

STATE OF NEW HAMPSHIRE

ROCKINGHAM, ss.

SUPERIOR COURT

217-2020-CV-00026

David Meehan, et al

v.

N.H. Department of Health and Human Services, et al  
(YDC and YDSU Cases)

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217-2021-CV-00523 <sup>1</sup>	217-2022-CV-00796	218-2023-CV-00333
217-2021-CV-00549	218-2022-CV-01086	218-2023-CV-00364
217-2021-CV-00559	218-2022-CV-01148	218-2023-CV-00368
217-2022-CV-00055	218-2023-CV-00267	218-2023-CV-00377
217-2022-CV-00060	218-2023-CV-00272	218-2023-CV-00400
217-2022-CV-00119	218-2023-CV-00276	218-2023-CV-00409
217-2022-CV-00147	218-2023-CV-00293	218-2023-CV-00411
217-2022-CV-00175	218-2023-CV-00308	218-2023-CV-00426
217-2022-CV-00356	218-2023-CV-00327	218-2023-CV-00437

**MEMORANDUM OF LAW SUPPORTING  
CONTRACTOR DEFENDANT NFI NORTH, INC.'S  
SECOND MOTION TO DISMISS (May 2023 Cases)**

Defendant NFI North, Inc. (“NFI”) by and through its counsel, Orr & Reno PA, moves to dismiss the five claims asserted against it in the above captioned “Doe” cases because all the claims are time-barred pursuant to RSA 508:4, I and 505:8. Even if timely filed, the claims should still be dismissed because the various Doe Plaintiffs have failed to state claims against it for which relief can be granted.

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<sup>1</sup> The respective Plaintiffs in these Dockets are John Doe #'s 7, 17, 24, 129, 187, 202, 217, 305, 378, 473, 554, 664, 666, 669, 675, 684, 691, 694, 700, 704, 714, 722, 724, 736, 740, and 749, and Jane Doe #65.

## I. Claims and Allegations

NFI is a non-profit, licensed residential childcare provider in New Hampshire that provides residential placements on behalf of the State of New Hampshire to children who have been adjudicated by courts as delinquents, abused, or in need of services under RSA 169-B, -C and/or -D, respectively. *See Chase Home for Children, et al v. New Hampshire Div. for Children, Youth & Families*, 162 N.H. 720, 723 (2011). In the parlance of the consolidated “Doe” cases, it is a “contractor defendant” in the above-referenced dockets. This memorandum of law supports NFI’s second omnibus motion to dismiss. The Doe Plaintiffs included in this filing have been grouped by the fact that NFI accepted service of process of their respective complaints during May 2023. Its prior motion to dismiss, filed on March 20, 2023, included Plaintiffs for whom NFI had accepted service of process between December 2022 and March 2023. It is filing its motions to dismiss in this omnibus fashion because the legal arguments, particularly which establish that these Plaintiffs have failed to state cognizable claims, are largely duplicative from case to case. In fact as explained in §IV, *infra*, each complaint<sup>2</sup> inadequately alleges the same five causes of action against NFI, which are: breach of a fiduciary duty on various theories (Count VIII ); a purported claim for “aiding and abetting” breach of fiduciary duty (Count X); negligent hiring, training and supervision of the Defendants’ employees (Count XI); negligence (Count XII); and civil conspiracy (Count XIV) making them amenable to

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<sup>2</sup> More precisely, each Doe filed a “Short Form Complaint Supplement to Master Complaint” (“Complaint”) which incorporates the form “Master Complaint” filed in the “lead docket” No. 217-2020-CV-26. Their respect claims against NFI are contained in a nearly identical “Addendum to Short Form Complaint” (“Addendum” or collectively, “Addenda”) filed in each docket referenced in the caption. This latter pleading makes primarily conclusory allegations targeted against the State of New Hampshire Department of Health and Human Services for generalized systemic abuse within the child placement system, as opposed to allegations that relate specifically to the named Plaintiff.

dismissal on a consolidated basis. Thus, grouping the motions to dismiss by logical collections of Plaintiffs should provide a more efficient way for the Court to address these motions.

NFI additionally seeks dismissal of each Doe Plaintiffs' complaint as against it because the claims are time-barred. Admittedly, a statute of limitations analysis must be applied on a per-Plaintiff basis. To address this in an omnibus pleading, NFI has placed the central legal principles guiding NFI's statute of limitations argument in this memorandum as they are applicable to the analysis of each of these Plaintiffs' complaints. It applies these principles in an individualized limitations analysis in Exhibit A. Exhibit A summarizes for each Doe Plaintiff in the above-docketed cases the dates relevant to the statute of limitations analysis, scant details of abuse alleged against NFI by each of these Plaintiffs in their respective complaints, and then presents the argument for why each Plaintiff's claims are time-barred based on the circumstances of that Plaintiff's case.

Typically, when the statute of limitations is raised as an affirmative defense in a motion to dismiss, it is analyzed by the court first given that it may dispose of all claims. Here, the question of whether these Plaintiffs have sufficiently stated causes of action for their identical five claims can be assessed on an omnibus basis, and does not depend on the unique facts of each case. Thus, it may be most efficient for the Court to first analyze whether the Plaintiffs have pled sufficient claims to survive a motion to dismiss before assessing whether they have timely-filed those claims against NFI. If there are any claims remaining after considering the sufficiency of the five claims, then an individualized analysis could be taken to determine whether any of these Plaintiffs filed their complaints against NFI within their limitations period. While NFI has presented its limitations arguments first, the Court may wish to address the second half of this motion before engaging in the individualized limitations analysis.

## II. Standard of Review:

As this Court noted in its February 10, 2023, Procedural order, Superior Court Rule 8 requires a plaintiff to plead “material facts” which, if proven, would entitle the defendant to relief. In determining whether the complaint meets this standard, the court must “rigorously scrutinize” the complaint and then decide whether it alleges facts that are sufficient to constitute the cause of action pled. *Trinity EMS, Inc. v. Coombs*, 166 N.H. 523, 525 (2014). When doing so, the court must accept the well-pled facts in the Complaint and take all reasonable inferences in the plaintiff’s favor. *Ojo v. Lorenzo*, 164 N.H. 717, 721 (2013); *Bel Air Associates v. New Hampshire Department of Health and Human Services*, 154 N.H. 228, 231 (2006). But, the court need not assume the truth of statements in the complaint that are merely conclusions of law. *Ojo*, 164 N.H. at 721. Nor must the court accept any “invective . . . bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like” that may be included in the complaint. *Aulson v. Blanchard*, 83 F.3d 1, 3 (1st Cir. 1996); *see also Brown v. Latin Am. Music Co.*, 498 F.3d 18, 24 (1st Cir. 2007).

The facts alleged in these Doe Plaintiffs’ complaints establish that all their claims are time barred because they were filed long after the running of the applicable statute of limitations. *See* §III, *infra*, and Exhibit A. Additionally, the facts do not support cognizable claims for breach of fiduciary duty; aiding and abetting a breach of fiduciary duty; negligent hiring, training, supervision, and retention; negligence; or civil conspiracy. *See* §IV, *infra*. Therefore, even if this Court were to determine that each Plaintiff’s claims are not barred by the applicable statute of limitations, this Court should still dismiss all claims asserted against NFI by these 27 Plaintiffs.

### III. THE CLAIMS SHOULD BE DISMISSED BECAUSE THEY ARE TIME BARRED.

#### A. All of the Doe Plaintiffs' claims expired pursuant to RSA 508:4, I (1986) and 508:8 prior to the filing of their respective complaints.

The Doe Plaintiffs each allege that they were abused during their respective placements at NFI. NFI denies these allegations. But even assuming they are true for purposes of this motion to dismiss, all the claims based on these alleged incidents are time-barred under the statutes of limitations in effect at the time their causes of action arose; that is, under RSA 508:4, I (1986) and 508:8. *See* Exhibit A (applying limitations analysis to specific details of each Doe's claims). Compliance with statutes of limitations is mandatory. Donnelly v. Eastman, 149 N.H. 631, 633 (2003). A statute of limitations is "designed to expedite the orderly administration of justice," and "ensure timely notice to an adverse party and eliminates stale or fraudulent claims." Id. (citations omitted). Statutes of limitations establish "a deadline after which the defendant may legitimately have peace of mind; it also recognizes that after a certain period of time, it is unfair to require the defendant to attempt to piece together his defense to an old claim." Id. (citations omitted)

The New Hampshire Supreme Court instructs that the appropriate statute of limitations to apply to a cause of action is the one in existence at the time the cause of action arose, even if that cause of action did not accrue until a later time. *Draper v. Brennan*, 142 N.H. 780, 783-84 (1998); *Conrad v. Hazen*, 140 N.H. 249, 252 (1995). A cause of action arises when "all the necessary elements are present. In the case of torts, it would be when causal negligence is coupled with harm to the plaintiff." *Conrad*, 140 N.H. at 252. When applying this test to an alleged claim of a plaintiff who asserted that she was sexually abused as a minor, the New Hampshire Supreme Court determined that the causes of action based on the alleged assault

arose at the time of the alleged assaults in 1977 even though the Plaintiff claimed that she did not identify this conduct as rape until 1991. *Id.* Applying this principle in this case, the Doe Plaintiffs' causes of action arose at the time the alleged abuse occurred during their respective placements at NFI North. *See id.*

The 27 Doe Plaintiffs who are included in this motion to dismiss all allege that they were placed at NFI North for discrete periods of time sometime between 1991 and 2011. *See* Complaints in the above dockets summarized on Exhibit A. The five claims asserted against NFI are all properly characterized as "personal actions." Throughout this time span, RSA 508:4, I and 508:8 governed the time limit within which personal actions must be brought. RSA 508:4, I provided during this time period: "Except as otherwise provided by law, all personal actions, except actions for slander or libel, may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 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." For claimed harm to minors arising during this time period starting in at least 1973, RSA 508:8 provided an extended limitations period for 2 years after the minor reached the age of majority to file his or her claim. *Norton v. Patten*, 125 N.H. 413, 416, (1984). The Supreme Court has long made clear that a failure to file suit within the limitations periods set forth in these statutes results in dismissal of the claims. *See, e.g., Beane v. Dana S. Beane & Co.*, 160 N.H. 708, 712 (2010).

NFI anticipates that these Doe Plaintiffs will assert that their limitations period has been extended by application of the discovery rule embedded within RSA 508:4, I (quoted above), and

recognized in this State's common law. The discovery rule is a "two-pronged rule requiring both prongs to be satisfied before the statute of limitations begins to run." *Beane*, 160 N.H. at 713 (quoting *Big League Entertainment v. Brox. Indus.*, 149 N.H. 480, 485 (2003)). The New Hampshire Supreme Court has explained:

"First, a plaintiff must know or reasonably should have known that [he] has been injured; and second, a plaintiff must know or reasonably should have known that [his] injury was proximately caused by conduct of the defendant.' 'Thus, the discovery rule exception does not apply unless the plaintiff did not discover, and could not reasonably have discovered, either the alleged injury or its causal connection to the alleged negligent act.'" "Although the discovery rule tolls the limitations period until a plaintiff discovers, or should reasonably have discovered, the causal connection between the harm and the defendant's negligent or wrongful act, this rule 'is not intended to toll the statute of limitations until the full extent of the plaintiff's injury has manifested itself.' 'Rather, that the plaintiff could reasonably discern that he suffered some harm caused by the defendant's conduct is sufficient to render the discovery rule inapplicable.' Further, a plaintiff need not be certain of this causal connection; the possibility that it existed will suffice to obviate the protections of the discovery rule."

*Beane v. Dana S. Beane & Co.*, 160 N.H. 708, 713 (2010) (citing *Big League Entm't, Inc. v. Brox Indus.*, 149 N.H. 480 (2003); *Furbush v. McKittrick*, 149 N.H. 426, 431(2003); & *Pichowicz v. Watson Ins. Agency*, 146 N.H. 166, 168(2001)).

The Supreme Court has further confirmed that the discovery rule does not stay the running of the statute of limitations "if the original injury was 'sufficiently serious to apprise the plaintiff that a possible violation of [her] rights had taken place.'" *Conrad v. Hazen*, 140 N.H. 249, 252 (1995) (quoting *Rowe v. John Deere*, 130 N.H. 18, 22 (1987)). It is the Plaintiff's burden to prove that the discovery rule is applicable to an action, like these, that is otherwise barred by the statute of limitations. *Glines v. Bruk*, 140 N.H. 180, 181 (1995).

The Plaintiffs may also assert that the doctrine of "equitable tolling" tolled the running of their limitations periods. This doctrine permits a plaintiff to bring an action after the running of the statute of limitations if the plaintiff was prevented in an "extraordinary way from exercising

his or her rights.” *Portsmouth Country Club v. Town of Greenland*, 152 N.H. 617, 623-24 (2005). This doctrine is only applicable in circumstances where the plaintiff “did not have, and could not have had with due diligence, the information essential to bringing suit.” *Id.*

None of these Plaintiffs allege in their complaints any facts that support application of the discovery rule embedded within RSA 508:4, I or some extraordinary circumstance that would justify the equitable tolling of the limitations period. Thus, the standard 3-year limitations period in RSA 508:4, I and 2-year tolling period prescribed by RSA 508:8 should control. Exhibit A analyzes the application of RSA 508:4, I and RSA 508:8, if longer, to the filing details of each of the Doe Plaintiff’s respective claims. All the Does referenced in this Motion filed their complaints long after the running of the limitations period. *See* Exhibit A. Therefore, the Court must dismiss all the claims asserted by these respective Doe Plaintiffs in the above-captioned dockets because they are time-barred. *See Beane*, 160 N.H. at 712.

**B. The complaints of the Doe Plaintiffs who allege claims based on purported sexual abuse are not saved by RSA 508:4-g from being dismissed as untimely.**

The legislature adopted RSA 508:4-g in 2005. It provided a longer limitations period to bring civil claims for victims of criminal sexual assault as defined by RSA 632-A or incest under RSA 639:2.<sup>3</sup> RSA 508:4-g was originally adopted with an effective date of July 22, 2005. 2005 Laws 283:1. As originally adopted it allowed a person alleging sexual abuse while a minor to file a personal action based on the incident within the later of 7 years after the person’s 18<sup>th</sup> birthday, or three years after 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. Effective

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<sup>3</sup> None of the Doe Plaintiffs assert that an NFI staff member was also their family member. Hence, an analysis of the application of RSA 508:4-g based on violation of RSA 639:2 is unnecessary.

January 1, 2009, the 7-year limitations period was extended to 12 years. *See* 2008 Laws 193:1. Effective September 18, 2020, the legislature uncapped the limitations period by amending RSA 508:4-g to provide that individuals “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.” NFI anticipates, based on the allegations of “sexual abuse” in their complaints, that John Does #7, 24, 217, 305, 691, 704 and Jane Doe #65 may claim that they are entitled to the application of RSA 508:4-g, and that it renders their claims timely. But any such argument fails.

**1. RSA 508:4-g cannot apply to the claims of Doe Plaintiffs placed at NFI prior to the statute’s effective date.**

The Supreme Court has consistently held that the limitations period in effect at the time a cause of action arose is the one that applies to a plaintiff’s claims. *Draper*, 142 N.H. at 783-84; *Conrad*, 140 N.H. at 252. The first version of RSA 508:4-g did not become effective until July 22, 2005. Accordingly, it cannot apply to any claims that arose prior its effective date. Because the placements of John Doe #7 (1999), #217 (sometime between 2002-04), #691 (1994), and Jane Doe #65 (sometime between 1991-2000) all occurred before the effective date of the first version of RSA 508:4-g, it cannot apply to extend their respective limitations periods. *Draper*, 142 N.H. at 783-84; *Conrad*, 140 N.H. at 252. Therefore, their claims are governed by RSA 508:4, I and 508:8, and must be dismissed as time-barred for the reasons set forth above.

Nor can RSA 508:4-g be applied retrospectively to enlarge the limitations period. As the New Hampshire Supreme Court explained:

Our constitution prohibits retrospective laws. N.H. Const. pt. I, art. 23. A law is retrospective if it impairs a vested right. *Lakeman v. Moore*, 32 N.H. 410, 412-13 (1855). A vested right “may relate to the grounds of the action, or the grounds of the defence, both of which seem to be equally protected by the constitution.” *Woart v. Winnick*, 3 N.H. 473, 477 (1826). A right to assert the statute of limitations as a defence [sic] vests once the limitations period has run. *Rockport v. Walden*, 54 N.H. 167, 173-74 (1874). Since the limitations period had run against the plaintiff prior to the enactment of the

amendment, application of the amendment would impair the defendants' vested right to assert the limitations defense and would thus operate as an unconstitutional retrospective law.

*Gould v. Concord Hosp.* 126 N.H. 405, 408 (1985). As set forth in Exhibit A, the applicable limitations period – RSA 508:4, I as modified by RSA 508:8 – had run against the claims of at least John Does #7, 691, and Jane Doe #65 prior to the adoption of RSA 508:4-g. It would be unconstitutional to apply it retrospectively to revive these Plaintiffs' claims. And as set forth on Exhibit A in the limitations analysis of John Doe #217's claims, he filed his claims too late even applying RSA 508:4-g to his claims. Accordingly, the claims of John Does #7, 217, 691 and Jane Doe #65 must be dismissed along with the claims of all the other Doe Plaintiffs.

**2. RSA 508:4-g cannot apply to claims against NFI because it only extends the limitations period for claims against the individual who perpetrated the alleged sexual assault.**

NFI anticipates that the Doe Plaintiffs who allege they were “sexually abused” after the effective date of RA 508:4-g will argue that the mere assertion of sexual assault triggers the application of RSA 508:4-g to their claims against NFI, and extends the statute of limitations from the default three-year standard that applies to personal actions under RSA 508:4 for all personal action claimed by that Plaintiff. This is not the case. RSA 508:4-g does not define “personal action” but the pre-September 18, 2020 version does specify that the action must be “based on *the incident*.” Within the context of the sentence, *the incident* refers back to the “offense under RSA 632-A.” The statute gives a person who is an alleged victim of an RSA 632-A offense a longer time to bring a personal action based on that incident of alleged sexual assault against the *alleged perpetrator* of the assault. But just because a person is an alleged victim of an RSA 632-A offense does not mean he or she has an extended period of time to bring any and all personal actions against any and all other possible defendants. Rather, by its terms,

RSA 508:4-g only extends the limitations period for claims asserted against the *individual perpetrator* of the alleged sexual assault.

Other states with similar statutes have so concluded. *See, e.g., Sandoval v. Archdiocese of Denver*, 8 P.3d 598, 601-02 (Colo. App. 2000) (finding the limitations statute’s “references to the criminal code” were “highly significant” to its holding that the statute did not apply to “claims against parties other than a perpetrator of a sexual offense” and “indicate that the [legislature] intended that the act upon which claims must be based is that of a perpetrator”); *Kelly v. Marcantonio*, 678 A.2d 873, 876 (R.I. 1996) (limitations statute defining “child sexual abuse” by reference to criminal code meant that “the only intended target of the legislation is . . . the person who actually commits the criminal sexual act, namely, the perpetrator”). Thus, RSA 508:4-g does not provide a blanket extension of the limitations period for all a plaintiff’s claims against all possible defendants, such as NFI. Accordingly, to the extent a Doe Plaintiff could assert a claim under RSA 508:4-g against the perpetrator of purported sexual abuse, that would not apply to extend the expired limitations set forth in RSA 508:4, I or 508:8 that applies to the claims asserted as against NFI.

**3. Allegations of unjustified “strip searches” do not fall within the reach of offenses covered under RSA 508:4-g, either.**

John Does #473, 664, 684, 691, 694, 700, 714, 736, 740, and 749 assert that they were subjected to unjustified “strip searches” while in placement at NFI. *See* Exhibit A. To the extent they hope to rely on RSA 508:4-g to save their otherwise untimely claims, that argument fails.

First, the alleged placement of John Does #473 (2003-04), #684 (1999), #691 (1994), #736 (1993 or 94), and #749 (1998-99) all predate the original effective date of RSA 508:4-g. Hence, that statute cannot apply to their claims as set forth above.

For the Doe Plaintiffs who allege they were unjustly “strip searched” during placements after the effective date of RSA 508:4-g, this statute still does not apply to extend the limitations period on their claims because a “strip search” does not meet the definition of “sexual assault” under RSA chapter 632-A. By definition, a “strip search” is a procedure “to find any contraband the person might be hiding.” Strip Search, Black’s Law Dictionary. None of the Doe Plaintiffs assert that a “strip search,” in and of itself, was illegal, or that it was inappropriate for NFI staff to perform a strip search on them at some point during their placements. In fact, a perusal of the complaints of these Doe Plaintiffs establishes that for many their placements were based in part on substance abuse issues. Thus, on its face, the fact that a strip search occurred in a facility into which teens with substance abuse issues is placed is not surprising or actionable.

RSA 632-A sets forth varying degrees of criminal sexual assault, ranging from aggravated felonious sexual assault (RSA 632-A:2), to felonious sexual assault (RSA 632-A:3), and to misdemeanor sexual assault (RSA 632-A:4). Factors affecting the type of conduct that implicates the various degrees of sexual assault include the age of the victim; the age difference between the perpetrator and the victim; whether the perpetrator was in a position of authority; and whether there was “sexual penetration” or “sexual contact” as defined by RSA 632-A:1. See RSA 632-A, et seq. None of the Doe Plaintiffs in the dockets at issue in this Motion allege any sexual penetration during a strip search. The question, then, is whether the act of conducting a strip search constitutes sexual contact within the meaning of RSA 632-A.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the victim’s or actor’s sexual or intimate parts, including emissions, tongue, anus, breasts, and buttocks. Sexual contact includes **only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification or the humiliation of the person being touched.**

RSA 632-A:1(IV) (emphasis added) While some Doe Plaintiffs allege that one or more NFI staff members conducted an unjustified strip search, they do not allege that the strip search involved the touching of intimate parts and/or that the strip search was conducted for the “purpose” of arousal or humiliation instead of the purpose of finding contraband. Without the requisite purpose, the alleged touching does not constitute “sexual contact.” As such, there is no offense under RSA chapter 632-A. And if there is no offense under RSA chapter 632-A, then RSA 508:4-g is plainly inapplicable.

**4 Even if RSA 508:4-g applied to claims against NFI, the claims of the Doe Plaintiffs who assert they were sexually abused remain time-barred.**

Even if RSA 508:4-g applies to some of the causes of action against NFI asserted by the Doe Plaintiffs who allege sexual abuse during placements after that statute’s effective date, their complaints are still untimely.

Between July 22, 2005 and December 31, 2008, RSA 508:4-g gave victims of RSA 632-A sexual assaults until age 25 to assert their claims. As set forth in detail in Exhibit A, the placements at an NFI facility of John Does #305 and 704 allegedly occurred between these dates. John Doe #305 filed his complaint on January 18, 2022 (and his motion to add NFI as a defendant was granted on February 18, 2022). He turned 25 many years before the filing of his complaint. *See id.* Similarly, John Doe 704 filed his complaint on March 16, 2023. *Id.* He also turned 25 well before the filing of his complaint. Thus, even applying RSA 408:4-g, it does not save the complaints of either of these Does from dismissal.

Between January 1, 2009 and September 17, 2020,<sup>4</sup> a sexual assault victim could bring their claims based on the assault until they turned 30. John Doe #24 alleges that he was sexually

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<sup>4</sup> None of the Doe Plaintiffs included in this Motion allege that they were placed at NFI on or after September 17, 2020.

abused during a placement in 2009. *See* Exhibit A. He filed his complaint on August 19, 2022. *Id.* He turned 30 well before the filing of his complaint. *See id.* Thus, the claims of John Doe #24 are not saved by the application of even the 2009 version of RSA 508:4-g, either.

Even if the Court leniently construed an allegation by some Doe Plaintiffs of an unjust “strip search” to constitute an offense under RSA 632-A, RSA 508:4-g would not render the complaints of these Plaintiffs timely. Exhibit A analyzes the timing of the filing of the complaint by each of these Plaintiffs. Even applying this special limitations period, all their respective complaints are time-barred. *See* Exhibit A. Accordingly, the complaints of the Doe Plaintiffs asserting sexually abuse are not saved from dismissal by RSA 508:4-g, and should be dismissed along with the complaints of all the other Doe Plaintiff.

**IV. THE COMPLAINTS OF THESE 27 DOE PLAINTIFFS SHOULD BE DISMISSED BECAUSE THEY ALL FAIL TO STATE CAUSES OF ACTION AGAINST NFI.**

The Doe Plaintiffs’ claims should also be dismissed because the allegations in their Complaints and Addenda are not “reasonably susceptible of a construction that would permit recovery.” *See Plourde Sand & Gravel v. JGI Eastern, Inc.*, 154 N.H. 791, 793 (2007) (*quoting Berry v. Watchtower Bible & Tract Soc’y of N.Y., Inc.*, 152 N.H. 407, 410 (2005)).

**A. Count VIII (Breach of Fiduciary Duty) must be dismissed for failure to state viable claims against NFI North.**

Plaintiffs style Count VIII as a claim for breach of fiduciary duty, but attempt to assert four distinct causes of action within the confines of this count. More particularly, the Doe Plaintiffs allege: (1) breach of a fiduciary duty owed by the contractor defendants to Plaintiffs, (2) breach of a duty to stop systemic abuse through the reporting of past instances of abuse against third parties which supposedly would have prevented harm to Plaintiffs; (3) violation of the Doe Plaintiffs’ 14<sup>th</sup> Amendment rights by NFI, and (4) NFI’s violation of their constitutional

right to an adequate education. Count VIII fails to allege cognizable claims at least as against NFI under any of these alternative theories, and should be dismissed.

1. **NFI did not owe a fiduciary duty to Plaintiffs.**

In order to maintain a claim for breach of fiduciary duty the Plaintiffs must allege predicate facts that support the existence of a fiduciary duty. *See Mountain Springs Water Co. v. Mountain Lakes Vill. Dist.*, 126 N.H. 199, 200- 201 (1985) (explaining a plaintiff must “plead sufficient facts to form a basis for a cause of action.”) Under New Hampshire law, “[a] fiduciary relationship has been defined as a comprehensive term and exists wherever influence has been acquired and abused or confidence has been reposed and betrayed.” *Brzica v. Trustees of Dartmouth Coll.*, 147 N.H. 443, 447 (2002) (quoting *Lash v. Cheshire County Savings Bank*, 124 N.H. 435, 438 (1984)). The New Hampshire Supreme Court has never held that a residential childcare provider holds a fiduciary duty towards a child placed at its facility pursuant to its contract with DHHS. Nor is it likely to.

Plaintiffs are expected to rely on *Schneider v. Plymouth State College*, 144 N.H. 458, 462-63 (1999) to support the existence of a fiduciary duty owed to them by NFI. In *Schneider* the Supreme Court held that a college student could maintain a breach of fiduciary duty claim against her college for alleged sexual harassment by a professor. In reaching this conclusion, the court made the important observation that a fiduciary duty anticipates a first-party relationship between the party reposing confidence and the one acquiring influence; “[t]he party reposing confidence becomes dependent on the fiduciary because he or she must rely on the fiduciary for a particular service.” *Id.* at 462. The plaintiff in that case was not placed involuntarily at the college; she affirmatively enrolled there. *Id.* at 463. The Court highlighted this distinction by comparing its determination that a fiduciary duty existed under the circumstances in *Schneider* to

its failure to find a fiduciary relationship between a high school student and school in *Marquay v. Eno*, 139 N.H. 708, 717-18 (1995). *See also Doe v. Legion of Christ, Inc.*, 588 F. Supp. 3d 240, 246 (D. Conn. 2022) (court dismissed breach of fiduciary duty claim alleged against private boarding school located in New Hampshire by student claiming sexual abuse by school employee because secondary school did not have fiduciary duty under N.H. law towards student). *See also Franchi v. New Hampton Sch.*, 656 F. Supp. 2d 252, 263 (D.N.H. 2009) (“Indeed, the New Hampshire Supreme Court has clarified that *Marquay* did not ‘identif[y] a fiduciary duty’ between a secondary school and its students, but a common-law duty of care. *Berry v. Watchtower Bible & Tract Soc’y of N.Y., Inc.*, 152 N.H. 407, 415, 879 A.2d 1124 (2005).”) *The Federal District Court in Franchi further clarified that* “even if the allegations of Franchi's amended complaint suggest that she placed ‘a special trust or reliance’ in [New Hampton School] on CF's behalf, that was insufficient to give rise to a fiduciary duty. Though NHS, like any other secondary school, owes its students a duty to use reasonable care to protect them, this court predicts that the New Hampshire Supreme Court would not extend its holding in *Schneider* to elevate that duty to a fiduciary one under the circumstances alleged here. NHS's motion to dismiss Franchi's claim for breach of fiduciary duty is granted.” *656 F. Supp. 2d at 264-5.*

The Doe Plaintiffs do not allege facts that would support the existence of a fiduciary duty in this case. They do not claim they chose to go to NFI, like the college student in *Schneider*, or otherwise affirmatively “reposed [their] trust and confidence” in NFI. Rather, they all alleged that they were placed by the State at NFI. *See* Complaints at ¶6 (State placed Does at NFI pursuant to a contract, allowing it to exercise physical control over the Plaintiff “to the exclusion of others.”) and ¶10 quoted in Exhibit A. Because there is no fiduciary duty as a matter of law,

the Doe Plaintiffs' claim for breach of fiduciary duty must be dismissed. *See Schneider*, 144 N.H. at 462-63; *Marquay*, 139 N.H. at 717-18.

**2. NFI had no duty towards the Doe Plaintiffs to stop the allegedly suffered at the hands of others .**

Each Doe Plaintiff alleges within Count VIII that:

“[E]very 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.

Complaint at ¶9. They further assert that “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.” *Id.* at ¶10.

Under this unprecedented theory, NFI purportedly had a fiduciary duty towards each of the Doe Plaintiffs obligating it to prevent the alleged illegal and criminal acts of the other named defendants towards them. To the extent that this is intended to assert a cause of action separate from the breach of a non-existent fiduciary duty, it must be dismissed.

RSA 169-C:29 obligates a variety of individuals “having reason to suspect that a child has been abused or neglected” to report that suspicion to DHHS. Even if NFI failed to report abuse of third parties, which it denies, the New Hampshire Supreme Court has expressly held that “the reporting statute does not support a private right of action for its violation because we find no express or implied legislative intent to create such civil liability.” *Marquay*, 139 N.H. at

715. Accordingly, this statutory duty does not support a breach of fiduciary duty claim or independent tort claim. *See id.*

Moreover, “[t]he scope of the duty of care imposed upon the defendants... is limited by what risks, if any, are reasonably foreseeable. *Walls v. Oxford Management Co.*, 137 N.H. 653, 656, 633 A.2d 103 (1993). ‘Whether a defendant's conduct creates a sufficiently foreseeable risk of harm to others sufficient to charge the defendant with a duty to avoid such conduct is a question of law.’ *Kellner v. Lowney*, 145 N.H. 195, 197, 761 A.2d 421 (2000) (quotation and brackets omitted).” *Macie v. Helms*, 156 N.H. 222, 224 (2007). Applying this reasoning, first announced in *Palsgraf v. Long Island R. Co.*, the New Hampshire Supreme Court determined that there is no liability when the causal links between the original breach and the claimed harm is too attenuated. In that case, a motorist accidentally hit and damaged a stoplight. The repairman dispatched by the city to repair the stoplight wrenched his shoulder in the course of the repair, and then sued the motorist for causing the condition that resulted in his injury. The Supreme Court held that the motorist had no duty of care towards the repairman because the harm was not reasonably foreseeable. *Id.*

Similarly, in *Kukesh v. Mutrie*, 168 N.H. 76, 84 (2015) the New Hampshire Supreme Court refused to impose a duty of care on a homeowner towards police officers shot by her son when the officers went to the premises on suspicion that the son was engaged in criminal activity. The police officers alleged that the woman acted recklessly by allowing her adult son to keep weapons, and supplying him with housing, cars, and financial assistance, but failing to seek medical care for his mental health condition. It agreed with the trial court’s conclusion that “it is sheer speculation that the defendant could have prevented the plaintiffs’ injuries had she refused to provide housing, cars and financial assistance to her son.” *Id.* “[S]he ‘could not reasonably

have perceived that the series of events would occur and that [her son] would take the actions he did,' causing the plaintiffs' eventual injury." *Id.* (quoting *Macie* and citing to *Palsgraf*).

The same is true here. NFI could not reasonably foresee that had it made the reports that Plaintiffs claim it failed to make, about abuse suffered by third parties at some unspecified time in the past, those reports would have stopped systemic abuse and thereby prevented the alleged abuse suffered by each of these Doe Plaintiffs. It is sheer speculation that such reports by NFI could have or would have prevented the alleged abuse by other named State Defendants against these Doe Plaintiffs. "The [contractor] defendants in this case could not reasonably have perceived that the series of events would occur and that the plaintiff[s] would take the actions [they] did, causing eventual injury." *Macie*, 156 N.H. at 226. *See also Kukesh*, 168 N.H. at 84. Accordingly, this court should reject the Plaintiffs' efforts to impose liability on NFI based on a purported duty, fiduciary or ordinary, to protect these Doe Plaintiffs from alleged systemic abuse that supposedly resulted in their claimed abuse at that the hands of others, and dismiss Count VIII to the extent it is based on such a purported duty. *See id.*

**3. The Doe Plaintiffs have not adequately pled a cognizable violation of constitutional or statutory provisions against NFI.**

The Doe Plaintiffs assert in Count VIII that the "defendants" collectively have violated their state and federal constitutional rights. No statute or provision in the New Hampshire Constitution is identified in the Complaint or Addenda. The only provisions identified are purported violations of Plaintiff's due process and equal protection rights guaranteed by the 14<sup>th</sup> Amendment to the US 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." Addenda ¶10. Their substantive due process rights were also supposedly infringed by the "Defendants"

deliberate indifference to the risks of harm and unjustified and excessive punishments without due process. Alternatively, they assert that the “Defendants” “liberal use of physical violence, excessive force, excessive isolation, and excessive restraints” violated Plaintiffs’ Eighth Amendment right to be free from cruel and unusual punishment. *Id.* at ¶11.

As a threshold matter, these claims are too vague to support a viable claim for violation of statutes or the Constitution. “It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel’s work, create the ossature for the argument, and put flesh on its bones.” *See United States v. Zannino*, 895 F.2d 1, 17 (1<sup>st</sup> Cir. 1990). That is what the Doe Plaintiffs have done here by dropping reference to unidentified statutes and these constitutional provisions without fleshing out how NFI purportedly violated them. Accordingly, such claims should be dismissed.

Further, the Doe Complaints all acknowledge that NFI is a private institution. The United States Supreme Court has long held that the Fourteenth and Eighth Amendments only apply to actions by the State. The Constitution “erects no shield against merely private conduct, however discriminatory or wrongful.” *Blum v. Yaretsky*, 457 US 991, 1002, 102 S. Ct. 2777, 73 L. Ed. 2d 534 (1982) (quoting *Shelley v. Kraemer*, 334 U.S. 1, 13, 68 S. Ct. 836, 842, 92 L. Ed. 1161 (1948)). In *Blum*, the Court determined that the fact that the private nursing homes participated as Medicaid providers and were subjected to state regulation did not make them state actors for purposes of the Fourteenth Amendment. *Id.* The fact that NFI allegedly has a contract with the State to provide services and is a regulated entity does not turn it into a State actor, either. *See id.* There are no other facts alleged that would allow this Court to consider NFI a State actor. Hence, Plaintiffs effort to either assert independent constitutional claims, or derive a

fiduciary duty based on an alleged constitutional duty, fails and this claim must be dismissed.

*See id.*

**4. The Plaintiffs fail to allege a prima facie cause of action based on a failure to provide statutorily guaranteed education.**

Finally, all the Doe Plaintiffs assert in Count VIII that the “Defendants” breached their fiduciary obligation to the Doe Plaintiffs by depriving them of a constitutionally adequate education. Supposedly, the violation of this standard occurred two ways. First, they claim they had no access to school when each Plaintiff was “locked in isolation” by “Defendants.”<sup>5</sup> Second, “Defendants” purportedly deprived them of an adequate education because the claimed abuse caused them to struggle with a “diminished capacity to concentrate and complete school work” so that they were unable to benefit from “what little instruction was made available.” Addenda to Short Form Complaint at ¶¶14, 17.

In *Claremont School Dist. v. Governor*, 138 N.H. 183, 184 (1993), the New Hampshire Supreme Court announced that it is the State that has a duty to provide a constitutionally adequate education. To the extent that the Doe Plaintiffs seek to hold NFI liable for breach of a constitutional duty to provide an adequate education, that claim necessarily fails for the same reason their federal constitutional claims must fail; NFI is a private actor not a State actor.

Thirteen of the 27 Doe Plaintiffs included in NFI North’s Motion to Dismiss assert that they were placed in isolation improperly, although not all claim that they were also deprived of an education while in isolation. *See* Exhibit A and n.5 herein. Some specified that the action of

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<sup>5</sup> Only John Does #378, 473, 554, 664, 666, 669, 684, 691, 694, 722, 724, 736, and Jane Doe #65 allege that they were sometimes placed in isolation or solitary confinement during their placements at NFI. *See* Complaints at ¶10, summarized on Exhibit A. Hence, none of the other Doe Plaintiffs included in this Motion to Dismiss can support a claimed breach of a fiduciary duty to provide an adequate education as against NFI through an assertion that they were deprived of that education by being put in solitary confinement.

placing them in isolation deprived them of statutory, as opposed to constitutional, rights to an education. They do not, however, identify what statute supposedly created that right warranting dismissal of their claim on that basis. *See Zannino*, 895 F.2d at 17.

Further, a standard school year is 180 days, RSA 189:24, and a school day, 6 hours total. RSA 189:40. The Doe Plaintiffs who claim they were deprived of an education either through being placed in isolation or generally during their stays at NFI, fail to allege that the their respective periods of placements occurred during school periods (as opposed to during summer or other traditional vacations or weekends) or that they were kept in isolation for the entire day preventing them from receiving education. Thus, their claims fail for this reason as well.

#### 5. **Summary**

Count VIII fails to allege a cognizable breach of fiduciary duty against NFI. The Plaintiffs search for this duty in common law, the statutory duty to report child abuse, the federal Constitution, and finally, in the New Hampshire constitutional right to an education. None of these sources of law impose on NFI a fiduciary duty towards the children placed in their care. Accordingly, Count VIII must be dismissed as against NFI.

#### **B. Count X Alleging “Aiding and Abetting Breach of Fiduciary Duties” fails as a matter of law and must be dismissed.**

Count X of the supplemental complaint accuses NFI of aiding and abetting a breach of fiduciary duty. This claim fails to state a claim upon which relief can be granted.

The New Hampshire Supreme Court has never recognized a claim for “aiding and abetting” breach of a fiduciary duty, fraud, or similar intentional tort claims. *See Archdiocese of San Salvador v. FM International, LLC*, Civil No. 05-cv-237-JD, Opinion No. 2006 DNH 102, at \*23-24 (D.N.H. Sep. 7, 2006). But even if this Court concludes that the New Hampshire Supreme Court would recognize this cause of action, Count X should still be dismissed because

it fails to allege a cognizable cause of action as a matter of law under the Restatement (Second) of Torts §876(b) formalization of this tort.

Courts that have adopted “aiding and abetting a breach of fiduciary duty” as a cause of action generally follow the Restatement (Second) § 876(b). *See Inv. Almaz v. Temple-Inland Forest Prod. Corp.*, 243 F.3d 57, 82 (1st Cir. 2001) (reasoning it was likely the New Hampshire Supreme Court would recognize the tort of aiding and abetting breach of a fiduciary duty as stated in the Restatement (Second) of Torts); *Legacy Global Sports, LP v. St. Pierre*, No. 218-2019-CV-198, 2020 WL 2027401, at \*2 (N.H. Super. Apr. 27, 2020) (same); *Dale v. Ala Acquisitions, Inc.*, 203 F. Supp. 2d 694, 700 (S.D. Miss. 2002) (identifying twenty-eight cases dealing with state court adoption of the Restatement (Second) of Torts § 876 (1979).

The elements of the tort under the Restatement (Second) §876(b) are: 1) a breach of fiduciary duty by the principal; 2) knowing inducement or participation in the breach by the defendant; and 3) damages to the plaintiff. *See HayJo S.A. de CV v. Sponge-Jet, Inc.*, No. 14-CV-196-JD, 2015 WL 9459918, at \*4 (D.N.H. Dec. 23, 2015). The Doe Plaintiffs’ identical Complaints fail to allege facts from which the Court could infer that elements one and two are properly pled.

Starting with the first element, the claim as pled in paragraphs 25 through 30 of the Doe Plaintiffs’ Complaints, even when read generously, assert that NFI aided and abetted a breach of fiduciary duty because *NFI* had a fiduciary duty to the plaintiffs which *it* directly breached through its own conduct. NFI is unaware of any legal authority which holds that an entity can be liable for aiding and abetting its own breach of a fiduciary duty, or a fiduciary duty owed by its agents. To the contrary, Judge McNamara held in *Legacy Global Sports, LP v. St. Pierre*, that “a corporation cannot conspire with its agents” and therefore “a corporation cannot aid and abet

violations of the fiduciary duties [its agents] owed to [the plaintiff].” 2020 WL 2027401, at \*2. In essence, the aiding and abetting claim, as pled, is completely duplicitous of the breach of fiduciary claim and this Court should dismiss it as a matter of law on that basis.

The claim still fails as a matter of law even if one could construe this Court as alleging that the plaintiff seeks to hold NFI liable for aiding and abetting the *State*'s, as principal, breach of fiduciary duty. First, as the State Defendants explained in their September 29, 2022, Memorandum of Law In Support of Their First Master Motion to Dismiss the Master Complaint at Argument §I and its Reply to Plaintiffs' Objection to State Defendants' First Master Motion to Dismiss the Master Complaint at Argument §I, the State could not breach a fiduciary duty to the Plaintiff because it had no such duty. Accordingly, the aiding and abetting a breach of a fiduciary duty claim fails as a matter of law for this practical reason.

Turning to the second element, the “knowledge” element, the First Circuit Court of Appeals held in *Inv. Almaz v. Temple-Inland Forest Prod. Corp.*, that the New Hampshire Supreme Court would follow the majority rule if it were to recognize an aiding and abetting breach of fiduciary duty cause of action. 243 F.3d at 83. Under the majority rule, “actual knowledge of the breach of fiduciary duty is required.” *Id.* That is, the plaintiff must allege: 1) that the defendant actually knew that the principal owed the plaintiff a fiduciary duty; and 2) actually knew that the principal was breaching the duty. *See id.* “It is not enough for a [plaintiff] to show the [defendant] would have known these things if it exercised reasonable care.” *Id.*

In the context of this claim, this means that in order for the Plaintiffs' Complaints to allege a cognizable aiding and abetting breach of fiduciary duty claim, they would have to allege that NFI actually knew that the principal, arguably the State of New Hampshire, owed each Doe Plaintiff a fiduciary duty and actually knew that the State was breaching the duty. The Plaintiffs'

Complaints include no alleged facts that NFI, or anyone associated with NFI, knew that the State had a fiduciary duty to any or all of these Plaintiffs and was breaching that duty. *See* each Complaint ¶¶10 summarized on Exhibit A. Nor are there any facts in the respective Complaints from which the Court could infer any purposeful intent on the part of NFI to provide the “substantial assistance or encouragement” required for an aiding and abetting claim. *See Restatement (Second) § 876(b); Legacy Global Sports, LP*, 2020 WL 2027401, at \*2. Thus, Count X should be dismissed for this independent reason.

**C. Count XIV fails to allege a *prima facie* claim for civil conspiracy warranting dismissal of this claim.**

The Doe Plaintiffs recast their “aiding and abetting” claim as a claim for civil conspiracy in Count XIV. They all conclude, without alleging any facts, that NFI and the other named defendants “knowingly agreed, either explicitly or tacitly, to a course of action through which they would target minors placed with the 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 as well as their employers, State Defendants and Contractor Defendant/s.” Addenda ¶¶64-73. This, too, is a preposterous, conclusory allegation that fails to state a cause of action against NFI. *See Ojo*, 164 N.H. at 721; *Aulson*, 83 F.3d at 3.

In New Hampshire, “[a] civil conspiracy is a combination of two or more persons by concerted action to accomplish an unlawful purpose, or to accomplish some purpose not in itself unlawful by unlawful means.” *Jay Edwards, Inc. v. Baker*, 130 N.H. 41, 47 (1987) (quotation omitted). “Its essential elements are: (1) two or more persons (including corporations); (2) an object to be accomplished (i.e. an unlawful object to be achieved by lawful or unlawful means or a lawful object to be achieved by unlawful means); (3) an *agreement* on the object or course of

action; (4) one or more unlawful overt acts; and (5) damages as the proximate result thereof.” *Id.* If a plaintiff’s complaint includes “[r]eferences to conspiracy and conspiratorial conduct” but those references “are mere legal assertions, unsupported by factual content,” then the “the plaintiff’s pleadings stand bare of those essential facts that would give rise to any cognizable legal cause of action” and “do not meet the applicable test, which requires that a plaintiff’s pleadings, on their face, assert a cause of action if the claim is to survive a motion to dismiss.” *Id.* at 47-48. *See also Censabella v. Town of Weare*, 2017 U.S. Dist. LEXIS 143729, \*10-11, 2017 WL 3917154 (DNH 2017).

The Doe Plaintiffs plead nothing more than conclusory statements and surmise, strikingly similar to that found insufficient in *Jay Edwards* and *Censabella*. And conclusory allegations and surmise cannot substitute for sufficient facts; “conclusory statements are not entitled to the assumption of truth,” and warrant dismissal of civil conspiracy claims. *See Censabella*, 2017 U.S. Dist. LEXIS 143729, \*10-11 (*citing Maldonado v. Fontanes*, 568 F.3d 263, 268 (1<sup>st</sup> Cir. 2009)). Indeed, Plaintiffs’ Count XIV fails to provide any factual allegations supporting a plausible inference that NFI ever reached an agreement with any of the other named codefendants to achieve a goal regarding any of these Doe Plaintiffs to cause them damages, and it fails to set forth any facts of any “overt act,” by NFI or any of the codefendants in the respective dockets in furtherance of same. Accordingly, Count XIV must be dismissed from each of these identical Addenda because it fails to state a cause of action against NFI. *See Trinity EMS, Inc.*, 166 N.H. at 525.

Furthermore, the Doe Plaintiffs fail to allege facts from which the court can even identify the alleged co-conspirators with specificity. Rather, each identical Complaint merely identifies them as “agents and employees of Defendants, including those in supervisory positions.” *See*,

*e.g.*, John Doe #7 Addendum to Short Form Complaint at ¶ 68. The only NFI-affiliated individuals referenced in the Complaints with any specificity are referred to as “staff” and occasionally by first name. *See* Complaints ¶10 summarized on Exhibit A. But the Complaints do not allege that the nameless “staff” or few named individuals participated in the alleged conspiracy. *See id.* Therefore, the Doe Plaintiffs have failed to allege sufficient facts in support of the first element of a civil conspiracy claim.

The Doe Plaintiffs also fail to allege an unlawful purpose or means with any specificity. The Complaints do assert that “Defendants” committed “acts of child abuse,” against the named Plaintiff or others, *Id.* at ¶67 and 70, attempted to conceal those acts from discovery, *id.* at ¶71, and that “the co-conspirators acted in furtherance of the same unlawful purposes recited in paragraph 125 of the Master Complaint” *Id.* at ¶ 69. Although Paragraph 125 of the Master Complaint includes a laundry list of sixteen potential crimes and intentional torts, Plaintiff’s complaint does not identify which, if any, unlawful purpose NFI attempted to bring about.

The Complaint is equally unclear with regard to unlawful means. The Complaints all allege in a conclusory fashion that the “unlawful manner and means included the same unlawful manner and means recited in paragraph 126 of the Master Complaint.” *Id.* at ¶70. Although the cited paragraph of the Master Complaint includes an even longer laundry list of potential unlawful actions, the Plaintiffs’ Complaint still does not identify which, if any, unlawful means NFI may have used. Therefore, disregarding these bald, legal assertions unsupported by facts, the Complaint fails to set forth a cognizable claim of civil conspiracy warranting dismissal of the civil conspiracy claim. *See Jay Edwards*, 130 N.H. at 47.

Turning to the third element, the complaint also does not include any facts that would support an inference that the “staff,” a few named staff members, or NFI, undertook their alleged

unlawful actions by agreement. *See id.* Again, the Complaint relies on the bare conclusory assertion that “Defendants, acting through their agents and employees, including persons in positions with supervisory authority, . . . 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 individual co-conspirators as well as their employers, State Defendants and Contractor Defendant/s.[sic]” *Id.* at ¶68. But the Complaints do not include any facts in support of this threadbare recital of the element. The Complaint does not allege that the “staff” or few named individuals in some of the Complaints communicated with each other or with anyone else about their alleged acts, were aware of each other’s acts, or carried them out with a purpose to unlawfully harm the Plaintiff.

In sum, although the Plaintiffs’ Complaints include references to conspirator conduct, *see, e.g.*, Complaint of John Doe #7 ¶¶ 67-73, these references “are mere legal assertions, unsupported by factual content.” *Jay Edwards, Inc.*, 130 N.H. at 47. This Court, as have many others, should dismiss the civil conspiracy charge on this basis. *See, e.g., Laura v. Great Lakes Higher Educ. Guar. Corp.*, No. 17-CV-373-JL, 2018 WL 671174, at \*8 (D.N.H. Feb. 1, 2018) (dismissing a civil conspiracy charge because complaint did not “allege the existence of any agreement between, or even communication among, the defendants, but instead merely offers legal conclusions couched as fact or threadbare recitals of the elements of [this] cause of action, which the court must disregard.” (internal quotations omitted)); *Censabella*, 2017 WL 3996173, at \*4 (dismissing civil conspiracy charge when allegations did not “support a plausible inference that [plaintiff] entered into an agreement with anyone else on some “object to be accomplished” and therefore was “based on nothing more than conclusory statements and innuendo.”); *Jay Edwards, Inc.*, 130 N.H. at 48 (dismissing civil conspiracy claim because after “legal

conclusions and amorphous accusatory statements are set aside, the plaintiff's pleadings stand bare of those essential facts that would give rise to any cognizable legal cause of action.”)

**D. Count XI fails to properly allege a claim for Negligent Hiring, Training, Supervision and Retention and must be dismissed.**

In Count XI the Doe Plaintiffs allege that “Defendants” collectively were negligent in the hiring, training, etc. of their respective employees. Addenda ¶¶31-40. Under well-established New Hampshire law, an individual can bring “a cause of action against an employer for negligently hiring or retaining an employee that the employer knew or should have known was unfit for the job so as to create a danger of harm to third persons.” *Marquay v. Eno*, 139 N.H. at 718; *see also Cutter v. Town of Farmington*, 126 N.H. 836, 840–41 (1985); *LaBonte v. National Gypsum Co.*, 113 N.H. 678, 681 (1973). “This cause of action is distinct from one based upon the doctrine of *respondeat superior* and is a theory of direct, not vicarious, liability.” *Marquay*, 139 N.H. at 718. “Liability exists not because of when the injury occurs, but because ‘the actor has *brought into contact or association* with the other a person whom the actor knows or should know to be peculiarly likely to commit intentional misconduct.’ *Restatement (Second) of Torts* § 302B comment *e* (emphasis added).” *Id.* at 719. (emphasis in the original).

The allegations in Count XI are, respectfully, dense and difficult to decipher, but it is apparent that Plaintiff recites nothing more than conclusions of “breaches of duties” by the amalgamated “Defendants” punctuated with assertions like “deprivations of Plaintiff’s constitutional rights as alleged in Counts VIII [breach of fiduciary duty], IX [breach of non-

delegable duty by State Defendants], and XII [negligence].”<sup>6</sup> *See, e.g.*, Addenda To Short Form Complaint ¶39.

The Complaint does not include any facts that allege, or from which one can infer, that *NFI*, had any knowledge, or should have had knowledge, that any particular employee was likely to engage in alleged misconduct. Nor are there any specific facts that allege, or from which one could infer, that *NFI* was negligent in its hiring, training, or supervision of the employees who interacted with the individual Doe Plaintiffs. The only facts alleged in the individual Complaints specific to *NFI*'s conduct is contained in the respective Complaint ¶10, which are summarized verbatim in Exhibit A. While each Doe Plaintiff alleges in their respective ¶10 that one or more staff persons at *NFI* committed acts against them, there are no specific facts alleged that any of these staff members were peculiarly likely to commit intentional misconduct, or that *NFI* knew or should have known that any of these individuals was unfit for the job. *See Marquay*, 139 N.H. at 718.

Paragraphs 34 through 42 of the Addenda includes generic factual allegations that are relevant to a negligent hiring, training, supervision, or retention claim, but importantly, these paragraphs are devoid of actual facts about *NFI*. Rather, counsel for the Plaintiffs appears to have copied and pasted these same bald assertions in each complaint against a contractor defendant, without any additional facts that addresses how any individual contractor defendant failed to hire, supervise, train, or retain any individual employee. This kind of generic complaint does not meet New Hampshire's pleading standard.

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<sup>6</sup> They never explain how the Constitution impacts a purported negligence-based duty to hire, train, supervise and retain staff, or what those breaches of duty were, let alone committed by a specific defendant.

As the Court noted in its February 10, 2023, Procedural Order, this Court “need not . . . assume the truth of statements in the complaint that are merely conclusions of law,” *Ojo*, 164 N.H. at 721, and has no obligation to “accept any ‘invective . . . bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like that may be included in the complaint.” (*quoting Aulson*, 83 F.3d at 3). Plaintiff’s claim does not include facts that are sufficient to constitute a cause of action for negligent hiring, training, supervision, or retention as against NFI. Accordingly, Count XI should be dismissed.

**E. Count XII Alleging Negligence must be dismissed because it fails to allege facts which support a cause of action for negligence against NFI.**

Count XII attempts to assert a negligence claim against all the Defendants collectively for the abuse they describe in the Complaint. *See* Addenda at ¶¶41-56. In order to state a claim for negligence against NFI, the Doe Plaintiffs have the obligation to establish that NFI owed them a duty to protect them from the alleged abuse, and breached that duty causing them damages. *Christen v. Fiesta Shows, Inc.*, 170 N.H. 372, 375 (2017); *Berry*, 152 N.H. at 412. Absent a duty, there is no liability. *See Christen*, 170 N.H. at 375. Whether a duty exists is a question of law for this Court. *Id.*

The Doe Plaintiffs approach this Count XII in the same way they did Count VIII, asserting that the duty of supervision and care to protect them from foreseeable harm arises from a kitchen sink full of legal sources. These include the statutory duty to report child abuse, Addenda, ¶¶46, 48, 49, that “Defendants” tolerated systemic abuse towards children in concert with co-defendants, *id.* at ¶48, through conduct that violates unspecified provisions of the New Hampshire Constitution and the Fourteenth and Eighth Amendments of the federal Constitution, *id.* at ¶50; and the constitutional and statutory duty to provide an education regardless of race,

ethnic background, religion, sex or citizenship, *id.* at ¶¶51-55.<sup>7</sup>

NFI has already addressed why none of these sources of law create a duty, fiduciary or otherwise, owed by it to any of the Doe Plaintiffs. *See* Section IV.A., *supra*. Because none of these sources of law create a duty of care for which Plaintiff can seek redress as against NFI, Count XII cannot survive dismissal based on these allegations. *Christen*, 170 N.H. at 375.

The Doe Plaintiffs have not alleged sufficient facts against NFI to support a common law negligence claim against it, either. There is no question that in Count X of each Doe Plaintiff's short form Complaint, the Plaintiffs each allege certain conduct that they claim is abuse, but fail to allege a viable direct negligence claim against NFI as an entity.<sup>8</sup> The New Hampshire Supreme Court has explained that:

“Ordinarily there is no duty to control the conduct of a third person to prevent the third person from causing harm to another person.” 1 J.D. & Barry A. Lindahl, *Modern Tort Law: Liability & Litigation*, §3:12, at 3-31 to 3-32 (2d ed. 2003). “This rule is grounded in the fundamental unfairness of holding private citizens responsible for the unanticipated criminal acts of third parties. *Walls [v. Oxford Manag. Co.]*, 137 N.H. 653, 657 (1993)].

*Christen*, 170 N.H. at 375. *See also Remsburg v. Docusearch*, 149 N.H. 148, 153-54 (2003);

Restatement (Second) of Torts §314. The New Hampshire Supreme Court has only recognized three exceptions to this general rule when: (1) a special duty exists between the parties; (2) special circumstances exist; or (3) the defendant has voluntarily assumed a duty to the plaintiff.

The Doe Plaintiffs use the term “special duty” to refer to alleged obligation of the “Defendants” to supervise and protect them from the alleged abuse, but none of them have alleged sufficient

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<sup>7</sup> None of the Doe Plaintiffs assert that they were placed in isolation or otherwise deprived of an adequate education because NFI was discriminating against them for one of these protected characteristics. *See, generally*, Complaints and Addenda.

<sup>8</sup> Count XII does not assert vicarious liability against NFI for the actions of its employees.

facts to support the existence of a duty by NFI to prevent the specific alleged abuse compelling dismissal of Count XII.

The New Hampshire Supreme Court has found a special duty to exist in only limited circumstances. These include: “common carrier/passenger, innkeeper/guest, landowner/invitee and one who is required by law to take or who voluntarily takes custody of another under circumstances such as to deprive the other of his normal opportunities for protection.” *Berry*, 152 N.H. at 412-13 (quoting *Dupont v. Aavid Thermal Tech.*, 147 N.H. 706, 710 (2002)); Restatement (Second) of Torts §314A. This standard has been applied to identify a special duty of a restaurant owner towards its patrons when the owner failed to protect patrons from a gang of rowdy youths on its premises that posed a threat to patrons, *Iannelli v. Burger King Corp.*, 145 N.H. 190, 194 (2000), and between schools and students because of the compulsory nature of school and the expectation of parents and students of a safe school environment. *Marquay*, 139 N.H. at 717. The Court has expressly declined “to hold that the employment relationship is the type of ‘special’ relationship that gives rise to a duty to protect against the criminal attacks by third parties.” *Dupont*, 147 N.H. at 709-10.

The New Hampshire Supreme Court has never extended this doctrine to a private entity under contract with the State to care for children on behalf of the State. Even if, *arguendo*, it did, the harm the Doe Plaintiffs would still have to allege facts to support that NFI breached their special duty care and that the harm they suffered was a foreseeable result of that breach. This is where the Doe Plaintiffs fail. They once again rely on cookie cutter, generalized “invective . . . bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like” asserted collectively against “Defendants.” *Aulson*, 83 F.3d at 3. This pleading style may be convenient for the Doe Plaintiffs’ counsel given the massive litigation they have chosen to bring on behalf of

hundreds of Does, but it cannot survive the “rigorous scrutiny” this Court must conduct, and NFI deserves if it is to be pulled into this litigation. It is not enough that bad acts allegedly occurred while these Doe Plaintiffs were at NFI. They need to allege why it should have been foreseeable to NFI that staff members interacting with these Does would commit acts of abuse against them. These Plaintiffs should not be allowed to slide by on unspecified allegations of a breach of duty collectively launched at all named Defendants in the various cases. When stripped of bald assertions not supported by facts, and legal conclusions, invectives and hyperbole, this claim fails to assert a sufficient claim for negligence based on a special duty of care against NFI. Accordingly, Count XII must be dismissed as against NFI along with all the other claims asserted against it.

## V. CONCLUSION

The Doe Plaintiffs subject to this Motion to Dismiss were placed at NFI years ago. Their alleged claims arose at the time of these distant placements, and expired before they filed their respective Complaints. *See* Exhibit A. These claims must be dismissed because they are time barred. Even if timely, the claims make serious claims against NFI which fail to stand up to rigorous scrutiny. Instead of supporting their claims with allegations of fact, these 27 Doe Plaintiffs rely on identical conclusory allegations, “invective...bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like.” *Aulson*, 83 F.3d at 3. When stripped of this, the Plaintiffs have failed to plead material facts that entitle them to relief under any of the five theories advanced against NFI. Accordingly, the Court should dismiss NFI from each of the 27 individual cases referenced in the caption.

WHEREFORE, Defendant NFI North, Inc. respectfully requests that the Court:

A. Dismiss all claims against it in the 27 dockets referenced in the caption;

B. Award NFI North its reasonable costs and attorneys' fees reasonably prorated among these dockets; and

C. Grant such other relief as the Court deems just.

Respectfully submitted,

NFI North, Inc.

By its attorneys,

Orr & Reno, PA  
45 S. Main Street  
Box 3550  
Concord, NH 03302-3550  
(603) 223-9150

Dated: May 30, 2023

By: /s/ Lisa Snow Wade  
Lisa Snow Wade (Bar no. 5595)  
[lwade@orr-reno.com](mailto:lwade@orr-reno.com)

**Certificate of Service**

I, Lisa Snow Wade hereby certify that on this 30th day of May 2023 a copy of the foregoing document was served on all parties through the Court's electronic filing system.

/s/ Lisa Snow Wade  
Lisa Snow Wade (Bar no. 5595)

**REDACTED VERSION FOR DOCKET**

STATE OF NEW HAMPSHIRE

ROCKINGHAM, ss.

SUPERIOR COURT

217-2020-CV-00026

David Meehan, et al

v.

N.H. Department of Health and Human Services, et al  
(YDC and YDSU Cases)

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217-2021-CV-00523 <sup>1</sup>	217-2022-CV-00796	218-2023-CV-00333
217-2021-CV-00549	218-2022-CV-01086	218-2023-CV-00364
217-2021-CV-00559	218-2022-CV-01148	218-2023-CV-00368
217-2022-CV-00055	218-2023-CV-00267	218-2023-CV-00377
217-2022-CV-00060	218-2023-CV-00272	218-2023-CV-00400
217-2022-CV-00119	218-2023-CV-00276	218-2023-CV-00409
217-2022-CV-00147	218-2023-CV-00293	218-2023-CV-00411
217-2022-CV-00175	218-2023-CV-00308	218-2023-CV-00426
217-2022-CV-00356	218-2023-CV-00327	218-2023-CV-00437

**EXHIBIT A**

to

**MEMORANDUM OF LAW SUPPORTING  
CONTRACTOR DEFENDANT NFI NORTH, INC.'S  
SECOND MOTION TO DISMISS (May 2023 Cases)**

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<sup>1</sup> The respective Plaintiffs in these Dockets are John Doe #'s 7, 17, 24, 129, 187, 202, 217, 305, 378, 473, 554, 664, 666, 669, 675, 684, 691, 694, 700, 704, 714, 722, 724, 736, 740, and 749, and Jane Doe #65.

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PLAINTIFF	D/O/B <sup>2</sup>	PLACEMENT DATE <sup>3</sup>	COMPLAINT FILING DATE <sup>4</sup>
<b>John Doe #7</b>	██████████	1995-99	Motion to add granted 2/18/22

John Doe #7 alleges in Complaint ¶10 as follows:

“State Defendants also sent Plaintiff to the Midway Shelter where he was sexually abused by a female staff member known to Plaintiff as "Penny." "Penny" performed oral sex on Plaintiff and once forced Plaintiff to have vaginal sex.”

Statute of Limitations Analysis: John Doe #7 turned 18 on ██████████. His claims arose no later than December 31, 1999 because they are all based on alleged conduct that occurred sometime in between 1995 and 1999. *See* Memorandum of Law Supporting NFI North, Inc.’s (Second) Motion to Dismiss (“Memorandum”) at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #7 needed to file his complaint by December 31, 2002 at the latest. That date is more than 2 years after he turned eighteen, and 3 years after the latest his claims could have arisen in 1999. John Doe #7 originally filed a Complaint without naming NFI as a defendant on October 12, 2021. His motion to add NFI as a defendant was granted on February 18, 2022. *See id.* His claims against NFI are untimely, and all his claims against it are time barred, even if they relate back to the original Complaint filing date.

John Doe #7 may claim that RSA 508:4-g extended the limitations period because his claims are based on conduct which qualifies as a “sexual assault” within the definitions in RSA 632-A. RSA 508:4-g was first effective on July 22, 2005. *See* Memorandum at §III.B

<sup>2</sup> All dates of birth are extracted from the Addendum to Short Form Complaint filed by each Plaintiff under seal as part of their service package in their respective dockets.

<sup>3</sup> The Placement Dates for each Plaintiff are extracted from Short Form Complaint Supplement to Master Complaint at ¶6 and/or ¶10.

<sup>4</sup> The Filing Dates are extracted from the Summons served by each Plaintiff.

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The claims alleged by John Doe #7 arose in 1999 at the time of the conduct about which he complains. Accordingly, RSA 508:4-g does not apply to extend Plaintiff’s claims. *See id.* at §III.B.1. Moreover, he is asserting claims against NFI, not the individual who engaged in this alleged conduct. Hence, RSA 508:4-g would not apply to his claims to the extent they are based on this alleged conduct for this additional reason even if RSA 508:4-g was in effect at the time his alleged causes of action arose. *See id.* at §III.B.2

<b>John Doe #17</b>		2003-04	Motion to add ¶ granted 2/18/22
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John Doe #17 alleges in Complaint ¶10 as follows:

“Staff members at Midway Shelter denied food to Plaintiff for three days and prevented him from going to the kitchen. Midway Shelter staff also put Plaintiff in excessive restraints without justification.”

Statute of Limitations Analysis: John Doe #17 turned 18 on [REDACTED]. His claims arose no later than December 31, 2004 because they are all based on alleged conduct that occurred sometime in between 2003 and 2004. *See Memorandum*, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #17 needed to file his complaint by December 31, 2007 at the latest. That date is more than 2 years after he turned eighteen, and 3 years after the latest his claims could have arisen in 2004. John Doe #17 originally filed a Complaint without naming NFI as a defendant on October 17, 2021. His motion to add NFI as a defendant was granted on February 18, 2022. *See id.* His claims against NFI are untimely, and all his claims against it are time barred, even if they relate back to the original Complaint filing date.

<b>John Doe #24</b>		2009 at Midway Shelter	8/19/2022
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John Doe #24 alleges in Complaint ¶10 as follows:

**REDACTED VERSION FOR DOCKET**

“At the Midway Shelter, in approximately 2009, a female staff member named "Heidi" would grope and feel Plaintiff’s body, over and under clothes, dozens of times. She would feel Plaintiff all over his body, including his groin.”

Statute of Limitations Analysis: John Doe #24 turned 18 on [REDACTED]. His claims arose no later than December 31, 2009 because they are all based on alleged conduct that occurred sometime in 2009. *See* Memorandum at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #24 needed to file his complaint by [REDACTED] at the latest. That date is 2 years after he turned eighteen, and more than 3 years after the latest his claims could have arisen in 2009. His complaint filed on August 19, 2022 is untimely and all his claims time barred. *See id.*

John Doe #24 may claim that RSA 508:4-g extended the limitations period. The conduct about which John Doe #24 complains against NFI, however, corresponds to a pat down or strip search for contraband, which is not actionable under RSA 632-A and, therefore, not included within the reach of RSA 508:4-g. *See* Memorandum at §III.B.3. Even if the alleged claims constitute “sexual assault” under the definition in RSA 632-A, which NFI does not concede, RSA 508:4-g does not extend the limitations period for John Doe #24’s claims against NFI because that statute only extends the period to file claims by a sexual assault victim against the individual who perpetrated the assault. *See id.* at §III.B.2. Accordingly, his claims must be dismissed as untimely. *See id.*

<b>John Doe #129</b>	[REDACTED]	1992-93	Motion to add granted 2/18/22

John Doe #129 alleges in Complaint ¶10 as follows:

“State Defendants also sent Plaintiff to to [sic] the Midway Shelter for a period. The staff at Midway would sometimes deprive Plaintiff of food.”

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Statute of Limitations Analysis: John Doe #129 turned 18 on [REDACTED]. His claims arose no later than December 31, 1993 because they are all based on alleged conduct that occurred sometime in between 1992 and 1993. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #129 needed to file his complaint by [REDACTED] at the latest. That date is 2 years after he turned eighteen, and more than 3 years after the latest his claims could have arisen in 1993. John Doe #129 originally filed a Complaint without naming NFI as a defendant on October 17, 2021. His motion to add NFI as a defendant was granted on February 18, 2022. *See id.* His claims against NFI are untimely, and all his claims against it are time barred, even if they relate back to the original Complaint filing date. *See id.*

<b>John Doe #187</b>	[REDACTED]	2005	Motion to add granted 3/3/23
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John Doe #187 alleges in Complaint ¶10 as follows:

“In or around 2005, State Defendants transferred Plaintiff to the Jefferson Shelter, operated by NFI. While in placement at the Jefferson Shelter, Plaintiff broke his hand. Staff made Plaintiff wait over 24 hours before bringing him to the hospital for medical attention. When he was examined at the hospital, it was determined that surgery was required.”

Statute of Limitations Analysis: John Doe #187 turned 18 on [REDACTED]. His claims arose no later than December 31, 2005 because they are all based on alleged conduct that occurred sometime in 2005. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #187 needed to file his complaint by December 31, 2008 at the latest. That date is more than 2 years after he turned eighteen, and 3 years after the latest his claims could have arisen in 2005. John Doe #187 originally filed a Complaint without naming NFI as a defendant on January 16, 2022. His motion to add NFI as a

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defendant was granted on March 3, 2023. *See id.* His claims against NFI are untimely, and all his claims against it are time barred, even if they relate back to the original Complaint filing date. *See id.*

<b>John Doe #202</b>	██████████	Midway (September to October 1994, November 1996-January 1997, and August to September 1997)	Motion to add granted 2/18/22
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John Doe #202 alleges in Complaint ¶10 as follows:

“From 1994 through 1999, State Defendants placed Plaintiff for detention at various privately operated facilities, including Odyssey House (in or around August to September 1994), NFI (Midway Shelter, in or around September to October 1994, November 1996 to January 1997, and August to September 1997), and Spaulding Youth Center (November 1994 to January 1996). ... At NFI North, including at its locations in Jefferson, New Hampshire, and Manchester, New Hampshire, staff at the private facility beat Plaintiff so severely on multiple occasions that he ran away.”

Statute of Limitations Analysis: John Doe #202 turned 18 on ██████████. His claims arose no later than September 30, 1997 because they are all based on alleged conduct that occurred sometime between September 1994 and September 1997. *See Memorandum*, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #202 needed to file his complaint by ██████████ at the latest. That date is 2 years after he turned eighteen, and more than 3 years after the latest his claims could have arisen in 2007. John Doe #202 originally filed a Complaint without naming NFI as a defendant on January 17, 2022. His motion to add NFI as a defendant was granted on February 18, 2022. *See id.* His claims against NFI are untimely, and all his claims against it are time barred, even if they relate back to the original Complaint filing date. *See id.*

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<b>John Doe #217</b>	[REDACTED]	Jefferson Shelter and Davenport School 2002-04	Motion to add granted 2/18/22
<p>John Doe #217 alleges in Complaint ¶10 as follows:</p> <p style="padding-left: 40px;">“State Defendants placed Plaintiff at the Davenport School, a residential facility operated by NFI in Jefferson, New Hampshire. While there, a staff member known to Plaintiff as “Jen Richardson” sexually abused Plaintiff on multiple occasions. Richardson began grooming Plaintiff by leaving flirtatious notes and letters for him. Eventually, those letters turned sexually explicit. Richardson progressed to fondling Plaintiff’s genitals, performing oral sex on him, and, ultimately, vaginally raping him. Richardson extended special privileges to Plaintiff while subjecting him to this abuse, e.g., by bringing him CDs. The director of the Davenport School learned of the abuse, and Richardson was fired as a result. The director, however, told Plaintiff not to tell any of the other residents about what had happened. Shortly thereafter, Plaintiff was discharged from the Davenport School; on information and belief, this occurred as a result of Richardson’s abuse.”</p>			
<p><u>Statute of Limitations Analysis:</u> John Doe #217 turned 18 on [REDACTED]. His claims arose no later than December 31, 2004 because they are all based on alleged conduct that occurred sometime in between 2002 and 2004. <i>See</i> Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #217 needed to file his complaint by December 31, 2007 at the latest. That date is more than 2 years after he turned eighteen, and 3 years after the latest his claims could have arisen in 2004. John Doe #217 originally filed a Complaint without naming NFI as a defendant on January 16, 2022. His motion to add NFI as a defendant was granted on February 18, 2022. <i>See id.</i> His claims against NFI are untimely, and all his claims against it are time barred, even if they relate back to the original Complaint filing date.</p> <p>NFI assumes for purposes of this motion that the alleged conduct about which John Doe #217 complains fits the definition of sexual assault under RSA 632-A. While RSA 508:4-g extends the limitations period for victims of sexual assault, that statute was first effective on July 22, 2005. <i>See</i> Memorandum at §III.B.1. The claims alleged by John Doe #217 arose prior</p>			

**REDACTED VERSION FOR DOCKET**

to the effective date of even this earliest version of RSA 508:4-g. Accordingly, RSA 508:4-g does not apply to extend the limitations period for the filing of Plaintiff's alleged claims based on the alleged sexual assaults. *See id.* at §III.B.1. Moreover, he is asserting claims against NFI, not the individual who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct for this additional reason. *See id.* at §III.B.2.

<b>John Doe #305</b>	██████████	2007	Motion to add granted 2/18/22
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John Doe #305 alleges in Complaint ¶10 as follows:

“State Defendants sent Plaintiff to Midway Shelter where a staff member known to Plaintiff as "Buda" manually stimulated Plaintiff's penis on multiple occasions.”

Statute of Limitations Analysis: John Doe #305 turned 18 on ██████████. His claims arose no later than December 31, 2007 because they are all based on alleged conduct that occurred sometime in 2007. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #305 needed to file his complaint by December 31, 2010 at the latest. That date is more than 2 years after he turned eighteen, and 3 years after the latest his claims could have arisen in 2007. John Doe #305 originally filed a Complaint without naming NFI as a defendant on January 18, 2022. His motion to add NFI as a defendant was granted on February 18, 2022. *See id.* His claims against NFI are untimely, and all his claims against it are time barred, even if they relate back to the original Complaint filing date.

NFI assumes for purposes of this motion that the alleged conduct about which John Doe #305 complains fits the definition of sexual assault under RSA 632-A. While the conduct

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about which he complains arose during the time that RSA 508:4-g provided sexual assault victims to the age of 25 to file claims, that statute only provided this extended limitations period for claims by the sexual assault victim against the individual who perpetrated the assault. *See id.* at §III.B.2. Accordingly, his claims filing deadline as against NFI is not extended by this statute and must be dismissed as untimely under the analysis above. *See id.* Even if RSA 508:4-g could apply to extend John Doe #305’s limitations period, he turned 25 on [REDACTED]. Thus, his complaint filed in January 2022 was still filed too late even giving him the benefit of the extended limitations period. *See id.* at §III.B.4.

<b>John Doe #378</b>	[REDACTED]	Midway 1994-98	Motion to add granted 2/18/22
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John Doe #378 alleges in Complaint ¶10 as follows:

“State Defendants also detained Plaintiff at Midway Shelter in Manchester, New Hampshire. During his time at Midway Shelter, staff members used excessive force in restraining Plaintiff and locked him in isolation or solitary confinement without justification, causing him further trauma and denying him of his statutorily guaranteed rights.”

Statute of Limitations Analysis: John Doe #378 turned 18 on [REDACTED]. His claims arose no later than December 31, 1998 because they are all based on alleged conduct that occurred sometime in the period between 1994 and 1998. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #378 needed to file his complaint by December 31, 2001 at the latest. That date is more than 2 years after he turned eighteen, and 3 years after the latest his claims could have arisen in 1998. John Doe #378 originally filed a Complaint without naming NFI as a defendant on January 19, 2022. His motion to add NFI as a defendant was granted on February 18, 2022. *See id.* His claims

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against NFI are untimely, and all his claims against it are time barred, even if they relate back to the original Complaint filing date. *See id.*

**John Doe #473**

██████████

Midway 2003-04

Motion to add granted 2/18/22

John Doe #473 alleges in Complaint ¶10 as follows:

“State Defendants held Plaintiff at Midway Shelter in or around 2003 and/or 2004, where staff subjected him to multiple excessive strip searches that were performed without justification and unreasonably invaded his privacy. Staff members also beat Plaintiff while restraining him on multiple occasions. These staff members included an individual known to Plaintiff as “Rick,” and as a result of these assaults, Plaintiff sustained bruising to his ribs, a strained neck, bruises on his face, rug burn, a black eye, and cuts to his lips. Additionally, Midway Shelter staff locked Plaintiff in isolation or solitary confinement for days at a time on several occasions without justification. On at least one occasion, staff locked Plaintiff in isolation or solitary confinement for at least a week. During these periods of isolation or solitary confinement, Plaintiff suffered emotional trauma and was denied access to statutorily guaranteed rights.”

Statute of Limitations Analysis: John Doe #473 turned 18 on ██████████. His claims arose no later than December 31, 2004 because they are all based on alleged conduct that occurred sometime in the period between 2003 and 2004. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #473 needed to file his complaint by ██████████ at the latest. That date is 2 years after he turned eighteen, and more than 3 years after the latest his claims could have arisen in 2004. John Doe #473 originally filed a Complaint without naming NFI as a defendant on July 18, 2022. His motion to add NFI as a defendant was granted on February 18, 2022. *See id.* His claims against NFI are untimely, and all his claims against it are time barred, even if they relate back to the original Complaint filing date. *See id.*

John Doe #473 may claim that RSA 508:4-g extends the limitations period for the portion of his claims based on alleged strip searches. While RSA 508:4-g currently applies to persons

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who allege that they are victims of sexual assault as defined under RSA 632-A, that statute does not apply to John Doe #473’s claims because those claims arose at the latest by December 31, 2004 prior to the effective date of the statute. Accordingly, RSA 508:4-g would not apply to extend Plaintiff’s claims. *See id.* at §III.B.1. Additionally, a “strip search” does not meet the definition of an offense that falls within the reach of RSA 508:4-g. Hence, RSA 508:4-g does not apply to John Doe #473’s claims for this additional reason. *See id.* at §III.B.3. Finally, he is asserting claims against NFI, not the individuals who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct for this additional reason. *See id.* at §III.B.2.

<b>John Doe #554</b>	██████████	Jefferson Shelter 2002-03 for 1 month	Motion to add granted 3/3/23
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John Doe #554 alleges in Complaint ¶¶8 and 10 as follows:

“State Defendants first placed Plaintiff at a private placement called Jefferson Shelter in or about 2002 and/or 2003.” *Id.* at ¶8. “In or around 2002 and/or 2003, State Defendants placed Plaintiff at Jefferson Shelter (NFI) for approximately one month. Staff members at Jefferson Shelter put Plaintiff in solitary confinement on at least one occasion for a period of approximately three to four days, resulting in emotional trauma as well as the denial of his statutorily guaranteed rights, including his right to an education.” *Id.* at ¶10.

Statute of Limitations Analysis: John Doe #554 turned 18 on ██████████. His claims arose no later than December 31, 2003 because they are all based on alleged conduct that occurred sometime in the period between 2002 and 2003. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #554 needed to file his complaint by ██████████ at the latest. That date is 2 years after he turned eighteen, and more than 3 years after the latest his claims could have arisen in 2003. John Doe #554 originally filed a Complaint without naming NFI as a defendant on December 16, 2022. His

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motion to add NFI as a defendant was granted on February 18, 2022. *See id.* His claims against NFI are untimely, and all his claims against it are time barred, even if they relate back to the original Complaint filing date. *See id.*

<b>John Doe #664</b>	██████████	2006-07	2/27/23
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John Doe #664 alleges in Complaint ¶10 as follows:

“In or around 2006 and 2007, State Defendants sent Plaintiff to Midway Shelter on at least two separate occasions. While Plaintiff was detained there, staff subjected him to multiple excessive strip searches that were performed without justification and unreasonably invaded his privacy. Staff also locked Plaintiff in isolation or solitary confinement. This occurred on approximately four occasions for several days each time, and it was unjustified on each occasion. During these periods of isolation, Plaintiff suffered emotional trauma and was denied access to statutorily guaranteed rights, including the right to an education..”

Statute of Limitations Analysis: John Doe #664 turned 18 on ██████████. His claims arose no later than December 31, 2007 because they are all based on alleged conduct that occurred sometime in the time period between 2006 and 2007. *See Memorandum*, at §III.A.1.

Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #664 needed to file his complaint by December 31, 2010. That date is more than 2 years after he turned eighteen, and 3 years after the latest his claims could have arisen in 2007. His complaint filed on February 27, 2023 is untimely and all his claims time barred. *See id.*

John Doe #664 may claim that RSA 508:4-g extends the limitations period for the portion of his claims based on alleged strip searches. While John Doe #664’s claims arose during the time that RSA 508:4-g provided sexual assault victims to the age of 25 to file claims, that statute only provided this extended limitations period for the claims of victims of crimes that violated RSA 632-A, and as against the individual who perpetrated the assault.

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*See id.* at §III.B.2. The alleged unjustified strip searches about which he complains do not meet the definition of an offense that falls within the reach of RSA 508:4-g. *See id.* at §III.B.3. Moreover, he is asserting claims against NFI, not the individuals who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct. *See id.* at §III.B.2. Even if RSA 508:4-g could apply to extend John Doe #664’s limitations period, he turned 25 on [REDACTED]. Thus, his complaint filed on February 27, 2022 was still filed too late even giving him the benefit of the extended limitations period. *See id.* at §III.B.4.

<b>John Doe #666</b>	[REDACTED]	Sometime in 2005-06 at Midway Shelter	2/28/23

John Doe #666 alleges in Complaint ¶10 as follows:

“State Defendants sent Plaintiff to Midway Shelter where staff members dragged, grabbed, pushed, and slammed Plaintiff against walls on multiple occasions, as a result of which he sustained injuries, including bloody noses. Midway staff members made verbally abusive remarks towards Plaintiff that caused severe emotional damage to his mental health. For example, a staff member who was bald and wore glasses called Plaintiff and other residents "idiots" and "waste[s] of life." Also, a staff member gave Plaintiff’s roommate markers to huff, and when Plaintiff asked what would happen if the roommate got sick from the markers, the staff member replied, “If he dies, we will deal with it tomorrow.” On multiple occasions, a female staff member, who was overweight and had curly hair, took Plaintiff and other residents on outings in her SUV to drink beer, smoke marijuana, and take prescription drugs, including Percocet and OxyContin. Midway staff locked Plaintiff in isolation or solitary confinement for days at a time without sufficient justification, during which time Plaintiff suffered emotional trauma and was denied access to statutorily guaranteed rights.”

Statute of Limitations Analysis: John Doe #666 turned 18 on [REDACTED]. His claims arose no later than December 31, 2006 because they are all based on alleged conduct that occurred sometime in the time period between 2005-06, at which point in time he would already have

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been over the age of 18. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #666 needed to file his complaint by December 31, 2009 at the latest. That date is more than 2 years after he turned eighteen, and 3 years after the latest his claims could have arisen in 2007. His complaint filed on July 14, 2022 is untimely and all his claims time barred. *See id.*

<b>John Doe #669</b>	██████████	Davenport School – October 2000 for 10 months	2/28/23

John Doe #669 alleges in Complaint ¶10 as follows:

“In or around October 2000, State Defendants sent Plaintiff to Davenport School. Plaintiff was detained there for approximately 10 months. The staff at Davenport School constantly threatened to send Plaintiff to YDC and forced Plaintiff to take medications without medical necessity. The medications would sedate Plaintiff and the other residents, which made it easier for the staff to supervise them. Staff also put Plaintiff in isolation or solitary confinement for days or weeks at a time without justification. During these periods of isolation, Plaintiff suffered emotional trauma and was denied access to statutorily guaranteed rights, including the right to an education.”

Statute of Limitations Analysis: John Doe #669 turned 18 on ██████████. His claims arose no later than August 31, 2001 because they are all based on alleged conduct that occurred sometime in the 10-month period starting October 2000. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #669 needed to file his complaint by ██████████ at the latest. That date is 2 years after he turned eighteen, and more than 3 years after the latest his claims could have arisen in 2001. His complaint filed on February 28, 2023 is untimely and all his claims time barred. *See id.*

<b>John Doe #675</b>	██████████	Midway Shelter (4 times between 2010 and 2011)	3/1/23

John Doe #675 alleges Complaint ¶¶8 and 10 as follows:

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“When Plaintiff was approximately 13 or 14 years old, State Defendants sent him to Midway.” *Id.* at ¶8

“State Defendants sent Plaintiff to Midway on approximately four separate occasions, the first one being in or around 2010 or 2011. During one detention at Midway, a staff member subjected Plaintiff to unjustifiable physical abuse. The staff member grabbed Plaintiff by the chest, shoved him, forced him to the ground, and pressed an elbow into Plaintiff’s chest. Plaintiff suffers from asthma and this physical abuse caused him to be unable to breathe. The staff member ignored Plaintiff’s pleas for him to stop the abuse, including Plaintiff’s efforts to communicate that he has asthma and that his arm was broken and the staff member was badly hurting him.” *Id.* at ¶10

Statute of Limitations Analysis: John Doe #675 turned 18 on [REDACTED]. His claims arose no later than December 31, 2011 because they are all based on alleged conduct that occurred sometime in the time period between 2010 and 11 when he was 13-14 years old. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #675 needed to file his complaint by no later than [REDACTED]. The three-year limitations period under RSA 508:4, I would have expired by December 31, 2014, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 1, 2023 is untimely and all his claims time barred. *See id.*

<b>John Doe #684</b>	[REDACTED]	1999 for 1 month at Midway; later in 1999 Jefferson	3/6/23

John Doe #684 alleges in Complaint ¶10 as follows:

“After Plaintiff had suffered years of abuse in his parents’ home, the State removed him from their custody and State Defendants detained him at Midway Shelter for approximately one month in 1999. While at Midway, youth facility staff beat Plaintiff on at least two occasions and subjected him to excessive restraints at least two to three times per day. In addition, youth facility staff at Midway Shelter strip-searched Plaintiff on one occasion. On another occasion, youth facility staff at Midway Shelter locked Plaintiff in isolation without justification for an entire week, during which time Plaintiff was denied his statutorily guaranteed rights, including his right to an education. . . . [description of 1 week stay at Eckard during 1999]. State Defendants

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then sent Plaintiff to NFI North in Jefferson that same year, where Plaintiff was similarly locked in isolation for most of his stay, specifically for two-day periods on at least four occasions.”

Statute of Limitations Analysis: John Doe #684 turned 18 on [REDACTED]. His claims arose no later than December 31, 1999 because they are all based on alleged conduct that occurred sometime in 1999. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #684 needed to file his complaint by no later than [REDACTED]. The three-year limitations period under RSA 508:4, I would have expired by December 31, 2002, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 6, 2023 is untimely and all his claims time barred. *See id.*

John Doe #684 may claim that RSA 508:4-g extends the limitations period for the portion of his claims based on alleged strip searches. While RSA 508:4-g extends the limitations period for victims of sexual assault, that statute was first effective on July 22, 2005. *See* Memorandum at §III.B.1. The claims alleged by John Doe #684 arose prior to the effective date of even this earliest version of RSA 508:4-g. Accordingly, RSA 508:4-g does not apply to extend Plaintiff’s claims. *See id.* at §III.B.1. Further, the alleged unjustified strip searches about which he complains do not meet the definition of an offense that falls within the reach of RSA 508:4-g. *See id.* at §III.B.3. Moreover, he is asserting claims against NFI, not the individuals who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct. *See id.* at §III.B.2.

<b>John Doe #691</b>	[REDACTED]	1994 for Midway Shelter 1 month and	3/9/23

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		NFI Jefferson for 1 week	
<p>John Doe #691 alleges in Complaint ¶10 as follows:</p> <p>“In or around 1994, State Defendants sent Plaintiff to Midway Shelter for approximately one month. While Plaintiff was detained there, he was sexually assaulted by a staff member known to him as “Trish.” Trish made Plaintiff strip naked and she forcibly performed oral sex on him. Trish told Plaintiff that if he did not submit to the sexual abuse, he would be in trouble and get kicked out of YDSU. Then, Trish made Plaintiff turn around and she digitally penetrated his anus while masturbating his penis. When Plaintiff bled from his anus, Trish said, “Oh, did mommy hurt you? I’m sorry.” Trish threatened Plaintiff that he would never go home or see his family ever again if he reported the sexual abuse. Several days later, Trish entered Plaintiff’s room and subjected him to additional sexual abuse, including licking his anus and performing oral sex on him. Other Midway staff members subjected Plaintiff to unjustifiable and excessive strip searches on at least two occasions. Also, during his entire detainment at Midway Shelter, State Defendants deprived Plaintiff of the right to an education. Also in or around 1994, State Defendants sent Plaintiff to NFI Jefferson for approximately one week. Staff at NFI Jefferson unreasonably strip-searched Plaintiff on at least two occasions, excessively invading his privacy without justification. During Plaintiff’s entire detainment at NFI Jefferson, the staff kept him locked in solitary confinement or isolation. During this extended period of time, Plaintiff suffered emotional trauma and was denied access to statutorily guaranteed rights, including the right to an education..”</p>			
<p><u>Statute of Limitations Analysis:</u> John Doe #691 turned 18 on [REDACTED]. His claims arose no later than December 31, 1994 because they are all based on alleged conduct that occurred sometime in that year. <i>See</i> Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #691 needed to file his complaint by [REDACTED] at the latest. The three-year limitations period under RSA 508:4, I would have expired by December 31, 1997, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 9, 2023 is untimely and all his claims time barred. <i>See id.</i></p> <p>NFI assumes for purposes of this motion that the alleged conduct attributed to a staff member named “Trish” about which John Doe #691 complains fits the definition of sexual</p>			

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assault under RSA 632-A which is incorporated into RSA 508:4-g. While RSA 508:4-g extends the limitations period for victims of sexual assault, that statute was first effective on July 22, 2005. *See* Memorandum at §III.B.1. The claims alleged by John Doe #691 arose prior to the effective date of even this earliest version of RSA 508:4-g. Accordingly, RSA 508:4-g does not apply to extend Plaintiff’s claims. *See id.* at §III.B.1. Moreover, he is asserting claims against NFI, not the individual who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct for this additional reason. *See id.* at §III.B.2.

His complaints related to purported unreasonable strip searches would not fall with the class of offenses that trigger the application of RSA 508:4-g. *See id.* at §III.B.3. Thus, the portion of his claims based on the alleged occurrence of such strip searches would not have the benefit of RSA 508:4-g even if the conduct had occurred after the statute’s effective date. *See id.* and §III.B.1.

<b>John Doe #694</b>	██████████	2005	3/10/23

John Doe #694 alleges in Complaint ¶10 as follows:

“At the age of 12, Plaintiff started drinking alcohol and smoking marijuana. He fell in with the wrong crowd and eventually was arrested for possession of marijuana and placed on probation. He failed to check in with probation and State Defendants sent him to the Midway Shelter for one month. Midway Shelter staff members subjected Plaintiff to strip searches without justification on at least three occasions. Staff members also put him in isolation or solitary confinement for five days.”

Statute of Limitations Analysis: John Doe #694 turned 18 on ██████████. His claims arose no later than December 31, 2005 because they are all based on alleged conduct that occurred sometime in 2005. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #694 needed to file his complaint by no later than

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██████████. The three-year limitations period under RSA 508:4, I would have expired by December 31, 2008, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 10, 2023 is untimely and all his claims time barred. *See id.*

John Doe #694 may claim that RSA 508:4-g extends the limitations period for the portion of his claims based on alleged strip searches. While John Doe #694’s claims may have arisen during the time that RSA 508:4-g provided sexual assault victims to the age of 25 to file claims, that statute only provided this extended limitations period for claims for victims of crimes that violated RSA 632-A, and as against the individual who perpetrated the assault. *See id.* at §III.B.2. The alleged unjustified strip searches about which he complains do not meet the definition of an offense that falls within the reach of RSA 508:4-g. *See id.* at §III.B.3. Moreover, he is asserting claims against NFI, not the individuals who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct. *See id.* at §III.B.2. Even if RSA 508:4-g could apply to extend John Doe #664’s limitations period, he turned 25 on ██████████. Thus, his complaint filed on March 10, 2023 was still filed too late even giving him the benefit of the extended limitations period. *See id.* at §III.B.4.

<b>John Doe #700</b>	██████████	One month during 2004-05 at Midway Shelter	3/16/23

John Doe #700 alleges in Complaint ¶10 as follows:

“In or about 2004 to 2005, State Defendants also detained Plaintiff at Midway Shelter for a period of approximately one month during which time staff members subjected Plaintiff to an unnecessary strip search on at least one occasion.”

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Statute of Limitations Analysis: John Doe #700 turned 18 on [REDACTED]. His claims arose no later than December 31, 2005 because they are all based on alleged conduct that occurred sometime in the 2004-05 time period. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #700 needed to file his complaint by no later than [REDACTED]. The three-year limitations period under RSA 508:4, I would have expired by December 31, 2008 while he was still a minor, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 16, 2023 is untimely and all his claims time barred. *See id.*

John Doe #700 may claim that RSA 508:4-g extends the limitations period for the portion of his claims based on alleged strip searches. While John Doe #700's claims may have arisen during the time that RSA 508:4-g provided sexual assault victims to the age of 25 to file claims (if the alleged conduct occurred after July 22, 2005), that statute only provided this extended limitations period for claims for victims of crimes that violated RSA 632-A, and as against the individual who perpetrated the assault. *See id.* at §III.B.2. The alleged unjustified strip search about which he complains does not meet the definition of an offense that falls within the reach of RSA 508:4-g. *See id.* at §III.B.3. Moreover, he is asserting claims against NFI, not the individuals who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct. *See id.* at §III.B.2. Even if RSA 508:4-g could apply to extend John Doe #700's limitations period, he turned 25 on [REDACTED]. Thus, his complaint filed on March 16, 2023 was still filed too late even giving him the benefit of the extended limitations period. *See id.* at §III.B.4.

<b>John Doe #704</b>	[REDACTED]	2007-08 placed at Midway and 2008	3/16/23

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		placed at Jefferson Shelter	
<p>John Doe #704 alleges in Complaint ¶10 as follows:</p> <p>“When State Defendants took custody of Plaintiff initially, the State sent him to Midway Shelter in or about 2007 or 2008 for approximately one month. During that time, staff members deprived Plaintiff of his right to an education by failing to send him to school. Staff members also failed to protect Plaintiff from being physically beaten by other residents at least two times per week. In or about 2008, State Defendants sent Plaintiff to Jefferson Shelter for approximately two months where staff members failed to protect Plaintiff from sexual and physical abuse by other residents. One male resident grabbed Plaintiff’s buttocks and genitals over his clothing on a weekly basis. Throughout his detention at Jefferson Shelter, another female resident would fondle Plaintiff’s genitals over his clothing on a weekly basis in the recreation room. Another resident burned Plaintiff’s skin with a hot pen at least once per week, causing Plaintiff to suffer injuries on his wrist and arms that resulted in scars which remain to this day.”</p>			
<p><u>Statute of Limitations Analysis:</u> John Doe #704 turned 18 on [REDACTED]. His claims arose no later than December 31, 2008 because they are all based on alleged conduct that occurred sometime in 2007 or 2008. <i>See</i> Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #704 needed to file his complaint by no later than [REDACTED]. The three-year limitations period under RSA 508:4, I would have expired by December 31, 2011, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 16, 2023 is untimely and all his claims time barred. <i>See id.</i></p> <p>NFI assumes for purposes of this motion that some of the alleged conduct about which John Doe #704 complains fits the definition of sexual assault under RSA 632-A, although all of it allegedly was committed by third parties who were other residents of the NFI facility and not employees or agents of NFI. While the conduct about which he complains arose during the time that RSA 508:4-g provided sexual assault victims to the age of 25 to file claims, that</p>			

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statute only provided this extended limitations period for claims by the sexual assault victim against the individual who perpetrated the assault. *See id.* at §III.B.2. Accordingly, his claims as against NFI are not extended by this statute and must be dismissed as untimely under the analysis above. *See id.* Even if RSA 508:4-g could apply to extend John Doe #704’s limitations period for claims against NFI even though related to the alleged sexual assaults at the hands of others, he turned 25 on [REDACTED]. Thus, his complaint filed on March 16, 2023 was still filed too late even giving him the benefit of the extended limitations period. *See id.* at §III.B.4.

<b>John Doe #714</b>	[REDACTED]	2006 at NFI Jefferson	3/20/23

John Doe #586 alleges in Complaint ¶¶ 8 and 10 as follows:

“State Defendants initially sent Plaintiff to NFI Jefferson in or around 2006” *Id.* at ¶8.

“State Defendants held Plaintiff at NFI Jefferson for approximately 45 days. On at least two occasions, staff at NFI Jefferson subjected Plaintiff to excessive strip searches that were performed without justification and unreasonably invaded his privacy. On at least two other occasions, two to three staff members beat Plaintiff while physically restraining him.” *Id.* at ¶10.

Statute of Limitations Analysis: John Doe #714 turned 18 on [REDACTED]. His claims arose no later than December 31, 2006 because they are all based on alleged conduct that occurred sometime in 2006. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #714 needed to file his complaint by no later than [REDACTED]. The three-year limitations period under RSA 508:4, I would have expired by December 31, 1997 while he was still a minor, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 20, 2023 is untimely and all his claims time barred. *See id.*

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John Doe #714 may claim that RSA 508:4-g extends the limitations period for the portion of his claims based on alleged strip searches. While John Doe #714’s claims may have arisen during the time that RSA 508:4-g provided sexual assault victims to the age of 25 to file claims, that statute only provided this extended limitations period to claims for victims of crimes that violated RSA 632-A, and as against the individual who perpetrated the assault. *See id.* at §III.B.2. The alleged unjustified strip search about which he complains does not meet the definition of an offense that falls within the reach of RSA 508:4-g. *See id.* at §III.B.3. Moreover, he is asserting claims against NFI, not the individuals who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct. *See id.* at §III.B.2. Even if RSA 508:4-g could apply to extend John Doe #714’s limitations period, he turned 25 on [REDACTED]. Thus, his complaint filed on March 20, 2023 was still filed too late even giving him the benefit of the extended limitations period. *See id.* at §III.B.4.

<b>John Doe #722</b>	[REDACTED]	Sometime in 2010-11 at the Midway Shelter	3/23/23

John Doe #722 alleges in Complaint ¶¶8 and 10 as follows:

“Plaintiff was taken into State custody and, from 2010 to 2012, he was detained at Midway, Orion House, Mount Prospect Academy, and then Webster House.” *Id.* at ¶8. “State Defendants placed Plaintiff at Midway for approximately one month in or about 2010 or 2011. At Midway, Plaintiff was locked in ‘out-of-community confinement’ twice for three days each time, causing Plaintiff emotional trauma.” *Id.* at ¶10

Statute of Limitations Analysis: John Doe #722 turned 18 on [REDACTED]. His claims arose no later than December 31, 2011 because they are all based on alleged conduct that occurred sometime in 2010-2011. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #722 needed to file his complaint by no

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later than [REDACTED]. The three-year limitations period under RSA 508:4, I would have expired by December 31, 2014, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 23, 2023 is untimely and all his claims time barred. *See id.*

<b>John Doe #724</b>	[REDACTED]	November 1997	3/22/23

John Doe #724 alleges in Complaint ¶10 as follows:

“In or about November of 1997, before State Defendants placed Plaintiff at YDSU, Plaintiff was sent to the NFI North, Midway Shelter for a period of 60 days. While committed to the Midway Shelter, Plaintiff experienced extreme and harsh punishments like “Off-Mission.” During the times when Midway Shelter staff placed Plaintiff in “Off Mission,” Plaintiff would not be permitted to speak to anyone and was forced to stay seated in a chair at all times during the day. Plaintiff would be subjected to this punishment for the smallest of infractions. While placed at Midway Shelter, State Defendants did not provide Plaintiff with the opportunity to attend school.”

Statute of Limitations Analysis: John Doe #724 turned 18 on [REDACTED]. His claims arose no later than January 29, 1998 because they are all based on alleged conduct that occurred sometime during an alleged 60-day stay at NFI starting in November 1997. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #724 needed to file his complaint by no later than [REDACTED]. The three-year limitations period under RSA 508:4, I would have expired by January 29, 2001 while he was still a minor, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 22, 2023 is untimely and all his claims time barred. *See id.*

<b>John Doe #736</b>	[REDACTED]	1993 or 94 at Jefferson Shelter	3/23/23

John Doe #736 alleges in Complaint ¶10 as follows:

“In or around 1993 or 1994, State Defendants sent Plaintiff to NFI Jefferson for approximately six months. Staff members at NFI Jefferson subjected Plaintiff to multiple

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excessive strip searches that were performed without justification and unreasonably invaded his privacy. There were also multiple staff members who, at least once a month, would hold Plaintiff down and beat him. These physical assaults left Plaintiff with bloody noses, black eyes, scrapes, and bruising throughout his body. NFI Jefferson staff locked Plaintiff in isolation or solitary confinement for days or weeks at a time without justification. At one point, this included up to three weeks in isolation. During these periods of isolation, Plaintiff suffered emotional trauma and was denied access to statutorily guaranteed rights, including the right to an education. The staff would occasionally deprive Plaintiff of meals while he was in isolation, and he was forced to urinate or defecate on the floor of his cell on dozens of occasions when he was deprived the use of a restroom.”

Statute of Limitations Analysis: John Doe #736 turned 18 on [REDACTED]. His claims arose no later than June 30, 1995 because they are all based on alleged conduct that occurred sometime during an alleged 6-month stay that began sometime in 1993 or 1994. *See* Memorandum of Law Supporting NFI North’s Motion to Dismiss, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #736 needed to file his complaint by no later than [REDACTED]. The three-year limitations period under RSA 508:4, I would have expired by June 30, 1998 while he was still a minor, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 23, 2023 is untimely and all his claims time barred. *See id.*

John Doe #736 may claim that RSA 508:4-g extends the limitations period for the portion of his claims based on alleged strip searches. While RSA 508:4-g extends the limitations period for victims of sexual assault, that statute was first effective on July 22, 2005. *See* Memorandum at §III.B.1. The claims alleged by John Doe #736 arose prior to the effective date of even this earliest version of RSA 508:4-g. Accordingly, RSA 508:4-g does not apply to extend Plaintiff’s claims. *See id.* at §III.B.1. Moreover, even when applicable that statute only provided this extended limitations period to claims for victims of crimes that violated RSA 632-A, and as against the individual who perpetrated the assault. *See id.* at

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§III.B.2. The alleged unjustified strip search about which John Doe #736 complains does not meet the definition of an offense that falls within the reach of RSA 508:4-g. *See id.* at

§III.B.3. Further, he is asserting claims against NFI, not the individuals who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct. *See id.* at §III.B.2.

<b>John Doe #740</b>		2005	3/27/23
John Doe #740 alleges in Complaint ¶10 as follows:  “In or about 2005, State Defendants placed Plaintiff at Midway Shelter for approximately three months. Midway Shelter staff subjected Plaintiff to an unjustified and unnecessary strip search that unreasonably invaded his privacy. While at Midway Shelter, State Defendants did not provide any educational opportunities for Plaintiff.”			
<u>Statute of Limitations Analysis:</u> John Doe #740 turned 18 on [REDACTED]. His claims arose no later than December 31, 2005 because they are all based on alleged conduct that occurred sometime during 2005. <i>See</i> Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #740 needed to file his complaint by no later than [REDACTED]. The three-year limitations period under RSA 508:4, I would have expired by December 31, 2008, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on March 27, 2023 is untimely and all his claims time barred. <i>See id.</i>  John Doe #740 may claim that RSA 508:4-g extends the limitations period for the portion of his claims based on alleged strip searches. While John Doe #740’s claims may have arisen during the time that RSA 508:4-g provided sexual assault victims to the age of 25 to file claims (if the alleged conduct occurred after July 22, 2005), that statute only provided this extended limitations period for claims for victims of crimes that violated RSA 632-A, and as			

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against the individual who perpetrated the assault. *See id.* at §III.B.2. The alleged unjustified strip search about which he complains does not meet the definition of an offense that falls within the reach of RSA 508:4-g. *See id.* at §III.B.3. Moreover, he is asserting claims against NFI, not the individuals who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct. *See id.* at §III.B.2. Even if RSA 508:4-g could apply to extend John Doe #740’s limitations period, he turned 25 on [REDACTED]. Thus, his complaint filed on March 27, 2023 was still filed too late even giving him the benefit of the extended limitations period. *See id.* at §III.B.4

<b>John Doe #749</b>	[REDACTED]	1998 or 99 at Midway Shelter for two weeks, and 1999 at Jefferson Shelter for 3-4 weeks	3/28/23

John Doe #749 alleges in Complaint ¶10 as follows:

“In or around 1998 or 1999, State Defendants sent Plaintiff to Midway Shelter for approximately two weeks. State Defendants next sent Plaintiff to PACE for approximately two weeks in or around 1999, during which time he was denied his right to an education. State Defendants subsequently detained Plaintiff at NFI Jefferson for approximately three to four weeks. State Defendants also held Plaintiff at Chase Home for approximately one month in or around 2000. At all four of these placements, staff members subjected Plaintiff to excessive strip searches that were performed without justification and unreasonably invaded his privacy.”

Statute of Limitations Analysis: John Doe #749 turned 18 on [REDACTED]. His claims arose no later than December 31, 1996 because they are all based on alleged conduct that occurred sometime in 1996. *See* Memorandum of Law Supporting NFI North’s Motion to Dismiss, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, John Doe #749 needed to file his complaint by no later than [REDACTED]. The three-year limitations period under RSA 508:4, I would have expired by December 31, 1999 while he

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was still a minor, but RSA 508:8 would apply to extend his limitations period to two years after his eighteenth birthday. His complaint filed on January 6, 2023 is untimely and all his claims time barred. *See id.*

John Doe #749 may claim that RSA 508:4-g extends the limitations period for the portion of his claims based on alleged strip searches. While RSA 508:4-g extends the limitations period for victims of sexual assault, that statute was first effective on July 22, 2005. *See* Memorandum at §III.B.1. The claims alleged by John Doe #749 arose prior to the effective date of even this earliest version of RSA 508:4-g. Accordingly, RSA 508:4-g does not apply to extend Plaintiff’s claims. *See id.* at §III.B.1. Moreover, that statute only provided an extended limitations period for claims for victims of crimes that violated RSA 632-A, and as against the individual who perpetrated the assault. *See id.* at §III.B.2. The alleged unjustified strip search about which he complains does not meet the definition of an offense that falls within the reach of RSA 508:4-g. *See id.* at §III.B.3. Further, he is asserting claims against NFI, not the individuals who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to his claims to the extent they are based on this alleged conduct for this additional reason. *See id.* at §III.B.2.

<b>Jane Doe #65</b>		Jefferson Shelter 1991-2000	Motion to add granted 2/18/2022

Jane Doe #65 alleges in Complaint ¶10 as follows:

“**NFI North – Jefferson Shelter.** Plaintiff was placed at State contractor Jefferson Shelter. Enroute to the facility, the van driver – a male adult – sexually assaulted her. Once at Jefferson, a staffer named “Rick” sexually assaulted her approximately six times. Plaintiff disclosed the abuse to a staffer named “Linda.” Linda told Plaintiff that “that did not happen,” and beat her for “trying to ruin a good man’s reputation.” Thereafter, she was placed in solitary confinement for a lengthy period as a punishment. Plaintiff was also beaten numerous times.”

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Statute of Limitations Analysis: Jane Doe #65 turned 18 on [REDACTED]. Her claims arose no later than December 31, 2000 because they are all based on alleged conduct that occurred sometime between 1991 and 2000. *See* Memorandum, at §III.A.1. Applying RSA 508:4, I and RSA 508:8 to the facts alleged in the complaint, Jane Doe #65 needed to file her complaint by no later than December 31, 2003. That date is more than 2 years after she turned eighteen, and 3 years after the latest her claims could have arisen in 2000. Jane Doe #65 originally filed a Complaint without naming NFI as a defendant on December 26, 2022. Her motion to add NFI as a defendant was granted on February 18, 2022. *See id.* Her claims against NFI are untimely, and all her claims against it are time barred, even if they relate back to the original Complaint filing date. *See id.*

Jane Doe #65 may claim that RSA 508:4-g extends the limitations period for the portion of her claims based on alleged sexual assaults. While RSA 508:4-g extends the limitations period for victims of sexual assault, that statute was first effective on July 22, 2005. *See* Memorandum at §III.B.1. The claims alleged by Jane Doe #65 arose prior to the effective date of even this earliest version of RSA 508:4-g. Accordingly, RSA 508:4-g does not apply to extend Plaintiff's claims. *See id.* at §III.B.1. Moreover, she is asserting claims against NFI, not the individuals who engaged in this alleged conduct. Hence, RSA 508:4-g does not apply to her claims to the extent they are based on this alleged conduct for this additional reason. *See id.* at §III.B.2.