STATE OF NEW HAMPSHIRE

ROCKINGHAM, *ss.* SUPERIOR COURT

CASE NO. 217-2020-CV-00026

DAVID MEEHAN

v.

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

In re YDC/YDSU Consolidated Litigation

this document pertains to more than 5 cases
this document pertains to the contractor defendants

John Doe #24	217-2021-CV-00559
John Doe #535	217-2022-CV-00833
John Doe #644	218-2023-CV-00130
John Doe #675	218-2023-CV-00293
John Doe #714	218-2023-CV-00377

JOHN DOES #24, #535, #644, #675, #714
NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs John Does ##24, 535, 644, 675, 714, through their undersigned attorneys, respectfully submit this Notice of Supplemental Authority. Attached hereto as Exhibit A is Judge Kissinger's order in *John Doe #553 v. State*, No. 217-2022-CV-01081, slip op. *1 (N.H. Super. Oct. 23, 2023) (Kissinger, J.) (Index #37). Attached hereto as Exhibit B is Judge Kissinger's order in *John Doe #727 v. State*, No. 217-2023-CV-00141, slip op. *1 (N.H. Super. Oct. 25, 2023) (Kissinger, J.) (Index #21), which incorporates the narrative order in *John Doe #553* by reference.

In both matters, in reliance on *Troy v. Bishop Guertin High School, et al*, 176 N.H. 131 (2023), Judge Kissinger held that Plaintiff's allegations were sufficient to invoke the discovery

rule and accordingly denied the motions to dismiss of the defendants, including Mount Prospect Academy and NFI North, Inc.

Respectfully submitted,

PLAINTIFFS,

JOHN DOES ##24, 535, 644, 675, 714

Dated: November 7, 2024

By and through counsel,

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

/s/ Cyrus F. Rilee, III
Cyrus F. Rilee, III, Esq. (Bar No. 15881)
Laurie B. Rilee, Esq. (Bar No. 15373)
264 South River Road
Bedford, NH 03110
T: 603.232.8234
crilee@rileelaw.com
lrilee@rileelaw.com

NIXON PEABODY LLP

/s/ Allison K. Regan
David A. Vicinanzo, Esq. (Bar No. 9403)
W. Daniel Deane, Esq. (Bar No. 18700)
Mark Tyler Knights, Esq. (Bar No. 264904)
Nathan P. Warecki, Esq. (Bar No. 20503)
Erin S. Bucksbaum, Esq. (Bar No. 270151)
Allison K. Regan, Esq. (Bar No. 272296)
Jonathan O'Neil, Esq. (Bar No. 276336)
900 Elm Street, 14th Floor
Manchester, NH 03101
T: 603-628-4000
dvicinanzo@nixonpeabody.com
ddeane@nixonpeabody.com
mknights@nixonpeabody.com
nwarecki@nixonnpeabody.com
ebucksbaum@nixonpeabody.com
aregan@nixonpeabody.com
joneil@nixonpeabody.com

CERTIFICATE OF SERVICE

I certify that on November 7, 2024, I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (e-mail addresses) in this case.

/s/ Allison K. Regan
Allison K. Regan, Esq.

EXHIBIT A

The State of New Hampshire

MERRIMACK COUNTY **SUPERIOR COURT**

JOHN DOE #553

v.

STATE OF NEW HAMPSHIRE, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.

Docket No.: 217-2022-CV-01081

ORDER

The plaintiff, John Doe #553, brings this suit against the defendants, the State of New Hampshire, Department of Health and Human Services ("DHHS"); Division of Children, Youth, and Families ("DCYF"); Mount Prospect Academy, Inc. ("Mount Prospect"); and Pine Haven Boys Center ("Pine Haven"), arising out of alleged abuse the plaintiff suffered. Mount Prospect and Pine Haven (together, the "contractor defendants") individually move to dismiss. The plaintiff objects to each of their motions. The Court held a hearing on this matter on August 29, 2023. For the following reasons, the contractor defendants' motions are GRANTED in part and DENIED in part.

I. Standard

When ruling on a motion to dismiss, the Court considers "whether the allegations in the plaintiff's pleadings are reasonably susceptible of a construction that would permit recovery." Clark v. N.H. Dep't of Emp't Sec., 171 N.H. 639, 645 (2019). The Court assumes the facts from "the plaintiff's pleadings to be true and construe[s] all reasonable inferences in the light most favorable to [him]." Id. However, the Court

"need not assume the truth of statements in the plaintiff's pleadings that are merely conclusions of law." Id. The Court ultimately engages "in a threshold inquiry that tests the facts in the complaint against the applicable law." Id. The Court should grant the "motion to dismiss if the facts pleaded do not constitute a basis for legal relief." Id.

II. Background

For at least a century, the State of New Hampshire has taken custody of vulnerable children and children in need of protection or services pursuant to its *parens patriae* powers. (Compl. ¶ 10.) The State now takes custody of children under a statutory scheme including RSA 169-B, 169-C, and 169-D. (Id. ¶ 11.) At times, the State contracts with private third-party providers of congregate care facilities as an alternative to State operated facilities. (Id. ¶ 14.)

The plaintiff was born in 1990. (Id. ¶ 17.) The plaintiff first came under the control of the DHHS and DCYF (together, the "State defendants") in or around 2002 and then again in 2007 and 2008. (Id.) While in the State defendants' custody, the plaintiff lived in a series of residential facilities operated by various contractors, including the contractor defendants. (Id.) When the plaintiff was approximately twelve years old, he was placed at Pine Haven for approximately one year. (Id. ¶ 18.) During that time, a Pine Haven staff member, Amy, brought her boyfriend, Scott, to Pine Haven. (Id. ¶ 19.) Scott physically assaulted the plaintiff on multiple occasions. (Id.) Another Pine Haven staff member, Dave, also physically assaulted the plaintiff. (Id.) The plaintiff told Amy about the abuse, but no action was taken. (Id.) The plaintiff was also sexually abused by a man called Father John at Pine Haven. (Id. ¶ 20.) Years after his time at Pine Haven, the State placed the plaintiff at Mount Prospect. (Id. ¶ 21.) There, a Mount

Prospect staff member, John, physically assaulted the plaintiff on multiple occasions. (Id.)

The plaintiff filed this suit on November 30, 2022.

III. Analysis

The plaintiff seeks recovery against the contractor defendants for: breach of fiduciary duty; aiding and abetting breach of fiduciary duty; negligent hiring, training, supervision, and retention; negligence; and civil conspiracy.[1] The contractor defendants move to dismiss, arguing that the plaintiff's claims against them are barred by the applicable statute of limitations and, alternatively, fail to state a claim for which relief may be granted.[2] The Court addresses each issue in turn.

Statute of Limitations

"Statutes of limitation [ ] place a limit on the time in which a plaintiff may bring suit after a cause of action accrues." Beane v. Dana S. Beane & Co., 160 N.H. 708, 712 (2010). Here, RSA 508:4 is the applicable statute of limitations.[3] That statute provides, "all personal actions . . . may be brought only within 3 years of the act or omission complained of . . . ." RSA 508:4, I. "The statute of limitations constitutes an affirmative defense, and the defendant bears the burden of proving that it applies in a given case." Beane, 160 N.H. at 712. "Once the defendant has established that the statute of limitations would bar the action, the plaintiff has the burden of raising and proving that

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[1] The plaintiff alleges additional counts of breach of nondelegable duty and negligent failure to adopt and implement rules solely against the State defendants.

[2] While the contractor defendants filed separate motions to dismiss, the Court refers to their arguments collectively because they are substantially similar.

[3] The Court acknowledges the plaintiff's argument that the indefinite statute of limitations under RSA 508:4-g applies to his claims. However, the Court declines to address the applicability of RSA 508:4-g in this order.

the discovery rule is applicable to an action otherwise barred by the statute of limitations." Id. at 713.

In this case, the bulk of the "act[s] or omission[s] complained of" relate to the contractor defendants' breach of their duties to keep the plaintiff safe while he was at their residential facilities, which, in turn, occurred each time the plaintiff was abused. The Court infers from the plaintiff's complaint that he was abused at Pine Haven in approximately 2002 and abused at Mount Prospect in 2007 and 2008. (See Compl. ¶¶ 17-18, 21.) Accordingly, to comply with RSA 508:4, I, the plaintiff would have had to file suit against Pine Haven by December 31, 2005, and against Mount Prospect by December 31, 2011.

The plaintiff filed suit on November 30, 2022. The contractor defendants argue that his suit is untimely and thus barred by the applicable statute of limitations because he filed well after December 31, 2005, and December 31, 2011. The plaintiff contends that he benefits from the discovery rule, codified in RSA 508:4, I, which renders his claims timely.

The discovery rule provides that, while ordinarily a personal action must be filed within 3 years of the injury,

> 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 plaintiff discovers, or in the exercise of reasonable diligence should have been discovered, the injury and its causal relationship to the act or omission complained of.

RSA 508:4, I. "The purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party." Troy v. Bishop Guertin High Sch., __

N.H. __, __ (decided Aug. 10, 2023) (slip op. at 3) (citing Pet. of N.H. Div. for Children, Youth & Families, 173 N.H. 613, 618 (2020)).

"The discovery rule is a two-pronged rule requiring both prongs to be satisfied before the statute of limitations begins to run." Id. (citing Beane, 160 N.H. at 713). "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[s]." Id. "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." Id. (citing Perez v. Pike Inds., Inc., 153 N.H. 158, 160 (2005)). "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." Id. (slip op. at 4) (citing Beane, 160 N.H. at 713).

"A party attempting to invoke the discovery rule will be held to a duty of reasonable inquiry." Id. (citing Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 624 (2005)). "The discovery rule applies only when a plaintiff 'did not have, and could not have had with due diligence, the information essential to bringing suit.'" Id. (quoting Portsmouth Country Club, 152 N.H. at 624). The discovery rule is objective. Id. "Accordingly, the plaintiff's subjective knowledge is not dispositive of [his] claim. Rather, the standard is what a plaintiff 'in the exercise of reasonable diligence should have discovered.'" Id. (quoting RSA 508:4-g, II). "Whether the plaintiff exercised reasonable diligence in discovering the causal connection between the injury and the

defendant's alleged act or omission is a question of fact." Id. (citing Balzotti Global Grp., LLC v. Shepherds Hills Proponents, LLC, 173 N.H. 314, 321 (2020)).

The New Hampshire Supreme Court recently addressed the discovery rule in Troy. Specifically, the Court addressed the second prong of the rule: "whether the plaintiff knew or should have known of the causal connection between her injury and the defendants' conduct . . . ." Id. In Troy, the plaintiff alleged that she was sexually assaulted by her teacher, defendants' employee. Id. (slip op. at 1.) The plaintiff filed suit after the applicable statute of limitations but argued that she should benefit from the discovery rule because she did not know, nor reasonably should have known, of the causal connection between her injury and the conduct of the institutional defendants until approximately a year before filing suit. Id. (slip op. at 2.) The Court found that the trial court erred when it determined, relying primarily on the fact that the plaintiff knew her abuser was employed by the defendants, that the plaintiff knew or should have known of the causal connection between her injuries and the defendants' conduct. Id. (slip op. at 4.)

The Troy Court declined "to establish a per se rule that the plaintiff's knowledge of the abuser's employer is alone sufficient to trigger the application of the discovery rule." Id. (slip op. at 5.) "[T]he plaintiff's knowledge that she had been injured and that her assailant was employed by the defendants differs from her knowing of the causal connection between the injury and the defendants' [conduct.]" Id. (slip op. at 4.) Relying on Doe v. Cath. Bishop for Memphis, 306 S.W.3d 712, 727 (Tenn. Ct. App. 2008) which stated, "there is no duty of inquiry where there is no reason to suspect that a party's involvement contributed to the injuries," the Troy Court acknowledged that the

plaintiff was allegedly assaulted "in a school, where adults are charged with keeping students safe." Id. (slip op. at 5.) Further, the Court noted that "[a]llegations of childhood sexual abuse arise in varied and complicated factual settings." Id.

Here, taking the plaintiff's factual allegations as true, the Court is unable to determine as a "matter of law" that he "discovered or in the exercise of reasonable diligence should have discovered" the causal connection between his injuries and the defendants' conduct. Lamprey v. Britton Const., Inc., 163 N.H. 252, 258 (2012) (dismissal on statute of limitations grounds at pleading stage only appropriate if court can make discovery rule determination as a matter of law). For instance, the plaintiff alleges that, because he was a minor when his alleged injuries occurred, he did not understand, nor was he capable of understanding, that the abuse he suffered was caused by the institutional contractor defendants and not merely by the individual perpetrators. (Compl. ¶ 26.) Further, when the plaintiff was released from the State's custody, he was a child survivor of traumatic abuse and incapable of understanding that the contractor defendants caused his harm. (Id. ¶ 27.) Not until "recently" did the plaintiff understand that his harm was caused by the contractor defendants' acts and omissions. (Id. ¶ 28.)[4] The Court reasonably infers that "recent months" means that the

[4] The contractor defendants contend that the plaintiff's allegations that he "recently" understood that his harm was caused by institutional actors and that in "recent months" he discovered that his injuries were caused by the contractor defendants are insufficient and too vague to survive a motion to dismiss. The Court acknowledges that the plaintiff's allegations are unclear about how, exactly, he discovered that the contractor defendants were responsible for his harm or the exact date he made such a discovery. However, the defendants cited no authority for the proposition that such allegations are necessary at the pleading stage.

Similarly, the contractor defendants ask the Court to not accept the plaintiff's fact regarding his discovery of the contractor defendants' involvement in his injury as true because the plaintiff's complaint includes boilerplate language used by the plaintiff's counsel in several other complaints against the contractor defendants and others on behalf of other plaintiffs. While the Court recognizes the use of similar language in other complaints filed by the plaintiff's counsel on behalf of other plaintiffs, that fact does not change the Court's standard of review. Under the appropriate standard of review, the Court accepts as

plaintiff discovered the contractor defendants' alleged culpability at some point within the thirty-six months prior to filing his complaint. See Clark, 171 N.H. at 645. Based on these allegations, which the Court must assume are true at this stage in the proceedings, see id., the Court cannot say that the plaintiff's claims are barred by RSA 508:4, I as a matter of law. See Lamprey, 163 N.H. at 258. Accordingly, the contractor defendants' motion to dismiss on statute of limitations grounds is DENIED.

As the Court concludes that, due to the potential applicability of the discovery rule, the plaintiff's claims survive the contractor defendants' motion to dismiss on statute of limitations grounds, the Court declines to address the parties' arguments related to the applicability of RSA 508:4-g, fraudulent concealment, or equitable tolling. See Canty v. Hopkins, 146 N.H. 151, 156 (2001) (holding that the Court need not consider party's remaining arguments where one or more was dispositive).

Failure to State a Claim

The plaintiff alleges the following five claims against the contractor defendants: breach of fiduciary duty (Count I); aiding and abetting breach of fiduciary duty (Count III); negligent hiring, training, supervision, and retention (Count IV); negligence (Count V); and civil conspiracy (Count VII). The contractor defendants move to dismiss all five counts on the basis that they do not state claims for which relief may be granted. The Court addresses each claim in turn.

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true that the plaintiff was not aware of the contractor defendants' culpability in his harm until "recently" and in "recent months," which the Court interprets as within the 36 months prior to the filing of his complaint. While the specific allegations regarding discovery may be light on details, the Court cannot find that the discovery rule does not apply as a matter of law.

Breach of Fiduciary Duty (Count I) and Negligence (Count V)

The Court addresses the plaintiff's claims for breach of fiduciary duty and negligence together as they present substantially similar issues.

The plaintiff alleges that,

> When State Defendants placed Plaintiff with Contractor Defendants, and Contractor Defendants accepted physical custody of Plaintiff pursuant to their contracts with State Defendants, and Contractor Defendants thereafter exercised physical control over Plaintiff to the exclusion of others, they likewise accepted a fiduciary obligation to protect and care for Plaintiff[.]

(Compl. ¶ 38.) In moving to dismiss, the contractor defendants first argue that the plaintiff has not alleged "facts to support the existence of a fiduciary duty," and "there is no fiduciary duty as a matter of law." (Pine Haven's Memo. Supp. Mot. Dismiss at 13.) As the parties acknowledge, the New Hampshire Supreme Court has not yet determined whether a fiduciary relationship exists under these types of circumstances. Thus, the Court must determine, as a matter of first impression, whether the contractor defendants owed a fiduciary duty to the children in its care, including the plaintiff. The Court first determines whether a fiduciary relationship existed between the plaintiff and the contractor defendants and then addresses the contractor defendants' specific arguments about types of breaches.

"As a general rule, a person has no affirmative duty to aid or protect another." Marquay v. Eno, 139 N.H. 708, 716 (1995) (citing Walls v. Oxford Mgmt. Co., 137 N.H. 653, 656 (1993)). "Such a duty may arise, however, if a special relationship exists." Id. (citing Murdock v. City of Keene, 137 N.H. 70, 72 (1993)). "The relation of the parties determines whether any duty to use due care is imposed by law upon one party for the benefit of another. If there is no relationship, there is no duty." Id. (citing Guitarini v. Co., 98 N.H. 118, 119 (1953)).

"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." Schneider v. Plymouth State Coll., 144 N.H. 458, 462 (1999) (quoting Lash v. Cheshire Cnty. Sav. Bank, 124 N.H. 435, 438 (1984)). "A fiduciary relation does not depend upon some technical relation created by, or defined in, law." Id. Rather, "[i]t may exist under a variety of circumstances, [including] in cases where there has been a special confidence reposed in one who, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." Id. (quoting Lash, 124 N.H. at 439). A fiduciary relationship arises where equity requires. Ahrendt v. Granite Bank, 144 N.H. 308, 311 (1999). "The party reposing confidence becomes dependent on the fiduciary because he or she must rely on the fiduciary for a particular service." Id. (citation omitted). "Once a person becomes a fiduciary, the law places him in the role of a moral person and pressures him to behave in a selfless fashion . . . ." Brzica v. Tr. of Dartmouth Coll., 147 N.H. 443, 448 (2002) (citing Lash, 124 N.H. at 438).

The Court finds Schneider instructive. In that case, the plaintiff was a college student who was sexually harassed by one of her professors. Among other claims, she sued the college for breach of a fiduciary duty. Schneider, 144 N.H. at 460. At the conclusion of the plaintiff's case, the college moved for a directed verdict, arguing that "no fiduciary relationship exists between post-secondary educational institutions and their students under New Hampshire law." Id. at 462. The trial court denied the motion and the college appealed. On appeal, the Supreme Court found, "[i]n the context of sexual harassment by faculty members, the relationship between a post-secondary

institution and its students is a fiduciary one." Id. The Court reasoned that students are vulnerable because "the power differential between faculty and students makes it difficult for students to refuse unwelcome advances and also provides the basis for negative sanctions against those who do refuse." Id. (citation, ellipses, and brackets omitted). The Court further noted that the relationship between students and their professors is "built on a professional relationship of trust and deference, . . . [and] gives rise to a fiduciary duty on behalf of the [college] to create an environment in which the plaintiff could pursue her education free from sexual harassment by faculty members." Id. at 463. The Court clarified that its holding did not rest on the *in loco parentis* doctrine, but rather the unique relationship between a student and a post-secondary institution. Id.

New Hampshire recognizes a distinction between the fiduciary duty a post-secondary school owes its students and the duty of care a primary or secondary school owes its students. The New Hampshire Supreme Court, concurring with the majority of courts from other jurisdictions, held that primary and secondary "schools share a special relationship with students entrusted to their care, which imposes upon them certain duties of reasonable supervision." Marquay, 139 N.H. at 717; cf. Franchi v. New Hampton Sch., 656 F. Supp. 2d 252, 264-65 (D.N.H. 2009) (following Marquay in holding that a private boarding secondary school does not have a fiduciary relationship with its students). The scope of a school's duty "is limited by what risks are reasonably foreseeable." Marquay, 139 N.H. at 717. "A child while in school is deprived of the protection of his parents or guardian. Therefore, the actor who takes custody of a child is properly required to give him the protection which the custody or the manner in which

it is taken has deprived him." Id. (citation omitted). The following factors influenced the Court's holding: "the compulsory character of school attendance, . . . the expectation of parents and students for and their reliance on a safe school environment, and the importance to society of the learning activity which is to take place in public schools." Id.

Upon review of the holdings in Schneider and Marquay, the Court concludes that a fiduciary relationship exists between the contractor defendants and the children placed in their care under the circumstances of this case. This includes children placed in the contractor defendants' custody pursuant to RSA 169-B, RSA 169-C, and RSA 169-D. In those situations, the contractor defendants have acquired influence over the children in their custody. See Schneider, 144 N.H. at 462; cf. Berry v. Watchtower Bible & Tract Soc. of N.Y., Inc., 152 N.H. 407, 415-16 (2005) (holding that plaintiffs, who were abused by their father, failed to state breach of fiduciary duty claim against religious congregation where "the plaintiffs did not allege that the [congregation] elders acquired influence over them or that their confidence had been reposed in the elders"). Similar to post-secondary school students, children in the contractor defendants' custody are vulnerable. Id. These children are removed from the custody of their parents, family members, or legal guardians and placed in the care of the contractor defendants. (Compl. ¶¶ 12, 14.) The contractor defendants provide residential treatment which typically includes twenty-four-hour surveillance. (Id. ¶ 14.) Children in the contractor defendants' care are dependent on them and must rely on them for shelter, food, safety, and education. See Schneider, 144 N.H. at 462. In that regard, the children are essentially wards and the contractor defendants are their guardians, which is a well-

recognized relationship giving rise to a fiduciary duty. See In re Guardianship of Richard A., 124 N.H. 474, 478 (1984) (noting that "[h]istorical principles" and "our own common law" compel the "conclusion that a guardian stands in a fiduciary relationship to his ward"); Conway Nat'l Bank v. Pease, 76 N.H. 319, 326–37 (1912) (listing classic examples of fiduciary relations, including "guardian and ward"); see generally T.S. v. Twentieth Century Fox Television, 548 F. Supp. 3d 749, 779–80 (N.D. Ill. 2021), rev'd on other grounds, 67 F.4th 884 (7th Cir. 2023) (finding that a fiduciary relationship existed between the superintendent of juvenile detention facility and juvenile detainees as it was akin to a guardian-ward relationship). The nature of the relationship distinguishes these circumstances from those in Marquay. For foregoing reasons, the Court determines that the plaintiff sufficiently alleged the existence of a fiduciary relationship between himself and the contractor defendants.[5]

The Court rules that the plaintiff adequately pleaded a fiduciary relationship between himself and the contractor defendants. Accordingly, the Court turns to the contractor defendants' arguments that they cannot be liable for certain breaches the plaintiff alleges. The contractor defendants argue that they cannot be held liable for failing to prevent the harm the plaintiff suffered or report prior abuse of children in their

[5] Notably, several courts from other jurisdictions have found that a fiduciary relationship exists between state agencies and the children they take under their care. See, e.g., S.B. ex rel. D.M. v. City of Phila., No. 07-768, 2007 WL 3010528 at *3 (E.D. Penn. Oct. 12, 2007) (holding that the relationship between a foster child and agencies who place the child in foster care is a fiduciary one); Dapo v. State, 454 P.3d 171, 179-80 (Alaska 2019) (concluding that the state has a fiduciary relationship with children in its legal custody for the purposes of the "breach of trust or fiduciary duty" exception to the statute of repose); In re Leah S., 898 A.2d 855, 861 (Conn. App. Ct. 2006) ("In seeking and accepting the child's charge, the commissioner [of children and families] acted as a fiduciary to the family and for the state."), rev'd on other grounds, 935 A.2d 1021 (Conn. 2007); Doe v. Harbor Sch., Inc., 843 N.E.2d 1058, 1064-65 (Mass. 2006) (finding a fiduciary relationship between a minor in the legal custody of the state placed in a group home and her counselor at that facility). The Court finds these courts' analyses persuasive and that they lend support to its conclusion that a party contracting with the State to take children into its care has a fiduciary relationship with those children.

facilities. Further, the contractor defendants contend that they cannot be held liable for violations of the Eighth or Fourteenth Amendments. The Court addresses each argument in turn.

First, the contractor defendants contend, and the plaintiff does not dispute, that RSA 169-C:29 does not provide a private right of action for a failure to comply with its reporting mandates. See Marquay, 139 N.H. at 715-16 (holding that RSA 169-C:29, which requires any person to report suspected child abuse or neglect, "does not support a private right of action for its violation . . . ."). The Court acknowledges that Marquay left open the applicability of RSA 169-C as a basis for a negligence per se claim. The Court defers a determination as to whether RSA 169-C is applicable as the basis for a negligence per se standard in this matter. To the extent the plaintiff's complaint alleges a cause of action arising directly from RSA 169-C, such claim is DISMISSED.

Second, the contractor defendants argue that, as a private party, they cannot be liable for the plaintiff's constitutional claims under the Eighth and Fourteenth Amendments. The plaintiff concedes that he does not assert an independent cause of action under the federal constitution. (Plf.'s Obj. to Pine Haven's Mot. to Dismiss at 37.) The plaintiff contends he only acknowledged his constitutional rights to establish a minimum standard of care. Accordingly, to the extent the plaintiff alleges a cause of action against the contractor defendants arising out of constitutional violations, such claim is DISMISSED.

Finally, the contractor defendants argue that they cannot be liable for the illegal and criminal acts of the named individuals in the plaintiff's complaint because their actions were not reasonably foreseeable, and it is speculative that if the contractor

defendants reported abusive conduct in their facilities that such reports would have prevented the plaintiff's harm. The plaintiff disputes whether foreseeability limits claims for breach of fiduciary duty. However, the Court determines that even if foreseeability is the applicable standard, the plaintiff's allegations meet it.

Whether a party's duty is imposed by its actions or a special relationship to another, "the scope of the duty imposed is limited by what risks, if any, are reasonably foreseeable." Walls, 137 N.H. at 656. "The decision to impose liability ultimately rests on a judicial determination that the social importance of protecting the plaintiff's interest outweighs the importance of immunizing the defendant from extended liability." Id. at 657 (quotation omitted). Ordinarily, individuals are not responsible "for the unanticipated criminal acts of third parties." Id. at 658. However, there are four recognized exceptions to this general principle: (1) where a special relationship exists between the parties, (2) where "an especial temptation and opportunity for criminal misconduct is brought about by the defendant," (3) where there exists "overriding foreseeability," meaning criminal attacks were clearly foreseeable, and (4) where the defendant has voluntarily assumed a duty to provide security. Id. at 658-59 (emphasis omitted).

In Walls, the Court determined that a landlord, while having no general duty or special relationship with his tenants, may have a duty to protect his tenants from criminal attacks where the landlord created, or is responsible for, a known defect on the premises that foreseeably enhanced the risk of criminal attack. Id. at 659. Further, landlords have a duty to act with reasonable care when they voluntarily provide security protections. Id. But, the Court rejected the applicability of a duty to protect against

criminal attacks "solely based on the landlord-tenant relationship or on a doctrine of overriding foreseeability." Id. In Iannelli v. Burger King, Corp., 145 N.H. 190, 194-95 (2000), the Court determined that a foreseeable risk of a criminal attack placed a duty on the defendant restaurant where a group of teenagers were loud and rowdy in the restaurant. Similarly, in Remsburg v. Docusearch, Inc., 149 N.H. 148, 155 (2003), the Court held that the crimes of stalking and identity theft were "sufficiently foreseeable so that an investigator has a duty to exercise reasonable care in disclosing a third person's personal information to a client."

The Court determines that, under the facts alleged by the plaintiff, there existed a reasonably foreseeable risk of criminal activity where the contractor defendants took children into their care and placed them in twenty-four-hour residential facilities under the full-time supervision of the contractor defendants' agents and employees. The nature of full-time supervision and the children's separation from their families provided ample opportunities for adults in the facility (employees, agents, or guests) to perpetuate abuse. Because a special relationship existed between the plaintiff and the contractor defendants and the contractor defendants voluntarily assumed a duty to protect the children in their care, including the plaintiff, they have a duty to reasonably protect against the criminal activity alleged to have been perpetuated by their employees, agents, and those permitted inside their facilities.

The contractor defendants contend that, even if they had a duty to protect against the alleged criminal activity of the individual perpetrators, it is too speculative that previous reporting of abuse behavior would have prevented the plaintiff's alleged harm. The Court is not persuaded and rules that, at this preliminary pleading stage, the

plaintiff sufficiently alleged that the contractor defendants breached their duty owed to the plaintiff to prevent his alleged harm by not reporting or taking corrective steps after witnessing or becoming aware of previous abuse of other children in State custody.

Therefore, the contractor defendants' motion to dismiss the plaintiff's claim for breach of fiduciary duty is DENIED.

The Court now turns to the plaintiff's claim for negligence. "To recover for negligence, the plaintiff must demonstrate that the defendant[s] [owed] a duty to [him], that [they] breached that duty, and that the breach proximately caused injury to [him]." England v. Brianas, 166 N.H. 369, 371 (2014). "Absent the existence of a duty, the defendant cannot be liable for negligence." Id. "When charged with determining whether a duty exists in a particular case, [the Court] necessarily encounter[s] the broader, more fundamental question of whether the plaintiff[s'] interests are entitled to legal protection against the defendant's conduct." Id. "In other words, 'duty' is a question of whether the defendant is under any obligation for the benefit of the particular plaintiff; and in negligence cases, the duty is always the same—to conform to the legal standard of reasonable conduct in the light of the apparent risk." Id. Whether a duty exists in a particular case is a question of law for the Court to decide. Id.

As discussed, the contractor defendants owed the plaintiff a duty of care to protect him from the alleged abuse he endured while in their care. To the extent a fiduciary relationship between the contractor defendants and the plaintiff is definitively established in the future, this negligence claim may be redundant. However, if a fiduciary relationship is not established, the plaintiff may rely on this claim to

demonstrate that the contractor defendants had and breached a duty under their special relationship with the plaintiff. See Marquay, 139 N.H. at 717.

Therefore, the contractor defendants' motion to dismiss the plaintiff's claim for negligence is DENIED.

Aiding and Abetting Breach of Fiduciary Duty (Count III)

The New Hampshire Supreme Court has not recognized a cause of action for aiding and abutting breach of fiduciary duty. See Invest Almaz v. Temple-Inland Forest Products Corp., 243 F.3d 57, 82 (1st Cir. 2001) (noting that the district court concluded that the New Hampshire Supreme Court would recognize the tort and that the majority of jurisdictions recognize the tort). The Restatement (Second) of Torts § 876(b) establishes tort liability when a tortfeasor "knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself . . . ." To state a claim for aiding and abetting breach of fiduciary duty, a plaintiff must allege the following three elements: "(1) a breach of fiduciary obligations, (2) knowing inducement or participation in the breach by the one aiding and abetting, and (3) damages as a result of the breach." Legacy Global Sports, LP v. St. Pierre, No. 218-2019-CV-198, 2020 WL 2027401, at *2 (N.H. Super. Ct. April 27, 2020) (citations omitted).

The Court is persuaded that the New Hampshire Supreme Court would recognize the tort of aiding and abetting breach of fiduciary duty. The courts which regularly apply New Hampshire law have predicted that the New Hampshire Supreme Court would recognize the tort. See, e.g., Invest Almaz, 243 F.3d at 82 (acknowledging a non-appealed trial court determination); Legacy Global Sports, LP, No. 218-2019-CV-

198, 2020 WL 2027401, at *2; In re Felt Mfg. Co., Inc., 371 B.R. 589, 614-15 (D.N.H. 2007). Accordingly, the Court turns to analyzing whether the plaintiff states a claim for aiding and abetting breach of fiduciary duty against the contractor defendants.

The plaintiff seeks recovery for aiding and abetting a breach of fiduciary duty. In that count, the plaintiff alleges that all of the "Defendants' agents and employees understood that each of them individually, and each of their co-workers or other employees and agents of Defendants, as well as all of them collectively, owed a fiduciary obligation to the minors committed to their custody, care, and control, including Plaintiff." (Compl. ¶ 54.) The plaintiff further claims that the individuals knew "about at least some of the various forms of abuse and harm suffered by Plaintiff, and by the other minors committed to the custody, care, and control of Defendants, and not only failed to report this information or take other corrective actions, but actively participated in the abuse and/or concealed this information." (Id. ¶ 55.) Finally, the plaintiff alleges these individuals "acted together in a common plan or design, for the purpose of committing acts of physical, sexual, and emotional abuse, and then acted together, in a common plan or design, to unlawfully and deliberately conceal those acts from discovery so that they would evade consequences for those acts and could continue to perpetrate those acts on minors in state custody, including Plaintiff." (Id. ¶¶ 56.) The plaintiff does not specify which defendants acted together.

The contractor defendants make various arguments in support of dismissal. Mount Prospect contends that "corporations cannot aid and abet violations of the fiduciary duties" they themselves owe, and that the complaint "fails to set forth sufficient facts establishing that [it] provided substantial assistance of encouragement." (Mount

Prospect's Mot. Dismiss at 7.) Pine Haven likewise contends that: (1) a "corporation cannot aid and abet violations of the fiduciary duties its agents owe[]" to the plaintiff; (2) to the extent the plaintiffs allege that the defendants aided the State in breaching the State's duty, such a claim fails because the State did not owe a fiduciary duty to the plaintiff; and (3) the complaint fails to allege sufficient facts to support the second element. (Pine Haven's Memo. Supp. Mot. Dismiss at 20–21.) The Court will address each issue in turn.

First, to the extent the plaintiff alleges that the agents or employees of each contractor defendant acted together with the agents and/or employees of the same contractor defendant, such a claim is not viable. Such a claim in essence alleges that each contractor defendant aided and abetted the breach of its own fiduciary duty. See Legacy Global Sports, LP, 2020 WL 2027401, at *2 (explaining that because a "corporation cannot conspire with its agents[,] . . . a corporation cannot aid and abet violations of the fiduciary duties [the corporation's employees] owed to [the plaintiff]"); In re Amcast Indus. Corp., 365 B.R. 91, 112-13 (Bankr. S.D. Ohio 2007) (determining that the tort of aiding and abetting breach of fiduciary duty "by its nature . . . requires participation by a non-fiduciary defendant."); Tong v. Dunn, No. 11 CVS 1522, 2012 WL 944581, at *6 (N.C. Super. Mar. 19, 2012) ("As a general rule, the conduct of a corporate officer, within the scope of employment, cannot expose the corporation itself to aider and abettor liability because of the intra-corporate immunity doctrine . . . ."). Accordingly, to the extent the plaintiff seeks recovery on the basis that the contractor defendants aided and abetted their own agents or employees in breaching the fiduciary duty owed to the plaintiff, such claim is DISMISSED.

The contractor defendants argue that they cannot be liable for aiding and abetting the State defendants' fiduciary duty because the State defendants do not owe the plaintiff a fiduciary duty. As found above, (see supra n.4), case law from other jurisdictions supports the existence of such a fiduciary duty between the State and the children in its custody and care. However, at this juncture, the Court will defer final ruling on this issue, as the State defendants recently filed their own motion to dismiss based on that same argument.[6] As the Court will undoubtedly need to consider that issue in depth when ruling on that motion, the Court declines to consider it now. Should the Court ultimately determine that the State defendants did not owe the plaintiff a fiduciary duty, the Court will also dismiss this claim as part of that order.

Finally, the contractor defendants argue that the plaintiff did not allege sufficient facts to support the second element of the claim—that they "knowing[ly] induce[d] or participat[ed] in the [principal's] breach" of its fiduciary duty or that they provided "substantial assistance or encouragement." Legacy Global Sports, LP, No. 218-2019-CV-198, 2020 WL 2027401, at *2. Specifically, the contractor defendants contend that the plaintiff failed to allege that they knew that the State defendants owed the plaintiff a fiduciary duty and that they knew the State defendants were in breach of that duty. It is true, as the contractor defendants contend, that to satisfy the second element, the plaintiff must allege that the contractor defendants "actually knew two things: that [the State defendants] owed a fiduciary duty to [the plaintiff], and that [the State defendants] [were] breaching that duty." Invest Almaz, 243 F.3d at 83 (affirming trial court's jury instruction using that standard).

[6] Specifically, on September 14, 2023, the State defendants filed a motion to dismiss arguing, in part, that they did not owe the plaintiff a fiduciary duty. The plaintiff has yet to object.

Here, as noted above, the plaintiff alleges that all of the contractor defendants "understood that each of them individually, and each of their co-workers or other employees and agents of Defendants, as well as all of them collectively, owed a fiduciary obligation to the minors committed to their custody, care, and control, including Plaintiff." (Compl. ¶ 54.) The plaintiff further alleges that the contractor defendants knew "about at least some of the various forms of abuse and harm suffered by Plaintiff, and by the other minors committed to the custody, care, and control of Defendants, and not only failed to report this information or take other corrective actions, but actively participated in the abuse." (Id. ¶ 55.) Construing all of the inferences from these allegations in the plaintiff's favor, see Clark, 171 N.H. at 645, the Court finds they are sufficient to state a claim of aiding and abetting breach of fiduciary duty.

Therefore, the contractor defendants' motion to dismiss the plaintiff's claim for aiding and abetting breach of fiduciary duty is GRANTED in part and DENIED in part.

Negligent Hiring, Training, Supervision, and Retention (Count IV)

New Hampshire recognizes "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, 139 N.H. at 718 (citing Cutter v. Town of Farmington, 126 N.H. 836, 840-41 (1985)). The New Hampshire Supreme Court has adopted the principles of this cause of action from the Restatement (Second) of Agency § 213, which provides:

> A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless:
> (a) in giving improper or ambiguous orders of in failing to make proper regulations; or
> (b) in the employment of improper persons or instrumentalities in work involving risk of harm to others[;]

(c) in the supervision of the activity . . .

Cutter, 126 N.H. at 840. "This cause of action is distinct from one based upon the doctrine of *respondeat superior* and is a theory of direct, not vicarious, liability." Id. "A cause of action for negligent hiring or retention, however, does not lie whenever an unfit employee commits a criminal or tortious act consistent with a known propensity . . . the plaintiff must establish some causal connection between the plaintiff's injury and the fact of employment." Id. (quotations and brackets omitted).

In moving to dismiss this claim, the contractor defendants argue that the plaintiff fails to allege that they had knowledge, or should have had knowledge, that a specific employee was likely to engage in the alleged misconduct. After consideration, the Court disagrees. Here, the plaintiff alleges that the defendants "knew or reasonably should have known of the indicia of abuse and the abusive proclivities of certain employees or agents of Defendants, and knew or reasonably should have known of the foreseeable risk of harm to Plaintiff and other children in Defendants' custody, care, and control." (Compl. ¶ 65.) The plaintiff further alleges that agents and employees of the defendants "tolerated or ignored a general culture of violence, abuse, boundary crossing, and disrespect and antipathy toward the children in their custody . . . ." (Id.)

While the plaintiff's allegations are broad and encompass all of the defendants, they nonetheless allege that the contractor defendants knew or should have known that certain employees or agents could foreseeably harm the plaintiff and that the contractor defendants ignored or tolerated a toxic environment within their facilities. At the pleading stage, those allegations suffice. The plaintiff makes allegations against specific agents or employees of the contractor defendants. (Id. ¶¶ 19-20.) The plaintiff's specific allegations against employees or agents of the contractor defendants,

his allegation that the defendants knew of the dangerousness of certain employees or agents, and his allegation that defendants tolerated or ignored a culture harmful to the children in their care, together allege a claim for negligent hiring, training, supervision, and retention.

Therefore, the contractor defendants' motion to dismiss the plaintiff's negligent hiring, training, supervision, and retention claim is DENIED.

Civil Conspiracy (Count VII)

"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) (citation 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. (citation omitted; emphasis omitted). "The gist of a civil action for conspiracy is not conspiracy as such, without more, but the damage caused by the acts committed pursuant to the formed conspiracy." In re Appeal of Armaganian, 147 N.H. 158, 162 (2001). A claim for civil conspiracy may exist without an express agreement, "all that is required is that there be a tacit understanding, as where two automobile drivers suddenly and without consultation decide to race their cars on the public highway." Goudreault v. Kleeman, 158 N.H. 236, 255 (2009).

In Count VII, the plaintiff alleges that agents and employees of the defendants, both the State defendants and contractor defendants, "knowingly agreed with one

another . . . either explicitly or tacitly, on a common plan or design to perpetrate systematic child abuse at the facilities of the Contractor Defendants . . . ." (Compl ¶ 93.) The plaintiff further alleges that the defendants through their agents and employees, "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." (Id. ¶ 96.) The contractor defendants move to dismiss, arguing that the plaintiff's allegations are "nothing more than conclusory statements and surmise," which are insufficient to state a claim for which relief may be granted. (Pine Haven's Memo. Supp. Mot. Dismiss at 22.)

The Court finds that the plaintiff's claim of civil conspiracy does not allege sufficient facts beyond "a conclusory allegation of agreement at some unidentified point." Bell Alt. Corp. v. Twombly, 550 U.S. 544, 556-57 (2007) ("[A]n allegation of parallel conduct and a bare assertion of conspiracy will not suffice."); see Jay Edwards, Inc., 130 N.H. at 47 ("Once 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."); Moore v. Mortg. Elec. Reg. Sys., Inc., 848 F. Supp. 2d 107, 134 (D.N.H. 2012) (determining that plaintiffs failed to allege "plausible grounds to infer an agreement" when they asked the court "to infer that the defendants agreed to foreclose on their mortgage from the fact that the defendants all allegedly undertook wrongful acts" related to the plaintiffs' mortgage). The plaintiff alleges that the defendants, through their agents and employees, "agreed" to perpetuate and conceal the alleged abuse. The plaintiff's allegations are too vague. The Court does not consider the allegations regarding widespread child abuse at the

contractor defendants' and other State facilities sufficient to establish a claim for conspiracy. The complaint does not specify when the defendants agreed, by what means they agreed, which specific agents or employees engaged in the agreement, or other details specifying the nature of the agreement. While the plaintiff need not allege all of those details, the Court finds that the lack of any specific facts regarding the agreement warrants dismissal. For that reason, the plaintiff's claim for civil conspiracy is DISMISSED.

To the extent the plaintiff alleges that the contractor defendants are liable for the conspiring of their agents or employees with other agents or employees of the same contractor defendant, such claim is DISMISSED with prejudice. The contractor defendants cannot be liable under a civil conspiracy theory for the conspiring of their agents or employees with other agents or employees of the same entity. Similar to the Court's analysis of the plaintiff's aiding and abetting of fiduciary duty claim, each contractor defendant cannot conspire with itself.

"A corporation is a jural person, but not a person in fact." Luv Pharmacy, Inc., 118 N.H. 398, 404 (1978). "It is an artificial creature, acting only through its agents." Id. Other courts that have addressed this issue found that a corporation cannot be liable for conspiracy among its own agents or employees. See Jackson v. City of Cleveland, 925 F.3d 793, 817-18 (6th Cir. 2019) (applying the principle to §1983 actions); Grider v. City of Auburn, 618 F.3d 1240, 1261 (11th Cir. 2010) (same); Richard v. Fischer, 38 F. Supp. 3d 340, 353 (W.D.N.Y. 2014); see generally Ortolano v. City of Nashua, No. 22-CV-326-LM, 2023 WL 6319586, at *11 (D.N.H. Sept. 28, 2023) (holding as a matter of law that two city employees could not "form a conspiracy with other [city] officials"). The

doctrine, referred to as the intracorporate conspiracy doctrine, provides that "a corporation cannot conspire with its own employees or agents." Hoefer v. Fluor Daniel, Inc., 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000) (citation omitted).

> The logic for the doctrine comes directly from the definition of a conspiracy. A conspiracy requires a meeting of the minds. . . . It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself anymore than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.

Id. (citations omitted).

While the New Hampshire Supreme Court has not adopted the intracorporate conspiracy doctrine, the Court is persuaded that it would and find it applicable to this action. Therefore, to the extent the plaintiff's civil conspiracy claim alleges that each contractor defendant is liable for conspiring with itself through its agents and employees, that claim is DISMISSED.

IV. Conclusion

To summarize, the contractor defendants' motion to dismiss on statute of limitations grounds is DENIED. The contractor defendants' motion to dismiss for failure to state a claim is GRANTED in part and DENIED in part consistent with the following:

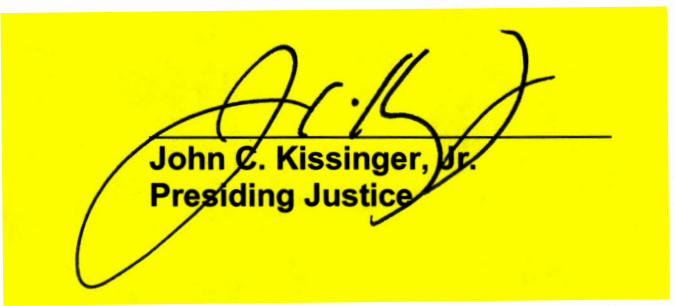
- The contractor defendants' motion to dismiss the plaintiff's claim for breach of fiduciary duty is DENIED except for claims alleging separate causes of action arising from RSA 169-C or constitutional rights.
- The contractor defendants' motion to dismiss the plaintiff's claim for aiding and abetting breach of fiduciary duty is GRANTED to the extent the plaintiff alleges that each contractor defendant aided and abetted its own breach of fiduciary duty, but otherwise is DENIED.

- The contractor defendants' motion to dismiss the plaintiff's claims for negligent hiring, training, supervision, and retention and negligence is DENIED.
- The contractor defendants' motion to dismiss the negligence claim is DENIED.
- The contractor defendants' motion to dismiss the plaintiff's claim for civil conspiracy is GRANTED.

The plaintiff is granted leave to amend his complaint to correct the deficiencies outlined in this order within 30 days of the clerk's notice accompanying this order. See ERG, Inc. v. Barnes, 137 N.H. 186, 189 (1993).

SO ORDERED.

10/18/2023
Date



Clerk's Notice of Decision
Document Sent to Parties
on 10/19/2023

EXHIBIT B

The State of New Hampshire

MERRIMACK COUNTY **SUPERIOR COURT**

JOHN DOE #727

v.

STATE OF NEW HAMPSHIRE, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.

Docket No.: 217-2023-CV-00141

ORDER

The plaintiff, John Doe #727, brings this suit against the defendants, State of New Hampshire, Department of Health and Human Services ("DHHS"); Division of Children, Youth, and Families ("DCYF"); and NFI North, Inc., arising out of alleged abuse the plaintiff suffered. NFI North moves to dismiss. The plaintiff objects. The Court held a hearing on NFI North's motion on September 21, 2023.

The Court notes that the plaintiff's counsel has filed several other suits in this Court on behalf of other plaintiffs alleging similar claims against DHHS, DCYF, and private providers of congregate care facilities the State contracted with to provide care to children in its custody (the "contractor defendants"). The Court's review of several, but not all, of the complaints filed in those matters reveal that the allegations and legal claims are substantially similar, apart from the specific allegations of abuse each plaintiff suffered. Here, the allegations the plaintiff pleads related to his discovery of NFI North's alleged culpability and legal claims of NFI North's liability are substantially similar to

those alleged by John Doe #535.[1] See Doe #553 v. State of New Hampshire, Health and Human Serv., et al., 217-2022-CV-01081, Court Docs. 1, 37 (October 18, 2023) (Kissinger, J.).

The Court addressed the issues NFI North raises in an order on different contractor defendants' motions to dismiss John Doe #553's complaint. See id., Court Doc. 37. Upon careful consideration of the parties' filings in this matter, the Court incorporates its rulings and analysis in that matter here.[2] Accordingly, NFI North's motion to dismiss on statute of limitations grounds is DENIED. Its motion to dismiss for failure to state a claim is GRANTED in part and DENIED in part, consistent with the following:

- The motion to dismiss the plaintiff's claim for breach of fiduciary duty is DENIED except for claims alleging separate causes of action arising from RSA 169-C or constitutional rights.
- The motion to dismiss the plaintiff's claim for aiding and abetting breach of fiduciary duty is GRANTED to the extent the plaintiff alleges that each contractor defendant aided and abetted its own breach of fiduciary duty, but otherwise is DENIED.
- The motion to dismiss the plaintiff's claims for negligent hiring, training, supervision, and retention and negligence is DENIED.

[1] Both plaintiffs assert claims for breach of fiduciary duty; aiding and abetting breach of fiduciary duty; negligent hiring, training, supervision, and retention; negligence; and civil conspiracy against contractor defendants. Further, both plaintiffs allege that they did not discover the contractor defendants' alleged culpability until "recently" and in "recent months."

[2] The Court incorporates its rulings and analysis due to concerns of judicial efficiency. The several complaints filed by various plaintiffs alleging similar claims and the contractor and state defendants' motions to dismiss in almost all of those actions compel a more efficient disposition of the motions. The Court has closely reviewed, and will continue to closely review, the filings in each matter.

– The motion to dismiss the negligence claim is DENIED.

– The motion to dismiss the plaintiff's claim for civil conspiracy is GRANTED.

The plaintiff is granted leave to amend his complaint to correct the deficiencies outlined in this order within 30 days of the clerk's notice accompanying this order. See ERG, Inc. v. Barnes, 137 N.H. 186, 189 (1993).

SO ORDERED.

10/25/2023
Date

John C. Kissinger, Jr.
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 10/26/2023