No. 123521

IN THE SUPREME COURT OF ILLINOIS

JANE DOE, a minor, by her mother and next friend, JANE A. DOE, and by her father and next friend, JOHN DOE; JANE A. DOE, individually; JOHN DOE, individually, Plaintiffs-Appellees, v. CHAD COE, as an individual, FOX VALLEY ASSOCIATION ILLINOIS CONFERENCE OF THE UNITED CHURCH OF CHRIST, an Illinois Not-for-Profit Corporation, ILLINOIS CONFERENCE OF THE UNITED CHURCH OF CHRIST, an Illinois Not-for-Profit Corporation, THE UNITED CHURCH OF CHRIST, THE GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST, THE UNITED CHURCH OF CHRIST BOARD, an Ohio Not-for-Profit Corporation, Defendants, and FIRST CONGREGATIONAL CHURCH OF DUNDEE ILLINOIS, an Illinois Not-For-Profit Corporation, PASTOR AARON JAMES, as an individual, Defendants-Appellants.	On Leave to Appeal from the Illinois Appellate Court, Second Judicial District Docket No. 2-17-0435 There Heard on Appeal from the Circuit Court of Kane County, Illinois, Case No. 2015-L-216 The Honorable James R. Murphy, Judge Presiding

REPLY BRIEF OF PLAINTIFFS-APPELLEES
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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

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ARGUMENT

I. CROSS RELIEF REQUESTED: The Second District Appellate Court Erred in Finding that the Second Amended Complaint Does Not State a Cause of Action for Negligent Retention Against James and FCC

As a preliminary matter, James and FCC[1] conflate the elements of negligent retention with the elements required to allege a duty under the custodial caretaker special relationship. Whether an attack is reasonably foreseeable is a requirement of the special relationship exception to the general duty rule. *See Doe v. Goff*, 306 Ill. App. 3d 1131, 1134 (3rd Dist. 1999) ("a duty can exist if (i) the attack was reasonably foreseeable and (ii) "the parties stand in one of the following 'special relationships:' (1) common carrier and passenger; (2) innkeeper guest; (3) business invitor and invitee; and (4) voluntary custodian protectee."). Notably, though, James and FCC do not dispute that they each owe a duty to Jane Doe. James does not contest Plaintiffs' arguments that, under Illinois law, James owes a duty for the negligent retention of Coe. *See Hills v. Bridgeview Little League Ass'n.*, 195 Ill. 2d 210 (2000) (wherein this Court held that the master-servant relationship is "not one capable of exact definition and it is generally left to the trier of fact to determine whether the relationship exists"). Rather, James and FCC argue the allegations pled do not adequately support the first two elements of a negligent retention cause of action.

An action for negligent retention of an employee requires the plaintiff to plead and prove that (1) the employer knew or should have known that the employee had a particular unfitness for the position so as to create a danger of harm to third persons; (2) such particular unfitness was known or should have been known at the time of the employee's

[1] Any capitalized terms not defined in the instant Reply Brief of Plaintiffs-Appellees shall have the meaning set forth in the Additional Brief of Plaintiffs-Appellees.

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retention; and (3) this particular unfitness proximately caused the plaintiff's injury. *See Doe v. Boy Scouts of America*, 2014 IL App (2d) 130121, ¶39 (2nd Dist. 2014). Because this case was dismissed pursuant to §2-615, this Court need only be concerned with the "pleading" of the action; and not the proving of its elements, which is the concern of James and FCC's arguments.

Unlike negligent supervision, negligent retention requires allegations that the master/employer knew or should have known about the employee's propensity for liability to attach. More than just a temporal aspect, liability for negligent retention can exist even where the employee was supervised at all times but was retained after the master/employer knew or should have known of the employee's dangerous propensity and harm occurred. Liability for negligent supervision, on the other hand, is based on the master/custodian/voluntary undertaker's failure to supervise the care of the minor. *See Mueller v. Community Consolidated School District 54*, 287 Ill. App. 3d 337, 342-343 (1st Dist. 1997); *see also Vancurra v. Katris*, 238 Ill. 2d 352 (Ill. Sup. Ct. 2010).

In their Reply Brief ("Reply"), James and FCC argue that "plaintiffs repeatedly alleged that Coe engaged in 'Inappropriate' contact with Doe... without further stating what the 'Inappropriate' behavior was and what about it made the assault/rape <u>reasonably foreseeable</u>." Reply, 16 [emphasis added]. Relying on *Dimovski*, James and FCC claim "plaintiffs never alleged what Coe's misconduct was other than to call it 'Inappropriate' throughout the pleadings." Reply, 15. But in *Dimovski*, the Second District Appellate Court reversed the trial court, holding that the issue of whether the defendants should have "reasonably anticipated the events, is a question of fact for the jury to determine that cannot be decided as a matter of law at the pleadings stage of the litigation." *Doe v. Dimovski*, 336

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Ill. App. 3d 292, 299 (2nd Dist. 2003). The *Dimovski* Court found that the plaintiff set forth sufficient facts to establish a negligent retention cause of action and did not need to address the cause of action further because its holding was limited to the defendants' failure to report. *Id*.

Consistent with the *Dimovski* court's ruling that negligent retention cannot be dismissed at the §2-615 stage based on the knew or should have known elements of negligent retention, this Court later held in *Vancurra* that, in a negligence claim, "the plaintiff may allege that the employer merely *should have known* of the employee's malfeasance." *Vancurra*, 238 Ill. 2d at 378-379 [emphasis in original]. And this holding in *Vancurra* follows a long line of cases by this Court on this issue. In *Doner v. Phoenix Joint Stock Land Bank of Kansas City*, this Court held that

> [t]he allegation that each of the defendants, at and before the time they acquired their aforesaid purported conveyances, or paid the consideration, if any, for the execution of the same, knew of the rights of the plaintiff in the premises and were charged with notice of said rights, was an allegation of ultimate fact and not a conclusion, as argued by appellee. *Doner v. Phoenix Joint Stock Land Bank of Kansas City*, 381 Ill. 106, 115 (Ill. Sup. Ct. 1942).

See also City of Chicago v. Beretta U.S.A. Corp., 213 Ill. 2d 351, 369 (Ill. Sup. Ct. 2004) ("despite the requirement that the complaint must contain allegations of fact bringing the case within the cause of action, the plaintiff is not required to set out evidence; only the ultimate facts to be proved should be alleged, not the evidentiary facts tending to prove such ultimate facts").

And Illinois Appellate Courts have addressed this very issue in favor of the Plaintiffs as well. *See Marshall v. David's Food Store*, 161 Ill. App. 3d 499 (1st Dist. 1987). In *Marshall*, the plaintiff, who was abducted from the store's parking lot and sexually assaulted, brought a cause of action against the store and its security service. *Marshall*, 161

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Ill. App. 3d 499. In reversing the trial court, the First District Appellate Court held that plaintiff did not need to set forth detailed evidence of notice in her complaint; but rather plaintiff need only allege that "both defendants 'knew or should have known' that it was reasonably foreseeable that a customer might be attacked in the parking lot." *Id.* at 500. The *Marshall* plaintiff also pled that "one or both of the defendants had actual or constructive notice of potential danger in the parking lot, that they knew or should have known of a likelihood of harm being done an invitee there." *Id*. at 501. The First District Appellate Court held that

> [i]t is not required that plaintiff allege facts which, to much greater degree of exactitude, are more within the knowledge of the defendant. In the instant case, the defendants are clearly in the best position to know what prior criminal activity occurred in or around the store. *Id.*

Like the plaintiff in the aforementioned case law, Plaintiffs here have alleged, among other allegations, that: (1) James and FCC "knew or had reason to know that Coe's behavior and interactions with youth, including Jane Doe, were Inappropriate" (¶241 (C1652), ¶263 (C1655)); (2) James and FCC "knew or had reason to know that Coe's behavior and interactions with youth, including Jane Doe, were dangerous" (¶242 (C1652-53), ¶264 (C1655-56)). Plaintiffs also specifically alleged what James and FCC "knew or should have known." (¶243, ¶265) (C1652-53, C1656-57). Thus, Plaintiffs' complaint sufficiently pled a cause of action under Illinois law. *See Vancurra v. Katris*, 238 Ill. 2d 352 (Ill. Sup. Ct. 2010)*; Doe v. Dimovski*, 336 Ill. App. 3d 292 (2nd Dist. 2003); *Marshall v. David's Food Store*, 161 Ill. App. 3d 499 (1st Dist. 1987).

Because knowledge allegations are sufficient to withstand a §2-615 motion to dismiss, and Plaintiffs are not required to allege the evidentiary facts supporting those allegations at this stage, James and FCC take a different tact and go to great lengths to

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include information outside of the record. Their "belief" as to Plaintiffs' access to facts within James and FCC's control is not only inaccurate but also seeks to invade on the attorney work-product and attorney-client communication privilege doctrines. In short, Plaintiffs would not have filed their Motion for the Prevention of Abuse in Discovery against James and FCC had the Plaintiffs possessed all of the facts and knowledge that James and FCC did.

James and FCC argue that "Plaintiffs were in possession of the DCFS report which contained the complete interview that investigators had with Pastor James." Reply, 15. As FCC and James know, the Plaintiffs submitted the DCFS report under seal to evidence the false attestations contained in James' affidavit, which the UCC and ICUCC Defendants were collaterally relying upon in their own motion to dismiss the Amended Complaint, which was raised at the same hearing as Plaintiffs' Motion for the Prevention of Abuse in Discovery. (R14-R22, R178-179). The Circuit Court declared the Plaintiffs' Motion for the Prevention of Abuse in Discovery to be moot as a result of the Circuit Court's dismissal of the Plaintiffs' Amended Complaint. (R189-190).

Along these same lines, James and FCC argue that "Plaintiffs had materials obtained through discovery from the Kane County State's Attorney Office's criminal file for Coe." Reply, 16. Plaintiffs obtained no such documents through discovery. The protective order entered by the Circuit Court was required by the Kane County State's Attorney's Office, who was in the process of prosecuting Coe for child pornography and the sexual assault of Jane Doe. As the protective order itself states, "[b]y the entry of this protective order, the Kane County State's Attorney is <u>not presently obligated to produce any materials, as no subpoenas or other discovery requests have yet been served</u>." (C331)

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[emphasis added]. James and FCC know that Plaintiffs did not serve any discovery requests and did not issue any subpoenas to the Kane County State's Attorney. James and FCC's argument misstates the actual record and attempts to invade the attorney-client privilege. Moreover, their argument misses the point. The information possessed by the State's Attorney is not the same as that which is possessed by James and FCC. The fact that Plaintiffs took the unusual step of filing a motion for the prevention of abuse in discovery at the outset of the case in relation to witnesses and evidence within the control of James and FCC contradicts any belief that Plaintiffs had all this access to James and FCC's knowledge and information.

James and FCC next piece together different allegations of the Second Amended Complaint to highlight the inherent inconsistencies in cases such as the instant case. Reply, 15. First, because we are at the pleadings stage, evidence of "who saw what, when, and where" is not required. Second, Plaintiffs do have allegations of "who saw what, when, and where." Finally, James and FCC's argument misses the point. While Coe may have been trying to avoid detection, it does not mean he was good at it; and we certainly know he was not successful at it by virtue of the fact that a mandated reporter recognized the interaction between Coe and Jane Doe as Inappropriate within just two days of seeing the two interact. This is why mandated reporters are trained to look for "red flags." And James and FCC altogether failed to see the "red flags" that were apparent to this mandated reporter, much less apparent to a reasonably prudent person. All of this was allowed to occur in the church, and James and FCC argue they did not "know" anything when a reasonably prudent person certainly would have known. And no amount of secrecy

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explains how Coe was physically able to show pornography depicting high school girls to minors inside the church.

James and FCC note that no detailed facts were alleged in Plaintiffs' 50-page Brief (Reply, 16); yet, the facts are set forth in the Amended Complaint and the Second Amended Complaint. (C1044-61; C1379-90). Besides properly pleading "knowledge" allegations, Plaintiffs also pled factual allegations that clearly are sufficient even under James and FCC's argument for a higher standard, especially when construed in a light most favorable to the Plaintiffs, as required by Illinois law. *See Doner*, 381 Ill. at 115; *see also City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351 (Ill. Sup. Ct. 2004); *Marshall v. David's Food Store*, 161 Ill. App. 3d 499 (1st Dist. 1987); *Marshall v. Burger King Corp.*, 222 Ill. 2d 422 (Ill. Sup. Ct. 2006).

In this regard, James and FCC make much ado about the term "Inappropriate." It was at the urging of defense counsel that the Circuit Court dismissed the original Complaint because the term "inappropriate" was deemed vague. And James and FCC continue that motif here before this Court. Obviously, any "vagueness" must be construed in favor of the Plaintiffs under Illinois law. *Id*. Because Plaintiffs took the term "inappropriate" from the UCC and ICUCC policies that were publicly available on the internet, Plaintiffs still do not understand how the term "inappropriate" could be vague as to James and FCC. Using a capitalized term, the defined term "Inappropriate" in the Amended Complaint (C768) and Second Amended Complaint (C1634-35), incorporates not only the UCC and ICUCC policies and materials but also Illinois law. The defined term "Inappropriate" therefore specifically includes "Inappropriate Content," "Inappropriate Displays of Affection," "Sexual Harassment," "Sexual Exploitation," "Grooming," "Sex Offenses," "Harmful to

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Minors," "Obscene," "Adult Obscenity" or "Child Pornography Internet Site." (C1629-35).

The ultimate facts set forth in Section D of the Second Amended Complaint (C1637-43) demonstrate the Inappropriate conduct occurring at the church. Specifically, Section D allegations support Coe's grooming, violation of the two-adult policy and Internet Safety Guidelines, violations of Illinois law, and Coe's brazen Inappropriate conduct. During Normal Working Hours and at FCC events and programs, Coe was able to engage in all of this conduct with children, including showing pornographic movies to youths in the Church (¶149 (C1642)), having Inappropriate physical contact and behavior with Jane Doe and other minors, such as kissing, massaging, sitting on laps, legs and feet touching, full frontal hugs, fondling, touching buttocks, playing sexually charged games, sharing a sleeping bag, discussing sexual exploits and fantasies, sending sexual images or texts electronically, giving excessive attention, performing habitual grooming, and isolating Jane Doe. (¶152 (C1642-43)). Coe had such free reign and was so comfortable with his own actions that, while he waited for a colleague to arrive and with the door to his office fully open to the adjacent offices, Coe sent Jane Doe a picture of his erect penis with the caption "How's that??" (C1645).

And, in Section F of the Second Amended Complaint, Plaintiffs do allege that James and FCC employees, members, or volunteers were present during Normal Working Hours at FCC and for FCC and Youth Group functions to witness Coe's Inappropriate interactions with youth, including Coe's Inappropriate interactions with Jane Doe. (C1651, C1655). Multiple adult employees, volunteers, or members witnessed Coe's behavior toward minor females in the Youth Group that those adults found unsettling and

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Inappropriate; and multiple adults received information from the children of FCC regarding Coe's Inappropriate behavior toward minor females in the Youth Group that made the children feel uncomfortable, weird, isolated or frustrated. (C1658). Multiple adult FCC employees, volunteers, or members witnessed Coe alone, in the sanctuary of the church and in his office, with minor female members of the Youth Group, including Jane Doe; and multiple adults reported or discussed among themselves the Inappropriate attentiveness, behavior, or physical contact by Coe with female members of the Youth Group, including Jane Doe. (C1658). For example, in March 2013, at least one employee of FCC observed Coe alone in the audio-visual booth with Jane Doe with the lights out. (C1659). At least one of FCC's employees, volunteers, or members confronted Coe regarding his Inappropriate behavior. (C1659). None of the multiple FCC employees, volunteers or members who witnessed Coe's Inappropriate behavior complied with Illinois law or the Safe Church Policy by making a report to DCFS. (C1659).

Plaintiffs' allegations of ultimate facts even demonstrate that FCC knew and James should have known of Coe's propensities prior to the rape. Plaintiffs allege that a Vacation Bible School volunteer and mandated reporter under ANCRA recognized the interactions between Jane Doe and Coe as Inappropriate after just two days of seeing Coe with Jane Doe and decided to report it to James. (C1660-61). Thus, prior to the rape, an FCC mandatory reporter volunteer saw Inappropriate conduct between Coe and Jane Doe and decided to tell James but not the DCFS. (C1660-61). At no point after the volunteer reported the Inappropriate conduct to James did James fulfill his own mandatory reporting obligation by reporting Coe to DCFS, removing Coe as Director of Youth Ministries or otherwise restricting Coe's access to minors, including Jane Doe. (C1661, C797). Given

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these salient facts, along with Coe's pre-rape conduct, the witnessing and reporting of Inappropriate conduct, the rumors, the talks about Inappropriate conduct, the utter lack of supervision, and the failure to have or enforce the Safe Church Policy or any safe church policy, Plaintiffs' allegations more than satisfy the "should have known" requirement of negligent retention.

FCC and James argue that one innocent act cannot create a duty to report under the Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq. ("ANCRA"). But that depends on the act, the context, and the viewer. If this were a mall Santa, as James and FCC previously argued, a thirteen-year-old sitting on Santa's lap would not be reportable. But a thirteen-year-old sitting on a thirty-year-old minister's lap in a church, school, or youth group activity is certainly a "red flag" to any adult with common sense, not to mention a person trained as a mandated reporter. Even without a mandated reporter finding the interactions between Coe and Jane Doe Inappropriate after just two days of seeing the two together, the facts alleged survive dismissal of the negligent retention count. The "should have known" requirement is easily met here because the conduct complained of is so outrageous and it occurred in a church setting. Thus, while a child sitting on a minister's desk or lying on a minister's couch in his office may not concern James and FCC, it would lead a reasonable prudent person to be very much concerned. That is an issue that Illinois courts leave for the jury to decide.

As a final argument, James and FCC state that a complaint must contain facts of "notice" for negligent retention to survive a §2-615 dismissal. The Circuit Court and the Second District Appellate Court agreed with this misinterpretation of Illinois law. Relying on *Dimovski*, James and FCC argue that "[a]s for their claim for negligent retention, unlike

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their claims for negligent supervision, plaintiffs agree that they had to allege well-pled facts showing notice." Reply, 15 [emphasis added]. Again, Illinois law does not require the Plaintiffs to prove James and FCC's "actual knowledge" or "notice" at this stage of the litigation. To require such evidence be pled at the pleadings stage would benefit defendants who "circle the wagons" and lock down witnesses such that plaintiffs would never be able to obtain the necessary facts to meet this higher pleading burden. Ignoring Illinois law, James and FCC continue to argue "notice" or "actual knowledge" is required for pleading a negligent retention cause of action, when "actual knowledge" is not even required for pleading willful and wanton conduct or punitive damages. *See Doe v. Catholic Bishop of Chicago*, 2017 IL App (1st) 162388 at ¶11-13. Requiring actual knowledge or notice for pleading negligent retention will needlessly raise the pleading standard required by Illinois law for negligent retention. Arguably, "notice" is only a requirement for proving willful and wanton conduct, as it would be a degree fact that pushes the facts beyond negligence and into the realm of willful and wanton conduct. *See Doe v. Bridgeforth*, 2018 IL App (1st) 170182, ¶54 (wherein the record contained "no support for Jane Doe's conclusion that the evidence was sufficient to prove that CPS was on notice that J.E. faced an impending danger of sexual assault from Bridgeforth").

Therefore, the Second District's upholding of the §2-615 dismissal of negligent retention against James and FCC, as well as the willful and wanton counts stemming from negligent retention, must be reversed in light of Illinois law governing knowledge requirements and all the allegations within the Second Amended Complaint. *See City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351 (Ill. Sup. Ct. 2004).

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II. CROSS RELIEF REQUESTED: The Second District Appellate Court Erred in finding that That Allegations Stricken from the Amended Complaint Are Immaterial to the Plaintiffs' Causes of Action

In response to Plaintiffs' argument regarding the Circuit Court's blanket striking of allegations contained in the Amended Complaint, James and FCC argue that the stricken allegations do not demonstrate (i) "actual or constructive knowledge of Coe's unfitness and the opportunity to prevent the assault/rape," (ii) "notice of Coe's unfitness," and, (iii) how James and FCC "knew or should have known." Reply, 18. Regardless of whether we are discussing negligent retention (*Doe v. Catholic Bishop of Chicago*) or willful and wanton conduct (*Doe v. Bridgeforth*), the stricken facts can be material.

In *Doe v. Catholic Bishop of Chicago*, the First District expressly rejected the argument that a plaintiff's complaint must "demonstrate the defendant's conscious disregard or willful and wanton conduct by alleging that defendant had 'actual knowledge' of [employee's] 'propensity to sexually assault children.'" 2017 IL App (1st) 162388 at ¶11,12 [emphasis added]. The First District stated that "under the facts of one case, willful and wanton misconduct may be only degrees more than ordinary negligence, while under the facts of another case, willful and wanton acts may be only degrees less than intentional wrongdoing." *Id*. (*citing Ziarko v. Soo Line Railroad Company*, 161 Ill. 2d 267, 275-76 (1994)). The First District also noted that the question whether "certain conduct constitutes either negligence or willful and wanton misconduct… becomes one for the jury to determine." *Id.* at ¶13 (*citing Bryant v. Livigni*, 250 Ill. App. 3d 303, 312 (5th Dist. 1993)). The First District concluded by stating that "[a]t this point in the proceedings, for this court to essentially dictate what constitutes a showing of willful and wanton conduct as defendant suggests, would infringe upon the jury's duty to make that finding after presentation of evidence." *Id*. This is consistent with this Court's ruling in *McLean*, which held that in

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order to recover damages based on willful and wanton conduct, a "plaintiff must plead and prove the basic elements of a negligence claim – that the defendant owed a duty to the plaintiff, that the defendant breached that duty and that the breach was a proximate cause of the plaintiff's injury." *Jane Doe-3 v. McLean County Unit Dist. No. 5 Bd. of Directors*, 2012 IL 112479, ¶19 (Ill. Sup. Ct. 2012); *See also Dimovski*, 336 Ill. App. 3d at 299 (a plaintiff must allege either a deliberate intention to harm or an utter indifference to or conscious disregard for the welfare of the plaintiff); *Doe v. Catholic Bishop of Chicago*, 2017 IL App (1st) 162388 at ¶11; *Doe v. Bridgeforth*, 2018 IL App (1st) 170182 (Willful and wanton conduct requires proof that the defendants were aware of facts which would have put a reasonable person on notice of the risk of serious harm from the activity). In short, the facts alleged matter as they elevate the action from one of negligent to one of willful and wanton conduct.

While Plaintiffs agree that the Second Amended Complaint states causes of action for negligence and willful and wanton conduct, the stricken post-rape facts help establish the strong degree of willful and wanton conduct in this case, which is why the parties and the Circuit Court focused on post-rape facts in the underlying ruling. James and FCC argue the post-rape allegations do not show that James and FCC "knew or should have known of Coe's particular unfitness" before the rape occurred. Reply, 18. *Bridgeforth*, a case relied upon by James and FCC in their Appellants' Brief, held that the <u>evidence at trial</u> showed that: (i) no one "had any reason whatsoever to suspect the J.E. was not safe with Bridgeforth;" (ii) "Bridgeforth's behavior did not display any red flags that could have 'disclosed to any reasonable man' the danger which J.E. was facing;" and, (iii) "[t]here was nothing about Bridgeforth that stood out as something [Rippy] 'should have caught in

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hindsight.'" *Bridgeforth*, 2018 IL App (1st) at ¶55. In fact, after learning about Bridgeforth's behavior, the teachers were stunned and shocked. *Id*. at ¶21, 24. In the instant case, after receiving the report from the mandated reporter regarding Coe's Inappropriate conduct with Jane Doe, James sent Coe to Costa Rica with 34 youth. After Coe's arrest for the rape of Jane Doe, James held a support meeting for Coe. (C1662). And, after James received a DCFS "indicated" report finding abuse by Coe, James held another meeting with Youth Group members and encouraged members to sign-up to attend Coe's criminal hearings to support Coe. (C1663).

Contrary to James and FCC's argument, these post-rape allegations help establish that James and FCC were either: (i) already aware of Coe's Inappropriate conduct with Jane Doe and had decided not to take action and turned a blind eye, i.e. knew; or (ii) so completely and utterly unqualified or unprepared to recognize and appropriately respond to reports of Inappropriate conduct with a minor, i.e. should have known. In either case, these post-rape facts are material to whether FCC and James were sufficiently trained to recognize and respond to reports of Coe's particular unfitness, much less capable of supervising and determining whether to retain Coe. These facts not only support a pattern of behavior by FCC and James to willfully ignore Inappropriate conduct but also help demonstrate an ongoing conscious disregard for Jane Doe's welfare, which is a requirement for alleging willful and wanton conduct. *See McLean County*, 2012 IL 112479 at ¶19. While the Second District Appellate Court believes these facts are "neutral" or can be construed to have other meanings, at the §2-615 stage they must be construed in the Plaintiffs' favor. *Doner*, 381 Ill. at 115.

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A detailed review of the other allegations will similarly show they are material. Paragraphs 24-35 contain allegations of ultimate facts regarding the Bylaws and UCC Constitution, which support the duty element of the negligence causes of action. (C760-762). Paragraphs 48-54 contain allegations of ultimate fact regarding the recommendations of the UCC's Insurance Board, which also support the duty element of the negligence causes of action. (C764-765). Paragraphs 74-83 contain allegations of ultimate fact relating to James' education and training. (C769). James' background and training directly relate to (i) James's function as the supervisor of Coe, (ii) James's status as a mandated reporter under ANCRA, and, (iii) James's status as a custodian of the minors in the care of FCC. Paragraphs 168-203 contain allegations of the events leading up to the rape of Jane Doe. (C779-783). Many of these facts were alleged at the request of the Circuit Court to support that James and FCC "should have known" what to look for and recognize the "red flags." The fact that James underwent mandated reporter training and training under the UCC's two-adult policy but still failed to recognize Coe's Inappropriate conduct, take any action, or make any report under ANCRA, when a mandated reporter saw and recognized the interaction between Coe and Jane Doe as Inappropriate after just two days of seeing the two together, speaks volumes. Clearly, given James and FCC's training, knowledge, and course of conduct before and after the rape of Jane Doe, these allegations can elevate Plaintiffs' negligence claims to willful and wanton claims. Paragraphs 208-224 and 304-345 contain the post-rape allegations discussed above. (C784-785, C796-800).

Finally, the Second District Appellate Court upheld the Circuit Court's indiscriminate striking of Plaintiffs' allegations and, in doing so, undermined its own Appellate Opinion. Specifically, stricken ¶243 contains allegations regarding what James

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"knew or should have known." (C1652-53). Curiously, James and FCC did not challenge ¶265, which contained allegations regarding what FCC "knew or should have known." (C1656-57). The facts alleged in ¶243 are material to the Plaintiffs' negligent retention claims because the success of those claims may depend upon the existence of these facts, as Plaintiffs are required to allege what James or FCC knew or should have known. (*See generally Lindenmier v. City of Rockford*, 156 Ill App. 3d 76, 88 (2nd Dist. 1987); *Lighthart v. Lindstrom*, 24 Ill. App. 3d 918 (2nd Dist. 1975)).

To the extent this Court determines stricken allegations can be material to the Plaintiffs' causes of action against James and FCC, Plaintiffs seek reversal of James and FCC's Motion to Strike pursuant to §2-615. As to James and FCC's argument that Plaintiffs have waived their argument to a blanket striking of the Amended Complaint, this Court has the ability to grant any relief warranted by the record and Court should reverse the grant of the motion to strike in its entirety. *See* Ill. Sup. Ct. Rule 318(a); *see also Weatherman v. Gary-Wheaton Bank of Fox Valley, N.A.*, 186 Ill. 2d 472, 490-491 (Ill. Sup. Ct. 1999) ("in all appeals any appellee… may seek and obtain any relief warranted by the record on appeal without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal").

CONCLUSION

For the reasons stated above, Plaintiffs respectfully ask this Court to (i) affirm the Second District Appellate Court's finding as to the negligent supervision and negligent hiring causes of action, and the willful and wanton counts arising out of those counts, (ii) reverse the Second District Appellate Court's finding as to the negligent retention cause of action and the willful and wanton counts arising out of that count, (iii) reverse the Second

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District Appellate Court's upholding of the striking of allegations from the Amended Complaint, (iv) reverse the Circuit Court's grant of James and FCC's joint §2-615 Motion to Dismiss and Motion to Strike, and (v) remand this case to the Circuit Court for further proceedings.

Dated: December 28, 2018

Respectfully submitted,

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One of the Attorneys for Plaintiffs-Appellants in 2-17-0435

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CERTIFICATE OF COMPLIANCE WITH SUPREME COURT RULE 341(c)

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 17 pages.

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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2018 I caused true and correct copies of the foregoing *Plaintiffs-Appellees' Reply Brief Cross-Relief Requested* to be filed and served by electronic means with the Clerk's Office and served by the following methods upon:

One Copy by Email:

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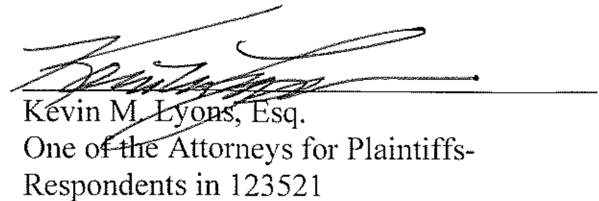
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.



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No. 123521

IN THE SUPREME COURT OF ILLINOIS

JANE DOE, a minor, by her mother and next friend,	)
JANE A. DOE, and by her father and next friend,	)
JOHN DOE; JANE A. DOE, individually;	) On Leave to Appeal from the
JOHN DOE, individually,	) Illinois Appellate Court,
Plaintiffs-Appellees,	) Second Judicial District
v.	) Docket No. 2-17-0435
CHAD COE, as an individual, FOX VALLEY	)
ASSOCIATION ILLINOIS CONFERENCE OF	) There Heard on Appeal from the
THE UNITED CHURCH OF CHRIST, an Illinois	) Circuit Court of Kane County,
Not-for-Profit Corporation, ILLINOIS	) Illinois, Case No. 2015-L-216
CONFERENCE OF THE UNITED CHURCH OF	)
CHRIST, an Illinois Not-for-Profit Corporation,	) The Honorable James R. Murphy,
THE UNITED CHURCH OF CHRIST, THE	) Judge Presiding
GENERAL SYNOD OF THE UNITED CHURCH	)
OF CHRIST, THE UNITED CHURCH OF	)
CHRIST BOARD, an Ohio Not-for-Profit	)
Corporation,	)
Defendants, and	)
	)
FIRST CONGREGATIONAL CHURCH OF	)
DUNDEE ILLINOIS, an Illinois Not-For-Profit	)
Corporation, PASTOR AARON JAMES,	)
as an individual,	)
Defendants-Appellants.	)

NOTICE OF FILING

TO: All Counsel of Record
See attached service list

PLEASE BE ADVISED that on this 28th day of December, 2018, we caused to be electronically filed with the Clerk of the Illinois Supreme Court, the attached Reply Brief of Plaintiffs-Appellees Cross-Relief Requested, copies of which, along with this notice of filing with affidavit of service, are herewith served upon all attorneys of record.

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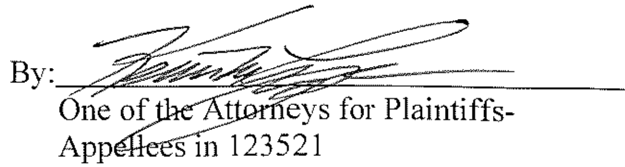
Respectfully submitted,



By:_________________________________
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STATE OF ILLINOIS)
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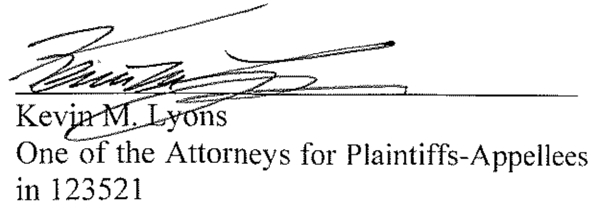
AFFIDAVIT OF SERVICE

I hereby certify that I served this notice via electronic mail to the attorneys listed on the attached Service List at their email address on December 28, 2018.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.



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SUPREME COURT CASE No. 123521

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