SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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DEBORAH HINES,

Plaintiff,

-against-

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.; THE GOVERNING BODY OF JEHOVAH'S WITNESSES; and JOHN AND JANE DOES 1-20 as priests, clergy, staff and administrators whose names are unknown to the Plaintiff,

Defendants.

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Index No. 520772/2021

Motion Sequence No. 001

REPLY MEMORANDUM OF LAW

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PRELIMINARY STATEMENT

This reply memorandum is in further support of the motion to dismiss plaintiff Deborah Hines' ("Plaintiff") Complaint pursuant to CPLR §§ 3211(a)(2) and (a)(7). It is made on behalf of the eight individuals who currently serve on the Governing Body of Jehovah's Witnesses (the "Governing Body").

Plaintiff submitted a rambling opposition that includes pages of boilerplate and inapplicable arguments. There is also reference to so-called "admissions" allegedly made by a co-defendant in a filing in a separate case.

Plaintiff relies on conclusory pleadings, bereft of facts. By contrast, almost no attention was paid to the fact that Plaintiff's abuser, William Briggs ("Briggs"), was her stepfather and his contact with Plaintiff was separate and apart from any status or position that either Plaintiff or her abuser (Briggs) had in the religion of Jehovah's Witnesses or their relationship to the Governing Body. As a matter of New York law, that issue alone disposes of the case against the Governing Body.

The Governing Body's motion to dismiss the Complaint should be granted for multiple reasons, including that (1) the Governing Body is not an unincorporated association or a jural entity that is capable of being sued; (2) Plaintiff has not met the pleading requirements against an unincorporated association; (3) Plaintiff's claims sounding in negligence must be dismissed because no negligence is alleged against any current member of the Governing Body acting in a capacity as a member of the Governing Body; (4) allegations, even as made against a former member of the Governing Body, amount to mere labels and conclusions without the pleading of supporting facts; and (5) any recourse Plaintiff may have against his alleged abuser and the corporate entities named in this action are unaffected by dismissal of the Governing Body.

As there are no factual allegations of wrongdoing against the current members of the Governing Body in their capacity as members of the Governing Body, the punitive damage allegations fail as well, as a matter of law.

ARGUMENT

POINT I

PLAINTIFF HAS FAILED TO MEET THE REQUIREMENTS TO MAINTAIN ACTION AGAINST THE GOVERNING BODY

Plaintiff has failed to meet its burden to establish that the Governing Body is a jural entity amenable to suit. In her Complaint, Plaintiff alleges that the Governing Body "was and is a business entity or religious entity of unknown status." Compl. at ¶ 7. Plaintiff has now settled on labelling the Governing Body as an unincorporated association, without pleading anything other than that label. Even if the Governing Body were an unincorporated association (and it is not), the documents submitted by Plaintiff establish that the Governing Body has a purely ecumenical function and civil courts may not entertain claims that inquire into religious determination. In addition, Plaintiff has failed to meet the stringent requirements for maintaining an action against an unincorporated association. Accordingly, the Complaint against the Governing Body must be dismissed.

A. The Governing Body Is Not a Jural Entity Amenable to Suit

Plaintiff claims, in conclusory fashion, that the Governing Body "plainly exists as an entity." Plaintiff's Response in Opposition to Defendant Governing Body of Jehovah's Witnesses' Motion to Dismiss, dated March 25, 2022 (NYSCEF Doc. 17) ("Pl. Opp.") at 8.

Relying on an organizational chart, and a letter describing the structure of the Jehovah's Witness religion, Plaintiff argues that the Governing Body exists as an entity because it allegedly sits atop or controls defendant Watchtower Bible and Tract Society of New York, Inc.

("Watchtower").[1] *See* Pl. Opp. at 8-9. However, even if true, a group of managers or an unincorporated division of a corporation has no independent legal existence. *See e.g.*, *Sheldon v. Kimberly-Clark Corp.*, 111 A.D.2d 912 (2d Dep't 1985) (affirming dismissal of complaint against division of defendant corporation because it was not a jural entity amendable to suit in its own right); *Tropea v. Tishman Constr. Corp.*, 2016 N.Y. Misc. LEXIS 448 (Sup. Ct. New York Cnty. 2016) (denying plaintiff's motion for leave to amend complaint to add a department within defendant corporation as a defendant because department was not a distinct legal entity); *Justinian Capital SPC v. WestLB AG, N.Y. Branch*, 37 Misc. 3d 518 (Sup. Ct. New York Cnty. 2012) (granting defendants' motion to dismiss where named entity was "merely a division or group of asset managers" and not a legal entity).

Even assuming that the Governing Body has "control" over secular rather than ecumenical functions of the corporate entities (and it does not), it is not a proper party to the lawsuit without a pleaded basis for disregarding corporate formalities, a showing not even attempted by Plaintiff in her opposition.

In her opposition, Plaintiff relies on the supposed "admissions" contained in the Watchtower materials submitted by Plaintiff support, rather than rebut, the Governing Body's position that it is not a legal entity amenable to suit. For example, the U.S. Organization Structure of Jehovah's Witnesses submitted by Plaintiff identifies the "primary legal entities" prior to April 2001 as the Watch Tower Bible and Tract Society of Pennsylvania and the Watchtower Bible and Tract Society of New York, Inc. (a named defendant in this action). *See*

[1] Watchtower is a domestic not-for-profit corporation organized under the laws of the State of New York. *See* Corporation and Business Entity Database for the New York State Department of State Division of Corporations, *available at* https://apps.dos.ny.gov/publicInquiry/.

Affirmation of Irwin M. Zalkin, Esq. dated March 25, 2022 ("Zalkin Aff."), Exh. A at 23 (NYSCEF Doc. 19). After April 2001, the "primary legal entities" also include the Christian Congregation of Jehovah's Witnesses, the Religious Order of Jehovah's Witnesses and the Kingdom Support Services. *See id*. at 24. The materials identify the Governing Body as part of the "primary theocratic structure." *See id.*

The evidence Plaintiff relies on shows a purely ecumenical function for the Governing Body – nothing more. *See e.g.*, Zalkin Aff., Exh. A at 17 ("The Governing Body outlines organizational arrangements, including teaching, standards of conduct, and witnessing procedures, all of which are Bible-based."); Exh. B at 19 (NYSCEF Doc. 209) ("The Governing Body also continues to carry the responsibility of overseeing the preaching work, producing Bible study material, and arranging for the appointment of overseers to serve in various capacity in the organization."); Exh. C at 4 (NYSCEF Doc. 21) ("From this we see that the term 'governing body' is as appropriate, fitting and Scriptural as any for referring to that body of elders entrusted with the spiritual oversight of Jehovah's Christian witnesses today.").[2]

Civil Courts may not entertain claims that in effect require religious determinations that are ecclesiastical, regardless of the nature of the underlying dispute. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). The United States Supreme Court decided *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, ___ U.S. ___ (2020), reaffirming "the right of churches and other religious institutions to decide matters 'of faith and

[2] Plaintiff also purports to cite to Watchtower's Motion to Dismiss Plaintiff's Complaint in another action. *See* Pl. Opp. at 9 (citing Zalkin Aff., Exh. D). However, Exhibit D to the Zalkin Affirmation is the Governing Body's memorandum of law in support of its motion to dismiss the complaint in the action entitled *Diaz v. The Governing Body of Jehovah's Witnesses et al.* (Index No. 520480/2020) pending in this Court.

doctrine' without government intrusion." *Id.* at 881 (citing *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 197 (2012)).

The supposed "contradiction" between statements made by Mr. Lösch in a declaration submitted in 2014 in another case[3] and the positions taken by the Governing Body on this motion (*see* Pl. Opp. at 13-14) are utter nonsense. There is no contradiction and Mr. Lösch maintains, as does this firm, that the Governing Body is not a jural entity, and not subject to suit at all.

The Complaint must be dismissed regardless of the analysis used. If the Governing Body is being sued as a manager of a corporation, such a claim cannot stand because it is an improper, unpleaded and unsupportable attempt at "veil piercing." Control over business functions is shielded by corporate form. Such shielding is the reason businesses incorporate, the protections granted by incorporation would be illusory otherwise. If the Governing Body is being sued in connection with its religious determinations or ecumenical functions, such claims are immune from inquiry. *See* Defendant The Governing Body of Jehovah's Witnesses Memorandum of Law dated February 11, 2022 (NYSCEF No. 12) ("Def. Mem.") at 6-8. In either case, the Complaint against the Governing Body must be dismissed.

B. Plaintiff's Arguments of Unincorporated Association Fare No Better

Not only must the Complaint be dismissed since the Governing Body is not an unincorporated association (or a jural entity amenable to suit), the Complaint must also be dismissed because (i) Plaintiff has not complied with the pleading requirements governing unincorporated associations, and (ii) current members of the Governing Body are not liable in their individual capacity for the acts of prior members; and (iii) Plaintiff has not pleaded

[3] *See* Zalkin Aff., Exh. F (NYSCEF No 24).

ratification of the wrongful conduct by all of the current members of the Governing Body.

1. Plaintiff Has Not Met the Stringent Pleading Requirements to Maintain an Action Against an Unincorporated Association

It is well settled that an unincorporated association is neither a partnership nor a corporation and has no existence independent of its members. *Martin v. Curran*, 303 N.Y. 276, 280 (1951). A claim against an unincorporated association will only lie if it also lies against each individual member. *Id.* General Association Law § 13 "provides for the maintenance of the action against the president or treasurer of the association, and it must be strictly complied with." *Caines v. Prudential Ins. Co.*, 8 Misc. 2d 789 (Sup. Ct. Queens Cnty.1957) (internal citation omitted). If Plaintiff believes the Governing Body is an unincorporated association, then Plaintiff must comply with the "stringent pleading … requirements for maintaining an action against an unincorporated association." *Hoesten v. Best*, 34 A.D.3d 143, 159 (1st Dep't 2006).

Plaintiff speciously claims that the rule that an unincorporated association has no existence independent of its members "is inapposite on a motion to dismiss." Pl. Opp. at 9. Plaintiff ignores the controlling authorities that unequivocally state that a complaint against an incorporated association is subject to dismissal where a plaintiff fails to plead that all members of an unincorporated association authorized or ratified the alleged wrongful conduct (here plaintiff makes a factual pleading as to one current member, not all, and for non-tortious conduct that long predates his service on the Governing Body), including the Court of Appeals' decision in *Martin v. Curran*, 303 N.Y. 276 (1951). *See* Def. Mem. at 10-12. Plaintiff's reliance on *Palladino v. CNY Centro, Inc.*, 23 N.Y.3d 140 (2014) is misplaced.[4] In *Palladino*, the Court of

[4] Plaintiff also misleadingly leaves out the beginning of the sentence in the quoted language from *Palladino* in the parenthetical, which refers to the discussion distinguishing New York as being in the small minority of states that requires that a complaint allege that all members of an

…Continued

Appeals affirmed the lower court's dismissal of a complaint for failure to allege that the conduct of the unincorporated association ratified by all members of the unincorporated association. *See id.*

Plaintiff, in desperation, cites to a recent decision from another New York court that denied the Governing Body's motion to dismiss a complaint against it. *See* Pl. Opp. at 10 (citing Zalkin Aff., Exh. G (NYSCEF Doc. 25). However, in that case, the Court improperly shifted the burden to the defense to prove (when it had not been pleaded by Plaintiff) that the Governing Body was not a legal entity. How one proves a negative, particularly on a motion to dismiss, eludes us, and, in any event, is not defendant's burden. This Court is not bound to repeat the error of another Court. In any event, Plaintiff Hines has not pleaded the status of the Governing Body. Even assuming the Governing Body is an unincorporated association, there is plainly no basis to join the current Governing Body of the Jehovah's Witness religion as a defendant for Plaintiff's sexual abuse by her stepfather (Briggs) in the 1980s when none of them were serving as a member of the Governing Body.

2. The Current Individual Members of the Governing Body Are Not Liable For the Alleged Actions of Past Members

Plaintiff claims that "New York law permits a later iteration of an unincorporated association to be sued for prior acts by a different group of members." Pl. Opp. at 11. Plaintiff is wrong. The only case cited by Plaintiff – *Rankin v. Killion*, 190 Misc. 26 (Sup. Ct. New York Cnty.1947) – is a three-paragraph lower court decision that is over 70 years old. In *Rankin*, the

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unincorporated association ratified the conduct at issue. *See Palladino*, 23 N.Y.3d at 149 ("*Additionally, '[i]n many jurisdictions*, by statute or decisional law many kinds of associations are now treated as jural entities, distinct from their members in the same way that a corporation is distinct form tis stockholders.").

sole issue was whether the Democratic National Committee ("DNC"), an unincorporated association, could be held liable for debt incurred under an agreement entered into by former officers of the unincorporated association. *Rankin* does not address the liability of an individual member of an unincorporated association for ratification of tortious acts allegedly committed by others decades earlier. Rather, the court simply held that an unincorporated association may be liable for debts, contractual obligations expressly undertaken by the unincorporated organization, despite fluctuating membership. Obviously a debt owed by the DNC in the 1940s is a question of contract law, and has nothing whatsoever to do with the law of tort, or questions of ratification, presented by this case. *Rankin* is wholly irrelevant, and Plaintiff's failure to cite to any pertinent case law speaks volumes.

Plaintiff also argues that the CVA revived claims against the Governing Body because of the "continual nature of the Governing Body." Pl. Opp. at 11. Plaintiff cites to no authority for this argument. Even if the Governing Body was an unincorporated association (and Plaintiff has not plead that it is), the rule in *Martin* is that lawsuits against association officers are limited to "cases where the individual liability of every single member can be alleged and proven." *Martin*, 303 N.Y. at 282. The members of the Governing Body in the 1980s (when the sexual abuse took place) are not the same individuals that currently serve on the Governing Body. The only allegation as to any current members of the Governing Body involve Mr. Lösch (Compl. at ¶¶ 175-76). However, Mr. Lösch was not on the Governing Body at that time Plaintiff reported the abuse to him, nor are there any allegations that Mr. Lösch did anything tortious (indeed, no abuse in the forum is claimed after Mr. Lösch was told). There are also seven other members of the Governing Body against whom no factual allegations, causal or otherwise, are lodged.

Plaintiff contends that dismissal of the Governing Body "would yield the absurd result of allowing otherwise culpable entities to shield themselves from liability simply by changing leadership." Pl. Opp. at 11. That argument is bogus and need not distract this Court. Corporate existence means that a change of CEO, treasurer or any officer, director, shareholder or employee, does not alter a plaintiff's rights, against the corporation. Plaintiff, assuming corporate responsibility can be demonstrated, has a remedy against the corporate entities. She does not have a remedy against the current members of the Governing Body, none of whom are alleged to have done anything wrong. Dismissal of the Governing Body will not in any way reduce or limit Plaintiff's ability to recover on her claims, if proven.

What Plaintiff wants is to be able to have an unpleaded and unsupportable remedy of veil piercing, and, on top of that, apply it against persons with no possible nexus to the wrong decades after the alleged tortious acts in question. That effort cannot be countenanced.[5] On the one hand, Plaintiff argues that, for pleading purposes, the current individuals that serve on the Governing Body should be treated as an unincorporated association. Yet, on the other hand, Plaintiff argues that, for liability purposes, the current individual members of the Governing Body should be treated as a corporation – vicariously liable for conclusorily pleaded wrongs committed by members of the Governing Body of decades past. Both the doctrines of "veil piercing" and the *Martin* case bar this rather flimsy and poorly conceived endeavor.

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[5] Plaintiff's counsel has publicly stated the reason for naming the Governing Body as a defendant in this and another lawsuit is to try to obtain a deposition of the members of the Governing Body. *See* Daniel Avery, Groundbreaking Lawsuits Claim Jehovah's Witnesses Covered Up Years of Child Sexual Abuse, NEWSWEEK, Aug. 13, 2019, *available at* https://www.newsweek.com/jehovahs-witnesses-child-sex-abuse-lawsuit-1454001 ("'Before, having to sue from another state, we've had trouble even getting a deposition from these guys,' Zalkin says. 'But given that [the Governing Body] operates from the state of New York, and control the conduct of Witnesses worldwide, we think [sic] have a good shot.'")).

3. Plaintiff Has Not Pleaded Ratification By The Members of the Governing Body

Plaintiff incorrectly argues that the requirement that all members of an unincorporated association unanimously authorize or approve the alleged wrongful conduct does not apply to negligence claims. *See* Pl. Opp. at 12-13 (citing *Riordan v. Garces*, 2019 N.Y. Slip Op. 33666[U] (Sup. Ct. New York Cnty. 2019)). To the contrary, on questions of ratification, authorization or approval (none of which are pleaded beyond mere labels and conclusions), there is no distinction between contract and negligence claims asserted against an unincorporated association:

> The Court finds the case of *Martin v. Curran* (303 NY 276 [1951]) dispositive as to all causes of action alleged against the Association. In *Martin,* the Court of Appeals held that because a voluntary, unincorporated membership association has no existence independent of its members, a plaintiff cannot maintain a cause of action against it "unless the debt which he seeks to recover is one upon which he could maintain an action against all the associates by reason of their liability therefor, either jointly or severally" (*id.* at 281, quoting *McCabe v. Goodfellow,* 133 NY 89, 92 [1892])…
>
> In her reply papers, the plaintiff concedes that *Martin* controls as to her claims sounding in breach of contract, but not as to her remaining claims sounding in negligence. Contrary to the plaintiff's contentions, the *Martin* decision makes no distinction between contract and negligence claims. Indeed, the decision itself explicitly states that the line of consistent precedent on this holding beginning with *McCabe v. Goodfellow, supra,* includes not only contract but tort cases. Interpreting General Associations Law § 13, the Court of Appeals elaborated, "[s]o, for better or worse, wisely or otherwise, the Legislature has limited such suits against association officers, whether for breaches of agreements or for tortious wrongs, to cases where the individual liability of every single member can be alleged and proven" (*Martin v. Curran, supra* at 282). Therefore, even assuming that the plaintiff's negligence claims were otherwise viable, they would fail pursuant to *Martin.*

Kreutzer v. East Islip Union Free Sch. Dist., 2015 N.Y. Slip Op. 32322 (Sup. Ct. Suffolk Cnty. 2015). *Accord Scopo v. Laborers' Int'l Union of N. Am.*, No. 11-cv-3991, 2103 U.S. Dist.

LEXIS 31061 (E.D.N.Y. Mar. 6, 2013). The Complaint does not allege that any of current members of the Governing Body "ratified" the acts of the past members of the Governing Body. Plaintiff does not explain how one can "ratify" conduct many decades after the alleged wrong.

To the extent Plaintiff asserts negligence, those claims are aimed at the former members of the Governing Body, not the current members of the Governing Body. Yet the Complaint does not contain a single factual allegation of negligence or ratification against any former members of the Governing Body (or the current member of the Governing Body, for that matter).

Accordingly, Plaintiff's argument that the current eight individuals that comprise the Governing Body may be held individually liable for the alleged conduct of past members should be rejected.

POINT II

PLAINTIFF'S CLAIMS SOUNDING IN NEGLIGENCE MUST BE DISMISSED BECAUSE THERE ARE NO ALLEGATIONS OF PRIOR NOTICE OF ABUSE IN NEW YORK OR ANY DUTY ON ANY MEMBERS OF THE GOVERNING BODY

Plaintiff asserts the following claims sounding in negligence: (i) negligent supervision; (ii) negligent retention; (iii) negligent undertaking; (iv) negligent failure to train; (v) negligent failure to provide a safe and secure environment and (vi) negligence. For each of her negligence claims, Plaintiff attempts to treat the Governing Body as a corporation – vicariously liable for conclusorily pleaded wrongs committed by members of the Governing Body of decades past. As demonstrated in Section I.B.2, *supra*, both the doctrines of "veil piercing" and the *Martin* case bar Plaintiff's claims.

The alleged negligent conduct alleged is against one former member of the Governing Body. Even as alleged against a former member of the Governing Body, the allegations are conclusory. Plaintiff's negligence claims should also be dismissed because Plaintiff does not

plead any facts to support a claim for negligence as against the current members of the Governing Body. *See Martin*, 303 N.Y. at 281 ("[t]he liability to be enforced in any such suit, in which association officers are named as representative defendants, is still that of the individual members as individuals, ….").

There are pages of rather curious discussion of Restatement principles suggesting how one might theoretically be liable, under Restatement of Agency § 213 and Restatement of Torts §§ 323 and 324A for the action of another. *See, e.g.*, Pl. Opp. at 17-21. Plaintiff argues that she has sufficiently alleged facts supporting liability under Restatement (Second) of Agency § 213(b), "for employing an improper person for the work to be done." Pl. Opp. at 18. Yet Plaintiff fails to explain how any alleged employment relationship is relevant to Briggs' abuse of Plaintiff, his stepdaughter.

A necessary element to a claim for negligent hiring, supervision and retention is that the employer "knew or should have known of the employee's propensity" for sexual abuse. *Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 A.D.2d 159, 161 (2d Dep't 1997). However, some factual pleading must be made in order to survive a motion to dismiss. *See id.* at 162 ("a complaint which contains bare legal conclusions [ ] should be dismissed"). Here, the Complaint does not factually plead even a single specific instance of prior sexual abuse by Briggs that was known to any member of the Governing Body, current or former, before the abuse is alleged to have occurred to Plaintiff. We recognize that Plaintiff claims she pleaded as much, but the Complaint, and the paragraphs cited, show otherwise. Pl. Opp. at 18. The Second Department has emphasized that bare pleadings of labels and conclusions will not allow a negligent hiring claim to survive in this context. *Everett v. Eastchester Police Dep't*, 127 A.D.3d 1131 (2d Dep't

2015); *John Doe 1 v. Bd. of Educ. of Greenport Union Free Sch. Dist.*, 100 A.D.3d 703 (2d Dep't 2012).

Plaintiff's claim that the Governing Body "brought Briggs in contact with Plaintiff" and "thus, provid[ed] the access that Briggs needed to molest Plaintiff" is simply outrageous. *See* Pl. Opp. at 18. Briggs was Plaintiff's stepfather and, thus, Briggs had access to Plaintiff regardless of any role he played in the religion.

Plaintiff's claim for negligent undertaking must also be dismissed. As alleged in the Complaint, upon reporting the abuse to Mr. Barr, Plaintiff was removed from the room she shared with her mother and Briggs. Compl. at ¶¶ 170, 172. There are no allegations that any further abuse took place in New York, or that any member of the Governing Body, past or present was a mandated reporter, obliged to report an allegation of sexual abuse to law enforcement. To the extent Plaintiff suggests that the Governing Body is liable for abuse by Briggs at Plaintiff's home in Arizona, that argument must be rejected. *See E.F. v. Diocese of Brooklyn*, 2020 N.Y. Slip Op. 32651 (U) (Sup. Ct. Kings Cnty. Aug. 14, 2020) (the CVA applies only to wrongs committed within New York State).

Plaintiff's arguments about duty to train or protect do not amount to personal obligations applicable to the ecclesiastical leadership offered by members of the Governing Body, whether past or present. *See Kenneth R.*, 229 A.D.2d 159. The Complaint offers no specific allegations as to what, if anything, was deficient about any such training, education programs and procedures (or lack thereof) which would have prevented Briggs' abuse of Plaintiff. Plaintiff has failed to allege facts, which, if proven, would suggest how either a failure to train or a training deficiency caused or contributed to the sexual abuse, or, for that matter, how proper training would have prevented such abuse by Briggs.

Plaintiff also has not plead any facts (as opposed to bare conclusions) to establish that: (1) any prior or current member of the Governing Body had such a duty to provide a safe and secure environment; (2) any prior or current member of the Governing Body knew or should have known of the propensities of Briggs; and (3) any such claim would turn on a non-ecumenical function of the Governing Body, a necessary allegation for making such a claim adjudicable. *See Kenneth R.*, 229 A.D.2d 159.

Plaintiff's claim for negligence also fails. Plaintiff's abuser was her stepfather. The religion did not put him in proximity to her. In addition, the notice claimed to have been provided to a current member of the Governing Body was only to one member of the Governing Body (and the law requires notice to all members) *before* he was on the Governing Body and *after* the abuse in New York had ceased. *See* Compl. at ¶¶ 175-76.

Accordingly, Plaintiff's claims against the Governing Body sounding in negligence must be dismissed.

POINT III

PLAINTIFF'S CLAIMS AGAINST THE GOVERNING BODY FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND SEXUAL ABUSE AND BATTERY MUST BE DISMISSED

Plaintiff argues that her claims for intentional infliction of emotion distress should not be dismissed because the Governing Body "ratified" Briggs' sexual abuse of Plaintiff by failing to discipline Briggs and by elevating Brings to the position of Elder despite admitting to sexually abusing Plaintiff. *See* Pl. Opp. at 12-13. Plaintiff also argues that the "Governing Body allowed Plaintiff to continue sleeping in the same room as Briggs, where it permitted him unfettered access to Plaintiff for the purpose of sexually abusing her." *Id.* at 22-23. Plaintiff's arguments must be rejected.

Briggs' access to Plaintiff was a result of his role as her stepfather, regardless of any role Briggs' held in the religion. In addition, the Complaint alleges that "[f]ollowing her report to Mr. Barr [a former member of the Governing Body], Plaintiff was removed from her mother and stepfather's room at Bethel." Compl at ¶ 172.

Plaintiff further argues that she has alleged facts to support ratification of her claim for sexual abuse and battery by pleading that, after Plaintiff reported Briggs' abuse, the Governing Body elevated Briggs to the position of elder, and the Governing Body failed to report the abuse to law enforcement. Plaintiff's argument fails because (i) ecclesiastical appointments, guidance and direction that amount to ecumenical functions and are not cognizable under the CVA (*see* Point I.A., *supra*); and (ii) there is no allegation in the complaint that any member of the Governing Body, past or present, was a mandated reporter, obliged to report an allegation so sexual abuse to law enforcement.

Moreover, intentional torts such as intentional infliction of emotional distress and sexual assault and battery require that Plaintiff plead ratification of Briggs' abuse by every one of the then-members of Governing Body as an unincorporated association. *See Martin v. Curran*, 303 N.Y. 276, 289 (1951). None of the cases cited Plaintiff address a claim for intentional infliction of emotional distress and sexual assault and battery against an unincorporated association. Here, Plaintiff has failed to plead that each member of the Governing Body authorized or ratified the alleged abuse by Briggs. *See* Point I.B.3, *supra*. Accordingly, Plaintiff's claims for intentional infliction of emotional distress and for sexual abuse and battery as against the Governing Body should be dismissed.

POINT IV

PLAINTIFF'S CLAIMS FOR PUNITIVE DAMAGES SHOULD BE DISMISSED

Plaintiff's claims for punitive damages against the Governing Body should be dismissed because Plaintiff failed to allege facts that (i) plead a claim against the Governing Body or any individual member thereof; or (ii) assert the requisite malice against the Governing Body or any individual member thereof. Plaintiff argues that the Governing's Body's "willful and wanton disregard for safety" is evidenced by "[t]he continued authority granted to an adult suspected to be a child abuser to live in such close quarters with children in an unsupervised context." Pl. Opp. at 25. Yet, Briggs' access to Plaintiff was a result of his role as her stepfather, not from any action or failure to act by any of the members of the Governing Body. Plaintiff's claims for punitive damages against the Governing Body must be dismissed.

CONCLUSION

For the reasons set forth fully above, all claims advanced against the Governing Body, effectively claims against the eight individual members thereof, must be dismissed as a matter of law.

Dated: New York, New York
April 12, 2022

Respectfully submitted,
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