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| STATE OF SOUTH CAROLINA<br><br>YORK COUNTY | ) | COURT OF COMMON PLEAS<br><br>SIXTEENTH JUDICIAL CIRCUIT |
| John Doe # 4, individually, and now over the age of eighteen (18) and Jane Roe # 4, individually, and as the parent and natural guardian of John Doe # 4 while he was under the age of eighteen (18),<br><br>Plaintiffs,<br><br>v.<br><br>Morningstar Fellowship Church, Richard Joyner, David Yarns, Douglas Lee, Erickson Lee, and Chase Portello,<br><br>Defendants. | ) | Civil Action No. 2025-CP-46-00493<br><br>**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS MORNINGSTAR FELLOWSHIP CHURCH, RICHARD JOYNER, DAVID YARNES, AND DOUGLAS LEE'S MOTION TO DISMISS** |

Plaintiffs John Doe # 4 and Jane Roe # 4 respectfully submit their memorandum of law in opposition to the motion to dismiss filed by Defendants Morningstar Fellowship Church, Richard Joyner, David Yarns, and Douglas Lee.

## COMPLAINT ALLEGATIONS

Plaintiffs allege John Doe # 4 participated in activities associated with Defendant Morningstar Fellowship Church ("Morningstar"). (Compl. ¶ 23). 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 # 4 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. ¶¶ 15-16). Morningstar chose Douglas Lee's son, Defendant Erickson Lee, as YSF's leader. (Compl. ¶ 17). 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. ¶ 217). However, Plaintiffs allege he had no training or experience in leading a program like YSF and no business being alone with young boys. (Compl. ¶ 300).

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. ¶¶ 265-67, 287). During a YSF event in spring 2020, Erickson Lee served John Doe # 4 alcohol and encouraged him to swim naked in the pool at the home where Erickson Lee resided. (Compl. ¶¶ 223-25). Erickson Lee's misconduct allegedly escalated 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. ¶¶ 228-30). Erickson Lee chose to share a bed with one of the YSF participants and the two drank heavily and watched pornography. (Compl. ¶ 235). Lee also showed porn to the larger group. Later that same evening, Lee's bedmate was discovered naked and unconscious in Lee's bed. (Comp. ¶¶ 239-40). Also on this trip, Lee served John Doe # 4 hard liquor and later required the YSF participants disrobe in his presence and shower as a group. (Compl. ¶¶ 241-46). Between the years of 2021 to 2023, there were multiple YSF "meetings" which included overnight stays during which Erickson Lee sexually abused John Doe # 4. (Compl. ¶¶ 248-51).

Erickson Lee's misconduct allegedly continued unabated by Defendants until January 2023 when he was asked to resign as YSF leader after sexually explicit messages with another YSF participant came to light. (Compl. ¶¶ 252-54). 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. ¶¶ 264-76). 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. (Compl. ¶¶ 279-80).

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 allegedly sexually assaulted by a Morningstar employee. (Compl. ¶¶ 152). The Complaint alleges 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 # 4. (Compl. ¶ 165).

John Doe # 4 and his mother (Jane Roe # 4) initiated this civil action on February 4, 2025, 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. ¶¶ 283-301), civil conspiracy (Compl ¶¶ 302-13), intentional/reckless infliction of emotional distress (Compl. ¶¶ 320-30), and to recover John Doe # 1's claim-related medical expenses. (Compl. ¶¶ 331-36). The Complaint further alleged claims against Erickson Lee for assault and battery. (Compl. ¶¶ 314-19).

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 chaperone of teenage boys during multiple overnight trips despite actual or constructive knowledge of a culture of sexual abuse within the organization. (Compl. ¶¶ 300). John Doe # 4 and Jane Roe # 4 further allege Morningstar

and its leaders were allegedly negligent in training Erickson Lee for the role of YSF leader, negligent in supervising Lee's interactions with YSF participants, negligent in failing to have proper policies and procedures or enforcing them, and negligent in failing to protect the vulnerable children entrusted by their parents to Morningstar's care. (Compl. ¶¶ 300).

Defendants Morningstar, Joyner, Yarnes, and Douglas Lee answered the Complaint on April 9, 2025. In a separate filing that same day, they filed the current motion to dismiss. This motion is very similar to ones Defendants filed in response to suits by other former YSF participants harmed during interactions with Erickson Lee. Several of those motions were heard and denied by the Honorable Martha M. Rivers on January 30, 2025. See e.g. John Doe # 1 v. Morningstar Fellowship Church et al., Civil Action No. 2024-CP-46-03171 (hereafter "John Doe # 1"). Judge Rivers also denied these Defendants' motions to reconsider on March 31, 2025.

## 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. Plaintiffs' Complaint properly alleges a negligent training/supervision claim.

In their opposition to Plaintiffs' negligent training/supervision claim, Defendants attempt the same argument raised and rejected by the court in nearly identical suits by other Morningstar members. John Doe # 1 at 10 ("the Complaint alleges Erickson Lee's years-long patter of sexual misconduct was 'allowed' to begin, continue, and remain undetected by Morningstar and its leaders. These assertions are sufficient under South Carolina law to allege negligent supervision."). For similar reasons, the Court should deny Defendants' current motion.

Fundamentally, Defendants err in arguing a negligent supervision claim is limited to employer-employee relationships. The negligent supervision tort was first recognized by the South Carolina Supreme Court in Degenhart v. Knights of Columbus, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992). Degenhart chose to take the elements of South Carolina's version of the tort directly out of the Restatement. Degenhart, 309 S.C. at 116, 420 S.E.2d at 496 (quoting Restatement (Second) of Torts § 317). Section 317 does not limit the tort to employer-employee relationships. This is clear from Section 317's title ("Duty of Master to Control Conduct of Servant") as well as its text. Section 317's substantive provision states: "A master is under a duty to exercise reasonable care so to control his servant . . ."

The "master" to "servant" relationship is not limited to employer-employee situations. Restatement (Second) of Agency § 225 ("One who volunteers services without an agreement for or expectation of reward may be a servant of the one accepting such services"). Financial remuneration "is not necessary to create the relation of principal and agent, and it is not necessary in the case of master and servant." Id. cmt. a. The key considerations for whether a volunteer is a "servant" are (1) whether the volunteer acts for purely selfish reasons or for the benefit of the

organization for which the services are offered; and (2) whether the organization consents to the services the volunteer provides Id. cmt. b, c.[1] Citing these authorities, Judge Rivers denied Defendants' nearly identical motion just a few months ago. John Doe # 1 at 8 ("The Court rejects Defendants' argument that a negligent supervision claim is limited to employer-employee relationships").

Moreover, there are a number of cases recognizing a duty to train or supervise can apply to a volunteer working on a larger organization's behalf. Alaska's Supreme Court has held that a church had a duty to investigate the background of a volunteer chosen to lead a "tiny tots" program in a suit arising from the volunteer's sexual assault of one of the program's young children. Broderick v. King's Way Assembly of God, 808 P.2d 1211, 1221 n. 25 (Alaska 1991). Broderick is fully consistent with the Restatement's recognition that negligent supervision applies to an organization's "servants" and that "servant" is not limited to an organization's employees. Id. ("a volunteer may be subject to the same interview and background checks as any other servant"). Similarly, Kansas's federal district court refused to dismiss a negligent supervision claim against a school district based on a volunteer coach who sexually abused the district's student-athletes. C.T. v. Liberal Sch. Dist., 562 F. Supp.2d 1324, 1343-45 (D. Kan. 2008). C.T. expressly held that an organization's agents and servants can include unpaid volunteers and "the mere fact that [offending coach] was not a formal 'employee' of the school district does not entitle the school district to summary judgment." Id. at 1343.

[1] Defendants argue a post-Degenhart case imposes an employer-employee relationship requirement on negligent supervision claims. Defs.' Mem. at 4 (citing Bank of N.Y. v. Sumter Cnty., 387 S.C. 147, 691 S.E.2d 473 (2010)). But, Bank of New York says nothing about the relationship of a volunteer and the entity and individuals who exercise control over him. That case held only that there was no negligent supervision claim under circumstances where a statute unambiguously stated the defendant had no control over the negligent actor.

At this 12(b)(6) stage, only the complaint allegations matter. Plaintiffs' complaint includes sufficient allegations to allege a master-servant relationship between Defendants and Erickson Lee. Erickson Lee was not just a random Morningstar member or non-descript volunteer. He was "leader of a youth program" at Morningstar (Compl. ¶ 38) and son of one of Morningstar's top officials (¶ 37). The Complaint plainly alleges Erickson Lee was a Morningstar employee. (Compl. ¶ 86). Erickson Lee identified himself as one of YSF's "instructors." (Compl. ¶ 217). The Complaint plainly alleges Morningstar and its leaders "have the right or power to direct and control" the behavior of "staff" members like Erickson Lee (Compl. ¶ 43).

Doug Lee in particular had this right. He was not just Morningstar's head of security and Erickson Lee's father, he also was "involved in the day-to-day running of the YSF program" in which Erickson Lee perpetrated his sexual assaults. (Compl. ¶ 145). Doug Lee's oversight role was communicated by Morningstar leaders to parents of prospective YSF participants. (Compl. ¶ 219). Moreover, Doug Lee certainly had the power to control Erickson Lee's behavior as YSF leader. One of the incidents of Erickson Lee's misconduct involving John Doe # 4 took place ***in Doug Lee's home***. (¶ 227).

The right to control went beyond just Doug Lee. Erickson Lee's penchant for providing YSF participants illicit items (e.g. alcohol, e-cigarettes, and pornography) were part of a program sponsored and facilitated by Morningstar (Compl. ¶ 123). This misconduct was both known and "normalized" by Morningstar leaders (Compl. ¶¶ 215). Morningstar leaders were both fully aware and fully supportive of the large role Erickson Lee was taking in the YSF program. They affirmatively told YSF participants' parents that the program was safe and their children would be protected by program leaders. (Compl. ¶ 91). In sum, the Complaint alleges, Erickson Lee's years-

long pattern of sexual misconduct was "allowed" to begin, continue, and remain undetected by Morningstar and its leaders (Compl. ¶ 263).

**2. Plaintiffs' Complaint properly alleges Defendants are liable in negligence under the doctrine of *respondeat superior*.**

The Complaint properly alleges all required elements to hold Defendants vicariously liable for Erickson Lee's tortious conduct of under the doctrine of respondeat superior as that conduct was performed within the scope of his agency as leader of Morningstar's YSF program.

Under South Carolina law, a servant's torts are "imputed to the master by law." Wade v. Berkeley County, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App. 1998).[2] Respondeat superior liability is a vicarious liability theory that does not require proof of any fault by the employer. James, 377 S.C. at 631, 661 S.E.2d at 330 (citing Sams v. Arthur, 135 S.C. 123, 128-31, 133 S.E. 205, 207-08 (1926)); see also Wade, 330 S.C. at 319, 498 S.E.2d at 688 (finding respondeat superior liability may apply even if servant was acting in violation of master's express instruction). A master should bear the burden of its servant's torts because the master chooses its servants and is in the best position to "spread the risk by treating third party liability as a cost of doing business." S.C. Ins. Co. v. James C. Greene & Co., 290 S.C. 171, 183, 348 S.E.2d 617, 624 (Ct. App. 1986); see also Jones v. Elbert, 211 S.C. 553, 558, 34 S.E.2d 796, 798 (1945).

Respondeat superior liability applies to an act within the course and scope of service, a term that broadly includes any act that was "reasonably necessary to accomplish the purpose" of the service. Froneberger v. Smith, 406 S.C. 37, 748 S.E.2d 625 (Ct. App. 2013). Froneberger's

[2] *Respondeat superior* can apply to hold a church and its leaders responsible for the errors of a church volunteer. John Doe No. 1 at 10-11 (citing Rozmus v. Wesleyan Church of Hamburg, 161 A.D.3d 1538, 77 N.Y.S.3d 245 (N.Y. App. Div. 4 Dep't 2018) and Trinity Lutheran Church, Inc. v. Miller, 451 N.E.2d 1099, 1102 (Ind. App. 1983) ("A master may have a gratuitous servant. The duty of an agent acting gratuitously is the same as other agents.")).

"scope" language should not be read as an exact definition since the term is "not susceptible of accurate definition" and the acts within the scope of a servant's authority are subject to "no fixed rule." Adams v. S.C. Power Co., 200 S.C. 438, 21 S.E.2d 17, 18 (1942). Instead, the authority given to a servant must be "gathered from all the surrounding and attendant circumstances." Id.; see also Fredrich v. Dogencorp, LLC, Civil Action No. 3:13-cv-01072-JFA, 2014 WL 5393033 at * 3 (D.S.C. Oct. 23, 2014) (quoting Adams)). The scope of service may be determined by the implications arising from the circumstances, and whether the servant was acting in furtherance of the master's business is only one factor for making this determination. Wade, 330 S.C. at 319, 498 S.E.2d at 688.

Defendants argue they may not be vicariously liable for any of Erickson Lee's alleged negligent conduct because all of it was outside the scope of his service. However, the Complaint plainly alleges otherwise. Plaintiffs allege the misconduct "occurred at all times during the course and scope of [Erickson Lee's] mentorship with the YSF program sponsored and facilitated by Morningstar and" Joyner, Yarnes, and Douglas Lee. (Compl. ¶ 211). Specifically, the Complaint alleges the YSF program's very nature called for Erickson Lee to spend extended periods in isolated locales alone with John Doe # 4 and other YSF participants. (Compl. ¶ 287) (Erickson Lee was "spending a lot of alone time with specific minors in the course and scope of YSF programs").

Defendants also suggest all claims arising out of a servant's assault of a plaintiff necessarily go beyond the scope of the perpetrator's service to his master. (Defs.' Mem. at 5-9). However, South Carolina law rejects that proposition. Crittenden v. Thompson-Walker Co., 288 S.C. 112, 115, 341 S.E.2d 385, 387 (Ct. App. 1986). In Crittenden, the court of appeals affirmed a verdict against the employer of an individual who severely beat the plaintiff on the defendant employer's

premises. In finding the perpetrator was acting within the scope of his service to the master, the court held "it is not necessary that the assault should have been made as a means or for the purpose of performing the work the servant was employed to do" in order to hold the master liable for the servant's actions. Id. A servant can still be within the course and scope of service even if he "exceed[s] his authority" in the tortious conduct. Id. (quoting Jones v. Elbert, 211 S.C. 553, 558, 34 S.E.2d 796, 798-99 (1945)); see also Lazar v. Great Atlantic & Pacific Tea Co., 197 S.C. 74, 14 S.E.2d 560 (1941) (finding store manager was acting within scope of service to retailer when committing assault during dispute with customer).

An assault was likely committed within the course and scope of service if committed on the master's premises or in the master's presence and if the perpetrator's relationship with his victim arose solely from the perpetrator's position as servant to the master. Crittenden, 288 S.C. at 116, 341 S.E.2d at 387-88. All of those factors are present here. Erickson Lee's misconduct included handing out shots of hard liquor to children in the restroom of the Morningstar facility. (Compl. ¶ 245). He also oversaw sleepovers in the Morningstar ballroom during which he would invite YSF participants to join him inside his tent. (Compl. ¶ 246). John Doe No. 4's relationship with Erickson Lee arose entirely out of the YSF program sponsored and overseen by defendants as part of Morningstar's ministry. (Compl. ¶¶15-19).

In the end, South Carolina courts have long held that "course and scope" disputes present a question of fact generally reserved for the factfinder's resolution. In fact, any doubt as to whether Erickson Lee was acting within the scope of his service must be resolved against Morningstar "at least to the extent of requiring the question to go to the jury." Murphy v. Jefferson Pilot Commc'ns Co., 364 S.C. 453, 462, 613 S.E.2d 808, 812 (Ct. App. 2005) ("The issues of agency relationship and scope of employment are generally for the jury."). As in Crittenden, the Complaint allegations

cited above are more than sufficient to show many portions of Erickson Lee's tortious conduct were undertaken within the course and scope of his work as the Morningstar YSF program leader.

**3. The Complaint alleges a valid intentional infliction of emotional distress claim.**

Plaintiffs' fourth cause of action for outrage or intentional/reckless infliction of emotional distress ("IIED") recounts the egregious intimidation campaign designed to prevent John Doe No. 4 and similar victims from reporting Erickson Lee's misconduct and an intentional effort to keep that misconduct from being discovered by Jane Roe No. 4 and police. (Compl. ¶¶ 322-23). This was part of a long-standing pattern among Defendants to "pressur[e]" individuals who were sexually abused at Morningstar to keep their trauma to themselves. (Compl. ¶ 324). Defendants' two arguments in opposition to the IIED claim are legally unsound and their motion to dismiss should be denied.

First, Defendants raise a structural argument, insisting an IIED claim may not seek relief for conduct also cited in other causes of action. (Defs.' Mem. at 12) (citing Todd v. S.C. Farm Bureau Mut. Ins. Co., 287 S.C. 190, 191, 336 S.E.2d 472, 473 (1985)). However, whatever concerns Todd raised about avoiding double recovery, they do not justify dismissing an IIED claim at the pleading stage. Recently, South Carolina's federal district court rejected the argument Defendants make here, concluding South Carolina does not require a plaintiff to choose between an IIED claim and other tort claims at the pleading stage. Johns v. Univ. of S.C., Civil Action No. 3:21-01197-MGL, 2024 WL 4534622, at * 4 (D.S.C. January 30, 2024) ("South Carolina law fails to support [Defendant's] contention that a plaintiff is unable to proceed on both an [intentional infliction of emotional distress] claim and other tort claims."). Johns feared a ruling that barred a plaintiff from pleading IIED in conjunction with other tort claims would "effectively declaw" the IIED cause of action. Id. The court is still in position to manage potential recovery on the different

claims later in the case through the way in which it structures the jury charges and verdict form. Id. Todd does not suggest otherwise. In fact, even after Todd, South Carolina courts still permit IIED claims to go to jury (and to result in a judgment) alongside other tort claims arising out of the same incident. Id. (citing Miller v. City of W. Columbia, 322 S.C. 224, 471 S.E.2d 683 (1996)).

Second, Defendants argue the Complaint fails to allege the outrageous conduct underlying Plaintiffs' IIED claim was directed at John Doe No. 4. (Defs.' Mem. at 11-12). That simply is not true. Complaint paragraph 323 reads as follows:

> Defendants Morningstar, Joyner, Yarnes and Douglas Lee inflicted severe emotional distress by acting in tandem to prevent Erickson Lee's sexual misconduct from being discovered by law enforcement and by others within its organization, including the parents of John Doe #4.

Thus, Plaintiffs allege outrageous conduct concerning John Doe No. 4 and directed at Jane Roe No. 4. This specific allegation is supported elsewhere in the Complaint by assertions that Defendants "undertook an effort to hide or otherwise prevent Erickson Lee [from being] found out for wholly self-interested reasons including the fact that Douglas Lee (Erickson's) father was a Morningstar leader and because acknowledging Erickson Lee's misconduct would be harm Morningstar financially. (Compl. ¶ 308). These allegations are sufficient to support an IIED claim, and Defendants' motion to dismiss this claim should be denied.

**4. Jane Roe No. 4's "necessaries" claim is not limited in the way Defendants claim.**

Plaintiff Jane Roe No. 4 seeks relief in the Complaint's fifth cause of action for "expenses related to" John Doe No. 4's injuries during his minority and arising from Defendants' misconduct. (Compl. ¶ 332). Defendants contend South Carolina law strictly limits recovery for this claim to John Doe No. 4's medical expenses and, therefore, the Court should dismiss the portion of this claim seeking recovery for Jane Doe No. 4's lost time at work, transportation costs, and other related losses (Defs.' Mem. at 12) (citing Hughey v. Ausborn, 249 S.C. 470, 154 S.E.2d 839

(1967)). But much more recent precedent describes this claim in broader terms. The South Carolina Supreme Court holds that "the parents of an injured child have the right to bring an action against the tortfeasor for **expenses incurred in caring for the child**." Endres v. Greenville Hosp. Sys., 312 S.C. 64, 439 S.E.2d 261 (1993) (emphasis added). Accordingly, all damages sought in Jane Roe No. 4's "necessaries" claim fall within the claim's scope as recognized by law, and Defendants' motion to dismiss portions of this claim should be denied.

5. **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' constitutional argument was considered, rejected, and rejected again in a motion to reconsider in claims of similar misconduct by other former YSF participants. John Doe No. 1 at 16-22 (see Exhibit A, attached Order). The three-sentence argument offered in Defendants' current memorandum offers no substantive basis for a different conclusion in this case.

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).

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 teenage boys (Compl. ¶ 18), sharing of pornography with YSF participants (Compl. ¶ 23), and repeated sexual assault of John Doe # 1 (Compl. ¶ 251) do not involve religious doctrine in any way. Nor do 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. (Compl. ¶¶ 20, 113, 123, 260, 263). The Complaint alleges Morningstar and its leaders just simply did not adequately train Erickson Lee before placing a large group of teenage boys in his care for days at a time. (Compl. ¶ 230 (d)-(f)). 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. ¶ 46) (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. ¶ 46); (2) investigating reports that an individual within the organization has committed acts of sexual misconduct (Compl. ¶¶

109-11); and (3) monitoring the behavior of a suspected abuser to prevent repeated victimization of innocent children (Compl. ¶ 122). 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. ¶ 308).

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. ¶¶ 192, 214, 288), 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.

## CONCLUSION

Based on the arguments stated above, Plaintiffs respectfully request the court deny Defendants' motion to dismiss. Negligent training and supervision are long-recognized torts in South Carolina law that should be applied equally in religious and secular settings. Plaintiffs' complaint properly alleges all required elements to state a claim for negligence, IIED, and for Jane Roe # 4's recovery of John Doe # 4's claim-related expenses. Moreover, 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. Accordingly, Defendants' motion should be denied.

Respectfully submitted,

s/S. Randall Hood

S. Randall Hood
Chad A. McGowan
McGowan, Hood, Felder & Phillips, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
rhood@mcgowanhood.com
cmcgowan@mcgowanhood.com

Attorneys for Plaintiffs

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