

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

CIVIL ACTION NO. 217-2021-CV-00547

JANE DOE #2

v.

STATE OF NEW HAMPSHIRE,
DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.

**FIRST AMENDED SHORT FORM COMPLAINT SUPPLEMENT TO
MASTER COMPLAINT
(For all Plaintiffs represented by Rilee & Associates, P.L.L.C. and Nixon Peabody LLP)**

Plaintiff Jane Doe #2 (“Plaintiff”), by and through counsel, Rilee & Associates, P.L.L.C. and Nixon Peabody, LLP, submits this “First Amended Short Form Complaint,” which supplements the Master Complaint filed in the lead docket, *Meehan v. State of N.H., Dep’t of Health and Human Servs.*, Docket No. 217-2020-CV-26, in the Superior Court for Merrimack County, and as may be amended in the future (the “Master Complaint”). Pursuant to the Court’s Orders of February 18, 2022, and July 6, 2022, Plaintiff files this First Amended Short Form Complaint, which, together with the Master Complaint filed on the lead docket in *Meehan*, supersedes and amends Plaintiff’s Complaint, and sets forth a statement of material facts entitling Plaintiff to the relief requested in Counts I through VII of the Master Complaint. To the extent Plaintiff has supplemental claims against State Defendants identified in the Master Complaint and any other defendant, those claims, and the material facts sustaining those claims, are additionally set forth herein.

INCORPORATION BY REFERENCE OF MASTER COMPLAINT

1. The Master Complaint filed in the lead docket, Docket No. 217-2020-CV-26, in the Superior Court for Merrimack County, and as may be amended in the future, is expressly

incorporated by reference to this First Amended Short Form Complaint as if fully set forth herein, except to the extent modified by this First Amended Short Form Complaint.

PARTIES

2. Plaintiff is an individual who is a resident of the State of New Hampshire, County of Coös, and a crime victim pursuant to the New Hampshire Victim Bill of Rights, New Hampshire Revised Statutes Annotated (“RSA”) 21-M:8-k. Plaintiff’s identity and date of birth have been filed **under seal** with this Honorable Court.

3. Plaintiff expressly incorporates by reference all Defendants as identified in paragraphs 2 through 8 of the Master Complaint, hereinafter referred to as “State Defendants.”

4. Plaintiff identifies additional Defendants, if indicated below:

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| | No additional Defendants. |
| X | Additional Defendant/s, hereinafter referred to as the “Contractor Defendant/s”: Defendant Pine Haven Boys Center (“Pine Haven”) is a nonprofit corporation incorporated under New Hampshire law to provide special education services to children with a principal place of business at 133 River Road, P.O. Box 162, Allenstown (Suncook), New Hampshire 03275. At all times relevant to this complaint, Pine Haven was paid under contract with the State of New Hampshire to provide, on behalf of the state and as an agent of the state, a secure residential placement and related services to children under the custody and control of the state. |

FACTS SPECIFIC TO PLAINTIFF

5. Plaintiff was born in the year: 1994.

6. Plaintiff was taken into the custody and control of the State of New Hampshire as a minor and was, while in the state’s custody and control, placed at facilities and placements as directed by State Defendants in or about the following approximate time period(s): 2010 to 2011.

7. In or about the time period(s) identified in paragraph 6, State Defendants placed Plaintiff in the State Youth Facility (as defined in the Master Complaint).

8. In or about the time period identified in paragraph 6, while Plaintiff was in the custody and control of State Defendants, and while Plaintiff was residing at the State Youth Facility, agents and employees of State Defendants harmed Plaintiff through specific acts of child abuse including, but not limited to, the incidents indicated (below or attached):

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| State Defendants first sent Plaintiff to Pine Haven Boys Center, where Plaintiff was sexually abused by staff. Later, State Defendants sent Plaintiff to SYSC, where Plaintiff endured further abuse. While at SYSC, a staff member known to Plaintiff as Tony Paquette would take Plaintiff into the corner of a room to wrestle him, which would often result in Paquette punching Plaintiff and "choking him out." Paquette did this on multiple occasions. Another staff member known to Plaintiff as "Wiggins" choked Plaintiff and slammed him into a wall. SYSC staff also locked Plaintiff in isolation or solitary confinement for days at a time (at least once for approximately two weeks) without justification, during which Plaintiff suffered emotional trauma and was denied access to statutorily guaranteed rights. During these periods of solitary confinement, staff members did not regularly feed Plaintiff, and they deprived him of access to a bathroom and shower. Sometimes Plaintiff would be fed only once per day. Most of the time, Plaintiff was forced to urinate and defecate in a blanket in the corner of his room. |
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9. In or about the time period identified in paragraph 6, and while Plaintiff remained in the custody and control of State Defendants, State Defendants additionally placed Plaintiff in other, privately operated, congregate care residential facilities or programs, if indicated below:

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| | Not applicable (no private placement) |
| X | State Defendants placed Plaintiff at residential facilities operated by the Contractor Defendant/s identified in paragraph 4. |

10. In or about the time period identified in paragraph 6, while Plaintiff remained in the custody and control of State Defendants, and while Plaintiff was residing at residential

facilities operated by the Contractor Defendant/s following placement by State Defendants, agents and employees of State Defendants and Contractor Defendant/s (collectively, "Defendants") harmed Plaintiff through specific acts of child abuse including, but not limited to, the incidents indicated below (or attached):

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| | Not applicable (no private placement) |
| X | Plaintiff was sexually abused at Pine Haven by an individual known to Plaintiff as "Father John." Father John, working in conjunction with another staff member known to Plaintiff as "Dave," anally raped and fondled Plaintiff on a weekly basis. Dave would hold Plaintiff down while Father John raped him. Sometimes the rapes were so traumatic that Plaintiff would have difficulty getting out of bed afterwards. |

CONSOLIDATED CAUSES OF ACTION

11. Plaintiff expressly adopts Counts I through VII of the Master Complaint against State Defendants arising from harm caused to Plaintiff by agents and employees of State Defendants while Plaintiff was in the custody and under the control of State Defendants and residing in the State Youth Facility or any other state-operated residential facility (the "Consolidated Claims") as alleged in Paragraph 8 of this First Amended Short Form Complaint.

SUPPLEMENTAL CAUSES OF ACTION

12. Additionally, Plaintiff alleges supplemental Counts against State Defendants and Contractor Defendant/s (together, "Defendants") arising from harm caused to Plaintiff by agents and employees of Defendants while Plaintiff was in the custody and under the control of Defendants and residing in residential facilities privately operated by Contractor Defendant/s (the "Supplemental Claims") as alleged in paragraph 10 of this First Amended Short Form Complaint, if any indicated below (and in separate attachments):

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| | No Supplemental Claims |
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| X | <p>Each of the following Supplemental Claims:</p> <p>Count VIII (Breach of Fiduciary Duty—State Defendants and Contractor Defendant/s)</p> <p>Count IX (Breach of Nondelegable Duty—State Defendants)</p> <p>Count X (Aiding and Abetting Breach of Fiduciary Duty—State Defendants and Contractor Defendant/s)</p> <p>Count XI (Negligent Hiring, Training, Supervision and Retention—State Defendants and Contractor Defendant/s)</p> <p>Count XII (Negligence—State Defendants and Contractor Defendant/s)</p> <p>Count XIII (Negligent Failure to Adopt and Implement Rules—State Defendants)</p> <p>Count XIV (Civil Conspiracy— State Defendants and Contractor Defendant/s)</p> |
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*Any indicated Counts are attached hereto as an addendum to this First Amended Short Form Complaint.

13. In addition to any Counts alleged in paragraph 12, Plaintiff alleges the following additional Supplemental Claims, if any indicated below or in separate attachments:

14. To the extent Plaintiff wishes to dismiss, without prejudice, any Consolidated Claims previously alleged in the Master Complaint, or any grounds in support of any Consolidated Claims, they are so indicated (below or attached):

WHEREFORE, Plaintiff demands a trial by jury on all issues so triable and prays for all relief as set forth in this First Amended Short Form Complaint, any addendum hereto, and in the Master Complaint filed in the lead docket, *Meehan v. State of N.H., Dep't of Health and Human Servs.*, Docket No. 217-2020-CV-26. Plaintiff further demands a jury viewing of all facilities where Plaintiff was harmed by agents and employees of State Defendants and, if applicable, Contractor Defendant/s. As discovery is ongoing, Plaintiff expressly reserves the right to amend or supplement this First Amended Short Form Complaint.

Respectfully Submitted,

JANE DOE #2

Dated: August 19, 2022

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

/s/ Cyrus F. Rilee, III

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By and through counsel,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via the Court's e-filing system on all parties of record on August 19, 2022.

/s/ David A. Vicinanza

ADDENDUM TO SHORT FORM COMPLAINT

SUPPLEMENTAL CLAIMS ALLEGED IN PARAGRAPH 12 OF SHORT FORM COMPLAINT

COUNT VIII

(Breach of Fiduciary Duty—State Defendants and Contractor Defendant/s)

1. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the Master Complaint and Plaintiff's Short Form Complaint as though fully and completely set forth herein.

2. Pursuant to the state's *parens patriae* powers, including those set forth in the Child Welfare Acts and their antecedents, State Defendants took custody of and control of Plaintiff as a child and placed Plaintiff at various residential facilities for juveniles, including the residential facilities operated by Contractor Defendant/s. This Count seeks recovery only for harm Plaintiff suffered while placed at the residential facilities of Contractor Defendant/s.

3. At all times relevant to the allegations contained herein, Contractor Defendant/s were privately owned businesses that contracted with and were paid by the State of New Hampshire to provide programs and services on behalf of State Defendants and as agents of State Defendants, to children in the custody and control of State Defendants. In particular, State Defendants hired Contractor Defendant/s to provide congregate care residential facilities for children in state custody, including Plaintiff.

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

5. A fiduciary relationship arose between State Defendants and Plaintiff by virtue of the state removing Plaintiff, a minor, from the custody, care, and control of Plaintiff's parents or

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guardian, and placing Plaintiff in the custody, care, and control of State Defendants, who thereafter placed Plaintiff with Contractor Defendant/s. When State Defendants accepted custody of Plaintiff, and exercised control over Plaintiff to the exclusion of others, they undertook a fiduciary duty to protect, care for, and educate Plaintiff, and they were required by common law to act at all times in Plaintiff's best interests, including by taking whatever steps necessary to prevent Plaintiff from being harmed.

6. When State Defendants placed Plaintiff with Contractor Defendant/s, and Contractor Defendant/s accepted physical custody of Plaintiff pursuant to their contract with State Defendants and thereafter exercised physical control over Plaintiff to the exclusion of others, they likewise accepted a fiduciary obligation to protect and care for Plaintiff and were required by common law to act at all times in Plaintiff's best interests, including by taking whatever steps necessary to prevent Plaintiff from being harmed.

7. In addition, the state legislature has codified, at least partially, the state's fiduciary obligations to children in its custody. Pursuant to RSA Chapter 169-B:1 and its antecedents, State Defendants and their agents and employees had statutorily imposed duties with respect to Plaintiff and all other minors committed to their custody and control. Among other duties, State Defendants were required to "encourage the wholesome moral, mental, emotional, and physical development of each minor coming within the provisions of this chapter, by providing the protection, care, treatment, counseling, supervision, and rehabilitative resources which such minor needs." Similar duties are likewise echoed in the policy and purpose provisions of RSA 169-C:2, III(a), and RSA 169-D:1. These statutorily pronounced purposes created a fiduciary relationship between State Defendants and all children, including Plaintiff, entrusted to their custody, care, and control.

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8. The state's fiduciary duty to children in state custody could not be discharged by transferring physical custody of such children to private residential placements, such as the residential facilities operated by Contractor Defendant/s.

9. Notwithstanding the fiduciary duty State Defendants and Contractor Defendant/s (together, "Defendants") owed to Plaintiff, during the time period that Plaintiff was entrusted to the custody, care, and control of State Defendants, and while Plaintiff was residing in the residential facilities operated and controlled by Contractor Defendant/s, agents and employees of Defendants harmed Plaintiff by the specific acts of child abuse alleged in paragraph 10 of Plaintiff's Short Form Complaint. Moreover, every agent and employee of Defendants had an independent duty to report knowledge of events observed, heard about, or done by the agent or employee relating to the care and safety of children in state custody placed with Contractor Defendant/s. On information and belief, however, the agents and employees of Defendants working at the residential facilities operated by Contractor Defendant/s failed to report or take corrective steps after witnessing or becoming aware of prior abuse of other children in state custody, and/or agents and employees in supervisory positions failed to take adequate corrective action upon receiving such reports, and thereby failed to correct the conditions that lead to Plaintiff's subsequent abuse.

10. Each of the acts of child abuse recounted in paragraph 10 of Plaintiff's Short Form Complaint constitutes an independent breach of each Defendant's fiduciary duty to Plaintiff, and the repeated failures of the agents and employees of Defendants to take corrective action in response to Plaintiff's abuse, and to take corrective action in response to previous acts of abuse against other children, represent additional breaches by agents and employees of Defendants, all of which are imputable to Defendants.

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11. Additionally, those acts of child abuse constitute violations of Plaintiff's state and federal constitutional rights. For example, agents and employees of Defendants violated Plaintiff's substantive due process and equal protection rights under the Fourteenth Amendment to the United States Constitution to not be subjected to sexual abuse and unjustified physical violence; the use of excessive force, bodily injury, and unreasonable restraint; and other abhorrent and unjustified conditions of confinement while in state custody. Defendants' deliberate indifference to the risks of harm to Plaintiff also constitute substantive due process violations, and Defendants' unjustified and excessive punishments of Plaintiff without any due process violated Plaintiff's right to procedural due process. In addition, or in the alternative, Defendants' liberal use of physical violence, excessive force, excessive isolation, and excessive restraints also violated Plaintiff's right under the Eighth Amendment to the United States Constitution to be free from cruel and unusual punishment. As fiduciaries, the acts and omissions of Defendants rising to the level of constitutional violations are by themselves breaches of the fiduciary duty Defendants owed to Plaintiff.

12. Furthermore, during the time Plaintiff was in the custody, care, and control of State Defendants, the state bore a constitutional and statutory duty under New Hampshire law to provide Plaintiff, a school-aged minor, with a constitutionally adequate education. The Equal Protection Clause of the Fourteenth Amendment likewise required that Plaintiff, along with the other minors in state custody, not be denied access to school and that they be afforded equal educational opportunities regardless of race, ethnicity, background, religion, sex, or citizenship.

13. Inasmuch as the state removed Plaintiff from the custody, care, and control of Plaintiff's parents or guardian and placed Plaintiff in an institutional setting, the state obligated itself to ensure that Plaintiff was not deprived of this right to a constitutionally adequate education.

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14. But, as a consequence of the specific acts of child abuse alleged paragraph 10 of Plaintiff's Short Form Complaint, Plaintiff was deprived of a constitutionally adequate education. For example, Plaintiff received little or no educational instruction during time periods when agents and employees of Defendants locked Plaintiff in isolation. Even when attending school, the child abuse Plaintiff had suffered caused Plaintiff to struggle with a diminished capacity to concentrate and complete school work. As a consequence of the abuse and confinement, Plaintiff was unable to attend classes and was unable to benefit from what little instruction was made available, resulting in a constitutionally inadequate education.

15. By placing Plaintiff in an institutional setting where Plaintiff was deprived of a constitutionally adequate education, the state treated Plaintiff and the other minors in state custody differently from all other children in the State of New Hampshire with regard to the provision of constitutionally mandated educational services. This differential treatment of children in state custody had no justification nor was it rationally related to any conceivable legitimate state interest.

16. The deprivation of Plaintiff's right to an equal and constitutionally adequate education amounts to a further breach of State Defendants' fiduciary duty to Plaintiff.

17. As a direct and proximate cause and result of the foregoing, Defendants subjected Plaintiff to the harm Plaintiff suffered while residing in the facilities of Contractor Defendant/s as recounted above, and Plaintiff sustained substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future. Accordingly, Plaintiff respectfully prays for an award against Defendants, jointly and severally, of all actual damages, economic damages, emotional distress

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and mental anguish damages, and compensatory damages, including enhanced compensatory damages, within the minimum and maximum jurisdictional limits of the Superior Court, plus recoupment of reasonable attorneys' fees, expert fees, other costs, and interest.

COUNT IX (Breach of Nondelegable Duty—State Defendants)

18. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the Master Complaint and Plaintiff's Short Form Complaint as though fully and completely set forth herein.

19. In particular, Plaintiff repeats, realleges, and incorporates by reference each and every allegation in Count II of the Master Complaint, including the allegation that State Defendants undertook a nondelegable duty to care for and protect Plaintiff at all times and then breached that duty, but with the limitation that this Count seeks recovery only for harm Plaintiff suffered while residing in the residential facilities of Contractor Defendant/s.

20. State Defendants' nondelegable duty persisted and was not interrupted, satisfied, or discharged by State Defendants' placement of Plaintiff with Contractor Defendant/s.

21. Accordingly, when State Defendants placed Plaintiff with Contractor Defendant/s, and agents and employees of Defendants working at those residential facilities thereafter harmed Plaintiff as alleged in paragraph 10 of Plaintiff's Short Form Complaint, State Defendants breached their nondelegable duty to Plaintiff in all the same ways as alleged in Count II of the Master Complaint. Every agent of State Defendants, including the agents and employees of Contractor Defendant/s, had an independent duty to report knowledge of events observed, heard about, or done by the agent or employee relating to the care and safety of children in state custody placed with Contractor Defendant/s. On information and belief, however, the agents of State Defendants working at the residential facilities operated by Contractor Defendant/s failed to report

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or take corrective steps after witnessing or becoming aware of prior abuse of other children in state custody, and/or agents and employees of State Defendants in supervisory positions failed to take adequate corrective action upon receiving such reports, and thereby failed to correct the conditions that lead to Plaintiff's subsequent abuse.

22. Each of the acts of child abuse recounted in paragraph 10 of Plaintiff's Short Form Complaint constitutes an independent breach of State Defendants' nondelegable duty to Plaintiff, and the repeated failures of the agents and employees of State Defendants to take corrective action in response to Plaintiff's abuse, and to take corrective action in response to previous acts of abuse against other children, represent additional breaches by agents and employees of State Defendants, all of which are imputable to State Defendants.

23. As a direct and proximate cause and result of the foregoing, State Defendants subjected Plaintiff to the harm Plaintiff suffered while residing in the facilities of Contractor Defendant/s as recounted above, and Plaintiff sustained substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future. Accordingly, Plaintiff respectfully prays for an award against State Defendants of all actual damages, economic damages, emotional distress and mental anguish damages, and compensatory damages, including enhanced compensatory damages, within the minimum and maximum jurisdictional limits of the Superior Court, plus recoupment of reasonable attorneys' fees, expert fees, other costs, and interest.

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COUNT X

(Aiding and Abetting Breach of Fiduciary Duty—State Defendants and Contractor Defendant/s)

24. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the Master Complaint and Plaintiff's Short Form Complaint as though fully and completely set forth herein.

25. As alleged herein, Defendants owed a fiduciary duty to Plaintiff which they breached when their agents and employees harmed Plaintiff through the acts of child abuse alleged in paragraph 10 of Plaintiff's Short Form Complaint, and by failing to take steps to protect Plaintiff from said acts of child abuse, including by failing to take corrective action in response to previous acts of abuse against other children in state custody. But this Count seeks recovery only for harm Plaintiff suffered while residing in the residential facilities of Contractor Defendant/s.

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

27. Upon information and belief, Defendants' agents and employees, including individuals in positions of supervisory authority, knew, or in the exercise of reasonable diligence should have known, about at least some of the various forms of abuse and harm suffered by Plaintiff, and by the other minors committed to the custody, care, and control of Defendants, and not only failed to report this information or take other corrective actions, but actively participated in the abuse and/or concealed this information.

28. Upon information and belief, Defendants' agents and employees, including individuals in positions of supervisory authority, acted together in a common plan or design, for the purpose of committing acts of physical, sexual, and emotional abuse and torture, and then acted

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together, in a common plan or design, to unlawfully and deliberately conceal those acts from discovery so that they would evade consequences for those acts and could continue to perpetrate those acts on minors in state custody, including Plaintiff. All of the aforesaid knowledge, constructive knowledge, acts, and omissions of agents and employees of Defendants is imputable to Defendants.

29. As a direct and proximate consequence of the foregoing acts and omissions, Defendants subjected Plaintiff to the harm and abuse alleged in paragraph 10 of Plaintiff's Short Form Complaint. Moreover, Defendants' agents and employees, including individuals in supervisory positions, failed to report or take corrective steps that could have prevented the abuse.

30. As a direct, proximate, and reasonably foreseeable cause and result of the foregoing, Defendants subjected Plaintiff to the harm Plaintiff suffered while residing in the facilities of Contractor Defendant/s as recounted above, and Plaintiff sustained substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future. Accordingly, Plaintiff respectfully prays for an award against Defendants, jointly and severally, of all actual damages, economic damages, emotional distress and mental anguish damages, and compensatory damages, including enhanced compensatory damages, within the minimum and maximum jurisdictional limits of the Superior Court, plus recoupment of reasonable attorneys' fees, expert fees, other costs, and interest.

COUNT XI
(Negligent Hiring, Training, Supervision, and Retention—State Defendants and Contractor Defendant/s)

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31. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the Master Complaint and Plaintiff's Short Form Complaint as though fully and completely set forth herein.

32. Pursuant to the state's *parens patriae* powers, including those set forth in the Child Welfare Acts and their antecedents, State Defendants took custody of and control of Plaintiff and placed Plaintiff at various residential facilities and placements, including the residential facilities operated by Contractor Defendant/s. This Count seeks recovery only for harm Plaintiff suffered while residing in the residential facilities of Contractor Defendant/s.

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

34. At all times relevant to the allegations contained herein, Defendants owed Plaintiff a duty to exercise reasonable care in the hiring, training, supervision, and retention of their employees and agents, including, *inter alia*, the duty to properly supervise, train, and control the employees and agents working with minors at residential facilities, including the facilities operated by Contractor Defendant/s, and to ensure that programs were in place to provide proper hiring, training, supervision, and retention so that their agents and employees would comply with the protective and rehabilitative duties owed by the state to children in state custody, as required by common law and in RSA 169-B, 169-C, 169-D.

35. Despite and in breach of the aforesaid duties, Defendants, as organizations, agencies, and programs charged under the common law and by statute with the rehabilitation and protection of minors in state custody, were negligent and breached minimum standards of care in failing to take reasonable measures to ensure the proper hiring, training, supervision, and retention of their

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agents and employees to promptly and effectively provide for the safety and welfare of the children in their care. Defendants' negligence includes, but is not limited to, failing to take reasonable measures to properly hire, train, supervise, and retain their workers, failing to report and act on any indicia or precursors of suspected physical, sexual, or emotional abuse, and failing to take affirmative steps to prevent the physical, sexual, and emotional abuse, including the unauthorized strip searches, excessive use of restraints, excessive use of force, and excessive solitary confinement thereby resulting in the abuse experienced by Plaintiff. State Defendants were further negligent in failing to ensure that any contractors it hired to fulfill its custodial obligations to the children in its custody hired appropriate and adequately vetted personnel and provided them with sufficient training, supervision, and oversight.

36. Upon information and belief, multiple employees and agents of Defendants, including those in supervisory positions and those employed by State Defendants with responsibility to oversee Contractor Defendant/s, knew or reasonably should have known of the indicia of abuse and the abusive proclivities of certain employees or agents of Defendants, and knew or reasonably should have known of the foreseeable risk of harm to Plaintiff and other children in Defendants' custody, care, and control. Notwithstanding this actual or constructive knowledge, agents and employees of Defendants not only failed to report this information and/or failed to take adequate corrective action in response to this information, but also actively concealed this information, which resulted in the continued retention of the individual perpetrators as employees or agents of Defendants, and the continued perpetration of abuse upon Plaintiff and other children in the state's custody, care, and control. More than that, agents and employees of Defendants, including those in supervisory positions and those with responsibility to oversee Contractor Defendant/s, tolerated or ignored a general culture of violence, abuse, boundary

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crossing, and disrespect and antipathy toward the children in their custody, creating fertile ground for reasonably foreseeable individual acts of abuse to proliferate, persist, and be left unaddressed, thereby creating a cycle that perpetuated abuse.

37. On further information and belief, when reports of suspected child abuse were made, employees and agents of Defendants, including those in supervisory positions, told the reporters to keep the reports to themselves or otherwise discouraged or prevented reporting of the abuse; consequently, no corrective action was taken and the perpetrators of abuse continued in their employment as agents and employees of Defendants.

38. Additionally, notwithstanding their knowledge of prior abuse of children in the custody of Defendants and the foreseeable risk of future harm to children who remained in the custody of Defendants, including Plaintiff, Defendants failed to adequately supervise and train its agents and employees who were entrusted to care for and protect children in state custody.

39. As a direct, proximate, and reasonably foreseeable cause and result of the negligent hiring, training, and supervision of Defendants, agents and employees of Defendants working at the residential facilities operated by Contractor Defendant/s harmed Plaintiff by the specific acts of child abuse alleged in paragraph 10 of Plaintiff's Short Form Complaint, and Plaintiff suffered deprivations of Plaintiff's constitutional rights as alleged in Counts VIII, IX, and XII. Moreover, agents and employees of Defendants, including individuals in supervisory positions, failed to report or take corrective steps that could have prevented the aforesaid abuse and deprivation of Plaintiff's constitutional rights.

40. As a direct and proximate cause and result of the foregoing, Defendants subjected Plaintiff to the harm Plaintiff suffered while residing in the facilities of Contractor Defendant/s as recounted above, and Plaintiff sustained substantial personal injuries of a disabling, debilitating,

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and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future. Accordingly, Plaintiff respectfully prays for an award against Defendants, jointly and severally, of all actual damages, economic damages, emotional distress and mental anguish damages, and compensatory damages, including enhanced compensatory damages, within the minimum and maximum jurisdictional limits of the Superior Court, plus recoupment of reasonable attorneys' fees, expert fees, other costs, and interest.

COUNT XII

(Negligence—State Defendants and Contractor Defendants)

41. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the Master Complaint and Plaintiff's Short Form Complaint as though fully and completely set forth herein.

42. Pursuant to the state's *parens patriae* powers, including those set forth in the Child Welfare Acts and their antecedents, State Defendants took custody of and control of Plaintiff and placed Plaintiff at various residential facilities and placements, including the residential facilities operated by Contractor Defendant/s. This Count seeks recovery only for harm Plaintiff suffered while residing in the residential facilities of Contractor Defendant/s.

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

44. By taking custody and control of Plaintiff, a minor, and by accepting the obligation to care for and protect Plaintiff in place of Plaintiff's parents, family, or legal guardian, whom the

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state physically separated from Plaintiff and effectively barred from ensuring Plaintiff's care and protection, Defendants entered into a special relationship with Plaintiff.

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

46. Defendants and their agents and employees also owed Plaintiff duties arising under statutory law, including, but not limited to, the duties set forth in the Child Welfare Acts and the duty to report instances of suspected child abuse or neglect pursuant to RSA 169-C:29.

47. During the time period that Plaintiff was committed to the custody, care, and control of Defendants, and specifically during the time period State Defendants had placed Plaintiff in the residential facilities operated by Contractor Defendant/s, agents and employees of Defendants harmed Plaintiff by the specific acts of child abuse alleged in paragraph 10 of Plaintiff's Short Form Complaint. Moreover, the agents and employees of Defendants working at the residential facilities operated by Contractor Defendant/s or with oversight responsibilities, including those in supervisory positions, failed to report or take corrective steps that could have prevented the abuse suffered by Plaintiff despite actual or constructive knowledge of prior abuse of other children in state custody at the facilities operated by Contractor Defendant/s.

48. The harm Plaintiff suffered was reasonably foreseeable and preventable. Upon information and belief, agents and employees of Defendants, including those in supervisory positions and those with responsibility to oversee Contractor Defendant/s, knew or reasonably should have known of at least some of the various forms of abuse and harm suffered by minors placed in the custody and control of Contractor Defendant/s, including Plaintiff, and not only failed to report this information or take adequate corrective action in response to this information, but

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actively participated in the abuse and/or concealed this information and thereby failed to correct the conditions that lead to Plaintiff's subsequent abuse. More than that, Defendants, including agents and employees in supervisory positions and those with responsibility to oversee Contractor Defendant/s, tolerated or ignored a general culture of violence, abuse, boundary crossing, and disrespect and antipathy toward the children in their custody, creating fertile ground for reasonably foreseeable individual acts of abuse to proliferate, persist, and be left unaddressed, thereby creating a cycle that perpetuated abuse. All of the aforesaid knowledge, constructive knowledge, acts, and omissions of agents and employees of Defendants is imputable to Defendants.

49. Inasmuch as the harm suffered by Plaintiff was reasonably foreseeable and preventable, both State Defendants and Contractor Defendant/s breached their duties owed to Plaintiff. Moreover, Defendants also breached statutory duties owed to Plaintiff, including, but not limited to, the duty to report suspected instances of child abuse or neglect.

50. The acts of child abuse Plaintiff suffered while residing in the facilities of Contractor Defendant/s also constitute violations of Plaintiff's state and federal constitutional rights. For example, Defendants violated Plaintiff's substantive due process and equal protection rights under the Fourteenth Amendment to the United States Constitution to not be subjected to sexual abuse and unjustified physical violence, the use of excessive force and unreasonable restraint, and other abhorrent and unjustified conditions of confinement while in the custody of the state. Defendants' deliberate indifference to the risks of harm to Plaintiff also constitute a substantive due process violation, and Defendants' unjustified and excessive punishments of Plaintiff without any due process violated Plaintiff's right to procedural due process. In addition, or in the alternative, Defendants' liberal use of physical violence, excessive force, excessive isolation, and excessive restraints also violated Plaintiff's right under the Eighth Amendment to

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the United States Constitution to be free from cruel and unusual punishment. Inasmuch as these constitutional violations were reasonably foreseeable and preventable, but Defendants failed to take corrective steps to prevent or stop these constitutional violations from occurring and reoccurring, these constitutional violations also constitute breaches of the special duty of care Defendants owed to Plaintiff.

51. Furthermore, as set forth in Count VIII, during the time Plaintiff was in the custody, care, and control of State Defendants, the state bore a constitutional and statutory duty under New Hampshire law to provide Plaintiff, a school-aged minor, with a constitutionally adequate education. The Equal Protection Clause of the Fourteenth Amendment likewise required that Plaintiff, along with the other minors in state custody, not be denied access to school and that they be afforded equal educational opportunities regardless of race, ethnicity, background, religion, sex, or citizenship.

52. Inasmuch as the state removed Plaintiff from the custody, care, and control of Plaintiff's parents or guardian and placed Plaintiff in an institutional setting, the state obligated itself to ensure that Plaintiff was not deprived of this right to a constitutionally adequate education.

53. But, as a consequence of the specific acts of child abuse that occurred after State Defendants placed Plaintiff with Contractor Defendant/s, as alleged paragraph 10 of Plaintiff's Short Form Complaint, Plaintiff was deprived of a constitutionally adequate education. For example, Plaintiff received little or no educational instruction during time periods when agents and employees of Defendants locked Plaintiff in isolation. Even when attending school, the child abuse Plaintiff had suffered caused Plaintiff to struggle with a diminished capacity to concentrate and complete school work. As a consequence of the abuse and confinement, Plaintiff was unable

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to attend classes and was unable to benefit from what little instruction was made available, resulting in a constitutionally inadequate education.

54. By placing Plaintiff in an institutional setting where Plaintiff was deprived of a constitutionally adequate education, the state treated Plaintiff and the other children in state custody differently from all other children in the State of New Hampshire with regard to the provision of constitutionally mandated educational services. This differential treatment of children committed to state custody had no justification nor was it rationally related to any conceivable legitimate state interest.

55. As this deprivation of Plaintiff's right to an equal and constitutionally adequate education was reasonably foreseeable, it amounts to a further breach of the special duty of care Defendants owed to Plaintiff.

56. As a direct, proximate, and reasonably foreseeable cause and result of Defendants' negligent supervision, negligent failure to protect, negligent failure to report instances of child abuse or neglect, and negligent violation of Plaintiff's constitutional rights, Defendants subjected Plaintiff to the harm Plaintiff suffered while residing in the facilities of Contractor Defendant/s as recounted above, and Plaintiff suffered substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future. Accordingly, Plaintiff respectfully prays for an award against Defendants, jointly and severally, of all actual damages, economic damages, emotional distress and mental anguish damages, and compensatory damages, including enhanced compensatory

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damages, within the minimum and maximum jurisdictional limits of the Superior Court, plus recoupment of reasonable attorneys' fees, expert fees, other costs, and interest.

COUNT XIII

(Negligent Failure to Adopt and Implement Rules—State Defendants)

57. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the Master Complaint and Plaintiff's Short Form Complaint as though fully and completely set forth herein.

58. Pursuant to the State of New Hampshire's *parens patriae* powers and associated protective and rehabilitative duties, as required by common law, and as codified in Chapters 169-B, 169-C, 169-D, and 621 of the RSA, the purpose of taking custody of minors and placing them in a residential facility, such as the residential facility operated by Contractor Defendant/s, is to protect and rehabilitate the child and to give the child the opportunity to become a productive citizen of the state. This imposes a duty on the state to adopt and implement reasonable rules governing the safety, protection, proper care, supervision, treatment, education, confinement, or discipline of the children committed to its custody and control, and to prevent harm to them, including at its residential facilities, such as the State Youth Facility, and at other residential facilities and placements with which the state contracts, including the facilities of Contractor Defendant/s. For like reasons, the state also bears a duty to adopt and implement reasonable rules governing the training, supervision, hiring, retention, and discipline of agents and employees hired to work at its residential facilities, including at privately operated residential facilities, such as the facilities operated by Contractor Defendant/s. This Count seeks recovery only for harm Plaintiff suffered while residing in the residential facilities of Contractor Defendant/s.

59. State Defendants knew or reasonably should have known that the failure to promulgate, adopt, and enforce reasonable rules or policies and procedures governing (a) the

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safety, proper care, supervision, treatment, education, confinement, and discipline of the juveniles committed to State Defendant's custody, care, and control and (b) the training, supervision, hiring, retention, and discipline of agents and employees working at State Defendants' residential facilities, as well as at other residential facilities and placements, would put the minors in the state's custody at foreseeable risk of harm. It was reasonably foreseeable, if not likely, that without such reasonable rules or policies and procedures in place, and reasonably enforced by State Defendants, State Defendants and their contractors would employ personnel not qualified or suited to the job of caring for and supervising vulnerable juveniles, and that unqualified, untrained, unsupervised, and unregulated personnel would abuse their position of authority and trust to the great harm of the children entrusted to their care.

60. Notwithstanding the reasonably foreseeable harm to children, State Defendants breached the aforementioned common law and statutory duties by negligently failing to promulgate, adopt, or enforce such reasonable rules or policies and procedures governing (a) the safety, proper care, supervision, treatment, education, confinement, and discipline of the children placed in State Defendants' custody, care, and control, whom State Defendants placed in privately operated residential facilities, and (b) the training, supervision, hiring, retention, and discipline of agents and employees of State Defendants entrusted with the care, custody, and control of minors placed in privately operated residential facilities, including the facilities operated by Contractor Defendant/s.

61. As a direct and proximate consequence of the negligent failure to promulgate, adopt, or enforce reasonable rules or policies and procedures, at all times relevant to the allegations contained herein, there were insufficient or unreasonable rules or policies and procedures in place at the various residential facilities used by State Defendants, including at privately operated

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residential facilities such as the facilities operated by the Contractor Defendant/s, to ensure the safety of minors placed at such facilities and for the prevention of and, if necessary, reporting of abuse or neglect of the minors placed at such facilities. In fact, the lack of reasonable rules or policies and procedures governing the residential facilities used by State Defendants communicated a *laissez-faire* attitude that the supervisors, employees, and agents of State Defendants working at these residential facilities were free to behave as they pleased without fear of discovery or consequences.

62. As a direct, proximate, and reasonably foreseeable cause and result of State Defendants' negligent failure to promulgate, adopt, or enforce reasonable rules or policies and procedures during the time period that Plaintiff was committed to the custody, care, and control of Defendants, and specifically during the time period State Defendants placed Plaintiff in the residential facilities operated by Contractor Defendant/s, agents and employees of Defendants harmed Plaintiff by the specific acts of child abuse alleged in paragraph 10 of Plaintiff's Short Form Complaint. Plaintiff was also deprived of Plaintiff's constitutional rights as alleged in Counts VIII, IX, and XII. Moreover, none of Defendants' agents or employees reported the abuse or took any corrective action to stop it.

63. As a direct, proximate, and reasonably foreseeable cause and result of the foregoing, State Defendants subjected Plaintiff to the harm Plaintiff suffered while residing in the facilities of Contractor Defendant/s as recounted above, and Plaintiff suffered substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to suffer all of the foregoing losses and damages into the foreseeable future. Accordingly, Plaintiff respectfully prays

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for an award of all actual damages against State Defendants, economic damages, emotional distress and mental anguish damages, and compensatory damages, including enhanced compensatory damages, within the minimum and maximum jurisdictional limits of the Superior Court, plus recoupment of reasonable attorneys' fees, expert fees, other costs, and interest.

COUNT XIV

(Civil Conspiracy—State Defendants and Contractor Defendant/s)

64. Plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the Master Complaint and Plaintiff's Short Form Complaint as though fully and completely set forth herein.

65. During the time when Plaintiff was in state custody, and State Defendants placed Plaintiff in the residential facilities operated by Contractor Defendant/s, agents and employees of Defendants, including individuals with supervisory authority, knowingly agreed with one another and others known and unknown, either explicitly or tacitly, on a common plan or design to perpetrate systemic child abuse at the facilities of Contractor Defendant/s, including through the physical, sexual, and emotional abuse of the minors committed to the custody and control of Defendants. This Count seeks recovery only for harm Plaintiff suffered while residing in the residential facilities of Contractor Defendant/s.

66. In particular, agents and employees of Defendants, including those in supervisory positions, knowingly agreed, either explicitly or tacitly, to a course of action through which they would target minors placed with Contractor Defendant/s, including Plaintiff, for the purpose of committing intentional acts of child abuse as previously alleged herein, as well as for the purpose of concealing those acts of abuse, to the benefit of and protection of the individual co-conspirators and as well as their employers, State Defendants and Contractor Defendant/s.

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67. Defendants, acting through their agents and employees, then acted together, in furtherance of their common plan or design, to unlawfully and deliberately target minors, including Plaintiff, placed with Contractor Defendant/s, knowingly carrying out acts of child abuse as previously alleged herein, including the specific acts of child abuse alleged in paragraph 10 of Plaintiff's Short Form Complaint.

68. Defendants, acting through their agents and employees, including persons in positions with supervisory authority, further knowingly agreed with one another and others known and unknown, either explicitly or tacitly, on a common plan or design to conceal those unlawful acts from discovery. They did so for the purpose of protecting the individual co-conspirators as well as their employers, State Defendants and Contractor Defendant/s.

69. The purpose or object of the conspiracy was the perpetuation of systemic physical, mental, and sexual abuse of minors who were committed to the custody, care, and control of Defendants, through the abuse itself and also through its concealment. In particular, the co-conspirators acted in furtherance of the same specific unlawful purposes recited in paragraph 125 of the Master Complaint.

70. The foregoing unlawful purposes of the conspiracy were accomplished and preserved through various unlawful manners and means, some of which Plaintiff directly experienced and some of which were experienced by other minors who were victims of the same conspiracy, as well as by other employees and agents of Defendants. In particular, those unlawful manners and means included the same unlawful manner and means recited in paragraph 126 of the Master Complaint.

71. Employees and agents of Defendants, including individuals in positions with supervisory authority, and others known and unknown, knowingly committed numerous overt acts

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in furtherance of their common plans and designs to perpetrate systemic child abuse and conceal child abuse, including, *inter alia*, threatening, assaulting, and falsely imprisoning the minor victims of the conspiracy, as well as covering up and failing to report instances of known child abuse on myriad occasions. Additionally, employees and agents of Defendants, including persons in positions with supervisory authority, and others known and unknown, used threats and intimidation to silence their co-workers and subordinates who had observed abuse, violations of rules or protocols, and other forms of misconduct or malfeasance.

72. As a direct and proximate cause and result of the above-alleged unlawful conspiracy, systemic child abuse thrived throughout the time Plaintiff was in the custody, care, and control of Defendants at the facilities operated by Contractor Defendant/s, and Plaintiff, a minor, was subjected to the specific acts of child abuse alleged in paragraph 10 of Plaintiff's Short Form Complaint.

73. As a direct, proximate, and reasonably foreseeable cause and result of the foregoing, Defendants subjected Plaintiff to the harm Plaintiff suffered while residing in the facilities of Contractor Defendant/s as recounted above, and Plaintiff sustained substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, medical expenses, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, and lost income and earning capacity, and will be caused to sustain all of the foregoing losses and damages into the foreseeable future. Accordingly, Plaintiff respectfully prays for an award against Defendants, jointly and severally, of all actual damages, economic damages, emotional distress and mental anguish damages, and compensatory damages, including enhanced compensatory damages, within the minimum and maximum jurisdictional limits of the Superior Court, plus recoupment of reasonable attorneys' fees, expert fees, other costs, and interest.