 (1992)**
A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if (a) the servant	Under certain circumstances, an employer is under a duty to exercise reasonable care to control an employee acting outside the scope of his employment. An employer may be liable for negligent supervision if the employee intentionally harms another when: (a) [the employee]

[1] This section recognizes a duty owed by a master/employer to control the conduct of his servant/employee in certain circumstances even when the latter is acting outside the scope of his employment.

(i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or (ii) is using a chattel of the master, and (b) the master (i) knows or has reason to know that he has the ability to control his servant, and (ii) knows or should know of the necessity and opportunity for exercising such control.	(i) is upon the premises in possession of the [employer] or upon which the [employee] is privileged to enter only as his [employee], or (ii) is using a chattel of the [employer], and (b) [the employer] (i) knows or has reason to know that he has the ability to control his [employee], and (ii) knows or should know of the necessity and opportunity for exercising such control.

Nearly two decades after Degenhart, the Supreme Court found that a negligent supervision claim failed because the offending individual "was not an employee" of the moving defendant, indicating that an employment relationship is a critical element of the tort. See Bank of N.Y. v. Sumter Cty., 387 S.C. 147, 156, 691 S.E.2d 473, 478 (2010).

The Plaintiffs also argue that the Complaint asserts a viable claim for *respondeat superior* liability, citing South Carolina Insurance Co. v. James C. Greene & Co., 290 S.C. 171, 176, 348 S.E.2d 617, 620 (Ct. App. 1986), for the proposition that the doctrine "makes a master liable to a third party for injuries caused by the tort of his servant[.]"[2] Id. at 179, 348 S.E.2d at 621. There are two major flaws with this argument.

First, the Plaintiffs' statement of the doctrine of *respondeat superior* is incomplete. The full statement of the doctrine is that it "makes a master liable to a third party for injuries caused by the tort of his servant *committed within the scope of the servant's employment*." Id. (italics added). The italicized language—which was omitted from the Plaintiffs' supplemental

[2] This is where the quote cuts off in the Plaintiffs' supplemental memorandum. As set forth in the following paragraph, the quote is incomplete.

memorandum—is key. "It is well settled that the liability of the master for the torts of his servant arises only when the servant is acting about the master's business, within the scope of his employment; if he is upon his own business acting outside of his employment the master is not liable." Lane v. Modern Music, Inc., 244 S.C. 299, 305, 136 S.E.2d 713, 716 (1964). "If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time." Id. "An act falls within the scope of the servant's employment if it was reasonably necessary to accomplish the purpose of the servant's employment, and it was done in furtherance of the master's business." Wade v. Berkeley Cty., 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App. 1988).

In this case, the types of misconduct alleged against Erickson Lee—sexual abuse and exploitation of minors—were outside the scope of any employment[3] as a matter of law. Such behavior is never "reasonably necessary to accomplish the purpose of the servant's employment" or "done in furtherance of the master's business." Rather, it is "wholly disconnected with [the servant's] employment" and furthers only the servant's personal gratification. Courts across the country, including in South Carolina and the Fourth Circuit, have so held. See, e.g., Doe v. Varsity Brands, LLC, No. 6:22-cv-02957-HMH, 2023 U.S. Dist. LEXIS 161233, at *19 (D.S.C. Sep. 11, 2023) ("South Carolina state courts and courts within the District of South Carolina have uniformly held that an employee's sexual misconduct falls outside the scope of employment."); Lee v. Dorsey, No. 3:21-cv-04137-MGL, 2023 U.S. Dist. LEXIS 105063, at *8 (D.S.C. June 15, 2023) ("Under South Carolina law, sexual assaults fail to give rise to vicarious liability."); Doe-4 v. Horry Cty., No. 4:16-cv-03136-AMQ, 2018 U.S. Dist. LEXIS 110036, at

[3] Erickson Lee is not alleged to have been employed by any of these Defendants.

*10 (D.S.C. July 2, 2018) ("Plaintiff's allegations relating to sexual assault and the facts presented in support of those allegations are outside the scope of [the employee's] employment."); Anderson v. United States, No. 8:12-cv-3203-TMC, 2016 U.S. Dist. LEXIS 9225, at *31 (D.S.C. Jan. 27, 2016) ("South Carolina courts have specifically considered whether an employee was acting within the scope of his employment when he commits a sexual assault. In all four cases, South Carolina courts have found that the sexual advances were outside the scope of employment.") (citing Frazier v. Badger, 361 S.C. 94, 603 S.E.2d 587 (2004); Doe v. S.C. State Budget & Control Bd., 329 S.C. 214, 494 S.E.2d 469 (Ct. App. 1997); Loadholt v. S.C. State Budget & Control Bd., 339 S.C. 165, 528 S.E.2d 670 (Ct. App. 2000); Padgett v. S.C. Ins. Reserve Fund, 340 S.C. 250, 531 S.E.2d 305 (Ct. App. 2000)); Lee v. Jones, No. 1:14-cv-04159-JMC, 2015 U.S. Dist. LEXIS 78325, at *19 (D.S.C. June 17, 2015) ("[P]ursuant to South Carolina agency law, [the employee] was not furthering his employer's interest in sexually assaulting Plaintiff."); Brockington v. Pee Dee Mental Health Ctr., 315 S.C. 214, 218, 433 S.E.2d 16, 18 (Ct. App. 1993) ("Clearly, [the employee] was acting in his individual capacity and not as an agent for the defendants when he sexually assaulted [the victim]."); Doe v. United States, 769 F.2d 174, 175 (4th Cir. 1985) (holding an employer not liable for the sexual misconduct of an Air Force social worker because he "clearly was acting for his personal gratification rather than within the scope of his employment"); Thigpen v. United States, 618 F. Supp. 239, 245 (D.S.C. 1985) ("[The employee's] duties did not include assaults and batteries on children. He was not furthering his master's employment when he sexually assaulted [the victims]. Instead, he was furthering his own self-interest. . . . Therefore, plaintiffs' claims are barred because his conduct was not within the scope of his employment."); Doe v. United States, 618 F. Supp. 71, 74 (D.S.C. 1985) ("[T]he [sexually inappropriate] acts of the government

employee herein were far beyond the scope of his employment[.]"); Andrews v. United States, 732 F.2d 366, 370 (4th Cir. 1984) ("[I]t is clear that [the employee] was furthering his self-interest, not his employer's business, at the time he seduced his patient."); Rabon v. Guardsmark, Inc., 571 F.2d 1277, 1279 (4th Cir. 1978) ("The [sexual] assault by [the employee] was manifestly not in furtherance of [the employer's] business[.] . . . The assault was to effect [the employee's] independent purpose, and it was not within the scope of his employment.").[4]

[4] See also Doe v. Villa Marie Educ. Ctr., 2017 Conn. Super. LEXIS 4066, at *8-9 (Conn. Super. Ct. July 20, 2017) ("The alleged criminal assault and sexual molestation of a child is a complete abandonment of any employer's business and is performed, as the defendants argue, only to satisfy the employee's personal and deviant sexual needs."); Doe v. Medeiros, 266 F. Supp. 3d 479, 491 (D. Mass. 2017) ("Applying common law principles of agency, the Supreme Judicial Court has reasoned that rape and sexual assault do not serve the interests of the employer and are not motivated by a purpose to serve the employer. Moreover, sexual abuse can never be services of the kind employees are employed to perform.") (citations and quotation marks omitted); Evans v. Tacoma Sch. Dist. No. 10, 380 P.3d 553, 559 (Wash. Ct. App. 2016) ("[A]s a matter of law . . . an employee's intentional sexual misconduct is not within the scope of employment."); W. Va. Reg'l Jail & Corr. Facility Auth. v. A. B., 766 S.E.2d 751, 769-70 (W. Va. 2014) ("There is overwhelming majority support in other jurisdictions concluding that sexual assaults committed on the job are not within the employee's scope of employment.") (collecting numerous cases); Smyre v. Amaral, No. 1:13-cv-00387-SLR-MPT, 2013 U.S. Dist. LEXIS 90850, at *40 (D. Del. June 28, 2013) ("[S]exual abuse is not within the scope of employment."), report and recommendation adopted, No. 1:13-cv-00387-SLR-MPT, 2013 U.S. Dist. LEXIS 101369 (D. Del. July 19, 2013); Goss v. Human Servs. Assocs., Inc., 79 So. 3d 127, 132 (Fla. Dist. Ct. App. 2012) ("[D]espite the fact that at least one of the sexual assaults occurred at [the employee's] place of work, the sexual assault was not within the course and scope of her employment because the act was not in furtherance of her employment with [her employer]."); Bloomer v. Becker Coll., No. 4:09-cv-11342-FDS, 2010 U.S. Dist. LEXIS 82997, at *24-25 (D. Mass. Aug. 13, 2010) ("As to plaintiff's claim for assault and battery, the Court finds that the acts alleged could not have been committed within the scope of [the employee's] employment. The acts alleged—touching plaintiff's hands, thighs, and breasts—go far beyond the scope of [the employee's] employment duties. . . . [The employee] clearly engaged in the torts alleged for his own personal motives, and was not in any way motivated by a desire to serve [the employer]."); Roe v. City of Spokane, No. 2:06-cv-00357-FVS, 2008 U.S. Dist. LEXIS 52212, at *3-4 (E.D. Wash. July 9, 2008) ("[A]n employee necessarily acts outside the scope of his or her employment in pursuing sexual gratification."); Am. Mfrs. Mut. Ins. Co. v. Stallworth, 433 F. Supp. 2d 767, 771 (S.D. Miss. 2006) ("[T]here is no allegation, or any arguable basis for an inference that when sexually assaulting [the victim], [the employee] was acting within the scope of his employment by the [employer], performing duties related to the conduct of the [employer's] business or performing duties as clergy. On the contrary, it is quite clear that his

actions and motivations were purely personal."); Doe v. Norwich Roman Catholic Diocese, 909 A.2d 983, 986 (Conn. Super Ct. 2006) ("Clearly, [the priest's] sexual assaults on the plaintiff were repugnant to his employer's business and in utter contravention of the employer's aims and rules. . . . [T]he molestation of children is a total abdication of the master's work so that the pedophile priest can satisfy personal lust."); Graham v. McGrath, 363 F. Supp. 2d 1030, 1034 (S.D. Ill. 2005) ("[S]exual misconduct of employees is outside the express or implied authority of their employment, relieving the employer of any liability under the doctrine of respondeat superior."); Simms v. Christina Sch. Dist., 2004 Del. Super. LEXIS 43, at *22 (Del. Super. Ct. Jan. 30, 2004) ("While [the employee] was clearly taking advantage of his position as a residential advisor during work hours and at the workplace, no employment related activity was even remotely taking place when [the employee] was sexually abusing the plaintiff."); Sanborn v. Methodist Behavioral Resources Partnership, 866 So.2d 299, 305 (La. Ct. App. 2004) (holding that the alleged sexual assault of a client by a substance abuse counselor was not within the course and scope of the counselor's employment, and therefore there was no vicarious liability on the part of employer); Juarez v. Boy Scouts of Am., Inc., 97 Cal. Rptr. 2d 12, 23 (Ct. App. 2000) ("[U]nder the doctrine of respondeat superior, sexual misconduct falls outside the course and scope of employment and should not be imputed to the employer."); Daugherty v. Legros, 2000 Mich. App. LEXIS 1920, at *5 (Mich. Ct. App. Apr. 25, 2000) ("The trial court correctly ruled that defendant [employer] was not vicariously liable under a theory of respondeat superior for [the employee's] sexual assaults during class because the assaults were outside the scope of his employment and his apparent authority."); Canty v. Old Rochester Reg'l Sch. Dist., 54 F. Supp. 2d 66, 71 n.6 (D. Mass. 1999) ("Sexual misconduct, especially sexual assault and rape, by an employee is not considered an act performed within the scope of his or her employment."); Godar v. Edwards, 588 N.W.2d 701, 707 (Iowa 1999) ("We conclude that any alleged sexual abuse by [the employee] would be conduct so far removed from his authorized duties as curriculum director that the question of whether any alleged sexual abuse by [the employee] was within the scope of his employment was properly determined by the court. We further conclude that the [trial] court properly decided as a matter of law that [the employee] was acting outside the scope of his employment during any alleged incidents of sexual abuse."); Judith M. v. Sisters of Charity Hosp., 715 N.E.2d 95, 96 (N.Y. 1999) ("Assuming plaintiff's allegations of sexual abuse are true, it is clear that the employee here departed from his duties for solely personal motives unrelated to the furtherance of the [employer's] business."); N.H. v. Presbyterian Church (U.S.A.), 998 P.2d 592, 599-600 (Okla. 1999) ("No reasonable person would conclude that [the employee's] sexual misconduct was within the scope of employment or in furtherance of the national organization's business. . . . [The employee] abused his position and exploited his special relationship with the children. It is inconceivable that [his] acts were of the nature of those which he was hired to perform. Because [he] was acting outside the scope of his employment as a matter of law when the molestation occurred, we hold that liability may not be imposed under the doctrine of *respondeat superior*."); Alpharetta First United Methodist Church v. Stewart, 472 S.E.2d 532, 535 (Ga. Ct. App. 1996) ("[I]t is well settled under Georgia law that an employer is not responsible for the sexual misconduct of an employee."); Deloney v. Bd. of Educ., 666 N.E.2d 792, 797 (Ill. Ct. App. 1996) ("[A]cts of sexual assault are outside the scope of employment.") (citing cases); Smith v. American Exp. Travel Related Services Co., Inc., 876 P.2d 1166, 1170 (Ariz. Ct. App. 1994) ("[The employee's] conduct in sexually assaulting and harassing [the plaintiff] was outside the scope of his employment. [The employee's] sexual

Second, modern cases describing the doctrine of *respondeat superior* make clear that—like claims for negligent hiring, supervision, or training—it is dependent upon the existence of an employment relationship (which is synonymous with a master-servant relationship). For example, when citing South Carolina Insurance Co. v. James C. Greene & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986)—which had used the old "master-servant" terminology—in Austin v. Specialty Transportation Services, Inc., 358 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004),

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misbehavior and assaultive conduct was neither the kind of activity for which he was hired nor was it actuated, even in part, by a desire to serve [the employer]."); Debbie Reynolds Prof. Rehearsal Studios v. Superior Court, 30 Cal. Rptr. 2d 514, 516-17 (Cal. Ct. App. 1994) ("[T]he only inference to be drawn from the facts as pleaded is that real party's assailant was not acting in the course and scope of his employment at the time of the sexual assaults. His wrongful conduct was so divorced from his duties and work that, as a matter of law, it was outside the scope of his employment. He was hired to teach dance, not to molest, abuse, or threaten minors. Sexual abuse simply is not typical of or broadly incident to the enterprise undertaken by petitioner."); Guzel v. State of Kuwait, 818 F. Supp. 6, 10 (D.D.C. 1993) ("As solely a question of common sense, it is difficult to comprehend how any sexual assault could be committed for a purpose other than that of the individual. Sexual assault is, by its nature, a crime committed for personal reasons. . . . [T]he assault [the employee] is alleged to have committed could not have been committed even partially in furtherance of any duties he owed [his employer]."); Medlin v. Bass, 398 S.E.2d 460, 464 (N.C. 1990) ("The [sexual] assault could advance no conceivable purpose of [the employer]; [the employee] acted for personal reasons only, and his acts thus were beyond the course and scope of his employment as a matter of law."); Birkner v. Salt Lake Cty., 771 P.2d 1053, 1058 (Utah 1989) ("[The employee's sexual misconduct] was not intended to further his employer's interest. On the contrary, it served solely the private and personal interests of [the employee]. . . . [The employee's] conduct arose from his own personal impulses, and not from an intention to further his employer's goals. Nor did his conduct in any way, inappropriately or otherwise, further those goals."); Hunter v. Countryside Ass'n For the Handicapped, Inc., 710 F.Supp. 233, 239 (N.D.Ill. 1989) ("[The employee's] alleged sexual assault can in no way be interpreted as furthering [the employer's] business."); Valdez v. Church's Fried Chicken, Inc., 683 F.Supp. 596, 610 (W.D.Tex. 1988) ("[T]here can be no question that the sexual assault [the employee] committed on [the plaintiff] was purely personal and had nothing to do with the business of [the employer]."); Randi F. v. High Ridge YMCA, 524 N.E.2d 966, 969 (Ill. Ct. App. 1988) ("[A]s a matter of law, [the employee] was not acting within the scope of her employment but solely for her own benefit when she assaulted and sexually molested plaintiffs' daughter."); Boykin v. D.C., 484 A.2d 560, 563 (D.C. 1984) ("The sexual assault here arose out of [the employee's] assignment only in the sense that [the employee's] walks with the student afforded him the opportunity to pursue his personal adventure. This is insufficient to make the [employer] vicariously liable for [the employee's] act.").

the Court of Appeals replaced the word "master" with "employer" and the word "servant" with "employee," writing: "Under the doctrine of respondeat superior, the *employer* is liable for the acts of an *employee* acting within the scope of *employment*." Id. at 318, 594 S.E.2d at 877 (italics added). And in the seminal case of James v. Kelly Trucking Co., 377 S.C. 628, 661 S.E.2d 329 (2008), the Supreme Court wrote: "The doctrine of respondeat superior provides that *the employer, as the employee's master*, is called to answer for the tortious acts of *his servant, the employee*, when those acts occur in the course and scope of the employee's employment." Id. at 631, 661 S.E.2d at 330 (italics added). For both of these reasons, any claim asserted in the Complaint based upon *respondeat superior* is not viable.

CONCLUSION

Because the Complaint does not allege the existence of an employment relationship between Erickson Lee and these Defendants, the cause of action for negligence must be dismissed to the extent it purports to allege theories of liability dependent upon the existence of such a relationship, namely negligent hiring, supervision, or training or the doctrine of *respondeat superior*. Defendants MorningStar Fellowship Church, Richard Joyner, David Yarnes, and Douglas Lee respectfully request that the court enter an order to that effect and that also grants the other relief requested in their motion to dismiss.

s/Curtis W. Dowling

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