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Merrimack Superior Court
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STATE OF NEW HAMPSHIRE

MERRIMACK, SS SUPERIOR COURT

David Meehan, on behalf of himself and all others similarly situated,

Plaintiffs,

vs.

State of New Hampshire, Department of Health and Human Services ("DHHS"), Kerrin Rounds, Acting Commissioner of DHHS, Division of Juvenile Justice Services ("DJJS"), Division of Children, Youth, and Families (DCYF"), Sununu Youth Services Center ("SYSC"), f/k/a Youth Development Center ("YDC"), Jeffrey Buskey, Stephen Murphy, James Woodlock, Frank Davis, Richard Brown, Thomas Searles, and John and Jane Does 1-100,

Defendants.

Civil Action No. 217-2020-CV-00026

PLAINTIFF'S OBJECTION TO STATE DEFENDANTS' MOTION TO DISMISS

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NOW COMES the plaintiff, David Meehan, on behalf of himself and all others similarly situated by and through their attorney, Rilee & Associates, P.L.L.C., and respectfully submits the following Plaintiff's Objection To State Defendants' Motion To Dismiss, stating in support thereof as follows:

I. Introduction

This suit arises out of the horrific physical, sexual and emotional abuse suffered by David Meehan and the now two hundred twenty-six (226) members of the putative class while they were minors living in a residential facility in the care and custody of the State of New Hampshire. The abuse—which included, but was not limited to, rapes, beatings, solitary

confinement and the excessive use of restraints (including, but not limited to, chokeholds and bondage)—spanned six decades and involved hundreds of children. It was only recently that these plaintiffs were able to discover that the abuse they had suffered was not attributable to the misfortune of encountering a few bad actors but was rather due to a system in which the State of New Hampshire negligently failed to promulgate regulations, properly train and supervise its employees and ignored or overlooked abusive conduct, resulting in an atmosphere in which the children living in the facility were treated more like chattel than like minors in need of protection and rehabilitation.

The state now baselessly claims that while the adolescent David Meehan ("David") was being violently abused he "had all of the factual information available to him[1]" to lead him to reasonably believe that "supervisors were not doing their jobs." This is patently untrue. It requires an absurd leap of logic to suppose that simply because, at the time of his injuries, David knew that others had been abused and because he had been disbelieved when he sought help from a nurse and a house leader, he also knew or should have known that supervisors were aware of, much less were covering up, widespread abuse at the facility.

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Perhaps most revealing is the State's premature and unsupported effort to have the class certification denied. Among the arguments made by the state to support its claim that the putative class of abused adolescents lacks commonality is the statement that it will be necessary "…to determine the factual questions surrounding <u>contributory negligence and comparative fault with reference to each specific class member</u> and each individual defendant.[2]" (emphasis added). This cynical argument that the children who were raped and abused might bear any fault or could

[1] Memorandum of Law in Support of State's Motion to Dismiss at p. 23.
[2] Memorandum of Law in Support of State's Motion to Dismiss at p. 12.

have contributed to their own abuse is not only illustrative of the state's view of these claims but also demonstrates the baselessness of the state's arguments as a whole.

Finally, this matter was stayed, and the state's deadline for filing any responsive pleading extended, until January 8, 2021, so that the parties could engage in "…discussions aimed at narrowing or resolving the matters in issue in this case.[3]" Consequently, discovery has not commenced, including discovery pertaining to class certification. For the state to file a motion in opposition to class certification on the basis that there is insufficient evidence to satisfy the requisites for class certification, knowing that there has been no discovery while the parties have been in discussions, is a disingenuous effort to avoid responsibility for the egregious abuse that occurred on its watch.

The state defendants' motion should be denied.

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II. <u>Factual Allegations</u>

A. Summary of Allegations related to David Meehan and representative of the class that are relevant to this objection

After episodic periods of homelessness and encounters with the police, in December 1995, when David was fourteen years old, he was ordered committed to the Youth Development Center ("YDC") by the New Hampshire District Court. The Court also ordered that David "…have individualized counseling as soon as practicable." (C. ¶¶33-36) [4]. Prior to his arrival at YDC, David had heard rumors about mistreatment of residents at YDC, including rapes and beatings. (C. ¶ 38). In fact, on the way to YDC, another boy in the vehicle told David that he and others were subjected to rapes and beatings but that no one would believe it. *Id*.

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[3] State Defendans' Third Assented-To Motion For Extension Of Time To Answer Or Otherwise Respond, granted on January 11, 2021 (Schulman, J.), attached hereto as "Exhibit 1."
[4] All references to the complaint will be summarized as "C" followed by the paragraph number.

During David's time at YDC he lived in one of three "cottages" on the campus, King Cottage, Spaulding Cottage and East Cottage. (C. ⁋⁋ 39, 43, 56). Following a visit home for Thanksgiving in 1996, David did not return to YDC and was reported Away Without Leave ("AWOL"). After his apprehension on December 12, 1996, he was punished with a ten-day "Out Of Community" confinement, known as "OOC." (C. ⁋44). This was the first of multiple OOC confinements for David. (C. ⁋⁋ 53, 59, 60, 69, 74, 77).

When a resident of YDC was placed in OOC confinement, the resident was confined alone in his room, which was stripped of everything but the mattress and a sheet, equivalent to solitary confinement. The child was stripped to his underwear. (C. ⁋45, 52). The specific conditions of this confinement differed depending upon the cottage to which the child was confined. In King Cottage, which was a higher-security cottage, many of the rooms were equipped with sinks and toilets, so that a child confined to OOC was not taken out of his cell even to go to the bathroom. (C. ⁋46). A resident confined to OOC in East Cottage, however, had to be taken from his cell to use the facilities. For this reason, the staff was supposed to do fifteen-minute checks on a child in OOC, but these checks were often not done for hours. Instead, the staff would sign time-sheets as though the checks had been done. The child, calling in vain for someone to take him to the bathroom, would often have to relieve himself on the floor of his room. (C. ⁋⁋ 47-48). A child who was confined to OOC was not permitted to attend school.

Sometime between December 1996 and January 1997, at the age of fifteen, David was anally raped for the first time during what was purportedly a cavity search. In late October 1997 David was orally raped by defendant Buskey, a counsellor who had cultivated a relationship of trust with David. (C. ⁋⁋57-58, 61-64). About a week later, another counsellor, defendant Murphy, anally raped David; when Buskey saw the bruises resulting from this rape he became

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angry and raped David as well. (C. ⁋⁋65-66). Shortly thereafter, David was forced to watch the sexual assault of a female resident with whom he had become friendly. (C. ⁋62).

January 1998 marked the beginning of a horrific period of approximately eight months during which David was repeatedly beaten and anally and orally raped by defendants Buskey and Murphy, often multiple times a day, and once at gunpoint. (C. ⁋⁋70-82). It was during this period, following a beating and rape by Buskey, that David asked to see a nurse. On that occasion, an individual known as "Nurse Jane" came to his room and looked in the doorway where David was crying, bruised, covered in urine, his nose broken. "Nurse Jane" remarked that the injuries appeared to be self-inflicted and left. David assumed that "Nurse Jane" believed he was lying. (C. ⁋⁋75-76).

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On another occasion during the winter-spring of 1998, defendant Searles, who was the house leader at King Cottage, came into David's cell and, observing David's severely bruised face, black eye and split lip, asked, in a jocular tone, what had happened. David began to cry and told Searles he had been beaten and raped, but Searles cut him off, telling him "Look little fella, that just doesn't happen." Then Searles left. Again, David assumed that Searles thought he was lying. (C. ⁋⁋78-80). The final rape occurred on September 12, 1998 shortly after David turned seventeen.

David attempted one last time to report the abuse he had suffered. Sometime between January 8 and January 14, 1999, David participated in a group counselling activity led by defendant Woodlock. When David revealed to the group that he had been raped during his stay at YDC, Woodlock responded that this was untrue, had not happened and that David had misunderstood events. (C. ⁋84).

After these experiences in which David was frankly told that the abuse he had suffered had not happened, David, like the putative class members, understood that it was unsafe for him to report the abuse, that he would not be believed if he attempted to report the abuse and that there was no recourse—any action would be futile. (C. ⁋99-102).

David felt tremendous shame as a consequence of the abuse he had experienced and, when he was released from state custody in 1999 at the age of eighteen, he hid his history of abuse. David, like the putative class members, suffered from various psychiatric disorders as a result of the abuse he had suffered, which interfered with his ability to function and find and keep gainful employment. (C. ⁋⁋ 88-89). In David's case, he became addicted to heroin for many years and attempted suicide multiple times. (C. ⁋88).

On January 13, 2017 David was no longer able to keep the memories of the abuse at bay and, after disclosing them to his wife for the first time, reported the abuse to the police. (C. ⁋90). In late February or early March, 2017, a State Police Investigator visited with David. During that visit, the Investigator disclosed that she had worked at YDC as an intern and that during her time there, she had become concerned that some sort of abuse was occurring. Specifically, she told David that she had witnessed a staff member assault a resident and had observed other residents with bruises and contusions. The Investigator told David that she had been told by a supervisor that it was in her best interest to keep quiet and stay out of things that did not concern her. (C. ⁋91).

Until the meeting with the State Police Investigator in February or March 2017, David believed that his abusers were acting alone without the knowledge of anyone else at YDC and that "Nurse Jane" and Searles thought he was lying. (C. ⁋92). It had never occurred to him that persons in positions of authority knew or should have known about the misconduct of YDC

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employees and had failed to protect him. (Id). After the conversation with the Police Investigator, David began to investigate how adults in positions of authority at YDC could have known about the abuse and failed to protect him. (C. ⁋93). As a result of his inquiries, multiple witnesses and other victims came forward. Through this investigation, David learned that one of the individuals to whom he had turned for help, defendant Searles, had himself abused young boys at YDC. (C. ⁋⁋94-95). Through his investigation, David learned that the abuse was so pervasive and severe that it must have been apparent and known about by all of the staff at YDC, including the supervisors, but instead of reporting and dealing with the abuse the employees of YDC concealed it, enabling it to continue. (C. ⁋⁋ 96-99).

B. Allegations related to class certification

The putative class consists of men and women who, while minors in the care and custody of the defendants, were subjected to physical, sexual mental and emotional abuse, solitary confinement and deprivation of education at the hands of defendants, their agents, employees and/or contractors. (C. ⁋18). It is believed that there are thousands of children who were removed from their homes and placed in the custody of the state at YDC over the past several decades. (C. ⁋19). As of the time the complaint was filed, counsel represented thirty-five members of the putative class with claims against the individual defendants and against other perpetrators[5]. (C. ⁋19). There are multiple questions of law and fact common to the class that predominate over questions affecting individual members and the claims are typical of the claims for the class. (C. ⁋⁋ 20-21). Undersigned counsel has the requisite experience to more than adequately represent the interests of the class. (⁋24).

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[5] Again, at this time, the total number of putative class members represented by undersigned counsel has grown to two hundred twenty-six (226) and continues to grow.

III. Procedural History

This action was filed on January 11, 2020. On June 2, 2020 this Court granted the parties' joint motion to stay until August 3, 2020. In support of their motion, the parties stated that the plaintiff and state defendants "…have been and continue to be involved in discussions that may narrow the scope of or resolve the matters at issue herein and wish to continue their discussions without pleading further at this time…In addition, there is an ongoing criminal investigation…The investigation presents complications for proceeding forward in this matter at this time." *Exhibit 2, Joint Motion (Granted) To Stay.* Following the expiration of that stay, the state defendants made three assented-to motions for an extension of time to answer the complaint or to otherwise respond, the latest of which was filed on or about January 7, 2021 and was allowed on January 11, 2021, extending the state defendants' time to file a response to the complaint until January 8, 2021. In support of the motion, the state defendants stated that "The parties are now again in discussion aimed at narrowing or resolving the matters in issue in this case and do not desire for the Defendants to plead further at this time."

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During this extended pause in the litigation, no discovery has been conducted by either party. On January 8, 2021 the state defendants filed their motion to dismiss.

IV. Argument

A. Standard for motion to dismiss

When evaluating a motion to dismiss, the Court must review whether the allegations in the plaintiffs' complaint are "…reasonably susceptible of a construction that would permit recovery. We assume the plaintiffs' pleadings to be true and construe all reasonable inferences therefrom in the light most favorable to the plaintiffs." Boyle v. Dwyer, 172 N.H. 548, 552 (2019)(internal citations omitted); Pro Done, Inc. v. Basham, 172 N.H. 138, 141-142 (2019). If

the allegations, construed thus favorably to the plaintiffs, when tested against the applicable law comprise a basis for relief then the motion must be denied. Id.

B. The state defendants' objection to class certification is premature

The state defendants' motion to "dismiss" the class allegations is more accurately an objection to certification of the class. In either case, where there has been no discovery of any kind due to the extended, agreed-upon and court-sanctioned pause in the litigation, it is premature for the state defendants to object to class certification on the grounds that the plaintiff has not provided the court with sufficient evidence to support class certification. Plaintiff has provided the court with no support for class certification beyond the bare pleadings because, as the state knows, plaintiff has not had the opportunity to conduct any discovery to support the certification as a class.

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Although Rule 16 requires that certification be decided

> …as early as practicable, this does not mean that the inquiry must be confined to the pleadings. [T]rial courts 'must conduct a rigorous analysis of the prerequisites established by [the] Rule…before certifying a class. Such a "rigorous analysis" ordinarily involves looking beyond the allegations of the plaintiff's complaint.

Cantwell v. J&R Props Unlimited, Inc., 155 N.H. 508, 511 (2007), quoting Thomas v. Sheahan, 370 F.Supp.2d 704, 714 (N.D.Ill. 2005) [6] (internal citations omitted).

"Because class certification usually is not decided upon the pleadings, 'the predominant view is to allow discovery before the motion for certification.'" Cantwell, 155 N.H. at 512, quoting, Thomas v. Sheahan, 370 F.Supp.2d 704, 714 (N.D.Ill. 2005). "'[G]oing beyond the pleadings is necessary, as a court must understand the claims, defenses, relevant facts, and applicable substantive law in order to make a meaningful determination of the certification issues.'" Cantwell, 155 N.H. at 512, quoting, Unger v. Amedisys Inc., 401 F.3d 316, 321 (5th

[6] Because Federal Rule of Civil Procedure 23 is similar to Superior Court Rule 16, the New Hampshire courts look to cases interpreting the federal rule for guidance. Eby v. State, 166 N.H. 321, 340-341 (2014).

Cir. 2005). Where discovery has not been had, it is impossible for the party seeking certification to adequately present the factual basis to support certification. See, id.

As noted above, discovery has not yet begun because the parties had agreed to suspend litigating this matter. It is therefore premature for this court to address the issue of class certification.

C. A private right of action exists pursuant to the New Hampshire Constitution, Part II Article 83

Contrary to the state's claims, the New Hampshire Supreme Court has recognized that all citizens of the state of New Hampshire have standing to enforce the right to a free public education secured by the New Hampshire Constitution, Part II Article 83:

> [T]he contemporary understanding was that part II, article 83 imposed a duty on the State to provide universal education and to support the schools.
> ***
> Having identified that a duty exists and having suggested the nature of that duty, we emphasize the corresponding right of the citizens to its enforcement. For over two hundred years New Hampshire has recognized its duty to provide for the proper education of the children in this State…We must conclude, therefore, that in New Hampshire a free public education is at the very least an important, substantive right… Any citizen has standing to enforce this right.

Claremont Sch. Dist. v. Governor, 138 N.H. 183, 191-192 (1993)(emphasis added; internal citations omitted). The Court should deny the state's motion to dismiss Count VIII.

D. David Meehan's claims were timely filed

As noted by the state defendants, the New Hampshire Supreme Court has recently confirmed that the discovery rule applies to claims brought against the state pursuant to RSA 541-B:14, IV. Petition of N.H. Div. for Children, Youth & Families, 2020 N.H. LEXIS 158 (September 30, 2020). Importantly, the New Hampshire Supreme Court also noted that the purpose of chapter 508 is to provide a "catch-all" of tolling provisions when another statute lacks

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a comparable provision, consistent with the legislature's history of mitigating the harshness of sovereign immunity:

> RSA chapter 508's purpose is to function as a "catch-all" for tolling provisions when another statute has no comparable provision, and chapter RSA 541-B has no such provision; specifically, no discovery rule. The purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party. … Indeed, the legislature has consistently expanded the scope of RSA chapter 541-B to lessen the harshness of the sovereign immunity doctrine in response to observations by this court.

Petition of N.H. Div. for Children, Youth & Families, 2020 N.H. LEXIS 158, *7-8 (internal citations omitted). Thus, while the issue before the Court in Petiton of N.H. Div. for Children, Youth & Families was limited to the application of the discovery rule, the decision embraces the entirety of tolling provisions under chapter 508, including those applicable to minors (508:8) and minors who suffered sexual assault (508:4-g[7]).

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The purpose of the discovery rule is to "… provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party." Petition of N.H. Div. for Children, Youth & Families, 2020 N.H. LEXIS 158, at *8.

> This is a two-pronged rule requiring both prongs to be satisfied before the statute of limitations begins to run. First, a plaintiff must know or reasonably should have known that it has been injured; and second, a plaintiff must know or reasonably should have known that its injury was proximately caused by conduct of the defendant.

Big League Entm't, Inc. v. Brox Indus., 149 N.H. 480, 485, (2003). The allegations in the complaint, construed in the light most favorable to David[8], support David's contention that he

[7] Prior to its recent amendment, RSA 504:4-g provided that a minor who was the victim of a sexual assault could "…commence a personal action based on the incident within the later of: I. Twelve years of the person's eighteenth birthday; or II. Three years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of." (emphasis added). On September 18, 2020, the statute was amended to provide that "A person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639:2 may commence a personal action at any time."

[8] Boyle v. Dwyer, 172 N.H. 548, 552 (2019); Pro Done, Inc. v. Basham, 172 N.H. 138, 141-142 (2019).

did not know and, in fact, reasonably could not have known that his injuries were caused by the conduct of the state defendants.

The state argues that David's knowledge of his abuse at the time it was occurring, along with his unsuccessful attempts to report the abuse to Searles and "Nurse Jane" and the pervasiveness of the abuse provided "…all of the facts that a reasonable person would need to make a connection between his sexual abuse, physical abuse, and mental/emotional abuse and the State Defendants' alleged negligence at the time he left YDC."[9] This argument ignores the allegations in the complaint that, at the time David left YDC, he was an eighteen-year-old teenager whose few efforts to report the abuse had been met with disbelief. (C. ¶¶ 75, 78, 84, 85). The "reasonable person" standard is not a blanket objective rule that applies a single standard in all contexts, but rather, it applies the standard of a "reasonable person" in the circumstances of the plaintiff. Ouellette v. Beaupre, 977 F.3d 127, 137 (1st Cir. 2020)("In other words, the hypothetical 'reasonable person' must be 'similarly situated' to the specific plaintiff invoking the discovery rule and must have access to the same information that was available to the plaintiff during the timeframe relevant to the accrual analysis."). As a matter of law, no reasonable person, just released from the custody of the state and from a facility in which he had been brutalized, would, at the age of eighteen or for many years thereafter, have any understanding that the abuse he had suffered was caused by institutional negligence in addition to the intentional acts of the individual abusers.

Moreover, even inferentially, there is no basis for concluding that David knew or even should have known that the state defendants were engaged in negligent hiring, supervision and training, or were engaged in a concerted effort to conceal the abusive conditions at YDC. Drawing all inferences in David's favor, all that David knew was that he was being abused and

[9] Memorandum of Law in Support of State's Motion to Dismiss at p. 21.

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that no one believed him, reinforcing his understanding that the abuse was being perpetrated by a few bad actors whose misdeeds were unknown to the YDC staff as a whole[10]. (C. ⁋92).

Ouellette v. Beaupre, 977 F.3d 127 (1st Cir. 2020), cited by the state defendants, lends support to the plaintiff's position. In Ouellette, plaintiff Ouellette alleged that during the late 1980's he was sexually abused by a police officer when he was fifteen years old. In Ouellette reported the abuse to two police officers, who reported it to the police chief in 1990. The matter was referred to the district attorney's office and then to the attorney general's office. The attorney general conducted an investigation that led to a presentation before a Grand Jury but no indictment. There was also an internal affairs investigation conducted by the police department that resulted in "No action taken." It was not until 2015 when Ouellette learned, for the first time, that the police department and the police chief had received complaints of sexual abuse by the same police officer that predated Ouellette's allegations, but had taken no disciplinary action. Ouellette, 977 F.3d at 130-133.

The defendants in Ouellette moved for summary judgement, arguing that Ouellette's claims under §1983 were barred by the statute of limitations. The Court, applying the discovery rule, held that the mere fact that Ouellette's abuser was a captain in the police force did not support the inference that the abuser's supervisors knew about or condoned this conduct or that Ouellette had any reason to believe that they were complicit in his abuse. Ouellette, 977 F.3d at 139-144.

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[10] The state, quoting paragraph 98 of the complaint, which alleges that on information and belief the abuse "…was so pervasive and severe that it was apparent to and known about by everyone working at YDC, including, but not limited to, those in supervisory positions," asks the Court to draw an inference against the plaintiff, arguing that if the abuse was so pervasive, then David must have known (or should have known) that the state defendants' negligence had caused his injuries. Not only is there no basis for such an inference, but importantly, when evaluating a motion to dismiss all inferences must be drawn in favor of the plaintiff. Boyle v. Dwyer, 172 N.H. 548, 552 (2019)(internal citations omitted); Pro Done, Inc. v. Basham, 172 N.H. 138, 141-142 (2019). Once again, the state is making an argument that lacks any legal or factual foundation.

Here too, this court cannot find that, as a matter of law, David knew or should have known about the causal connection between YDC and his injuries in 1999 and the state defendants' motion should be denied. Lamprey v. Britton Constr., 163 N.H. 252, 258 (2012).

E. The complaint adequately pleads the facts necessary for equitable tolling

Generally speaking, "equitable tolling" is the doctrine under which the statute of limitations is tolled when the conduct of the defendant has actively misled the plaintiff about the cause of action. Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 623 (2005). Fraudulent concealment is an equitable ground for tolling the statute of limitations. Conrad v. Hazen, 140 N.H. 249, 253 (1995); Lakeman v. La France, 102 N.H. 300, 304 (1959).

> In our opinion the defense that the statute of limitations has been tolled by fraudulent concealment is in the nature of an equitable estoppel. Its purpose is to promote "the equity and justice of the individual case by preventing a party from asserting his rights under a general technical rule of law, when he has so conducted himself that it would be contrary to equity and good conscience" to avail himself of his legal defense.

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Lakeman, 102 N.H. at 304, quoting, Horn v. Cole, 51 N.H. 287, 291, 292 (1868)(internal citation omitted). The complaint alleges more than sufficient facts to support a claim of fraudulent concealment by the state defendants and, thus, equitable tolling.

It is simply untrue that the allegations related to fraudulent concealment and equitable tolling do not encompass the state defendants. As alleged in the complaint, David first learned in 2017 that when the State Investigator was an intern at YDC she had reported physical abuse of the residents but had been told by a superior to remain quiet. (C. ⁋91). This was the first time that it occurred to David that persons in positions of authority knew about the abuse but were looking the other way. (C. ⁋92). The complaint goes on to allege that:

- On information and belief, defendants Buskey, Murphy, Davis, Woodlock, Brown, Searles and the John and Jane Doe officers, directors, supervisors, employees, servants or agents of YDC and other public or private agencies or

businesses involved in the care of David and the members of the putative class conspired together for the purpose of committing acts of physical abuse, sexual abuse, and mental/emotional abuse, solitary confinement, and deprivation of education, and then conspired together in order to unlawfully and deliberately conceal those acts from discovery so that they could continue to perpetrate those acts on David and the members of the putative class.

- On information and belief, the physical abuse, sexual abuse, and mental/emotional abuse, solitary confinement, and deprivation of education suffered by David and by the putative class plaintiffs was so pervasive and severe that it was apparent to and known about by everyone working at YDC, including, but not limited to, those in supervisory positions.

- On information and belief, YDC, through its agents and employees, and the individual defendants both as agents and/or employees of YDC and also individually, intentionally concealed the ongoing acts of abuse from law enforcement authorities and also acted to "gaslight" David and the other putative class plaintiffs by denying the physical abuse, sexual abuse, and mental/emotional abuse had ever occurred, even when directly confronted by one of their victims. This created an atmosphere at YDC in which David and the other putative class members were made to understand that it was unsafe for them to attempt to report the abuse they were suffering, that they would not be believed if they attempted to report the abuse to anyone inside or outside of YDC, and that there was no recourse for their suffering.

- As a direct consequence of the deliberate acts of the defendants, even after leaving YDC, David and the other putative class members were too frightened to speak out and did not understand that they could seek legal counsel.

- As a direct consequence of the deliberate acts of the defendants, even after leaving YDC, David and the other putative class members believed that they were powerless against their former abusers.

- As a direct consequence of the deliberate acts of the defendants, even after leaving YDC, David and the other putative class members believed that there was no way to prove that they had been abused while at YDC, so any action to seek redress would be futile.

(C. ¶¶ 97-102). These allegations expressly encompass all of the defendants. The doctrine of fraudulent concealment/equitable tolling has been properly pleaded as to the state defendants and as such, the motion to dismiss must be denied.

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F. Alternatively, the plaintiff should be granted leave to amend the complaint

Finally, even if this Court should find that the allegations of the complaint are lacking in sufficient explicit detail to satisfy the motion to dismiss standard, the plaintiff must be accorded an opportunity to amend the complaint before any order dismissing the complaint becomes a final judgment. RSA 514:9; Sanguedolce v. Wolfe, 164 N.H. 644, 647 (2013); Cambridge Mut. Fire Ins. Co. v. Crete, 150 N.H. 673, 678 (2004); N.H. Super. Ct. R. 12(a)(3),(4). However, for the reasons discussed above, complaint more than adequately pleads the facts necessary to support the plaintiff's claims, including the application of the discovery rule, and the state defendants' motion should be dismissed.

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WHEREFORE, the plaintiff respectfully requests that this Honorable Court:

A. Deny State Defendants' Motion to Dismiss;

B. In the alternative, grant the plaintiff leave to amend the Complaint; and

C. Grant such other and further relief as the Court deems equitable and just.

Respectfully Submitted,

DAVID MEEHAN, BOTH INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

By His Attorneys,

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

Date: February 16, 2021

By: /s/ Cyrus F. Rilee, III

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's Objection to State Defendants' Motion to Dismiss has been served via New Hampshire E-Court Electronic Services upon all counsel of record.

Date: February 16, 2021 By: /s/ Cyrus F. Rilee, III

Cyrus F. Rilee, III, Esq., #15881

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