

EXHIBIT 11



113392202

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

FILED

JUN 15 2020

*Clerk of Courts
Cuyahoga County, Ohio*

MICHELLE RODRIGUEZ
Plaintiff

Case No: CV-19-909566

Judge: JOAN SYNENBERG

CATHOLIC CHARITIES CORPORATION, ET AL
Defendant

JOURNAL ENTRY

CMC BY PHONE HELD ON 04/22/2020. COUNSEL PARTICIPATED AND AGREED TO THE FOLLOWING CASE SCHEDULE:

DEADLINE FOR AMENDING THE PLEADINGS IS 6/1/2020.

DISCOVERY CUT-OFF IS 11/02/2020.

PLAINTIFF'S EXPERT REPORT DUE 12/01/2020.

DEFENDANT'S EXPERT REPORT DUE 02/01/2021.

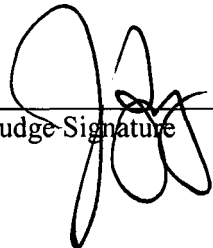
DISPOSITIVE MOTION TO BE FILED BY 03/15/2021. RESPONSES ARE DUE IN ACCORDANCE WITH THE TIME PERIODS SET FORTH IN CIV.R. 6(C). PARTIES SHALL PROVIDE THE COURT WITH PRINTED COURTESY COPIES WHEN THE FILING IS GREATER THAN 50 PAGES, OR WHEN ATTACHMENTS UPLOADED TO THE COURT'S ELECTRONIC FILING SYSTEM ARE ILLEGIBLE OR UNCLEAR.

PRETRIAL SET FOR 11/04/2020 AT 01:30 PM. PRETRIAL TO BE CONDUCTED BY PHONE. COUNSEL AND ANY UNREPRESENTED PARTIES MUST BE PRESENT. PLAINTIFF'S COUNSEL SHALL INITIATE THE CONFERENCE CALL WITH OPPOSING COUNSEL, ANY UNREPRESENTED PARTIES, AND THEN THE COURT (216-443-8606). PLAINTIFF(S) SHALL SEND WRITTEN NOTICE OF THE DATE AND TIME OF THE CONFERENCE CALL TO ANY PRO SE LITIGANTS. IF THE COURT CANNOT BE REACHED, COUNSEL SHALL NOTIFY THE COURT BY EMAIL (LACTON@CUYAHOGACOUNTY.US) OR VOICEMAIL MESSAGE OF THEIR RESPECTIVE DIRECT-CONTACT INFORMATION. FAILURE TO APPEAR WILL RESULT IN SANCTIONS AND/OR DISMISSAL.

MOTIONS IN LIMINE ARE DUE BY 7/19/2021.
RESPONSES ARE DUE BY 8/2/2021.

FINAL PRETRIAL SET FOR 08/12/2021 AT 01:30 PM. FINAL PRETRIAL TO BE CONDUCTED IN COURTROOM 15-D. COUNSEL, PARTIES AND ANY REPRESENTATIVES MUST BE PRESENT WITH FULL SETTLEMENT AUTHORITY, UNLESS THE COURT HAS GRANTED PERMISSION TO APPEAR BY PHONE. FAILURE TO APPEAR WILL RESULT IN SANCTIONS AND/OR DISMISSAL. PARTIES SHALL ALSO FILE PRETRIAL STATEMENTS SEVEN (7) DAYS BEFORE THE FINAL PRETRIAL UNLESS PREVIOUSLY SUBMITTED WITHOUT CHANGE. PRETRIAL STATEMENTS SHOULD INCLUDE THE PARTIES' RESPECTIVE SETTLEMENT POSITIONS. PRETRIAL STATEMENTS MAY BE SUBMITTED BY EMAIL (LACTON@CUYAHOGACOUNTY.US) IN LIEU OF FILING TO PROTECT CONFIDENTIAL INFORMATION. FAILURE TO SUBMIT A PRETRIAL STATEMENT WILL RESULT IN SANCTIONS.

JURY TRIAL SET FOR 09/13/2021 AT 08:30 AM.



Judge Signature 6/1/20 Date

EXHIBIT 12



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

MOTION TO...
August 23, 2021 12:47

By: RICHARD H. BLAKE 0083374

Confirmation Nbr. 2332964

MICHELLE RODRIGUEZ

CV 19 909566

vs.

CATHOLIC CHARITIES CORPORATION, ET AL

Judge: JOAN SYNENBERG

Pages Filed: 9

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ	)	COMMON PLEAS CASE NO.
	)	CV-19-909566
Plaintiff,)	
	)	COURT OF APPEALS CASE NO.
v.	)	CA-21-110743
)	
CATHOLIC CHARITIES	)	JUDGE JOAN SYNENBERG
CORPORATION, et al.,)	
	)	<u>DEFENDANT CATHOLIC</u>
Defendants.	)	<u>CHARITIES CORPORATION'S</u>
	)	<u>MOTION TO STAY ALL</u>
	)	<u>PROCEEDINGS PENDING APPEAL</u>

Pursuant to Rule 62 of the Ohio Rules of Civil Procedure, Defendant Catholic Charities Corporation (“Catholic Charities”), by and through undersigned counsel, hereby moves this Court for an Order staying all proceedings in this case pending appeal, including any trial against alleged agent and former employee of Catholic Charities, Defendant Nancy Caraballo (“Caraballo”). Because of the Notice of Appeal filed by Catholic Charities, this Court is divested of jurisdiction to proceed with the trial of any claims that *might* be subject to Catholic Charities’ statutory immunity defense, which includes proceeding with any claims against Catholic Charities’ alleged agent and former employee, Caraballo.

The reasons supporting this Motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Richard H. Blake

RICHARD H. BLAKE (0083374)
JOSEPH M. MUSKA (0089512)
THERESA M. LANESE (0097897)
McDonald Hopkins LLC
600 Superior Avenue, East, Suite 2100
Cleveland, OH 44114
Phone: (216) 348-5400
Fax: (216) 348-5474
Email: rblake@mcdonaldhopkins.com
jmuska@mcdonaldhopkins.com
tlanese@mcdonaldhopkins.com

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)
RONALD A. MARGOLIS (0031241)
BRIAN F. LANGE (0080627)
Bonezzi Switzer Polito & Hupp Co. L.P.A.
1300 East 9th Street, Suite 1950
Cleveland, OH 44114
Phone: (216) 875-2767
Fax: (216) 875-1570
Email: bsebaugh@bsphlaw.com
rmargolis@bsphlaw.com
blange@bsphlaw.com

/s/ John W. Patton, Jr.

JOHN W. PATTON, JR.
(Admitted Pro Hac Vice)
Patton & Ryan
330 N. Wabash, Suite 3800
Chicago, IL 60611
Phone: (312) 261-5166
Fax: (312) 261-5161
Email: jpatton@pattonryan.com

*Attorneys for Defendant Catholic Charities Corporation,
also identified in the Second Amended Complaint as
Catholic Charities Diocese of Cleveland*

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ	)	COMMON PLEAS CASE NO.
	)	CV-19-909566
Plaintiff,)	
	)	COURT OF APPEALS CASE NO.
v.	)	CA-21-110743
)	
CATHOLIC CHARITIES	)	JUDGE JOAN SYNENBERG
CORPORATION, et al.,)	
)	
Defendants.	)	<u>MEMORANDUM IN SUPPORT OF</u>
	)	<u>DEFENDANT CATHOLIC</u>
	)	<u>CHARITIES CORPORATION'S</u>
	)	<u>MOTION TO STAY ALL</u>
	)	<u>PROCEEDINGS PENDING APPEAL</u>

I. INTRODUCTION

Plaintiff Michelle Rodriguez, as Administrator of the Estate of Jordan Rodriguez (“Plaintiff”), asserted claims against Catholic Charities for wrongful death, survivorship, statutory failure to report, and negligent hiring, supervision, and training. Pl.’s Sec. Am. Compl. at ¶¶ 47-61, 62-71, 72-73, 82-87, 88-94. Likewise, Plaintiff asserted claims against Caraballo, in her individual capacity and as an agent and employee of Catholic Charities, for wrongful death, survivorship, and statutory failure to report. *Id.* at ¶¶ 47-61, 62-71, 74-79, 80-81, 82-87. Plaintiff’s claims against Catholic Charities and Caraballo are inextricably woven together, with overlapping factual and legal issues. *See generally*, Sec. Am. Compl. Significantly, whether Caraballo acted within the scope of her employee with Catholic Charities is a threshold issue in this case. *See* Def. Catholic Charities’ Mtn. for Summ. J. on Respondeat Superior.

In its Answer to Plaintiff’s Second Amended Complaint, Catholic Charities raised statutory immunity as an affirmative defense. Def. Catholic Charities’ Ans. Pl.’s Sec. Am. Compl. at ¶ 133. Consistent with that affirmative defense, on March 15, 2021, Catholic Charities filed its Motion for Summary Judgment on Statutory Immunity arguing that as an agent of Educational Service

Center of Cuyahoga County (“ESC”), “Catholic Charities and all of its employees that worked pursuant to the Bright Beginnings’ Contracts (‘BB Contracts’), are ‘employees’ of a ‘political subdivision’ for purposes of this action.” Def. Catholic Charities’ Mtn. for Summ. J. on Stat. Immunity, at pp. 18-19. As set forth more fully in Catholic Charities’ Motion for Summary Judgment on Statutory Immunity, an employee of a political subdivision is entitled to the presumption of immunity as provided in R.C. 2744.03(A)(6). Under R.C. 2744.01(B), an “employee” is broadly defined as an “officer, agent, employee, or servant * * * who is authorized to act and is acting with the scope of the officer’s, agent’s, employee’s, or servant’s employment for a political subdivision.”

On August 11, 2021, this Court denied Catholic Charities’ Motion for Summary Judgment as to Statutory Immunity. On August 16, 2021, Catholic Charities timely filed its Notice of Appeal and the appeal is currently pending. Trial was scheduled to commence on September 13, 2021. During the last status conference with the Court on August 17, 2021, Plaintiff indicated her intention to proceed with trial against Caraballo.¹ The Court of Appeals has ordered a mediation on September 14, 2021 at 10:30 a.m.

Catholic Charities requests that this Court stay all proceedings, including any trial against Caraballo, pending resolution of the appeal. If the Court of Appeals finds that Catholic Charities is entitled to statutory immunity, then all of its agents or employees - which include alleged agent and employee Caraballo under respondeat superior - would be entitled to statutory immunity. Consequently, the claims brought by Plaintiff against Catholic Charities and Caraballo, in her individual capacity and as an agent and employee of Catholic Charities, might be subject to

¹ There was discussion regarding Plaintiff’s claims against Defendant Porcia Mainor, which may be dismissed.

Catholic Charities' statutory immunity defense. A stay of all proceedings in this case, including any trial against Caraballo, is required as a matter of law.

II. LAW AND ARGUMENT

Pursuant to Ohio Civil Rule of Procedure 62, Catholic Charities requests that this Court stay all proceedings, including any trial against Caraballo pending the appeal. “[O]nce an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court’s jurisdiction to reverse, modify, or affirm the judgment.” *State ex rel. Rock v. School Emp. Retirement Bd.*, 96 Ohio St.3d 206, 2002-Ohio-3957, 772 N.E.2d 1197, ¶ 8. In *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, the Ohio Supreme Court held that, “[w]hen ECOT appealed from [the Judge’s] denial of its motion for leave to file an amended answer to raise the affirmative defense of political-subdivision immunity, the common pleas court and its judges lacked authority to proceed with the trial of any claims that might be subject to ECOT’s immunity defense because those claims were within the appellate court’s jurisdiction on review.” *State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga Cty. Ct. of Common Pleas*, 2011-Ohio-626, ¶ 14, 129 Ohio St. 3d 30, 33, 950 N.E.2d 149, 153 (Emphasis added) (holding that the trial court is prohibited from enforcing portions of the judgment in the underlying civil case that were subject to an appeal filed by ECOT and ordering the trial court to vacate those portions of the judgment); *see also Pierce v. City of Gallipolis*, 4th Dist. Gallia No. 18CA4, 2019-Ohio-4118, ¶ 17, appeal not allowed sub nom. *Pierce v. Gallipolis*, 158 Ohio St.3d 1406, 2020-Ohio-371, 139 N.E.3d 911, ¶ 17 (holding that the trial court was divested of jurisdiction to continue with the jury trial after the City filed its notice of appeal in *Pierce III*, therefore, the Judgment Entry on the Verdict is void).

The Political Subdivision Tort Liability Act, Chapter 2744 of the Ohio Revised Code provides immunity to political subdivisions or employees of political subdivisions who meet a three-tier analysis. R.C. 2744.01, *et seq.*; *see also Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319, 790 N.E.2d 781, ¶¶ 7-9. Under that analysis, and as set forth more fully in the Motion for Summary Judgment as to Statutory Immunity, because ESC retained control and the right to control the mode and manner of the work performed by Catholic Charities under the BB Contracts, Catholic Charities is an agent of ESC, a political subdivision, and is entitled to statutory immunity. Further, under R.C. 2744.01(B), any employee of Catholic Charities, which is defined as an “officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer’s, agent’s, employee’s, or servant’s employment for a political subdivision” is also entitled to statutory immunity because that employee would also be considered employees of ESC, a political subdivision. R.C. 2744.01(B). If Caraballo’s “acts or omissions were manifestly outside the scope of the employee’s employment or official responsibilities” with Catholic Charities, then Caraballo may not be subject to the statutory immunity, even though Catholic Charities is immune. R.C. 2744.03(A)(6). Caraballo’s scope of employment with Catholic Charities will be an issue on appeal, which further supports why Plaintiff cannot proceed to trial against Caraballo. Caraballo’s alleged actions or inactions as a purported employee and agent of Catholic Charities is directly subject to the statutory immunity analysis and defense, which is currently on appeal. Plaintiff’s claims against Caraballo arises directly from, and is inextricably related to, Catholic Charities’ statutory immunity defense on appeal.

Under well-settled Ohio law, a stay of the proceedings, including any trial against Caraballo, is required because this Court is divested of jurisdiction over any claims that *might* be

subject to Catholic Charities' statutory immunity defense. If the Court of Appeals finds that Catholic Charities and all of its employees that worked pursuant to the BB Contracts, are "employees" of ESC, a "political subdivision" for purposes of this action, then all of the claims against Catholic Charities, and therefore, by extension, its purported employee or agent, Caraballo, would be subject to that immunity defense. Thus, a stay is required to maintain the status quo of all claims pending resolution of the appeal. Furthermore, proceeding with trial against Caraballo will result in a voidable verdict because the Court is without jurisdiction to proceed. *Pierce v. City of Gallipolis*, 4th Dist. Gallia No. 18CA4, 2019-Ohio-4118, ¶ 17, appeal not allowed sub nom. *Pierce v. Gallipolis*, 158 Ohio St.3d 1406, 2020-Ohio-371, 139 N.E.3d 911, ¶ 17 (court lacked jurisdiction to proceed with trial after appeal was filed, and therefore, after the City filed its notice of appeal in *Pierce III*, therefore, the Judgment Entry on the Verdict is void). Because the appeal is currently pending as to statutory immunity defense of Catholic Charities, which includes immunity protections for its alleged employee, Caraballo, a trial against Caraballo will result in a voidable verdict. All proceedings in this case should be stayed pending the outcome of the appeal.

III. CONCLUSION

Based on the foregoing reasons, Catholic Charities requests that this Court stay all proceedings in this case, including any trial against Caraballo, during the pendency of this appeal.

Respectfully submitted,

/s/ Richard H. Blake

RICHARD H. BLAKE (0083374)
JOSEPH M. MUSKA (0089512)
THERESA M. LANESE (0097897)
McDonald Hopkins LLC
600 Superior Avenue, East, Suite 2100
Cleveland, OH 44114
Phone: (216) 348-5400
Fax: (216) 348-5474
Email: rblake@mcdonaldhopkins.com
jmuska@mcdonaldhopkins.com
tlanese@mcdonaldhopkins.com

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)
RONALD A. MARGOLIS (0031241)
BRIAN F. LANGE (0080627)
Bonezzi Switzer Polito & Hupp Co. L.P.A.
1300 East 9th Street, Suite 1950
Cleveland, OH 44114
Phone: (216) 875-2767
Fax: (216) 875-1570
Email: bsebaugh@bsphlaw.com
rmargolis@bsphlaw.com
blange@bsphlaw.com

/s/ John W. Patton, Jr.

JOHN W. PATTON, JR.
(Admitted Pro Hac Vice)
Patton & Ryan
330 N. Wabash, Suite 3800
Chicago, IL 60611
Phone: (312) 261-5166
Fax: (312) 261-5161
Email: jpatton@pattonryan.com

*Attorneys for Defendant Catholic Charities Corporation,
also identified in the Second Amended Complaint as
Catholic Charities Diocese of Clevelan*

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2021, a copy of the foregoing **Defendant Catholic Charities Corporation's Motion to Stay All Proceedings Pending Appeal** was filed electronically and served upon the following parties by Regular U.S. Mail. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

LARISSA RODRIGUEZ
Inmate No. W101415
c/o Warden Shelbie Smith
Dayton Correctional Institution
4104 Germantown Street
Dayton, Ohio 45417

CHRISTOPHER RODRIGUEZ
Inmate No. A752141
c/o Warden Lyneal Wainwright
Marion Correctional Institution
940 Marion-Williamsport Road
Marion, Ohio 43302

/s/ Richard H. Blake

RICHARD H. BLAKE (0083374)

One of the Attorneys for Defendant Catholic Charities Corporation, also identified in the Second Amended Complaint as Catholic Charities Diocese of Cleveland

EXHIBIT 13



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

MOTION TO...
August 23, 2021 13:11

By: STEVEN J. FORBES 0042410

Confirmation Nbr. 2333003

MICHELLE RODRIGUEZ

CV 19 909566

vs.

CATHOLIC CHARITIES CORPORATION, ET AL

Judge: JOAN SYNENBERG

Pages Filed: 9

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ, ADMX, E/O JORDAN RODRIGUEZ,	)	CASE NO. CV-19-909566
)	
Plaintiff,	)	JUDGE JOAN SYNENBERG
)	
vs.	)	DEFENDANT NANCY
	)	CARABALLO'S MOTION TO STAY
CATHOLIC CHARITIES CORPORATION, et al.,	)	PROCEEDINGS
)	
Defendants.)	

Defendant Nancy Caraballo moves this Court for a stay of all proceedings, including the trial scheduled for September 13, 2021, pending resolution of the appeal filed by Catholic Charities on August 16, 2021. The appeal divested this Court of jurisdiction to proceed with the trial. Even if the appeal did not divest this Court of jurisdiction, a trial of the case without Catholic Charities is against the interest of justice. The reasons and arguments are set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Steven J. Forbes

STEVEN J. FORBES (0042410)
NORCHI FORBES LLC
Commerce Park IV
23240 Chagrin Boulevard, Suite 210
Cleveland, Ohio 44122
Telephone: (216) 514-9500
Facsimile: (216) 514-4304
E-mail: sforbes@norchilaw.com
Counsel for Defendant Nancy Caraballo

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ, ADMX,
E/O JORDAN RODRIGUEZ,

Plaintiff,

vs.

CATHOLIC CHARITIES CORPORATION,
et al.,

Defendants.

) CASE NO. CV-19-909566
)
) JUDGE JOAN SYNENBERG
)
) **MEMORANDUM IN SUPPORT OF**
) **DEFENDANT NANCY**
) **CARABALLO'S MOTION TO STAY**
) **PROCEEDINGS**
)
)

I. Introduction.

The Estate of Jordan Rodriguez seeks to proceed with trial against Defendants Nancy Caraballo and Porcia Mainor while Catholic Charities pursues its appeal on the Court's denial of its Motion for Summary Judgment, arguing it is entitled to immunity on all of the Estate's claims. Ms. Caraballo moves the Court to stay these proceedings until Catholic Charities' appeal is decided. The Court should grant this request for the following reasons:

1. Catholic Charities' appeal divested the Court of jurisdiction to proceed with trial of any matter inconsistent with the Court of Appeals' jurisdiction to reverse, modify or affirm this Court's denial of summary judgment on Catholic Charities' immunity claim; and
2. Even if this Court has jurisdiction, it should, in the interest of justice and judicial economy, stay this case to avoid the waste of resources and the significant possibility of inconsistent findings which may cause confusing and unintended results.

Rather than create the possibility of multiple trials with unenforceable or conflicting outcomes, this Court should stay these proceedings pending the outcome of Catholic Charities' appeal.

II. Catholic Charities' appeal divested this Court of jurisdiction to decide the Estate's claims against Ms. Caraballo.

The Ohio Supreme Court has “consistently held that once an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court’s jurisdiction to reverse, modify, or affirm.” *State ex. Re. Elec. Classroom of Tomorrow v. Cuyahoga County Court of Common Pleas*, 129 Ohio St.3d 30, 33 (holding the court lacked jurisdiction to proceed with a trial on claims affected by defendant’s appeal of a ruling related to its defense of political subdivision immunity); see also *State ex rel. Bohlen v. Halliday*, 2021-Ohio-194, ¶20. Here, the matters Catholic Charities raises in its appeal relate to its argument that, as an agent of a political subdivision, it is immune from liability. Catholic Charities’ potential liability arises, in part, from Ms. Caraballo’s conduct as its employee. The question is whether the trial of Catholic Charities’ former employee for negligence and failing to meet a statutory requirement to report abuse is a matter that may be inconsistent with matters that may be decided on appeal. The answer is yes.

The Estate claims that Ms. Caraballo, acting within the course and scope of her employment, failed to report abuse in violation of R.C. 2151.241. The reporting statute expressly imposes civil liability on mandatory reporters. R.C 2151.241(N). The Estate’s Complaint specifically raises a claim based on the reporting statute. Second Amended Complaint at ¶14. Catholic Charities admitted Ms. Caraballo is a mandatory reporter. Answer to Second Amended Complaint ¶16. The Estate claims Ms. Caraballo should have reported abuse of Jordan and Ms. Caraballo disagrees. The trial will decide this dispute.

Even if Catholic Charities is determined to be the agent of a political subdivision, which is the basis of its claim of immunity, it will not be immune “when civil liability is expressly imposed... by a section of the Revised Code ...” R.C. 2744.02(5). Here the reporting statute may impose liability on Ms. Caraballo acting within the course and scope of her employment with Catholic Charities. The question – which has been addressed by the Seventh Appellate District but not the Eighth Appellate District or the Ohio Supreme Court – is whether a political subdivision may be stripped of its immunity when an employee, acting within the course and scope of her employment, is found civilly liable for failing to report abuse in violation of the reporting statute. See *Doe v. Skaggs*, 2018-Ohio-5402 (7th Dist. 2018).

Catholic Charities’ appeal places this question squarely before the Appellate Court. If the Trial Court proceeds with the trial and the trial results in a finding that Ms. Caraballo had a duty to report abuse of Jordan, this finding affects the Appellate Court’s review of immunity issues in the pending appeal and is inconsistent with that Appellate Court’s authority to reverse, modify or affirm. Once Catholic Charities perfected its appeal, only the Appellate Court has jurisdiction to characterize Ms. Caraballo’s actions and their effect on Catholic Charities’ claim of immunity. Therefore, this Court does not have jurisdiction to proceed with the trial

III. Even if this Court has jurisdiction, it should, in the interest of justice and judicial economy, stay this case to avoid the waste of resources and the significant possibility of inconsistent findings which may cause confusing and unintended consequences.

The Ohio Supreme Court has recognized that “[i]nherent within a court’s jurisdiction, and essential to the orderly and efficient administration of justice, is the power to grant and deny stays.” *State v. Hochhausler*, 76 Ohio St. 3d 455, 464 (1996); See also

Landis v. North American., 299 U.S. 248 (1936)(finding that “the power to stay proceeding is incidental to the power inherent in every court to control the disposition of its docket with economy of time and effort for itself, for counsel and for the litigants.”). Failure to issue a stay forces Ms. Caraballo to proceed with a three-week trial that may be a significant waste of time and resources. The trial also creates the possibility of two trials with different results and raises the likelihood of the parties attempting to use issue preclusion in the second trial creating unnecessary disputes and complicating the future prosecution of this case.

a. A trial against Ms. Caraballo and Ms. Mainor during the pendency of Catholic Charities’ appeal is a waste of resources and time and creates the possibility of conflicting results.

Proceeding with trial before the Appellate Court decides Catholic Charities’ appeal risks the substantial waste of time and money and creates the likelihood of two trials with different and conflicting results. Ms. Caraballo and Ms. Mainor are permitted to apportion liability to other parties and non-parties. Even without Catholic Charities’ participation in the trial, the parties will need to litigate all issues in the case with the exception of Catholic Charities’ immunity. To prove her defense, Ms. Caraballo will need to present evidence that the following persons and entities are liable, in part, for Jordan Rodriguez’s injuries and death: Christopher Rodriguez; Larissa Rodriguez; Porcia Mainor; the Cuyahoga County Department of Children and Family Services; MetroHealth Hospital; and Catholic Charities (based on the negligent supervision claim). Virtually all the witnesses identified by the parties will need to testify to address fully the questions of liability and apportionment of fault. If the Court of Appeals rejects Catholic Charities’ immunity argument on appeal, the case will need to be tried again with the question of the liability

of all these parties presented to another jury – wasting time and almost certainly reaching different and conflicting results.

b. The results of the two trials are certain to be different undermining the public's confidence in the Court.

While it is difficult to anticipate all the potential contradictory results from two trials, three possibilities jump out – causation, apportionment, and damages. Having different juries reach different results on the cause of Jordan's death, the percentage fault of the various parties and non-parties who played a role in Jordan's injuries and death, and on the amount of money necessary to compensate Jordan and his siblings, undermines the stature of the Court. This Court can – and should – avoid the likely spectacle of having conflicting jury results.

c. Confusion and consequences: The effect of issue preclusion.

The elements of issue preclusion are “that the identical issue was 1) actually litigated, (2) directly determined, and (3) essential to judgment handed down in the prior action.” *Buckeye Union Ins. Co. v. New England Ins. Co.* 87 Ohio St.3d 280, 287 (1999). Ms. Caraballo is in privity with Catholic Charities and it, therefore, may be subject to being bound by issue preclusion. *Elec. Enlightenment, Inc. v. Kirsch*, 2008-Ohio-3633, ¶19 (finding that “an employee's employment relationship, coupled with an identity of desired result, created privity between the employee and his employer.”); see also *Glesser v. Prof'l Transp., Inc.*, 2018-Ohio-5282 (6th Dist. 2018).

Here, Ms. Caraballo desires the same result as her employer Catholic Charities concerning causation and damages. Both Ms. Caraballo and Catholic Charities want to establish Ms. Caraballo's conduct did not cause Jordan's injuries and death. Both Catholic Charities and Ms. Caraballo want to establish the lowest damages possible.

These issues will be actually litigated, directly determined, and are essential to the judgment handed down. Whatever the results, the party that benefits will seek the application of issue preclusion and this Court and the Appellate Court will have yet another issue to address. It is unclear whether the Estate or Catholic Charities actually want the issues of causation and damages to be decided at trial in which Catholic Charities does not participate.

IV. Conclusion.

Throughout this litigation, the Estate and Catholic Charities have jockeyed for position while avoiding any serious attempts to resolve the dispute or discuss the merits of the case. In the latest moves on the litigation chess board, Catholic Charities appealed and the Estate promptly responded by asserting that it would proceed to trial and seek multiple millions from two individuals. The case now proceeds to a needless and possibly meaningless trial that – if permitted – will waste resources, undermine the integrity of the Court, and create new and unnecessary legal issues. Almost certainly, the trial will also add unexpected and confusing issues to the remaining prosecution of the litigation.

Ohio Supreme Court precedent creates the significant possibility that this Court does not have jurisdiction to proceed with the trial. Even if the Court disagrees with Ms. Caraballo's application of this precedent, it still has the discretion to stay the trial and stop the gamesmanship. Ms. Caraballo asks this Court to eliminate the possibility of multiple trials and proceed with the trial after Catholic Charities' appeal is decided.

Wherefore, Ms. Caraballo requests this Court stay these proceedings pending the resolution of Catholic Charities' appeal.

Respectfully submitted,

/s/ Steven J. Forbes

STEVEN J. FORBES (0042410)
NORCHI FORBES LLC
Commerce Park IV
23240 Chagrin Boulevard, Suite 210
Cleveland, Ohio 44122
Telephone: (216) 514-9500
Facsimile: (216) 514-4304
E-mail: sforbes@norchilaw.com
Counsel for Defendant Nancy Caraballo

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2021, the foregoing Motion to Stay Proceedings was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties can access this document through the Court's system. A courtesy copy was served upon counsel of record via electronic mail, only.

Jay Paul Deratany, Esq.
Roosevelt Allen, Esq.
The Deratany Firm
221 N. LaSalle Street, Suite 2200
Chicago, Illinois 60601
Email: jpderatany@lawinjury.com
allen@lawinjury.com
Counsel for Plaintiff

Russell Randazzo, Esq.
Randazzo Law, LLC
Local Co-Counsel for Plaintiffs
55 Public Square – Suite 2100
Cleveland, Ohio 44113
Email: Russell@rrandazzolaw.com

Holly Marie Wilson, Esq.
Reminger Co., L.P.A.
101 Prospect Ave., West, Suite 1400
Cleveland, OH 44115-1093
Email: hwilson@reminger.com
Counsel for Defendant Porcia Mainor

Beth A. Sebaugh, Esq.
Ronald A. Margolis, Esq.
Brian F. Lange, Esq.
Bonezzi, Switzer, Polito & Hupp, Co., LPA
1300 East 9th Street, Suite 1950
Cleveland, OH 44114
Email: bsebaugh@bspplaw.com
rmargolis@bspplaw.com
blange@bspplaw.com

Richard H. Blake, Esq.
Dan L. Makee, Esq.
Joseph M. Muska, Esq.
Theresa M. Lanese, Esq.
McDonald Hopkins LLC
600 Superior Avenue, East, Suite 2100
Cleveland, OH 44114
Email: rblake@mcdonaldhopkins.com
dmakee@mcdonaldhopkins.com
jmuska@mcdonaldhopkins.com
tlanese@mcdonaldhopkins.com

John W. Patton, Jr., Esq.
Patton & Ryan
330 N. Wabash, Suite 3800
Chicago, IL 60611
Email: jpatton@pattonryan.com

*Counsel for Defendant Catholic
Charities Corporation, and Catholic
Charities Diocese of Cleveland*

I further certify that a copy has been sent via first class U.S. mail to Third-Party Defendants, Larissa Rodriguez and Christopher Rodriguez at the addresses listed below:

Larissa Rodriguez
Inmate No. W101415
c/o Warden Shelbie Smith
Dayton Correctional Institution
4104 Germantown Street
Dayton, OH 45417

Christopher Rodriguez
Inmate No. A752141
c/o Warden Leon Hill
Marion Correctional Institution
940 Marion-Williamsport Road
Marion, OH 43302

/s/ Steven J. Forbes

Steven J. Forbes
Counsel for Defendant Nancy Caraballo

900.0338

EXHIBIT 14



118445692

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

MICHELLE RODRIGUEZ
Plaintiff

Case No: CV-19-909566

Judge: JOAN SYNENBERG

CATHOLIC CHARITIES CORPORATION, ET AL
Defendant

JOURNAL ENTRY

BY AGREEMENT OF THE PARTIES, COURT SET THE FOLLOWING ADDITIONAL CASE SCHEDULE:

PRETRIAL SET FOR 09/01/2021 AT 08:30 AM. PRETRIAL TO BE CONDUCTED BY ZOOM TELECONFERENCE.

Judge Signature

Joan Synenberg

Date

8/30/21

CLERK OF COURTS
CUYAHOGA COUNTY

2021 AUG 30 P 2:56

FILED

EXHIBIT 15

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

MICHELLE RODRIGUEZ as Administrator of the Estate of Jordan Rodriguez,	)	CV 19-909566
)	
)	
Plaintiff,	)	JUDGE JOAN SYNENBERG
)	
-vs-)	
	)	<u>PLAINTIFF’S FINAL PRE-TRIAL</u>
CATHOLIC CHARITIES CORPORATION, et. al.,	)	<u>STATEMENT PURSUANT TO</u>
	)	<u>LOC.R. 21</u>
)	
Defendants.)	

Now comes the Plaintiff, Michelle Rodriguez as Administrator of the Estate of Jordan Rodriguez, by and through her attorneys, and for her Final Pre-trial Statement pursuant to Loc.R. 21.0 Part III (E).

1. **STATEMENT OF FACTS AND LEGAL ISSUES.**

This lawsuit is brought on behalf of the Estate of Jordan Rodriguez, a developmentally disabled child who was only five years old child at the time he lost his life between September 2017 and December 2017. Jordan ultimately succumbed to starvation, but this child also suffered through unspeakable physical abuse and emotional trauma, all of which occurred while the Defendant Catholic Charities was charged with providing casework and home monitoring care for his benefit from 2015-2017. Time and again Defendant failed to act to protect Jordan and simply looked the other way while he suffered relentless abuse.

Catholic Charities had a contractual relationship with an organization named Bright Beginnings and the Educational Service Center of Cuyahoga County (hereinafter “ESC”) to provide in-home social services to Jordan and his family as part of the Parents as Teachers

program. The mission of the Parent as Teachers program provided by Bright Beginnings, is to reduce instances of abuse and neglect by providing parent nutritional counseling, parent coaching, educational oversight, and to monitor for abuse and neglect. The allegations against Catholic Charities Corporation, allege liability based on the actions and inactions of their employees such as case managers, case workers, and supervisors, hired to provide child welfare and social services including but not limited to parent coaching, educational services, services for individuals with Developmental Disabilities, counseling services, and home evaluations and services for at risk families.

Catholic Charities, through its employees' willful conduct completely disregarded their duties and the safety of Jordan Rodriguez. Catholic Charities' failure to even minimally ensure the safety of Jordan Rodriguez for the past year of his life allowed others to mistreat this child which ultimately resulted in his starvation and death. Rather than provide nutritional counseling (one of the duties owed to Jordan Rodriguez) Catholic Charities' employee Nancy Caraballo was purchasing Larissa Rodriguez's EBT card for her own personal use and gain. This is such blatant disregard for the safety of Jordan Rodriguez, and utter breach of the standard of care of the Catholic Charities and its employees, that the Estate of Jordan Rodriguez seeks to hold Catholic Charities solely responsible for the untimely passing of Jordan Rodriguez.

2. STATEMENT OF REAL FACTUAL AND LEGAL ISSUES IN DISPUTE.

a. Catholic Charities' Numerous Breaches of the Standards of Care Owed to Jordan Rodriguez.

Between 2013 and 2017, Nancy Caraballo, was employed as a Human Services Worker assigned to Larissa Rodriguez and her children. (Ex. 1, Deposition of DeEbony Pelzer, p. 101). She was hired though she had no education or training to be a Human Services worker, which required a college degree. Nancy had a high school diploma. Her supervisors also failed to screen

Nancy before hiring her, then let her continue to work though she had poor reviews and was found to be incompetent. Her supervisor DeEbony Pelzer was also unqualified for her job, and did not have the educational requirements set forth in Catholic Charities' own policies. Further, when Nancy Caraballo came to Catholic Charities she "brought her own" book of business including the Rodriguez family. The supervisors at Catholic Charities failed to have adequate conflict of interest policies and failed to screen or even inquire whether Nancy and Larissa Rodriguez were friends, which they were. It is wholly inappropriate to allow a friend to serve as a caseworker—and that is why Nancy bought Larissa Rodriguez food stamps card. Utterly no supervision was provided to Nancy Carballo and no checks were made by Catholic Charities to the Rodriguez family.

Nancy Caraballo was specifically tasked with visiting the Rodriguez family to provide nutritional education, training, home visits/checks, and counseling. (Ex. 2, Deposition of Nancy Caraballo Day 2, p. 31-32). Such services included infant nutrition, toddler nutrition, and how to make food for the family. (Ex. 2, p. 31-32). On August 4, 2016, Nancy Caraballo entered a visit summary stating she had visit with the Rodriguez family and provided handouts including "Avoiding Food Fights", "My Daily Food Plan", "Meals and Snacks at School" and "Tips for Adding Variety to your Child's Diet". Ex. 2, p. 33). Nancy Caraballo agreed that this was nutritional counseling being provided to Larissa Rodriguez which was for the benefit of the family. (Ex. 2, p. 33). Nancy continued to testify that the discussion that she had with Larissa was in order to ensure that she was providing the proper nutrition and things for her kids and that would include all of the kids in the family. (Ex. 2, p. 34). Nancy testified that she agreed that Larissa selling her EBT (Electronic Benefit Transfer Card) card to Nancy was neglect. (Ex. 2, p. 37).

Beyond providing counseling, education, and training regarding nutrition, Nancy Caraballo further was required to provide counseling with coping with stress. (Ex. 2, p. 39). Nancy Caraballo allegedly provided numerous trainings for Larissa Rodriguez to benefit all of her children, though

this is unsubstantiated. These trainings required that Nancy Caraballo conduct herself in a certain manner to fulfill the obligations which she assumed when accepting her responsibilities vis-à-vis the Rodriguez Family. She was allegedly trained on and was responsible for looking for signs and symptoms of abuse or neglect in any home she was servicing. As she admits, if she knew, believed, or suspected any neglect or abuse during at any time, she had an affirmative duty to report such to 911 or the Department of Child Services. (Ex. 2, p. 117)

DeEbony Pelzer, and Karnese McKenzie, Supervisors for Catholic Charities, were responsible for supervising the home visits which Nancy Caraballo provided to Larissa Rodriguez and her children. (Ex. 1, p. 103). Yet, they never once visited the Rodriguez home, nor did they adequately review her notes. Nancy Caraballo was responsible for making home visits to Larissa Rodriguez's home under Pelzer's supervision, and yet when there was an indication that the family had no food or was running out of food Pelzer did nothing. (Ex. 1, p. 103). DeEbony herself did not have sufficient education required of her position. (Ex. 3, Deposition of Dr. Kathleen Faller; Deposition Exhibit 37, p. 5). She ignored the worker's case notes which should have alerted her that Ms. Caraballo was not going to the home as she indicated, was not providing the services as required, and failed to have eyes on Jordan as required, and during the specific time that he was starving to death.

Catholic Charities was paid in 2016 and 2017 for providing all home services to the Rodriguez Family. (Ex. 1, p. 105). Catholic Charities was paid by the number of home visits they made per month, and for the number of home visits each home visitor made per month. (Ex. 1, p. 105). Nancy Caraballo claimed she performed house visitations, but it turns out that she did not actually go to the home on the following dates: November 20, 2016; December 6, 2016; January 5, 2017; March 16, 2017; March 31, 2017; June 26; 2017; July 10, 2017; August 4, 2017; September 6, 2017; November 6, 2017; and November 20, 2017. (Ex. 4, Deposition of Karen

Mintzer, p. 67; Deposition Exhibit 16, p. 3). This was not caught by the supervisors even though it was fairly obvious that Ms. Caraballo was not attending to home visits.

Human services workers and their supervisors are mandatory reporters of abuse and neglect. (Ex. 4, p. 68). Executive Director Mintzer further testified at deposition as follows:

Q: Was it your understanding that parent educators were required to report abuse and neglect that they see or observe?

A: Yes.

Q: Was it your understanding that parent educators were required to report abuse when a client or family member advises them there's abuse in the home?

A: Yes.

Q: It says in the first bullet point under section 3 "It is the policy of Bright Beginnings that all Bright Beginnings staff and contractors who are contracting on behalf of Bright Beginnings and who are providing direct services to Bright Beginnings families, who suspect or believes that a child has been, or is likely to be physically harmed, sexually abused or exploited, or needs protection, reports this information to the Cuyahoga County Division of Human Services or 911 if there is imminent danger." Do you see that?

A: Yes.

Q: Would you agree that it was a policy of Bright Beginnings, that if a contractor like Catholic Charities suspects abuse, they're supposed to call?

A: Yes.

(Ex. 4, p. 69-70).

Executive Director Mintzer testified that she was unaware of any report of physical abuse or neglect suffered by Jordan that was sent to DCFS by Catholic Charities. (Ex. 4, p. 71). Nancy Caraballo admitted that she believed the purchase and sale of the EBT card was grossly neglectful. (Ex. 2, p. 37). Thus, though she knew it was neglect, she failed to report it. Further, Larissa Rodriguez disclosed to Caraballo on at least three to four occasions that Christopher Rodriguez was abusing Jordan and his brothers. (Ex. 5 Deposition of Larissa Rodriguez, day 1, p. 31-40). Caraballo never reported any abuse because she was not properly trained to recognize abuse and believed it was merely "discipline" being given to the children.

Catholic Charities was the recipient of payment for services rendered on behalf of Jordan

and even received payment for the non-existent “home visits” of Nancy Caraballo. (Ex. 7, Deposition of Karnese McKenzie, p. 206); (Ex. 8 Catholic Charities Answers to Request to Admit 10.6.20). All of the services which were rendered by Nancy Caraballo, or were supposed to be rendered by Nancy Caraballo, were those of a social services provider necessary for the protection of the Rodriguez children.

Catholic Charities agreed to provide services to the Rodriguez Family as follows:

3.1.1 General Purposes Description: Help Me Grow of Cuyahoga County ensures newborns, infants, and toddlers grow, learn and develop to their fullest potential. Help Me Grow **provides home visiting services for families** with children prenatal up to enrollment in kindergarten. Parenting education through home visiting is available for eligible families who meet the designated county eligibility.

Home visits are the manner in which **parenting education, screening and assessment**, and additional Help Me Grow-Home Visitation **services are intended to occur**. An evidence-based parenting education curriculum as approved by HMG must be used as the primary content source for parenting education offered to those eligible.

3.1.2 Outcomes: Help Me Grow Bright Beginnings services are designed to reach the following outcomes for families:

- Increase in parents’ knowledge of their child’s emerging development and age-appropriate child development
- Improved parenting capacity, parenting practices and parent-child relationships
- **Early detection** of developmental delays and **health issues**
- **Improved family health** and functioning
- **Prevention of child abuse/neglect**
- Improved child health and development

(Emphasis Added.)

3.2.3 The Agency shall provide **family education, support and advocacy through regular home visits**.

Plaintiff believes it is indisputable that Nancy Caraballo, her supervisors at Catholic Charities, and Catholic Charities had a duty to provide social services to Jordan Rodriguez.

Furthermore, Plaintiff believes it is indisputable that Nancy Carballo, her supervisors at Catholic Charities, and Catholic Charities breached their duties by failing to act and affirmatively acting in a harmful manner which directly caused Jordan Rodriguez's untimely passing. Plaintiff believes that the willful conduct of Nancy Carballo will establish the ability for Plaintiff to seek not only compensatory damages but also punitive damages against her and Catholic Charities. Moreover, Plaintiff believes the knowledge of Nancy Carballo of her wrongdoing establishes her responsibility greater than the responsibility for any other non party. Catholic Charities will be held responsible for the pain, suffering and untimely death of Jordan Rodriguez.

b. Catholic Charities' Failure to Properly Train and Supervise Nancy Carballo.

Catholic Charities, through its employee Nancy Carballo, was contractually required to provide "parent education" services as part of the Parents as Teachers program to Jordan, his siblings, and his mother, which contractually includes providing nutritional counseling and home safety monitoring. As a parent educator, Catholic Charities sent Nancy Carballo to Jordan's home to provide his family with nutritional counseling and to monitor the safety of the children. Catholic Charities provided these services as an independent contractor that was paid for their services.

Catholic Charities presented the State of Ohio with their code of conduct, and policies in order to obtain the contract. It was required, that the parent educator position be filled by someone with specialized education. Nancy Carballo was a high school graduate with no education in nutritional counseling, no education in child-care, and no education in special education or social work. Catholic Charities hired Carballo to perform the job despite Carballo not meeting any of the Parent as Teacher requirements and assigned her as the Rodriguez family parent educator in 2013. To add to this recipe for disaster, before she was their parent educator, Carballo was a personal friend of Larissa Rodriguez and the two had known each since at least 2004. (Ex. 3, Deposition of Larissa Rodriguez Day 1, p. 41-44). This was a conflict of interest.

Once assigned to the Rodriguez family, Carballo—as could be expected by someone without the required skill set—failed to conduct necessary safety assessments and nutritional assessments, she failed to ensure Jordan was receiving necessary medical treatment, she failed to ensure he was receiving educational services, and she even failed to realize Jordan and his brothers were being abused by Christopher Rodriguez because she believed the beatings that Larissa disclosed to her were happening, were a way of instilling good “*discipline.*” (Ex. 3, p. 36).

Perhaps most egregious was Carballo’s inept nutritional counseling. It is uncontested that over the last year of Jordan’s life Carballo purchased Larissa Rodriguez’s Electronic Benefit Transfer card (hereinafter “EBT”) from her multiple times. The EBT card was a form of government assistance that allowed Rodriguez to purchase certain groceries for herself and her family. Carballo did so out of a misguided belief that by giving Rodriguez cash for her EBT card, it was “helping” the family, because it allowed Rodriguez to purchase items she could not buy with the EBT card, like diapers. (Ex. 3, p. 67); (Ex. 4, Deposition of Nancy Carballo Day 2, p. 138). Purchasing the EBT card and failing to provide adequate monitoring and nutritional counseling proved to be a fatal mistake as Jordan was allowed to starve to death under the putative “care” of Catholic Charities and its employee Nancy Carballo. Catholic Charities failed to adequately perform its job in almost every conceivable way possible and because of that, Jordan Rodriguez died.

Not only did Nancy Carballo not meet the qualifications for her position nor was she trained for her job responsibilities, but there was also a total lack of supervision of her actions. Nancy Carballo's home visit narratives are repeated, almost word for word in multiple visits, and yet Ms. Carballo's direct supervisor DeEbony Pelzer simply rubber stamped the visits and submitted them for payment. (Ex. 5, p. 135-138). Catholic Charities was paid by the state of Ohio for each visit their parent educators completed. In 2016, Catholic Charities changed its contract

with the state of Ohio and instead of being paid a lump sum for the total amount of enrolled families they were servicing, they were paid per visit, for each visit made to an enrolled family. (Ex. 6, Deposition Exhibit 37, p. 3). Of the 11 admitted falsified visits, Catholic Charities received payment for nine of them and claims to be unsure whether they received payment for the other two. (Ex. 10, Defendant's Answer to Request to Admit, 10-6-20). Caraballo submitting her visit tracker was the mechanism that allowed Catholic Charities to take money from Ohio tax payers.

Caraballo's supervisor, Ms. Pelzer also testified that the only system to check that Caraballo's visits occurred, was to call the client. (Ex. 5, p. 135). Yet, not once did Pelzer or anyone else at Catholic Charities take steps to verify Caraballo's visits occurred and instead, Catholic Charities submitted the visits in order to receive payment. (Ex. 5, p. 135-138). Failing to check any of these visits, is a deviation of accepted standards according to Plaintiff's expert Dr. Faller. (Ex. 6, Deposition Exhibit 37, p. 3). More importantly however, the fact that the supervisors never checked any of the false visits raises the question of whether they were simply "looking the other way" in order to get paid.

c. **Cause of Jordan Rodriguez's Untimely Passing.**

The Cuyahoga County Medical Examiner listed the date of death of Jordan Rodriguez as September 22, 2017 based upon discovery of the body on December 19, 2017. The Medical Examiner listed Jordan's weight as fifteen (15) pounds at an age of five (5) years old. The cause of death was identified as "Homicide by unspecified means". Plaintiff's expert witness Janice J. Ophoven, M.D., a forensic pediatric pathologist performed an independent forensic review of the cause of death of Jordan Rodriguez, inclusive of a review of the depositions of the eye witnesses. Dr. Ophoven, agrees primarily with the Medical Examiner but adds that the primary cause of death is nutritional neglect, as a result of starvation over a six month period of time causing systemic injury, and finally death. Moreover, Dr. Ophoven identified there was no evidence of acute trauma

which was responsible for his death. Therefore, it is Plaintiff's position that any allegation that some acute trauma or physical abuse was the cause of Jordan's passing is without merit. The true cause of Jordan's passing was his body losing systemic organ functions as a result of the persistent malnourishment which was directly linked to Catholic Charities persistent refusal to provide services inclusive of nutritional counseling and ignoring specific evidence of starvation contained within their own records.

Nancy Caraballo's failure to even view Jordan Rodriguez in her presence during 2016 and 2017 reflects her failure to perform her job responsibilities and identify that he was being properly fed.

d. **Lack of Evidence to Establish Liability By Others.**

It is expected that Defendant Catholic Charities, rather than accept the responsibility of its actions and inactions, will merely posit a "defense" of trying to slander others who had even the most remote interactions with Jordan Rodriguez, going back years before his death. This is because not even Defendant's own social services expert Pamela Miller has opined that Catholic Charities complied with the standard of care in providing supervision or services to Jordan and the Rodriguez family. Instead, Miller bluntly stated at her deposition, "I wasn't hired to form an opinion about Catholic Charities."

Plaintiff expects Catholic Charities will baselessly attempt to place responsibility upon other individuals and organizations such as MetroHealth Medical Center, Cuyahoga County Department of Child and Family Services, and various friends or family members of Larissa Rodriguez.

First, any friends and/or family members of Larissa Rodriguez, unlike Nancy Caraballo and Catholic Charities did not owe a duty to Jordan Rodriguez and were certainly not mandatory reporters of any alleged abuse or neglect. These individuals cannot be held responsible for a failure

to act when there was no duty to act. Moreover, there is no evidence than any of them had firsthand knowledge of the starvation of Jordan over the past six to nine months of his life. In fact, neither Metro health nor CCDCFS had any contact during that time. Therefore, any purported attempt at placing any responsibility upon others than Catholic Charities lacks any evidence.

Second, with regard to the expected attempt to place blame upon any employees of MetroHealth Medical Center, there is absolutely no evidence of any deviation of the standard of care of any medical professionals in providing care and treatment to Jordan Rodriguez. The last medical appointment of Jordan Rodriguez was in December 2015, which in no way could predict nor were there any indications that Jordan Rodriguez would suffer malnourishment which resulted in his death.

Lastly, it is expected Defendants will similarly try to avoid responsibility by placing blame upon Cuyahoga County Department of Child and Family Services. However, this is a complete red herring. Defendants own employees have testified they did not report issues of abuse or neglect to CCFCFS. As it is admitted that Nancy Caraballo and other employees of Catholic Charities are obligated to report such suspected issues of neglect or abuse, it was incumbent upon them to timely report these issues. Nancy Caraballo admitted that her action of purchasing the EBT card of Larissa Rodriguez represented neglect which should have been reports. No report was made. CCDCFS is not able to investigate instances of neglect or abuse which are not reported to it. However, CCDCFS did indeed report other instances of alleged abuse of Jordan's siblings which pre-date his starvation. These allegations were properly investigated as to those other children. Reasonable efforts were taken to investigate the safety of all the children of Larissa Rodriguez. However, due to the fact no allegations of abuse or neglect of Jordan Rodriguez were ever directly report to CCDCFS.

3. **STIPULATIONS.**

At this time the parties have not entered into any stipulations but are discussing the potential of stipulating to the authenticity of various documents which were exchanged in discovery. Upon any agreement, notice will be provided to this Court.

4. **LIST OF NON-EXPERT TRIAL WITNESSES WITH BRIEF SUMMARY OF EXPECTED TESTIMONY.**

- Michelle Rodriguez, 18613 Flamingo Avenue, Cleveland, OH 44135- Her personal interactions with Larissa Rodriguez, Christopher Rodriguez and Jordan Rodriguez prior to Jordan's passing. Her care of Jordan's siblings after his passing including their emotional and mental trauma.
- Scott Rodriguez, 4729 W. River Road, Wakeman, OH 44889- His personal interactions with Larissa Rodriguez and Jordan Rodriguez prior to Jordan's passing. His knowledge of the manner of Jordan's passing and communication with the Cleveland Police Department.
- Ana Rosa Rodriguez, 4893 Scovill Avenue, Apt. 2187, Cleveland, OH 44104- To establish her interactions with Larissa Rodriguez and Jordan Rodriguez including his appearance on the last date which she personally saw Jordan prior to his untimely passing.
- Karen Custer, 3038 W. 110th Street, Cleveland, OH 44102- To establish her interactions with Larissa Rodriguez and Jordan Rodriguez including his appearance on the last date which she personally saw Jordan prior to his untimely passing.
- Angel Manuel Bolivar, 3503 Woodbridge Avenue, Cleveland, OH 44109- To establish his interactions with Larissa Rodriguez and Jordan Rodriguez including his appearance on the last date which he personally saw Jordan prior to his untimely passing.
- Mariana Rodriguez, witness is a minor and would only be called to introduce to jury for purposes of asserting damages as an heir.
- Naveah Rodriguez, witness is a minor and would only be called to introduce to jury for purposes of asserting damages as an heir.
- Milton Arroyon, Jr., witness is a minor and would only be called to introduce to jury for purposes of asserting damages as an heir.
- Anthony Cummings, witness is a minor and would only be called to introduce to jury for purposes of asserting damages as an heir.
- Tattiana Wagner, witness is a minor and would only be called to introduce to jury for purposes of asserting damages as an heir.

- Mia Rodriguez, witness is a minor and would only be called to introduce to jury for purposes of asserting damages as an heir.
- Aaliya Rodriguez, witness is a minor and would only be called to introduce to jury for purposes of asserting damages as an heir.
- Employees and/or Agents of Ohio Department of Health - Child Fatality Review Program- On Cross-examination to establish their investigation and review of the manner of Jordan's passing and the failures of Catholic Charities in their duties owed to Jordan Rodriguez.
- Employees and/or Agents of Bright Beginnings- On Cross-examination to establish the duties of Catholic Charities owed to Jordan Rodriguez and his family members. Also, to establish the independence of Catholic Charities from Bright Beginnings and the failures of Nancy Caraballo and Catholic Charities from discharging their duties owed to Jordan Rodriguez.
- Employees and/or Agents of Ohio Department of Developmental Disabilities Employees and/or Agents of Help Me Grow- On Cross-examination to establish the duties of Catholic Charities owed to Jordan Rodriguez and his family members. Also, to establish the independence of Catholic Charities from other governmental entities and the failures of Nancy Caraballo and Catholic Charities from discharging their duties owed to Jordan Rodriguez.
- Employees and/or Agents of Cleveland Police Department- To establish the investigation into the improper conduct of Nancy Caraballo, Larissa Rodriguez, and Christopher Rodriguez. Further, to establish the facts supporting the cause of death of Jordan Rodriguez.
- Employees and/or Agents of Cuyahoga County Medical Examiner's Office- To establish their investigation and ultimate manner and cause of death of Jordan Rodriguez.
- Larissa Rodriguez #W101415, Dayton Correctional Institution, 4104 Germantown Street, Dayton, OH 45417- On Cross-examination, as to all aspects of her relationship with her children, Christopher Rodriguez, Nancy Caraballo, and others associated with Catholic Charities.
- Christopher Rodriguez #A752141, Marion Correctional Institution, 940 Marion-Williamsport Rd E, Marion, OH 43302- On Cross-examination, as to all aspects of his relationship with Larissa Rodriguez, Larissa Rodriguez's children, and Nancy Caraballo.
- DeEbony Pelzer, 9717 Hilgert Drive, Cleveland, OH 44104- On Cross-examination to establish the duties of Catholic Charities owed to Jordan Rodriguez and his family members. Moreover, her failure to properly supervise the actions of Nancy Caraballo and the failures of Nancy Caraballo in discharging her duties.
- Nancy Caraballo, 4610 Wellington Avenue, Parma, OH 44134- On cross-examination, to establish her employer, her training, the level of her supervision, her interactions with Larissa Rodriguez's children, and her failures to discharge her duties owing to Jordan Rodriguez. Moreover, the knowledge of her willful disregard for the safety of Jordan

Rodriguez by falsifying reports and improperly purchased Larissa Rodriguez's EBT card to establish the claim for punitive damages.

- Karnese McKenzie, St. Martin De Porres Family Center, 1264 E. 123rd Street, Cleveland, OH 44108- On Cross-examination to establish the duties of Catholic Charities owed to Jordan Rodriguez and his family members.
- Joan Hinkelman, Catholic Charities Diocese of Cleveland, 1404 East 9th Street, Cleveland, OH 44114- On Cross-examination, to establish the duties of Catholic Charities owed to Jordan Rodriguez and his family members.
- Patricia Holian, Catholic Charities Diocese of Cleveland, 1404 East 9th Street, Cleveland, OH 44114- On Cross-examination, to establish the duties of Catholic Charities owed to Jordan Rodriguez and his family members.
- Michelle Boclear, Friendly Inn Settlement House, 2386 Unwin Road, Cleveland, OH 44104- On cross examination, to establish the hiring of Nancy Caraballo at Catholic Charities. Moreover, to establish the lack of proper qualifications for Nancy Caraballo to perform her job responsibilities as a trainer for Parents as Teachers and other conflicts of interests involving Nancy Caraballo performing her job responsibilities.
- Melissa Manos, Pepple & Wagoner, Ltd., Crown Centre Building, 5005 Rockside Road, Suite 260, Cleveland, OH 44131- The duties owed to Jordan Rodriguez by Catholic Charities and the failures to discharge those duties by Nancy Caraballo, DeEbony Pelzer, and others associated and employed by Catholic Charities.
- Karen Mintzer, Pepple & Wagoner, Ltd., Crown Centre Building, 5005 Rockside Road, Suite 260, Cleveland, OH 44131- The duties owed to Jordan Rodriguez by Catholic Charities and the failures to discharge those duties by Nancy Caraballo, DeEbony Pelzer, and others associated and employed by Catholic Charities.
- Robert Mengerink, 532 Eastwood Road, Hinckley, OH 44233- To establish the distinction between Catholic Charities and Bright Beginnings and/or ESC.
- Porcia Mainor- On cross examination, to establish the services available to Jordan Rodriguez, the services provided to Jordan Rodriguez, and the failures by Catholic Charities to provide proper services to Jordan Rodriguez.
- Jacob Wagner, 15953 York Road, North Royalton, OH 44133- His interactions with Larissa Rodriguez and Jordan Rodriguez prior to Jordan's passing. His personal knowledge of Jordan's condition during his last visit with Jordan.
- Maria Ruiz, 5421 Homer Avenue, Cleveland, OH 44103- Her interactions with Larissa Rodriguez and Jordan Rodriguez prior to Jordan's passing.
- Christopher Upton, 608 West Fike Avenue, Orrville, OH 44667- His interactions with

Larissa Rodriguez and Jordan Rodriguez prior to Jordan's passing.

- Thomas P. Gilson, M.D., Cuyahoga County Medical Examiner's Office, 11001 Cedar Avenue, Cleveland, OH 44106- His determination of the manner and cause of Jordan's death.
- Dr. Susan A. Carlin, 2500 MetroHealth Dr. Cleveland, Ohio 44103- To establish Jordan's medical conditions, her last visit with Jordan in November 2015, and to establish Jordan being a medically fragile child.
- Donna Yohe Ed., Cleveland Municipal School District- She will establish Jordan's limitations as determined through her preschool evaluation of Jordan including his developmental disability and his speech disability.
- Michele Adams is the Catholic Charities Quality and Compliance Manager- On cross-examination to testify regarding the review of the home visitor records of Nancy Caraballo and the findings of such review.
- Lorena Sheets is the Catholic Charities quality Improvement Administrator- On cross-examination to testify regarding the review of the home visitor records of Nancy Caraballo and the findings of such review.
- Glenda Buzzelli is the Catholic Charities Chief Administrator Officer - On cross-examination to testify regarding the review of the home visitor records of Nancy Caraballo and the findings of such review.
- Angela Lowder, 6393 Oak Tree Blvd, Suite 201 Independence, OH 44131: Expected to testify regarding the payment Catholic Charities received from the state of Ohio for implementing the Parents as Teachers Program

5. **LIST OF EXPERT TRIAL WITNESSES (REPORTS ATTACHED).**

- Dr. Kathleen Colburn Faller
- Dr. Charles Montero-Archer
- Dr. Janice Ophoven
- Dr. Robert Shapiro

6. **SPECIAL LEGAL PROBLEMS ANTICIPATED.**

As there remain several Motions for Summary Judgment pending, those issues must be resolved in advance of trial as they will drastically impact the presentation of the evidence at trial.

Moreover, there are a number of Motions *in Limine* and challenges to Defendants' expert witnesses which will be filed pursuant to this Court's scheduling order. Those will need to be addressed prior to trial as they will similarly impact the presentation of the evidence at trial.

7. **ESTIMATED LENGTH OF TRIAL.**

Plaintiff expects this trial will span three full weeks.

8. **PRETRIAL MOTIONS CONTEMPLATED.**

Plaintiff expects to file numerous Motions *In Limine* to preclude Defendant Catholic Charities improper reference to unrelated matters and other parties with which it has no ability to show a causal link between alleged negligent conduct and the passing of Jordan Rodriguez.

9. **SPECIAL EQUIPMENT NEEDS FOR TRIAL.**

Plaintiff requests access to a smart board, screen, or other projecting materials so that exhibits can be projected for the viewing of the jurors. Plaintiff will have at least two video exhibits.

10. **STATUS OF SETTLEMENT DISCUSSIONS.**

On September 28, 2020, Plaintiff submitted a formal demand upon Defendants for the insurance policy limits available to cover the actions of Nancy Caraballo and Catholic Charities of \$33,000,000. This demand was set to expire on November 25, 2020. However, defense counsel engaged in communication with counsel and Plaintiff agreed to allow Defendants additional time to evaluate the case and respond on or by December 31, 2020. On December 22, 2020, Defense counsel issued a letter identify they needed additional time to evaluate the case. Defendants have made no offer, and the plaintiffs demand has now been withdrawn. Plaintiff will be asking for well in excess of \$ 70,000,000.00 at trial. Since that time, the parties have conducted expert discovery, drafted and responded to motions for summary judgment, and still defendants have failed to make any offer. To date, Defendants have never responded to Plaintiff's demand by

offering any payment for settlement of this case.

Respectfully submitted,

/s/ Russell A. Randazzo

Russell Randazzo (0082221)
Randazzo Law, LLC
55 Public Square – Suite 2100
Cleveland, Ohio 44113
Tele: 216-350-4434
Fax: 216-274-9318
Email: Russell@randazzolaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that he served this Final Pre-Trial Statement only via electronic communication to Staff Attorney Lawrence Acton directly pursuant to this Court's Order.

**Attorney for Defendants Catholic Charities
& Catholic Charities Diocese of Cleveland**

Ms. Beth A. Sebaugh
Bonezzi Switzer Polito & Hupp Co. L.P.A.
1300 East 9th Street, Suite 1950
Cleveland, OH 44114
T: (216) 875-2062
F: (216) 875-1570
BSebaugh@bsphlaw.com
estoll@bsphlaw.com
DWilliams@bsphlaw.com

Attorney for Defendant Nancy Caraballo

Steven J. Forbes
Norchi Forbes, LLC
23240 Chagrin Blvd.
Suite 210
Cleveland, OH 44122
T: (216) 514-9500
F: (216) 514-4304
sforbes@norchilaw.com

Defendant – (Prose)

Christopher Rodriguez #A752141
Marion Correctional Institution
940 Marion-Williamsport Rd E
Marion, OH 43302

**Attorney for Educational
Service Center of Northeast
Ohio, Porcia Mainor and
Tom Wetzel**

Holly Marie Wilson, Esq.
Reminger Co., LPA
101 West Prospect Avenue,
Suite 1400
Cleveland, OH 44115
T: (216) 430-2238
F: (216) 687-1841
M (216) 407-8338
HWilson@reminger.com

Defendant – (Prose)

Larissa Rodriguez #W101415
Dayton Correctional
Institution
4104 Germantown Street
Dayton, OH 45417

**Co-Counsel For Defendants
Catholic Charities and
Catholic Diocese**

RICHARD H. BLAKE
(0083374)
JOSEPH M. MUSKA

(0089512)
THERESA M. LANESE
(0097897)
McDonald Hopkins LLC
600 Superior Avenue, East -
21st Floor Cleveland, Ohio
44114
Phone: (216) 348-5400 Fax:
(216)348-5474 Email:
rblake@mcdonaldhopkins.co
m
jmuska@mcdonaldhopkins.co
m
tlanese@mcdonaldhopkins.co
m

**Co-Counsel For Defendants Catholic Charities and
Catholic Diocese**

JOHN W. PATTON, JR.
Patton & Ryan
330 N. Wabash, Suite 3800
Chicago, Illinois 60611
Phone (312) 261-5166
Fax (312) 261-5161
Email j patton@pattonryan.com

Respectfully submitted,

/s/ Russell A. Randazzo

Russell Randazzo (0082221)
Randazzo Law, LLC
Local Co-Counsel for Plaintiffs
55 Public Square – Suite 2100
Cleveland, Ohio 44113
Tele: 216-350-4434
Fax: 216-274-9318
Email: Russell@rrandazzolaw.com



Date: December 1, 2020

The Family Assessment Clinic, located at Jewish Family Services in Ann Arbor, Michigan, provides three primary services. These are comprehensive assessments of families affected by abuse and trauma, referred primarily by agencies in Michigan, evidence-based, trauma-informed treatment to children and families affected by abuse and trauma, and record reviews and expert opinions on cases involved in civil litigation, which come from all over the United States. The Family Assessment Clinic also trains graduate students from various universities in child welfare best practice.

Contractual arrangement:

The Family Assessment Clinic has contracted with Deratany & Kosner (AKA The Deratany Firm), through Kathleen Coulborn Faller, Ph.D. A.C.S.W., L.M.S.W, D.C.S.W. and her expert colleagues to provide opinions regarding the standard of care afforded Jordan Rodriguez

The contract specifies a retainer of \$3,000 and a fee of \$350 an hour for all work on this case (document review, report writing, deposition, and court testimony) paid to the Family Assessment Clinic, plus expenses.

Brief bio-sketch:

KATHLEEN COULBORN FALLER, Ph.D., A.C.S.W., D.C.S.W., is Marion Elizabeth Blue Professor Emerita of Children and Families at the University of Michigan. She is also Co-Director of the Family Assessment Clinic in Ann Arbor, Michigan.

She is involved in research, clinical work, teaching, training, and writing in the area of child welfare, child sexual abuse, and the child welfare workforce. Her primary practice and research areas are child sexual abuse and forensic interviewing. She conducts case record reviews where the issues are child maltreatment, child welfare, and social work best practice. She has been qualified as an expert witness in Federal, State, and County courts, in child protection cases, criminal cases, domestic relations cases, and civil litigation.

She is the recipient of the Sol Gothard Lifetime Achievement Award, the National Organization of Forensic Social Workers (2018), Michigan Child Abuse and Neglect Social Work Award (2014), the Institute on Violence, Abuse and Trauma (IVAT) William Friedrich Memorial Child Sexual Abuse Research, Assessment and/or Treatment Award (2012), the Michigan Chapter of the National Association of Social Workers' Lifetime Achievement

Award (2012), the National Children's Advocacy Center's Outstanding Lifetime Achievement Award (2011), the University of Michigan School of Social Work Distinguished Faculty Award (2010), the American Professional Society on the Abuse of Children's Outstanding Research Achievement Award (2008), and the American Professional Society on the Abuse of Children's Outstanding Service Award. (1998).

She is the author, editor, or co-editor of 10 books, *Social Work with Abused and Neglected Children* (The Free Press, 1981), *Child Sexual Abuse: An Interdisciplinary Manual for Diagnosis, Case Management, and Treatment* (Columbia University Press, 1988), *Understanding Child Sexual Maltreatment* (Sage Publications, 1990), *Child Sexual Abuse: Intervention and Treatment* (U.S. Department of Health and Human Services, 1993), the American Professional Society on the Abuse of Children Study Guide: *Interviewing Children Suspected of Having Been Sexually Abused* (Sage Publications, 1996), *Maltreatment in Early Childhood: Tools for Research-based Intervention* (Haworth Press, 2000), *Understanding and Assessing Child Sexual Maltreatment, Second Edition* (Sage Publications, 2003), *Interviewing Children about Sexual Abuse: Controversies and Best Practice* (Oxford University Press, 2007), *Seeking Justice in Child Sexual Abuse: Shifting Burdens and Sharing Responsibilities* (Columbia University Press, 2010) and *Contested Issues in Child Sexual Abuse Evaluation* (Routledge Press, 2014), as well as approximately 100 research and clinical articles. She has conducted over 300 juried professional conference presentations at international national, and state conferences and provided over 250 workshops for child welfare professionals.

Process of review

Attached is the list of documents reviewed.

Questions addressed

- 1. Did Catholic Charities deviate from accepted standards of care in operating their organization?**

There are a number of domains in which Catholic Charities deviated from standards of care.

Catholic Charities requires that a Human Services Worker II carry a caseload of 40 families. Help Me Grow Bright Beginnings has a maximum allowable caseload under the contract between Catholic Charities Corporation and Educational Service Center of Cuyahoga County of 25 families. **Catholic Charities thereby deviated from the accepted standard of care.** (See Caraballo Exhibit 15; Pelzer Exhibit 10).

A review of the supervision documents found in Nancy Carabello's personnel folder indicates that she would often have a maximum of 23-26 active cases as well as recruit families. For example, on Oct. 15, 2014, Ms. Caraballo had 25 active families and 18 recruits (Bates # 00046); on Nov. 6, 2014, she had 26 active families and 19 recruits (Bates # 00045). It is not clear what the requirements were for recruit families, whether they required more or fewer visits than active families.

A requirement was that each active family should receive two visits per month. The expectation was that a Parent Educator, which was the position that Nancy Caraballo held as an employee at Catholic Charities, was visits to two families per day. Assuming on average 22 working days per month, it is almost possible to achieve 2 visits per family per month, but that calculation does not take into account visits that need to be made to recruits.

Beginning in 2016, Catholic Charities' contract changed, and Catholic Charities was paid by the number of visits Parent Educators completed per month, not by child contacts. It appears that the only consistent mechanisms for assuring that visits were conducted were the Personal Home Visit Reports and the Visit Tracker. According to her responses in her deposition of October 26, 2019, DeEbony Pelzer, who was Nancy Caraballo's supervisor, did not do regular checking to assure that home visits had occurred. If she thought the Personal Visit Report was bogus, she would call the client. Catholic Charities did not have a policy of randomly checking on each family to be sure visits were made and services were provided. In her deposition, Ms. Pelzer stated she never made such a call to Larissa Rodriguez. In her 2019 deposition, Nancy Caraballo admitted to falsifying 11 Personal Visit Reports in Larissa Rodriguez's case. She denied falsifying other visitation logs. Since Nancy Caraballo initially lied to the police, this assertion raises questions.

Catholic Charities fee for service agreement, with payment contingent upon completion of visits, with high caseloads sets up a system where Human Services workers are pressured to complete visits. This is more likely than not to result in superficial service delivery, including failure to prevent, observe, and report child abuse and neglect. One of the goals of the Bright Beginnings program was to prevent child abuse and neglect.

Focusing now on qualifications for positions held by Nancy Caraballo and DeEbony Pelzer, her supervisor, neither had the qualifications for the positions they held. **Hiring them for positions for which they were not qualified falls below the standard of care.**

When Nancy Caraballo was hired as a Human Services Worker II in 2013, she had a high school diploma (See her personnel file) and had taken 9 hours of general courses at Cuyahoga Community College (See Caraballo Exhibit 1). A requirement for Human Services Worker II was the equivalent of an associate's degree in early childhood development (See Caraballo Exhibit 2). Nancy Caraballo misrepresented her education on her application to become a Human Services Worker II, stating she was pursuing an early childhood development degree. No one at Catholic Charities ever bothered to ask for her transcripts from Cuyahoga Community College. When asked during her deposition on Oct. 29, 2019 about her college education, she admitted it was not in early childhood development and that her attendance was "off and on." She stated she "did not remember" if she flunked out or quit.

A memo from Wendy Grove, Ph.D., Help Me Grow Program Administrator, dated November 20, 2012 (Ms. Caraballo was hired by Catholic Charities in July 2013) specifically notes that many of the staff hired to work in Help Me Grow programs do not meet the requirements for credentialing because of lack of appropriate education, noting that home visitors and

service coordinators must have an associate's degree in a field related to early childhood development. The memo states that it is the responsibility of the contract manager, e.g., Catholic Charities, to assure that persons working in the Help Me Grow system have the required qualifications, which includes a review of the applicant's transcripts prior to making an offer of employment. (See Caraballo Exhibit 3.)

Evidently, Catholic Charities privileged the fact that Ms. Carballo had worked at Spanish American Committee as a Parent Educator and a Home Visitor in Bright Beginnings. Her very brief references for the Parent Educator position at Catholic Charities were conducted by phone by Michelle Boclear. References written by the referee are preferred because they are firsthand and allow the referee an opportunity for reflection. One of Ms. Caraballo's references is Miriam Cuevas, the mother of Ms. Caraballo's boyfriend. (See Caraballo Exhibit 1.) Ms. Cuevas, with Ms. Caraballo, committed fraud by using Larissa Rodriguez's EBT card (See Caraballo Exhibits 71 & 72). According to her deposition dated July 13, 2020, Ms. Boclear, who was Nancy Caraballo's first supervisor, never inquired about dual relationships with Nancy Caraballo's clients. If she had done so, she would have discovered that Nancy Caraballo and Larissa had a relationship began in 2000, and arguably was more of a friendship than a professional relationship.

Nancy Caraballo stated during her 2019 deposition and as reflected in her personnel file that she received on the job training, but such training does not substitute for college degree education in human services. An individual with a high school diploma simply does not have the appropriate background. For example, in 2016, Ms. Caraballo attended 5.5 hours of training on DSM-5 (American Psychiatric Association's Diagnostic and Statistical Manual) (Site Sup File 00099). The DSM-5 defines 20 different psychiatric disorders, applicable to both adults and children. Each disorder has subcategories. For example, Trauma and Stress-related Disorders has 12 subcategories. Each subcategory has a list of symptoms. For each subcategory, an individual must have a specified number of the symptoms and must manifest them for a given time period in order to receive the diagnosis (American Psychiatric Association. 2013. *Desk Reference to the Diagnostic Criteria from DSM-5*) Suffice it to say that the DSM-5 is a complex classification system of psychiatric disorders that would be above Ms. Caraballo's ability to comprehend and make use of in her work.

Finally, Nancy Caraballo answered many questions in her deposition that she "did not remember," suggesting she was either being disingenuous or has memory deficits, which would disqualify her to engage in an important service delivery role at Catholic Charities. She did not even remember what her grade point average was for those community college courses. Again, no one at Catholic Charities followed up on her assertion that she was studying early childhood development at Cuyahoga Community College or requested her transcripts.

Catholic Charities' failures to give careful consideration of Nancy Caraballo's qualifications for the important position of a Parent Educator at Catholic Charities fall below the standard of care.

I now turn to DeEbony Pelzer. When she was hired as a Human Services Worker II in 2010, she had recently been awarded an associate's degree in early childhood development. She was therefore qualified for this position.

In 2014, Ms. Pelzer was promoted to be supervisor/manager of both Catholic Charities Bright Beginnings Parent Educator program and Home Visiting program. The qualifications for those programs were a master's degree in social work, counseling, or closely related field. The position also required 3-5 years of fiscal, administrative, management and supervisory experience. (See Pelzer Exhibit 3). According to her deposition on October 28, 2019, Ms. Pelzer had neither of these requirements when she was promoted. Indeed, when she was deposed, she was still working on a master's degree in early childhood development.

Especially of relevance is Ms. Pelzer's lack 3-5 years of fiscal, administrative, management and supervisory experience. Thus, she did not have qualification for overseeing caseworkers under her supervision.

Both her deposition of October 28, 2019 and her personnel file indicate Ms. Pelzer was supervising/managing two programs, both Help Me Grow Bright Beginnings and the Home Visitor program, together having responsibility for 10 caseworkers, when she first started as a manager/supervisor in 2014. According to her deposition, over time the number of staff she had to supervise decreased, but in her Performance Evaluation of 2018, when she supervised nine staff members, she described managing two programs as "taxing" (Pelzer Exhibit 12).

Finally, of considerable concern in Ms. Pelzer's deposition was how frequently she answered, "I don't recall" to questions that were relevant to her position as a program supervisor, memory competence that would be necessary to do her job. For example, despite the fact that she was a Human Services Worker II for four years, she says she does not recall the qualifications and requirements for that position. Such responses reflect either serious memory problems or disingenuousness.

Although Ms. Pelzer was seeking to better herself by obtaining additional education, that Catholic Charities promoted her to manager/supervisor without having required qualifications falls below the standard of care.

2. Did the supervisors Karnese McKenzie and DeEbony Pelzer fail to appropriately supervise and or train their employee Nancy Caraballo?

In her deposition dated October 28, 2019, DeEbony Pelzer does not recall if she trained her workers when she was program manager for Bright Beginnings and the Home Visiting Program at Catholic Charities. Presumably, this would be something Ms. Pelzer would recall.

There are notes in Ms. Caraballo's personnel folder that indicate she received supervision from DeEbony Pelzer. These begin August 19, 2014. There are no supervision notes for Ms.

Caraballo's first year of employment at Catholic Charities, when she was supervised by Michelle Boclear. **The failure to document supervision during the first year of Ms. Caraballo's employment at Catholic Charities falls below the standard of care.**

Beginning in August 2014, there are supervision notes signed off on by DeEbony Pelzer. According to the Bright Beginnings Plan, Parent Educators must receive 2 hours individual reflective supervision per month plus 2 hours staff meetings per month (See Dec. 29, 2014 Plan, p. 9). According to the supervision notes, sessions range from an hour to an hour 45 minutes. There is no evidence in Ms. Caraballo's personnel file that she attended staff meetings.

Individual supervision sessions vary in frequency, but generally are monthly, and there are significant gaps in supervision notes. The dates are: 8/19/14, 9/12/14, 10/8/14, 10/15/14, 11/6/14, 12/10/14, 2/11/15, 3/4/15, 3/18/15, 3/25/15, 4/8/15, 11/17/15, 2/17/16, 5/11/16, 6/15/16, 7/29/16, 9/13/16, 10/14/16, 11/13/16, 6/21/17, 8/3/17, 9/7/17, 10/4/17 (Bates # 00011-49). In her 2019 deposition, Ms. Caraballo stated she met weekly with Pelzer, or at least twice monthly if Pelzer was really busy. The supervision notes do not reflect the frequency of supervision required for the Bright Beginnings program. There are six supervision notes in 2014, six in 2015, seven in 2016, and four in 2017.

If the notes are reflective of Ms. Caraballo's supervision, the low frequency of supervision falls below the standard of care. If the notes are indicative of the failure to include supervisions notes in Ms. Caraballo's personnel file, this failure falls below the standard of care.

During these supervision sessions, Ms. Caraballo and Ms. Pelzer would typically go over Ms. Caraballo's entire caseload. As noted, Ms. Caraballo carried a heavy caseload, either over the maximum of 25 cases, at the maximum, or slightly below the maximum. In addition as noted, Ms. Caraballo also had recruits to visit, the numbers ranging from 2 to 19, but mostly the number of recruits in the teens. From the supervision notes, the focus of supervision appears to be on making sure that all the forms that represented the requirements for Bright Beginnings were in the case files, with occasional brief reference to a case or two.

Both the supervision notes and email exchanges between Ms. Pelzer and Ms. Caraballo about the deficiencies in her work, found in the personnel file, indicate that Ms. Caraballo was a mediocre worker at best, with many delinquencies in her work. Yet she continued to be employed by Catholic Charities until she was fired for her use of Larissa Rodriguez's EBT card and perhaps for her falsifying Personal Visit Reports.

Of note, in DeEbony Pelzer's deposition, she denied any knowledge about Nancy Caraballo's admission in her deposition and evidently to law enforcement to falsifying 11 Personal Visit Reports indicating visits to the Rodriguez family (See Pelzer's deposition).

What is clear from Ms. Caraballo's personnel file is that supervision by Ms. Pelzer was focused narrowly on making sure the forms were completed and not on "reflective

individual supervision” in accordance with social work principles. There can be no other explanation for how the plight of Jordan Rodriguez could have been overlooked. Although Jordan is at times referred to in Nancy Caraballo’s Personal Visit Reports, he does not appear to have been discussed in Ms. Caraballo’s supervision. At times, Larissa Rodriguez would refer to difficulty getting services for Jordan; Ms. Caraballo would make reference to this in her Personal Visit Reports, but she did not take on an advocacy role in seeking services for Jordan. **The failure to attend to the needs of Jordan Rodriguez in case work and in supervision falls below the standard of care.**

The systems in place in Cuyahoga County successfully identified the special needs of Jordan in that his family was receiving the services of a Home Educator through Bright Beginnings from the time of his premature birth and that Early Intervention Services were provided through Help Me Grow from 10/2013 through 03/2014 (when Jordan was 1.8 to 2.1 years old). The history of failures by Catholic Charities to ensure that Jordan, who’s needs for services were clearly identified, are outlined below:

March 2014: Despite being in the home in her role as a Parent Educator, when Early Intervention services terminated, Ms. Caraballo did not ensure that two-year-old Jordan was referred to her program, Bright Beginnings, for services. A referral to Bright Beginnings made by the Early Intervention staff at that time was somehow lost and never received by the Bright Beginnings central intake. Those clerical errors happen in the social services environment. What is expected in those circumstances is that responsible and concerned staff, specifically Nancy Caraballo, DeEbony Pelzer, and Karnese McKenzie, follow up to ensure that the vulnerable child does not fall through the cracks. The case records indicate that as of July 2016, more than two years after exiting Early Intervention, Jordan was still not enrolled in services to meet his needs as a child who was “at risk for developmental delays, abuse, and neglect” (Pelzer Exhibit 10, p.1). Both the Catholic Charities Bright Beginnings Contract (Pelzer Exhibit 10) and the Help Me Grow Plan for Bright Beginnings Program (years 2014-2018) repeatedly refer to **families** as the unit of service. Since Ms. Caraballo was in the home that entire time and receiving supervision about the needs of her caseload, it is not clear how it is possible that Jordan’s needs were ignored.

March 2016: Two full years after termination with the Early Intervention program, Ms. Rodriguez elected to pursue an evaluation of Jordan with the Cleveland Metropolitan School District. If Jordan had been enrolled in the Bright Beginnings program, the expectation would be that this referral would have happened a full year earlier when he turned three-years-old. He was found eligible for special education services in March 2016, but Ms. Rodriguez never engaged Jordan with those service providers. One of the roles of Bright Beginnings Parent Educators was to manage the transition from Bright Beginnings

to the public-school system. Catholic Charities did not assist in this transition and did not explore the reasons why Ms. Rodriguez was keeping Jordan from these needed services.

July 2016: Ms. Caraballo assured a worker from the Department for Children and Families who was investigating an allegation of child abuse/neglect, that she was servicing Milton and “would pick up Jordan’s needs as well”. This statement is remarkable in that Jordan had been certified as eligible for special education, but Ms. Rodriguez had not initiated the services with the school. Ms. Caraballo was not monitoring the transfer of services to the public school programs and was not exploring the reasons why Ms. Rodriguez was not making Jordan available for this necessary intervention. Further, her promise to pick up Jordan’s needs was made despite the fact that Jordan was 4.4 years old at the time and no longer eligible for her program.

Turning now to Karnese McKenzie, who was DeEbony Pelzer’s supervisor, and who was deposed on June 11, 2020. First, I point out that she is not aware she has a social work degree. She has an undergraduate degree from Wilberforce University and a Masters Degree in Social Service Administration from Case Western Reserve University (CWRU). The Mandel School of Social Service Administration at CWRU is a school of social work. Yet when asked in her deposition if her degree was in social work, Ms. McKenzie answered “no.” That Ms. McKenzie did not appreciate her degree was in social work makes one wonder about her comprehension of her education and of the social work field.

Second, in her deposition, she was asked about Larissa Rodriguez’s housing not being approved for Section 8; she was not familiar with the requirements for Section 8. Section 8 is a Federal Program under the U.S. Department of Housing and Urban Development (HUD). It is administered locally and provides vouchers to persons who qualify, usually on the basis of low income. The voucher amount is paid directly to the landlord, and the family pays the difference between the rent and the voucher amount (https://www.hud.gov/topics/housing_choice_voucher_program_section_8). The dwelling has to be inspected and pass the inspection to qualify for Section 8. That Ms. McKenzie whose agency, Catholic Charities, works with low income individuals and families is not familiar with the requirements for Section 8 is very concerning.

There is no evidence that Karnese McKenzie reviewed any Personal Visit Reports or other required documents with Ms. Caraballo, which would have been reflected in additional notes by her as an administrator. In fact, the only documents found among those I reviewed related to Ms. McKenzie’s involvement with Ms. Caraballo were that she signed off on Ms. Caraballo’s annual Performance Evaluations. There were eight areas reviewed by Ms. Pelzer in completing Ms. Caraballo’s performance evaluations. In 2015-16, five of those areas were rated 3 (satisfactory) and three areas were rated 2 (needs improvement). There is no evidence in Ms. Caraballo’s personnel file that either Ms. Pelzer or Ms. McKenzie followed up on those negative evaluations. There was no performance evaluation done on Ms. Caraballo the following year, 2016-2017. **The failure of Ms. Pelzer and Ms. McKenzie**

to use the performance evaluations as an ongoing tool to improve Ms. Caraballo's job performance falls below the standard of care.

3. Did Catholic Charities have adequate policies to prevent the conduct of illegally purchasing the EBT card?

The Operations Manual references conflicts of interest and requires that staff sign a conflict of interest statement annually. It also prohibits staff from "exchanges of gifts, money, gratuities, and exploiting opportunities for personal gain" (p. 24). The Operations Manual does not address specifically clients' EBT cards. There is no evidence in Nancy Caraballo's personnel file that she signed the conflict of interest statement on an annual basis, only when she was hired on July 22, 2013 and that was two years before Ms. Caraballo started fraudulently using Larissa Rodriguez's EBT card (Bates # Caraballo PF 00046). Had Nancy Caraballo been reminded annually about conflict of interest by having to sign the form on a yearly basis, this process might have inhibited her from buying SNAP benefits from Larissa Rodriguez at half price. **If annual signing of the conflict of interest form was accompanied by supervisory instruction about what is and is not appropriate in worker-client relationships, chances of Catholic Charities preventing the abuse by Ms. Caraballo would have been greatly increased.**

Although Nancy Caraballo stated in her deposition, dated Oct. 29, 2019, that she knew that what she did was illegal, she stated this violation of the law was beneficial for both her and Larissa Rodriguez. Nancy Caraballo got food stamps at half price to buy food for her family and Larissa got cash. In both her 2019 deposition and her 2020 deposition, Nancy Caraballo admitted, however, that her action resulted in inadequate nutrition for the Rodriguez family which ultimately contributed to the death of Jordan Rodriguez from malnutrition. Nancy Caraballo is someone with a high school diploma and not a trained social worker, who would be bound by the NASW Code of Ethics.

In her deposition, Ms. Pelzer stated that she knew it was illegal to use someone else's SNAP benefits, but said, "I don't recall" when asked how she knew this. She also said, "I don't recall" when asked if she ever trained workers about conflict of interest or ever trained her workers not to use a client's SNAP benefits. Such training would have reduced the likelihood of Ms. Caraballo exploiting the Rodriguez family.

The failure to have Nancy Caraballo sign the conflict of interest declaration annually falls below the standard of care. The apparent failure to provide training on conflict of interest falls below the standard of care.

4. If Catholic Charities had properly supervised Nancy Caraballo would it be more likely than not, they would have prevented the purchase of the EBT card?

Yes. See responses to questions 2 and 3.

5. **Did Nancy Caraballo deviate from accepted standards of care by purchasing the EBT card, and/or by failing to go to the home on 10-11 occasions that was required?**

Nancy Caraballo egregiously deviated from the standard of care when she purchased Larissa Rodriguez's EBT card, paying half price for the SNAP benefits on the card. She also facilitated her boyfriend, Miguel Ortis, and his mother, Miriam Cuevas's use of the card. Caraballo Exhibit 71 is the Cleveland Police Department report after the warrant search of Nancy Caraballo's residence on January 10, 2018. Initially Nancy Caraballo lied and said she never used Larissa's EBT card. When told that her Sam's Club record and surveillance videos implicated her, she confessed but minimized her use. Caraballo Exhibit 72 is comprised of text messages on her phone which document numerous exchanges among her, Cuevas, Miguel Ortiz, and Larissa Rodriguez. Larissa received \$1,000 a month in SNAP benefits. She would leave \$200-350 on the card, which Caraballo or Cuevas would buy at half value. They would return EBT card to Larissa in two days. The estimated amount of fraud between July 2015 and December 2017 was \$10,058.18. According to law enforcement, Cuevas, Caraballo, and Rodriguez acted as a criminal enterprise. Nancy Caraballo pleaded to fraudulently using Larissa Rodriguez's EBT card and served seven months in prison.

Nancy Caraballo's job description and ongoing supervision by DeEbony Pelzer makes it patently clear what the visitation expectations were for a Parent Educator, which was the position Ms. Caraballo held. **That Nancy Caraballo failed to conduct these visits and falsified her Personal Visit Reports falls below the standard of care.**

6. **Were there other ways in which Nancy Caraballo, her supervisors fell below the standard of care in service delivery to the Rodriguez family?**

Records available to Nancy Caraballo and Catholic Charities make it very clear that Larissa Rodriguez was a high risk parent; she did not merely give birth to high risk children. Bright Beginnings requires a Family Intake/Assessment (Pelzer Exhibit 7, p. 13). There is a referral to Help Me Grow made by DCFS worker Keith Grahl received on June 24, 2013 with an Intake set for Aug. 21, 2013 at 1:00, but no Family Intake/Assessment could be found in the Rodriguez file. The child's name is redacted, but the child was a male. If there had been an adequate intake/assessment of Larissa Rodriguez which included a social history, it would have been obvious that she had many risk factors as a parent. These risk factors are described in the depositions of the Rodriguez sisters, Michelle, Ana, and Larissa.

Larissa Rodriguez had been removed from her mother's care at an early age by the child welfare system. She, Ana, and Michelle were removed when Michelle, the oldest, was about 3 or 4 (Michelle Rodriguez deposition dated June 23, 2020). Larissa, Ana, and Michelle Rodriguez document their subsequent traumatic experiences in the child welfare system (Larissa Rodriguez deposition, dated Aug. 10, 2020; Ana Rodriguez deposition, dated June 24, 2020; Michelle Rodriguez deposition, dated June 23, 2020).

Michelle stated in her deposition first they were in a foster family, then a children's home, and then bounced around to foster homes until they were teenagers. Michelle, Larissa, and Ana credit Michelle with keeping them together. They got adopted by the Rodriguez family, when Michelle was 14, and Michelle stayed with the adoptive family until she was 18 and graduated from high school. Michelle stated Larissa moved out of the Rodriguez family at age 14, when she became pregnant, and in with her boyfriend. She then found Emma Rojas, their biological mother, and lived off and on with her. Emma Rojas had 18 children, according to both Michelle and Ana. Larissa's first children were Angel Alvarez, Jr. and Gilberto by Angel Alvarez, Sr. Both children were removed from Larissa's care at birth. Both were legally adopted.

In her 2019 deposition, Nancy Caraballo, who had been working with Larissa Rodriguez since 2000, initially stated she did not know in 2000 whether Maryianna was Larissa's first pregnancy. She denied knowledge of Larissa's older children, but then stated that she knew there were two older boys who did not live with Larissa. Ms. Caraballo never had a conversation with Larissa about why they were removed or where they lived. **Since Ms. Caraballo was responsible for the wellbeing of children in Larissa's care, the failure to inquire about the reason Angel, Jr. and Gilberto were not in Larissa's custody falls below the standard of care.**

Had anyone from Catholic Charities reached out to Michelle and Ana, they would have discovered Larissa's dysfunction as a mother. In her deposition, Michelle Rodriguez described Larissa as seeking her out when Larissa needed something, such as money, being driven to food banks on Saturday (3 different food banks), being driven to pay her bills, and needing a ride to Jordan's medical appointments. Michelle stated if she confronted Larissa about something, for example her children having lice, Larissa would cut Michelle off, until she needed another favor from Michelle. Michelle sometimes could not afford to give Larissa money and would refuse; Larissa would become angry.

Michelle also stated in her deposition that she did not approve of the men Larissa engaged in liaisons with. They were frequently abusive. Arguably Christopher Rodriguez was the worst because he physically abused Larissa but also abused vulnerable little five year old Jordan Rodriguez, a special needs, non-verbal boy, was instrumental in his death, and was primarily responsible for Jordan being buried in the yard.

The first report of Nancy Caraballo's knowledge of Larissa's propensity to choose violent men as partners dated from Dec. 2, 2013 (Catholic Charities Bates # 00383-84). It is not clear from Ms. Caraballo's Personal Visit Report which of Larissa's many partners was the perpetrator, but the police had arrived at Larissa's dwelling with a warrant for his arrest. Ms. Caraballo did inquire if Larissa wanted a referral for domestic violence services, but Larissa declined, and evidently Ms. Caraballo did not pursue this issue of domestic violence further.

In her deposition, Ana Rodriguez documented additional concerns about Larissa's parenting. Ana understandably wanted to have a relationship with her sister, Larissa, and lived with her off and on over the years. Similar to Michelle's experience, if she confronted

Larissa about her choice in men, abusive treatment of the children, or the filthy condition of the house, Larissa would kick Ana out. Ana reported Larissa to Child Protective Services twice. Ana described Larissa's house as always filthy.

Ana reports that Nancy Caraballo would visit the home when it was in these deplorable conditions. Moreover, Ana stated Ms. Caraballo never made referrals for Larissa for services. In truth, during the approximately five years Ms. Caraballo was Larissa's Parent Educator at Catholic Charities of the 18 years Ms. Caraballo worked with Larissa (records from Spanish American Committee are not available), referrals are scant. They include a referral to Christ Child for cribs when DCFS would not close its case without beds for the children, for a layette for a soon to be born baby, and the provision of formula and diapers. The range of referrals that Parent Educators could provide was extensive.

During her deposition on August 10, 2020, Larissa Rodriguez provided more information about her tragic childhood. Her recollection is somewhat different from that recalled by her older sister, Michelle. Larissa stated she lived with her biological mother until 1 year old. Then, she was with a foster family until age 5. She was removed from that foster home because the 18-year-old foster brother sexually assaulted her. She was then with one family from 5 to 14 years old, the Rodriguez family, who adopted her. She ran away at 14 and went to stay with her biological mother for a couple months, then to her oldest son's father's mother's house. She was only there a couple of months before being placed in a girl's residential facility called Mercycrest. She was there for 3.5 years. She went to another foster home for a year after Mercycrest but eventually ran away and got established in her own place. This appears to have been when she first had Nancy Caraballo as a worker. **The failure of Catholic Charities to appreciate and act on high risk factors Larissa Rodriguez brought to her parenting role falls below the standard of care.**

In 2013, 2014, 2015, 2016, Larissa Rodriguez and Nancy Caraballo signed "Authorization & Consent for Release of Information" forms, which allowed for mutual sharing of information among the professionals and agencies serving the Rodriguez family. These agencies varied somewhat by year, but included DCFS, Help Me Grow (statewide), MetroHealth (where Jordan received his medical care), St. Martin De Porres, Christ Child, First Call for Help, and Cuyahoga County Mental Health. (Bates # Catholic Charities 00013-18; Catholic Charities 00089-95)

Yet Nancy Caraballo in her deposition of 2019 stated that she did not know of Jordan's hospital visits for physical abuse and injuries. In June 2015, Jordan was admitted to the hospital because he had a closed head injury. In July 2015, he was taken to the hospital because he had lesions. In August 2015, Jordan was taken to the emergency room because he had a lacerated right eye. In October 2015, he was taken to the emergency room because he had a laceration on the right side of his face; Jordan needed stitches, but Larissa refused to have his wound stitched. (See Caraballo deposition pp. 280-90)

Moreover, in her deposition of 2019, Ms. Caraballo denied knowledge of CPS reports made about Larissa Rodriguez. That said, Caraballo Exhibit 56a, which is one of her Personal Visit Reports, documents that DCFS worker Krista Van Horn was present during the visit. Ms.

Caraballo also noted that Van Horn would make a couple of more visits before closing the case. In several subsequent Personal Visit Reports, Larissa told Nancy Caraballo that the CPS case was still open, and this was causing her stress.

Indeed, there were at least seven reports of child maltreatment made about Larissa and her family, beginning in 2010. In 2010, Nancy Caraballo was Larissa's Parent Educator at Spanish American Committee. These reports continued until 2018, when all of Larissa's children were removed after the discovery of Jordan's body buried in the yard of her dwelling.

The CPS reports are documented, as is Nancy Caraballo's awareness of these reports. When DCFS would contact Ms. Caraballo, she would assert that Larissa was a good parent. Nancy Caraballo's vouching for Larissa Rodriguez and stating that Larissa was a good parent not only contributed to the failures to substantiate allegations of child maltreatment in the Rodriguez home, but also resulted in decisions by DCFS not to provide services that might have resulted in interventions to protect Larissa's children, including special needs boy, Jordan Rodriguez. (See Appendix 1.)

The failure of Catholic Charities staff and supervisors to recognize and respond to the increased risk of neglect and abuse in families that have generated multiple protective services reports falls below the standard of care.

7. Do other agencies that provided services to Jordan bear responsibility for his "falling through the cracks" and his ultimate demise?

The other agencies who at various times provided services to Jordan Rodriguez do not bear responsibility for lack of services for Jordan, nor for his death by starvation. Catholic Charities, through its Bright Beginnings program, was the one agency consistently in the home since 2013. Moreover, Nancy Caraballo, who was Larissa Rodriguez's parent educator when the Rodriguez family was on her caseload at Spanish American Committee, went to the hospital at Jordan's birth because his birth was at 26 weeks. Thus, Ms. Caraballo knew from the time Jordan came into the world that he was a special needs child, who would require services. Yet she did nothing to assure he received services. It was during 2016 and 2017 that Ms. Caraballo admits that she falsified 11 of her home visits to the Rodriguez home.

In addition to the Rodriguez family receiving services from Catholic Charities Parent Educator Nancy Caraballo, Jordan received medical care at MetroHealth, he was evaluated for special education by the Cleveland Metropolitan School District, and he was in the Rodriguez family which was the subject to reports to DCFS.

As noted above, DCFS CPS investigated reports made about the Rodriguez family, but none was substantiated until 2018, after Jordan's body was discovered; all the children in the Rodriguez home were then removed. None of the CPS reports were made specifically about Jordan, except indirectly the final one, after his body was found. According to her Oct. 5, 2020 deposition, when CPS worker Hope Gula investigated a report of sexual abuse of

Neveah by Maryianna in October 2013 and a May 2015 report that all of the Rodriguez children were outside the house in their underwear, she found Jordan to be in good health and no evidence of malnutrition. She obtained Jordan's records from MetroHealth. This was six months before MetroHealth made its first observation that Jordan was suffering from failure to thrive during a Nov. 10, 2015 MetroHealth visit. In May 2015, Ms. Gula also offered to make a referral for Jordan for mental health services, but Larissa Rodriguez said a referral was already in progress through MetroHealth. Ms. Gula stated in her deposition, that although neither of the cases were substantiated, she nevertheless did not close the case, but referred it to ongoing CPS because the family was high risk. Ms. Gula's case management decisions met the standard of care.

It appears that Jordan's last appointment at MetroHealth was in December 2015 for an audiology appointment. When MetroHealth staff noted that Jordan was not getting routine care, Larissa Rodriguez would assure them that she would follow up. However, he did not have any visits to MetroHealth in 2016 or 2017.

Jordan was evaluated for special education services by Cleveland Metropolitan School District, referred in November 2015. He was found to be eligible for special education services in March 2016, but his mother did not enroll him at that time. In September 2016, Ms. Rodriguez withdrew Jordan from school services, falsely stating the family was moving to Texas. The school system had no mechanism for determining that Ms. Rodriguez was lying.

These are my opinions to a reasonable degree of professional certainty. I reserve the right to augment my opinions should I review additional relevant information and/or more information should become available.

Respectfully submitted,



Kathleen Coulborn Faller, Ph.D., A.C.S.W.
 Marion Elizabeth Blue Professor Emerita of Children and Families
 School of Social Work, University of Michigan
 Co-Director, Family Assessment Clinic

Appendix 1: Protective Services Report Summary

Date	Intake ID # and Bates #	Allegation	Child Subject	Disposition	Comments
11/02/10	4888438	Phys Abuse	Mariana	Unsubstantiated,	Nancy Caraballo tells PS worker that she has never

	000028			02/21/11	had any concerns for the girls. She states that Ms. Rodriguez is a loving and nurturing mother (000037).
2/23/11	4968263 000052	Phys Abuse and DV	?	Unsubstantiated, 04/21/11	Phone call to Nancy Caraballo who stated she did not have any concerns for the children. Stated Ms. Rodriguez is a good mother who takes excellent care of her children. Ms. Rodriguez was referred to a DV program
3/23/12	5282684 000073	Phys Abuse	Maryianna	Unsubstantiated, 06/07/12	Alleged physical abuse and verbal abuse toward Maryianna. Maryianna was interviewed at daycare. Her statements were inconsistent, but she did say that mom's boyfriend hit her, and she did not get enough food (she was plump). The worker went to the Rodriguez

					home. Neveah was there but too young to be interviewed. She was clean, the house was clean, and there was food.
10/18/13	7381611 000140	Sexual Abuse	Neveah	Unsubstantiated, 09/14/14?	Neveah's father reports "hickie-like" marks on her inner thigh. Worker called Nancy Caraballo in September, 2014 and she denied any maltreatment (000177)
7/6/14	7381611 001471-81			Unsubstantiated, 09/12/14?	At 001480, worker reports phone call with Nancy Caraballo who states she is active with Milton and will also pick up Jordan's needs. Nancy Caraballo "denies any maltreatment."
5/19/15	9343639 000211	Neglect	All kids	5/28/15?	Apparently, a neighbor called the police because children were out in the yard one morning in diapers and boxers. Alleged

					neglect. At 000217, CPS worker states that although sexual abuse and neglect was unsubstantiated, family is high risk: 1) 8 referrals since 2010 2) 5 children, 4 under age of 4, and 3) serious behavior problems from one of the children (referring to Milton's aggressive behavior)
6/4/15	Unclear if this is a new referral			Unsubstantiated,	At 000227, worker states that Nancy Caraballo was in the home when they came to investigate.
01/27/17	12634403 000247			Unsubstantiated,	Ms. Rodriguez claims that allegations were made by Marianna's father who is filing for custody. CPS worker concludes there are no concerns at this time.

01/09/18	136727 05 000801	Abuse	All Rodriguez children	Substantiated	
----------	------------------------	-------	------------------------------	---------------	--

Charles A. Montorio – Archer, PhD., ESQ., MPA

347 W 39th Street, #12 North
New York, New York 10018
1 (347) 578 - 3557

December 8, 2020

Jay Paul Deratany, Esq.
Deratany & Kosner
221 North LaSalle Street, Suite 2200
Chicago, Illinois 60601

RE: Michelle Rodriguez vs. Catholic Charities Corporation, et al;
Court No. 19-CV-909566

Dear Mr. Deratany,

I provide here my opinion as an expert in not-for-profit corporate leadership and management on issues, identified below, that have arisen in the above referenced matter. The facts on which I rest my opinions and the bases for those conclusions are discussed in further detail below. Be advised that the following depositions and documents were reviewed as I conducted a thorough, fair and impartial review of this matter:

Deposition Reviewed

- Denise Bell
- Michelle Boclear
- Nancy Caraballo
- Susan Carlin, M.D.
- Pia Debose – Donald
- Bethalyn Fox
- Hope Gula
- Patricia Forrai Gunter
- Robin Hamker
- Joan Hinkleman
- Patricia Holian
- Krista Van Horn
- Emily Kotting
- Kathryn Mahoney
- Porcia Mainor
- Melissa Manos
- Janene Mazanec
- Robert Mengerink

- Karnese McKenzie
- Karen Mintzer
- DeEbony Pelzer
- Larissa Rodriguez
- Michelle Rodriguez
- Maria Ruiz
- David Siefert
- Kenyana Smith
- Jennifer Stabb, RN
- Christopher Upton
- Jacob Wagner
- William G. Weston, Jr.
- Tom Wetze
- Donna Yohel

Document Reviewed

- Catholic Charities Operations Manual, 2016
- Catholic Charities Records
- Cuyahoga County Medical Examiner's Office
- Cuyahoga County Coroner's Office
- Cuyahoga County Department of Children and Family Services
- Hope Gula: Subject to Protective Order – Exhibit A
- Hope Gula: Subject to Protective Order – Exhibit B
- Hope Gula: Subject to Protective Order – Exhibit C
- Plaintiff's Proposed Second Amended Complaint
- The Help Me Grow Plan for Bright Beginnings Program 2016 Guidelines
- The Bright Beginnings Plan for Parents as Teachers Program 2017 Guidelines

Based upon a reasonable degree of certainty in the field of non-for-profit corporate leadership, management and malfeasance, and based upon my review of the records, and depositions and my education and experience, it is my opinion the Catholic Charities deviated from the minimally accepted standards of care required for said not-for-profit corporations in the following ways:

1. At the time that Nancy Caraballo was first hired by Catholic Charities, in July 2013, Catholic Charities deviated from accepted standards of care, required of a similar corporate organization contractually responsible for childcare services. Catholic Charities had an obligation to investigate and assess Ms. Caraballo's past clients, and whether Ms. Caraballo had a potential conflict of interest with any of the past clients, and they failed to do so. Nancy was originally hired by Michelle Boclear. Ms. Boclear failed to inquire about the potential conflicts and failed to do a new intake for the clients that Nancy Caraballo was bringing over to Catholic Charities from Spanish American Committee.
2. Catholic Charities failed in its ongoing duty to assess and inquire whether their employees would have any conflicts of interest with their clients. The corporation is

required to complete conflict of interest forms and there were years in which the conflicts forms were either non-existent or not appropriately filled out, and this created a vacuum in which Nancy Caraballo was allowed to pursue a friendship with her client, Larissa Rodriguez.

3. Nancy Caraballo should not have been assigned to the Larissa Rodriguez or Jordan Rodriguez case. There was a clear conflict of interest, because the two acted as "friends." It is clear from reading the deposition of Larissa Rodriguez that she did not have an understanding as to Nancy Caraballo's role. She thought of Nancy Caraballo as "her social worker", which likely led to Larissa Rodriguez believing that she could rely upon Nancy Caraballo as her sole protector from Christopher Rodriguez abuse to her and her family including her son, Jordan Rodriguez. The supervisors, De Ebony Pelzer, and Karnese McKenzie, had a minimum duty to communicate with Nancy Caraballo's past clients, that were now becoming Catholic Charities clients, to determine what if any conflicts arose, and then to make an independent determination as to whether the client should be assigned to Nancy Caraballo. Instead, they simply accepted Nancy Caraballo's prior clients without any investigation or inquiry. This was a deviation from acceptable corporate supervision and practice. It was Catholic Charities' duty to identify the conflict of interest and to identify the intimate nature of the relationship between Nancy Caraballo and Larissa Rodriguez and then act accordingly to prevent, avoid and eliminate all conflicts in the best interest of Jordan Rodriguez, Larissa Rodriguez and Catholic Charities.

4. Had Catholic Charities made proper inquiry from the beginning and continued to properly and adequately address potential and existing conflicts then they would have more likely than not prevented Nancy Carballo's exploitation of her relationship with Larissa Rodriguez for personal gain.

5. Catholic Charities deviated from acceptable standards of corporate oversight by hiring and retaining De Ebony Pelzer as Nancy Caraballo's supervisor. De Ebony Pelzer was not a license social worker nor was Nancy Carballo. While it is not required that the caseworker have a degree in social work, at minimum, the supervisor should have a social work degree. De Ebony Pelzer was not qualified to know, nor instruct and train her subordinate Nancy Caraballo on recognizing the signs and symptoms of neglect and abuse. It was also a deviation of the standard of care for Catholic Charities to hire and then assign Nancy Caraballo to Jordan Rodriguez's case because of his disabilities and other special needs. Nancy Caraballo was wholly unqualified and lacked appropriate education requirements and/or experience to serve children with disabilities.

6. Under the contract that Catholic Charities had with the State of Ohio, Catholic Charities was required to provide nutritional counseling and observe for signs and symptoms of neglect and abuse. Catholic Charities failed to do so, and this constitutes a deviation of the standard of care.

7. Catholic Charities deviated from the standard of care regarding the administration and execution of their Parents as Teachers (PAT) and their Bright Beginnings program. Since Catholic Charities was funded by the state to run the program, they had an obligation to adequately and correctly identify each client, who is the client, and what services would be provided to said client. It is clear that the supervisors had conflicting testimony about the role that Nancy had with respect to Jordan Rodriguez. It is not up to the client to "figure out" what services would be provided and to which family member, this responsibility rest upon the company providing the services to be clear. The Catholic Charities supervisors seem to suggest that Jordan Rodriguez was not Nancy Caraballo's responsibility, yet this goes against the contract. Further, Ms. Pelzer and Ms. McKenzie seemed confused as to what responsibilities Catholic Charities employees had with respect to Jordan Rodriguez. This is unacceptable practice for a corporation such as Catholic Charities.

8. There is a deviation of the standard of acceptable practice for Porcia Mainor not to ensure proper transfer or referral was executed. Ms. Mainor was responsible for ensuring that the facsimile transfer was sent to Catholic Charities, and she failed to do that—and thus Porcia Mainor did not act within the minimally accepted standards of care. Further, though Nancy Caraballo knew that she was to provide services for the entire Rodriguez family, she did not fill out the necessary ASQ and ESQ-SA forms. Nancy Caraballo should have done that, but also if Porcia Mainor had correctly effectuated the transfer then it would have increased the likelihood that the forms would have been filled out and the abuse would have been more likely to have been discovered.

9. Catholic Charities was paid for services in 2016 and 2017 that were supposedly provided by Nancy Caraballo but were in fact not provided. Nancy Caraballo admitted to fraudulently filling out eleven (11) or so personal visit records for visits that did not occur. If Catholic Charities supervisors had appropriately done their job within the acceptable standards of care required of a corporation, such as Catholic Charities, then it more likely than not would have been discovered. Proper procedure, protocol and practice would require spot checks, and comparisons of records to ensure compliance. There was no written or stated policy, procedure or practice which included spot checks, verification of visits, or culture survey, which is a deviation of policy, procedure and practice for an organization such as Catholic Charities. It appears that Nancy Caraballo's personal visit records were in fact not subject to any oversight, and that her supervisors simply "rubber stamped" them.

Catholic charities were paid for services that were not provided, and therefore they are absolutely responsible for the actions of their employees since they received benefit from their employee's actions.

10. Catholic Charities failed to have adequate management structure of social workers and professionals required of social service organization; and failed to manage and execute policies, procedures, regulations and practices under the standard of care,

inclusive of maintaining conflicts of interest policies and gifts policies, which severely increased the likelihood of Jordan Rodriguez being injured.

In analyzing the issues discussed above, I believe that I have addressed all the important aspects and issues raised by the facts. I would, of course, be prepared to consider additional questions and respond to possible questions that you or others may have concerning my analysis. With respect to the scope of issues, I have had to proceed on the basis of my present understanding of the facts.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Charles A. Montorio". The signature is written in a cursive, flowing style.

Charles A. Montorio – Archer, PhD., ESQ., MPA

Janice J. Ophoven, M.D.

2616 Avon St N
Roseville, MN
651.458.0541
jophoven@ophovenmd.com

December 8, 2020

Mr. Jay Paul Deratany

Deratany & Kosner
Trial Attorneys
221 North LaSalle Street
Suite 2200
Chicago, Illinois 60601

Re: Michelle Rodriguez, etc. vs. Catholic Charities Corporation
Court No. CV 19 909566

Dear Mr. Deratany,

This correspondence is in response to your request for preliminary determinations from my forensic review and summary of findings and opinions regarding the death of **Jordan Rodriguez**.

I have been asked to conduct an independent forensic review of this case and to provide forensic analysis of the findings, opinions and conclusions relating to cause and circumstance of the injuries to **Jordan Rodriguez**. I have been asked to review this case in consultation as a pediatric forensic pathologist. During the course of my professional practice, I have been asked to provide opinions to courts on a number of occasions regarding the interpretation of cause and circumstances of injuries and to render opinions on behalf of guardian ad litem and others on the risks for potential harm if a child or infant were to be reunited with their biological family.

The field of forensic pathology is a subspecialty of pathology that involves specialized training and experience in the determination of cause and circumstance of injuries. Most forensic pathologists work at least in part as medical examiners with the task of determining how, and under what conditions, an individual has died. The field of pediatric forensic pathology includes analysis of injuries or conditions in living and deceased children. In years past I have played a role in educating pediatricians, law enforcement, other forensic pathologists etc. about child abuse and the various ways that children can present with the effects of physical abuse and neglect, sexual abuse, poisoning and factitious illnesses. One of the most common presenting concerns in young infants and children is the suspicion of abuse when evidence of unexplained injuries is identified.

The process of forensic review in a case of possible abuse of a child requires appropriate collection of the case evidence, careful analysis of the evidence, and identification of the key findings typically utilized to determine cause as well as manner /circumstances under which an injury or death could reasonably have occurred. The analysis includes a review of medical

records, the circumstances of the child's life and medical conditions, as well as the investigation pertaining to the environmental circumstances and activities of the child in the days and hours before presentation to medical attention and of course the findings and conclusions at autopsy. Following review of the evidence and identification of key findings, a differential diagnosis is developed. Differential diagnosis refers to the list of conditions or circumstances that reasonably explain the findings. The following opinions are based on that analysis and are rendered to a reasonable degree of medical probability.

I charge \$400.00, per hour for my deposition, trial testimony, and I have the qualifications set forth in my CV which is attached. I have reviewed the case materials provided to me [inventory of materials listed below] which included depositions in this case, the Ohio Medical Examiners records, conclusions and report, as well as the autopsy histopathology and photos, and I offer my opinions to a reasonable degree of certainty in the field of pediatric pathology and as a medical examiner. I base my opinions upon my education, training and experience, as well as the review of the records, medical examiner reports and depositions. My opinions, more probably true than not are:

1. Jordan's primary cause of death was nutritional neglect. Jordan had a loss of bodily function and systemic loss of organ functions as a result of the lack of nutrition that ultimately resulted in his death. There is substantial evidence that he was wasting for approximately 3-6 months prior to his death. This is corroborated by multiple witness testimony inclusive of Jacob Wagner who reports the child is "skin and bones" in July 2017; He is estimated to have died in September 2017, and based upon my review of the records and photos he was severely malnourished at the time of death.
2. There is no evidence of acute trauma that was responsible for his death. There was no acute traumatic injury that was fatal, and though he did have a fractured ulna and ribs, the callus formation on the wrist indicates that it occurred a month or so prior to his death.
3. By virtue of his special needs, and developmental issues, Jordan was especially vulnerable to nutritional deprivation. He required careful attention to his nutrition and health, and therefore Carabello/Catholic Charities conduct was especially harmful and was a significant contributor to his death.

It is more likely than not, that had Nancy Carabello/Catholic Charities been fulfilling her responsibilities as a case worker by: going to the home rather than falsifying records; going into the home within the last 8 months prior to his death; not taking the EBT card, that she would most certainly have noticed his failure to thrive, with nutritional neglect, and he would not have died.

4 Given that DCFS or other agencies were not in the home within the last 8 months of Jordan's death, it is unlikely that any of their actions or inactions was a cause or contributing cause to his nutritional neglect.

My professional background is forensic pathology with special training and experience in the evaluation, investigation and interpretation of injuries in childhood. I have over 30 years of experience in this field and teach and publish on this subject. I have qualified as an expert in pediatric forensic pathology in courts across the country and in the U.K.

In preparation of this report I have reviewed the following materials:

Materials

Histopathology Slides – 23 Slides
Flash drive – Michelle Rodriguez
Certificate of Death
Cleveland Metro Housing Auth
Case Reports
Cleveland Metropolitan School District – PDF File
Cleveland Municipal School District – PDF File
Police Department
Police Records
Video Files
SanDisk Secure Access
Cuyahoga County Coroner’s Records
ME Records – PDF File
Medical Examiner
Computerized Radiographs – CD
DX – 12 Files
Prosecutor’s Office
CCPO Disc 1 – PDF File
CCPO Disc 2 – PDF File
Media Object 1 – M4A File
Media Object 2 – M4A File
Cuyahoga Metropolitan Housing Authority
CMHA Subpoena – PDF File
Bates – PDF File
Randazzo LTR. – 2.5.20 – PDF File
Deposition Transcripts
DeEbony Pelzer
36 PDF Files
Joan Hinkelman
PDF File
Exhibits
36 Exhibits – PDF Files
Karnese McDenzie – PDF File
Exhibits – 30 PDF Files
Michelle Rodriguez – PDF File
Nancy Caraballo
Volume 1 – PDF File
Second Deposition – PDF File
15 Exhibits – PDF Files
Patricia Holian – PDF File
7 Exhibits – PDF Files

Metro Health
TMHS Records – PDF File
Ohio Department of Health
ODH Child Fatality Review Annual Report – PDF File
ODH Records – PDF File
Photographs of JR – 7 JPG Files
Susan A. Carlin, M.D.
Carlin Metrohealth Records – PDF File
United Cerebral Palsy
7.11.19 Records – PDF File
UCP – PDF File
CD – Cuyahoga County Medical Examiner’s Office
157 JPG Files
CMHA – Police
Police Division Case Report – Summary
Narrative
Cuyahoga County Medical Examiner
Duplicate Records (All ME Records)
Vital Statistics Report
Toxicology Report
Autopsy Report
Inmate Mail
Motion to Seal Search Warrant
School Records
Medical Records (Mother – Lisa Rodriguez)
Cuyahoga Metropolitan Housing Authority – All Records
Deposition Transcripts
DeEbony Pelzer
Exhibits
Joan Hinkelman
Exhibits
Karnese McKenzie
Exhibits
Michelle Rodriguez
Nancy Caraballo – 1st Deposition
Nancy Caraballo – 2nd Deposition
Exhibits
Patricia Holian
Exhibits
Cleveland Police Department
Supplemental Report
1st Police Report
Trace Evidence
ME Investigator Report
Coroner’s Verdict
Deposition Transcripts of Larissa Rodriguez (Vol 1 & 2)
Deposition of Jacob Wagner

If you have any additional questions, or should you need additional information, please do not hesitate to contact me.

Sincerely,

Janice Ophoven, M.D.
Pediatric Forensic Pathologist

December 7, 2020

Deratany & Kosner
Trial Attorneys
221 North LaSalle Street
Suite 2200
Chicago, Illinois 60601

Re: Michelle Rodriguez, etc. vs. Catholic Charities Corporation
Court No. CV 19 909566

Dear Mr. Deratany,

Kindly accept this correspondence as my expert report regarding the care and treatment provided to Jordan Rodriguez.

My qualifications as an expert physician are set forth in my CV which is attached to this report. I have reviewed the medical records, and depositions of the medical providers in this case, as well as some of the depositions of the witnesses, inclusive of Jacob Wagner. I charge an hourly rate of \$600. I base my opinions on my education, training, experience, and review of said records and depositions and offer these opinions to a reasonable degree of medical certainty more probably true than not:

Neither the medical providers from Metro Health, nor any other physicians that provided treatment and care to Jordan deviated from the standards of acceptable medical care. Jordan was last seen by medical providers in 2015 and had been appropriately treated and followed up. His physician, Dr. Carlin, examined the child, and referred him to audiology, ophthalmology, and for urine, blood and renal ultrasound testing in 2015. The mother, by all accounts, complied with that follow up. Dr. Carlin reviewed those results and identified no urgent medical needs following her evaluation. Jordan's mother gave Dr. Carlin no reason to suspect child abuse or neglect.

There is no record of further medical care from Metro Health after 2015. At the time of the last Metro Health visit in 2015 Jordan was doing well without signs or concerns of child abuse or neglect. Therefore, insuring continued medical care at Metro Health beyond 2015 for Jordan would not have been expected of Metro Health. There are many legitimate reasons for not following up with a provider such as address changes or choosing a different physician / health care system. Metro Health did not deviate from standards of acceptable medical care in this regard either.

Furthermore, there is no evidence or reason to believe that any care provided to Jordan by Metro Health providers had anything to do with Jordan's death. Based upon the medical evidence in this case, it is more probably true than not that Jordan died from nutritional neglect and child abuse. He did not die from complications related to those conditions followed by his Metro Health providers including his prematurity or his kidney disorder.

Although Jordan had special needs and was at higher risk for child abuse because of this, he showed no signs of child abuse or neglect during his care at Metro Health.

According to the medical and other evidence Jordan's nutritional neglect occurred after 2015. The healing and acute fractures suffered by Jordan did not cause his death but certainly caused pain and suffering during his life.

Further, if his brothers and sisters witnessed their sibling suffer from nutritional neglect and abuse, this would be expected to have a profound effect on their lifetime mental and physical well-being.

These are my opinions to a reasonable degree of medical certainty.

A handwritten signature in blue ink that reads "Robert Allan Shapiro". The signature is written in a cursive, flowing style.

Robert Allan Shapiro, MD
Professor of Clinical Pediatrics, University of Cincinnati School of Medicine
Director, Mayerson Center for Safe and Healthy Children, Cincinnati Children's Hospital

EXHIBIT 16

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ,

Plaintiff/Appellee,

v.

CATHOLIC CHARITIES
CORPORATION, et al.,

Defendants/Appellants.

CASE NO.: CA-21-110743

TRIAL COURT

CASE NO.: CV-19-909566

**DEFENDANT/APPELLANT CATHOLIC CHARITIES CORPORATION'S
EMERGENCY MOTION TO STAY ALL PROCEEDINGS IN THE TRIAL COURT
PENDING APPEAL**

Pursuant to Rule 7 of the Ohio Rules of Appellate Procedure, Defendant/Appellant Catholic Charities Corporation respectfully moves this Court for an immediate Order staying all proceedings in the trial court pending appeal. A Memorandum in Support is attached and incorporated herein.



Respectfully Submitted,

/s/ Richard H. Blake

RICHARD H. BLAKE (0083374)
JOSEPH M. MUSKA (0089512)
THERESA M. LANESE (0097897)
McDonald Hopkins LLC
600 Superior Avenue, East, Suite 2100
Cleveland, OH 44114
Phone: 216.348.5400
Fax: 216.348.5474
Email: reline@mcdonaldhopkins.com
jmuska@mcdonaldhopkins.com
tlanese@mcdonaldhopkins.com

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)
RONALD A. MARGOLIS (0031241)
Bonezzi Switzer Polito & Hupp Co. L.P.A.
1300 East 9th Street, Suite 1950
Cleveland, OH 44114
Phone: 216.875.2767
Fax: 216.875.1570
Email: bsebaugh@bsphlaw.com
rmargolis@bsphlaw.com

/s/ John W. Patton, Jr.

JOHN W. PATTON, JR.
(Admitted Pro Hac Vice)
Patton & Ryan
330 N. Wabash, Suite 3800
Chicago, IL 60611
Phone: 312.261.5166
Fax: 312.261.5161
Email: jpatton@pattonryan.com

*Attorneys for Defendant/Appellant Catholic
Charities Corporation, also identified in the
Second Amended Complaint as Catholic
Charities Diocese of Cleveland*

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ,

Plaintiff/Appellee,

v.

CATHOLIC CHARITIES
CORPORATION, et al.,

Defendants/Appellants.

CASE NO.: CA-21-110743

TRIAL COURT

CASE NO.: CV-19-909566

**MEMORANDUM IN SUPPORT OF DEFENDANT/APPELLANT CATHOLIC
CHARITIES CORPORATION'S EMERGENCY MOTION TO STAY ALL
PROCEEDINGS IN THE TRIAL COURT PENDING APPEAL**

Defendant/Appellant Catholic Charities Corporation ("Catholic Charities"), by and through undersigned counsel, respectfully moves this Court for an immediate Order staying all proceedings in the trial court pending appeal, including any trial or proceedings against alleged agent and former employee of Catholic Charities, Defendant Nancy Caraballo ("Caraballo"). As of the date of this filing, the trial court has not ruled on the pending Motion to Stay all Proceedings pending Appeal (the "Motion to Stay") filed by Catholic Charities in the trial court on August 23, 2021 and consequently failed to afford Catholic Charities the relief sought. With an upcoming trial scheduled for September 13, 2021, Catholic Charities seeks immediate and emergency relief from this Court.

As proposed by Plaintiff, and apparently agreed to by Caraballo, an abbreviated bench trial is scheduled to commence on September 13, 2021, in which Plaintiff and Caraballo intend to

{9809553:3 }

submit certain evidence to the trial court in the form of depositions and other stipulations. While the full nature and extent of this proposed evidence is unknown to Catholic Charities at the time of this filing, Plaintiff has forecasted that she will attempt to use this evidence against Catholic Charities under the doctrine of res judicata in any subsequent trial (if Catholic Charities' appeal is unsuccessful). Plaintiff's attempt to bind Catholic Charities to certain facts while this appeal is pending - without the presence of Catholic Charities in those proceedings - violates Ohio law and thwarts the judicial system. Consequently, Catholic Charities seeks emergency relief from this Court to Order a stay of all proceedings in the trial court pending this appeal.

This Court should enter an immediate Order staying all proceedings for the following three (3) independent, yet equally dispositive reasons: (1) a stay will preserve the status quo during the pendency of appeal; (2) the trial court is without jurisdiction to continue with any proceedings that *might* be subject to Catholic Charities' statutory immunity defense under Ohio law, which would include the alleged conduct of Caraballo as an agent or employee of Catholic Charities; and (3) Plaintiff's attempt to bind Catholic Charities under the doctrine res judicata to certain facts related to the alleged conduct of a purported agent and former employee of Catholic Charities violates Ohio law, causes severe prejudice to Catholic Charities, and is contrary to the fundamental administration of justice.

As set forth more fully in Plaintiff's Pretrial Statement filed on August 30, 2021, which is attached hereto as **Exhibit 1**, Plaintiff proposes to proceed with "a bench trial and stipulate on submission of depositions as evidence in the case and agree upon certain stipulations." *See* Pl.'s Pretrial Stmt. at p. 5. Further, Plaintiff proposes that the Plaintiff and Caraballo "would also agree to suggest an amount to the court to assist in the Court's determination of damages." *Id.* While the full extent of the evidence that may be presented at this abbreviated trial on September 13,

2021 is unknown by undersigned counsel, it is anticipated that the trial court will make “factual findings and a ruling” as set forth by Plaintiff. Plaintiff also states that that once this pending appeal has been decided, “many issues would have been decided in the earlier trial” and would narrow the focus on Catholic Charities in any subsequent trial. Indeed, Plaintiff forecasted that Plaintiff will attempt to use “res judicata or issue estoppel as to the issue of agency [between Caraballo and Catholic Charities] in any future trial”. See Email from J. Deratany to R. Blake dated August 16, 2021, attached hereto as **Exhibit 2**. While the full extent of Plaintiff’s proposal before the trial court is unknown at the time of this filing, it seems that Plaintiff is attempting to admit certain facts into evidence and request findings from the trial court that might be subject to Catholic Charities’ statutory immunity defense on appeal. Such litigation tactics and gamesmanship cannot be permitted. This Court must enter an immediate Order staying all proceedings in the trial court during the pendency of this appeal.

I. FACTS

This survivorship and wrongful death action arises out of the tragic death of four-year old Jordan Rodriguez (“Jordan”) in 2017, caused by the abuse and neglect by his mother, Larissa Rodriguez (“Larissa”), and her live-in boyfriend, Christopher Rodriguez (“Christopher”). Both Larissa and Christopher pleaded guilty to involuntary manslaughter, felonious assault, endangering children, and abuse of a corpse and are currently incarcerated for their crimes. Even though the responsible parties have been punished for the tragic death of Jordan, Plaintiff nevertheless has filed claims against Catholic Charities seeking monetary recovery.

From 2013 to 2017, Catholic Charities and Educational Service Center (“ESC”) entered into annual contracts for Catholic Charities to provide certain “parenting education” services under the Bright Beginnings’ “Parents as Teachers” (“PAT”) program. Caraballo was a Human Service

Worker II for Catholic Charities. In this role, Caraballo served as a “Parent Educator” providing parenting education services to Larissa for the benefit of her enrolled children under the PAT program. It is undisputed, however, that Jordan was never enrolled in the PAT program. During this time frame, and unbeknownst to Catholic Charities, Caraballo committed food stamp (“EBT”) fraud with Larissa for her own benefit and falsified governmental records indicating she provided the PAT program services to Larissa and her enrolled children. After Jordan’s remains were discovered in December 2017, police came to Caraballo’s home and questioned her about the EBT fraud with Larissa. It was not until after police became aware of Caraballo’s criminal actions that Caraballo reported her conduct to Catholic Charities. Catholic Charities immediately placed Caraballo on administrative leave and subsequently terminated her employment. Caraballo was sentenced for her criminal conduct and served seven months in prison.

In this civil action, Plaintiff Michelle Rodriguez, as Administrator of the Estate of Jordan Rodriguez, alleges that Caraballo, individually and as an agent of Catholic Charities, caused Jordan’s death by engaging in the EBT fraud with Larissa and by failing to report known or suspected child abuse and/or neglect. Plaintiff asserted claims against Catholic Charities for wrongful death, survivorship, statutory failure to report, and negligent hiring, supervision, and training. Pl.’s Sec. Am. Compl. at ¶¶ 47-61, 62-71, 72-73, 82-87, 88-94, attached hereto as **Exhibit 3**. Likewise, Plaintiff asserted claims against Caraballo, in her individual capacity and as an agent and employee of Catholic Charities, for wrongful death, survivorship, and statutory failure to report. *Id.* at ¶¶ 47-61, 62-71, 74-79, 80-81, 82-87. Plaintiff’s claims against Catholic Charities and Caraballo are inextricably woven together, with overlapping factual and legal issues. *See generally*, Sec. Am. Compl. Significantly, whether Caraballo acted within the scope of her employment with Catholic Charities is a threshold issue in this case. *See Def. Catholic Charities’*

Mtn. for Summ. J. on Respondeat Superior, attached hereto as **Exhibit 4**. While Catholic Charities argues that Caraballo deviated from her scope of employment when she engaged in concealed, criminal conduct, it is anticipated that both Plaintiff and Caraballo will argue that Caraballo was acting within the scope of her employment at all times. *See* Pl.'s Br. In Opp. to Def. Catholic Charities' Mtn. for Summ. J. on Respondeat Superior, attached hereto as **Exhibit 5**. *See also* Def. N. Caraballo's Br. In Opp. to Def. Catholic Charities' Mtn. for Summ. J. on Respondeat Superior, attached hereto as **Exhibit 6**.

In its Answer to Plaintiff's Second Amended Complaint, Catholic Charities raised statutory immunity as an affirmative defense. Def. Catholic Charities' Ans. Pl.'s Sec. Am. Compl. at ¶ 133, attached hereto as **Exhibit 7**. Consistent with that affirmative defense, on March 15, 2021, Catholic Charities filed its Motion for Summary Judgment on Statutory Immunity arguing that as an agent of ESC, "Catholic Charities and all of its employees that worked pursuant to the Bright Beginnings' Contracts ('BB Contracts'), are 'employees' of a 'political subdivision' for purposes of this action." Def. Catholic Charities' Mtn. for Summ. J. on Stat. Immunity, at pp. 18-19, attached hereto as **Exhibit 8**. As set forth more fully in Catholic Charities' Motion for Summary Judgment on Statutory Immunity, an agent and/or employee of a political subdivision is entitled to the presumption of immunity as provided in R.C. 2744.03(A)(6). Under R.C. 2744.01(B), an "employee" is broadly defined as an "officer, agent, employee, or servant * * * who is authorized to act and is acting with the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision." If Caraballo is adjudicated to be an authorized agent of Catholic Charities and Catholic Charities is entitled to statutory immunity, then Caraballo would be entitled to immunity as well.

On August 11, 2021, this Court denied Catholic Charities' Motion for Summary Judgment as to Statutory Immunity. Journal Entry dated August 11, 2021, attached hereto as **Exhibit 9**. On August 16, 2021, Catholic Charities timely filed its Notice of Appeal, and this appeal is currently pending. Trial is scheduled to commence on September 13, 2021. During the last status conference with the Court on August 17, 2021, Plaintiff indicated her intention to proceed with trial against Caraballo.¹ The trial court ordered that the parties brief the issue of whether the trial as to Caraballo must be stayed pending the outcome of Catholic Charities' appeal on statutory immunity. On August 23, 2021, Catholic Charities filed its Motion to Stay, which is attached hereto as **Exhibit 10**. Also, on August 23, 2021, Caraballo filed a Motion to Stay Proceedings, which is attached hereto as **Exhibit 11**. On August 25, 2021, Plaintiff filed Briefs in Opposition to both Catholic Charities and Caraballo's Motions to Stay, which are attached hereto as **Exhibit 12 and Exhibit 13**, respectively. As of the date of this filing, the trial court has not ruled on Catholic Charities' and Caraballo's Motions to Stay the Proceedings Pending Appeal. The trial court scheduled and proceeded with the pretrial conference on September 1, 2021. Journal Entry dated August 30, 2021, attached hereto as **Exhibit 14**. The trial court thereafter scheduled another pretrial conference for September 7, 2021. Journal Entry dated September 1, 2021, attached hereto as **Exhibit 15**. The trial court appears to be proceeding with the trial against Caraballo on September 13, 2021, despite lacking the jurisdiction to go forward, because those claims might be subject to Catholic Charities' statutory immunity defense on appeal.²

If the Court of Appeals finds that Catholic Charities is entitled to statutory immunity, then all of its agents or employees found to have acted within the course and scope of their employment

¹ There also were discussions regarding Plaintiff's claims against Defendant Porcia Mainor, which may be dismissed.

² The Court of Appeals has ordered a mediation on September 14, 2021 at 10:30 a.m.

- which may include alleged agent and former employee Caraballo under respondeat superior - would be entitled to statutory immunity too. Consequently, the claims brought by Plaintiff against Catholic Charities and Caraballo, in her individual capacity and as an agent and employee of Catholic Charities, might be subject to Catholic Charities' statutory immunity defense. A stay of all proceedings in this case, including any trial against Caraballo, is required as a matter of law.

II. LAW AND ARGUMENT

1. **A stay of proceedings in the trial court is necessary to preserve the status quo during the pendency of this appeal.**

A stay of proceedings is governed by Rule 7 of the Rules of Appellate Procedure. Rule 7(A) of the Rules of Appellate Procedure requires an appellant to apply for a stay of the judgment in the trial court, unless application to the trial court is not practicable, or the trial court has, by journal entry, denied an application or failed to afford the relief sought. Catholic Charities filed a Motion to Stay in the trial court, but the trial court has failed to afford the relief sought. With the upcoming pending trial and proceedings that are still continuing before the trial court, it is necessary for this Court to stay all proceedings to preserve the status quo pending the appeal. "In determining whether to grant or deny a motion for a stay, the appellate court is given the discretionary power to act in any manner it deems appropriate to preserve the status quo and to secure the benefit of the judgment to the party in whose favor it was rendered." *U.S. Bank Natl. Assn v. Perdeau*, 6th Dist. No. L-13-1226, 2014-Ohio-155, ¶5; *Buckles v. Buckles*, 46 Ohio App.3d 118, 121-122, 546 N.E.2d 965 (10th Dist.1988). Catholic Charities filed a Motion for Summary Judgment as to Statutory Immunity, which was denied by the trial court. Catholic Charities subsequently exercised its right to appeal the denial of that Motion for Summary Judgment as to Statutory Immunity and the appeal is pending. This Court should stay all the trial court

proceedings, including the trial against Caraballo to preserve the status quo pending Catholic Charities' appeal on statutory immunity.

2. The trial court is divested of jurisdiction to proceed with the trial of any claims that *might* be subject to Catholic Charities' statutory immunity defense, which includes claims against the alleged agent and former employee, Caraballo.

It is well-settled law that the filing of a notice of appeal divests the trial court of independent jurisdiction. *Black v. Hicks*, 8th Dist. No. 105248, 2018-Ohio-2289, 114 N.E.3d 365, ¶ 24. "Once a case has been appealed, the trial court loses jurisdiction except to take action in aid of the appeal." *Id.*, citing *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978). After an appeal has been perfected, "the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the judgment." *State ex rel. Rock v. School Emp. Retirement Bd.*, 96 Ohio St.3d 206, 2002-Ohio-3957, 772 N.E.2d 1197, ¶ 8.

An appeal of the denial of statutory immunity, filed pursuant to R.C. 2744.02(C), stays the case in the trial court, and the trial court has no discretion to determine whether to separate claims or parties. *See, e.g., Sullivan v. Anderson Twp.*, 122 Ohio St.3d 83, 2009-Ohio-1971, 909 N.E.2D 88, ¶ 12 ("When the denial of political-subdivision immunity is concerned, the trial court has no discretion to determine whether to separate claims or parties and permit an interlocutory appeal"); *R.K. v. Little Miami Golf Ctr.*, 1st Dist. No. C-130087, 2013-Ohio-4939, 1 N.E.3d 833, ¶ 6 (holding that the appellate court has "jurisdiction to review the trial court's order denying immunity to defendants-appellants even though claims against multiple parties remain unresolved by the order.") In *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, the Supreme Court of Ohio held that, "[w]hen ECOT appealed from [the Judge's] denial of its motion for leave to file an amended answer to raise the affirmative defense of political-

subdivision immunity, the common pleas court and its judges lacked authority to proceed with the trial of any claims that might be subject to ECOT's immunity defense because those claims were within the appellate court's jurisdiction on review." *State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga Cty. Ct. of Common Pleas*, 2011-Ohio-626, ¶ 14, 129 Ohio St. 3d 30, 33, 950 N.E.2d 149, 153 (Emphasis added) (holding that the trial court is prohibited from enforcing portions of the judgment in the underlying civil case that were subject to an appeal filed by ECOT and ordering the trial court to vacate those portions of the judgment); *see also Pierce v. City of Gallipolis*, 4th Dist. Gallia No. 18CA4, 2019-Ohio-4118, ¶ 17, appeal not allowed sub nom. *Pierce v. Gallipolis*, 158 Ohio St.3d 1406, 2020-Ohio-371, 139 N.E.3d 911, ¶ 17 (holding that the trial court was divested of jurisdiction to continue with the jury trial after the City filed its notice of appeal in *Pierce III*, therefore, the Judgment Entry on the Verdict is void).

The Political Subdivision Tort Liability Act, Chapter 2744 of the Ohio Revised Code provides immunity to political subdivisions or employees of political subdivisions who meet a three-tier analysis. R.C. 2744.01, et seq.; *see also Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319, 790 N.E.2d 781, ¶¶ 7-9. Under that analysis, and as set forth more fully in the Motion for Summary Judgment as to Statutory Immunity, because ESC retained control and the right to control the mode and manner of the work performed by Catholic Charities under the BB Contracts, Catholic Charities is an agent of ESC, a political subdivision, and is entitled to statutory immunity. Further, under R.C. 2744.01(B), any employee of Catholic Charities, which is defined as an "officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision" is also entitled to statutory immunity because that employee would also be considered employees of ESC, a political subdivision. R.C. 2744.01(B).

If Caraballo's "acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities" with Catholic Charities, then Caraballo may not be subject to the statutory immunity, even though Catholic Charities is immune. R.C. 2744.03(A)(6). Caraballo's scope of employment with Catholic Charities will be an issue on appeal, which further supports why Plaintiff cannot proceed to trial against Caraballo in any fashion. Caraballo's alleged actions or inactions as a purported agent and former of Catholic Charities are directly subject to the statutory immunity analysis and defenses, which are currently on appeal. Plaintiff's claims against Caraballo arise directly from, and are inextricably related to, Catholic Charities' statutory immunity defense on appeal.

Under well-settled Ohio law, a stay of the proceedings, including any trial against Caraballo, is required because the trial court is divested of jurisdiction over any claims that *might* be subject to Catholic Charities' statutory immunity defense. If the Court of Appeals finds that Catholic Charities and all of its authorized employees, acting within the course and scope of their employment, that worked pursuant to the BB Contracts, are "employees" of ESC, a "political subdivision" for purposes of this action, then all of the claims against Catholic Charities, and therefore, by extension, its alleged agent and former employee, Caraballo, would be subject to that immunity defense. The trial court is without jurisdiction to continue with any proceedings that *might* be subject to Catholic Charities' statutory immunity defense under Ohio law, which would include the alleged conduct of Caraballo as an alleged agent and former employee of Catholic Charities. Accordingly, an immediate stay must be entered by this Court.

3. Plaintiff's attempt to bind Catholic Charities under the doctrine res judicata to certain facts related to the alleged conduct of an alleged agent and former employee of Catholic Charities violates Ohio law, causes severe prejudice to Catholic Charities, and is contrary to the fundamental administration of justice.

If the proceedings continue with a trial against Caraballo while Catholic Charities is appealing the issue of statutory immunity, such proceedings violate Ohio law, will cause severe prejudice to Catholic Charities, and are contrary to the fundamental administration of justice. In her Pretrial Statement, Plaintiff proposes to proceed with “a bench trial and stipulate on submission of depositions as evidence in the case and agree upon certain stipulations.” *See* Pl.’s Pretrial Stmt. at p. 5. Further, Plaintiff proposes that Plaintiff and Caraballo “would also agree to suggest an amount to the court to assist in the Court’s determination of damages.” *Id.* Indeed, Plaintiff forecasted that Plaintiff will attempt to use “res judicata or issue estoppel as to the issue of agency [between Caraballo and Catholic Charities] in any future trial”. *See* Email from J. Deratany to R. Blake dated August 16, 2021, attached hereto as **Exhibit 2**.

While Catholic Charities disagrees that any stipulations between Plaintiff and Caraballo or evidence submitted at any trial will be binding in any subsequent action against Catholic Charities under the doctrine of res judicata; however, for purposes of this Motion to Stay, Plaintiff indicated her intention to “backdoor” evidence in a bench trial and use any findings against Catholic Charities in a subsequent action, which further warrants an immediate stay of the trial court’s proceedings. Plaintiff mistakenly claims that proceeding with the trial against Caraballo at this time without Catholic Charities will be efficient and will streamline the issues in a subsequent trial, if necessary, against Catholic Charities. Plaintiff’s erroneous belief stems from the mistaken conception that issue preclusion will apply to issues litigated between Plaintiff and Caraballo in a subsequent trial between Plaintiff and Catholic Charities. However, “[t]he doctrine of issue

preclusion, also known as collateral estoppel, holds that a fact or a point that was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action between the same parties or their privies, whether the cause of action in the two actions be identical or different. *Fort Frye Teachers Ass'n, OEA/NEA v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395, 692 N.E.2d 140, 144 (1998) (internal citations omitted). Indeed, any issues decided upon in a trial between Plaintiff and Caraballo cannot be binding in a subsequent trial between Plaintiff and Catholic Charities because the trials are not between the same parties. Plaintiff and Caraballo have alleged that Caraballo, as an alleged agent and former employee of Catholic Charities, *may* be in privity with Catholic Charities and thus any determination as to issues in a trial between Plaintiff and Caraballo *could* be binding in a trial between Plaintiff and Catholic Charities. *Electrical Enlightenment, Inc. v. Kirsch*, 9th Dist. Summit No. 23916, 2008-Ohio-3633, ¶¶ 11-13 (holding that an employee and its employer were in privity because they shared an “identity of desired results”). However, Catholic Charities and Caraballo cannot be found to be in privity because they do not share an identity of desired results, hence separate representation by counsel. Plaintiff seeks to hold Catholic Charities liable under a theory of respondeat superior for the criminal conduct of Caraballo and alleges that Caraballo’s criminal conduct caused Jordan’s death. Indeed, it is Catholic Charities’ position that it cannot be liable for Caraballo’s criminal conduct because such conduct was committed outside the scope of her employment. Catholic Charities filed a Motion for Summary Judgment on this issue. *See* Charities’ Mtn. for Summ. J. on Respondeat Superior, attached hereto as **Exhibit 4**. Plaintiff and Caraballo opposed this Motion and argued, in contrast, that Caraballo was acting within the scope of her employment when she engaged in the criminal EBT fraud scheme with Larissa. *See* Pl.’s Br. In Opp. to Def. Catholic Charities’ Mtn. for Summ.

J. on Respondeat Superior, attached hereto as **Exhibit 5**. *See also* Def. N. Caraballo's Br. In Opp. to Def. Catholic Charities' Mtn. for Summ. J. on Respondeat Superior, attached hereto as **Exhibit 6**. If trial were to proceed against Caraballo only, the finder of fact would only hear evidence and/or argument that Caraballo was acting within the scope of her employment. For these reasons, issue preclusion cannot be said to exist because Catholic Charities and Caraballo have different desired results.

If issue preclusion were to apply in such a scenario, it would be unfairly prejudicial to Catholic Charities because Catholic Charities would be bound by findings of certain facts, which it was not afforded the opportunity to fully and fairly litigate at trial because it had pursued appeal afforded by R.C. Chapter 2744.02(C). Catholic Charities has an absolute right to participate in the trial between Plaintiff and Caraballo as the claims by Plaintiff against Caraballo are inextricably intertwined with the claims against Catholic Charities. If the proceedings continue in the trial court, Catholic Charities will be unfairly prejudiced (given Plaintiff's proclaimed intention to use those trial findings against Catholic Charities in any subsequent action) and such proceedings are contrary to the fundamental administration of justice. This Court must stay the trial court proceedings pending appeal.

Even if this case proceeds to trial in any fashion, any factual or legal determinations will be void because the trial court is without jurisdiction to proceed. *Pierce v. City of Gallipolis*, 4th Dist. Gallia No. 18CA4, 2019-Ohio-4118, ¶ 17, appeal not allowed sub nom. *Pierce v. Gallipolis*, 158 Ohio St.3d 1406, 2020-Ohio-371, 139 N.E.3d 911, ¶ 17 (court lacked jurisdiction to proceed with trial after appeal was filed in *Pierce III*, and therefore, the Judgment Entry on the Verdict is void). Because this appeal is currently pending as to the statutory immunity defense of Catholic Charities, which includes immunity protections for its alleged agent and former employee,

Caraballo if acting within the course and scope of her employment, a trial against Caraballo would only result in jurisdictionally invalid rulings by the trial court. All proceedings in this case must be stayed pending the outcome of the appeal.

III. CONCLUSION

Based on the foregoing reasons, Catholic Charities respectfully requests that this Court enter an immediate Order staying all proceedings in the trial court pending appeal.

Respectfully submitted,

/s/ Richard H. Blake

RICHARD H. BLAKE (0083374)
JOSEPH M. MUSKA (0089512)
THERESA M. LANESE (0097897)
McDonald Hopkins LLC
600 Superior Avenue, East, Suite 2100
Cleveland, OH 44114
Phone: (216) 348-5400
Fax: (216) 348-5474
Email: rblake@mcdonaldhopkins.com
jmuska@mcdonaldhopkins.com
tlanese@mcdonaldhopkins.com

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)
RONALD A. MARGOLIS (0031241)
Bonezzi Switzer Polito & Hupp Co. L.P.A.
1300 East 9th Street, Suite 1950
Cleveland, OH 44114
Phone: (216) 875-2767
Fax: (216) 875-1570
Email: bsebaugh@bsphlaw.com
rmargolis@bsphlaw.com

/s/ John W. Patton, Jr.

JOHN W. PATTON, JR.
(Admitted Pro Hac Vice)
Patton & Ryan
330 N. Wabash, Suite 3800
Chicago, IL 60611
Phone: (312) 261-5166
Fax: (312) 261-5161
Email: jpatton@pattonryan.com

*Attorneys for Defendant/Appellant Catholic Charities Corporation,
also identified in the Second Amended Complaint as
Catholic Charities Diocese of Cleveland*

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2021, a copy of the foregoing **Defendant/Appellant Catholic Charities Corporation's Emergency Motion to Stay All Proceedings In the Trial Court Pending Appeal** was filed electronically and served upon the following parties by Regular U.S. Mail. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

LARISSA RODRIGUEZ
Inmate No. W101415
c/o Warden Shelbie Smith
Dayton Correctional Institution
4104 Germantown Street
Dayton, Ohio 45417

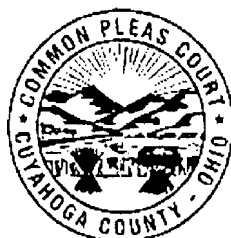
CHRISTOPHER RODRIGUEZ
Inmate No. A752141
c/o Warden Lyneal Wainwright
Marion Correctional Institution
940 Marion-Williamsport Road
Marion, Ohio 43302

/s/ Richard H. Blake

RICHARD H. BLAKE (0083374)

*One of the Attorneys for Defendant/Appellant
Catholic Charities Corporation, also identified in
the Second Amended Complaint as Catholic
Charities Diocese of Cleveland*

EXHIBIT 1



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

GENERAL PLEADING
August 30, 2021 16:56

By: RUSSELL A. RANDAZZO 0082221

Confirmation Nbr. 2339686

MICHELLE RODRIGUEZ

CV 19 909566

vs.

CATHOLIC CHARITIES CORPORATION, ET AL

Judge: JOAN SYNENBERG

Pages Filed: 8

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

MICHELLE RODRIGUEZ as Administrator of the Estate of Jordan Rodriguez,	)	CV 19-909566
)	
)	
Plaintiff,	)	JUDGE JOAN SYNENBERG
)	
-vs-)	
	)	<u>PLAINTIFF'S PRE-TRIAL</u>
CATHOLIC CHARITIES CORPORATION, et. al.,	)	<u>MEMORANDUM AS TO CLAIMS</u>
	)	<u>AGAINST NANCY CARABELLO</u>
	)	<u>AND PORCIA MAINOR</u>
)	
Defendants.)	

Now comes the Plaintiff, Michelle Rodriguez as Administrator of the Estate of Jordan Rodriguez, by and through her attorneys, and for her Pre-trial Memorandum states as follows:

STATEMENT OF FACTS AND LEGAL ISSUES.

This lawsuit is brought on behalf of the Estate of Jordan Rodriguez, a developmentally disabled child who was only five years old child at the time he lost his life between September 2017 and December 2017. Jordan ultimately succumbed to starvation, but this child also suffered through unspeakable physical abuse and emotional trauma, all of which occurred while the Defendant Catholic Charities, and their employee Nancy Carabello was charged with providing casework and home monitoring care for his benefit from 2015-2017. Time and again Defendants failed to act to protect Jordan and simply looked the other way while he suffered relentless abuse.

Catholic Charities had a contractual relationship with an organization named Bright Beginnings and the Educational Service Center of Cuyahoga County (hereinafter "ESC") to provide in-home social services to Jordan and his family as part of the Parents as Teachers program. Catholic Charities is listed as an **independent contractor**, and their Associate Executive

Director Joan Hinkleman, through her overall testimony, admitted that they were wholly independent, and not an employee or agent of the county or any other governmental entity. Moreover, Catholic Charities cannot as a matter of law be classified as an employee. In short, the basis to claim political subdivision immunity is baseless and frivolous, and there is little doubt that Catholic Charities filed this appeal to delay and obfuscate.

Regardless of the frivolity of Catholic Charities appeal, the remaining parties have met, and negotiated in good faith in order to resolve differences, streamline the issues and resolve the case as to those parties.

Porcia Mainor's Motion for Summary Judgment

With regard to Ms. Mainor, she has filed a well thought out Motion for reconsideration, and it is Plaintiff's belief that the defendant Mainor's Motion for Summary Judgment should be granted on legal grounds. As indicated previously, Plaintiff cannot agree outright because the court should make the decision on whether to grant Ms. Mainor's Summary Judgment on a legal basis, and not by agreement, so as to prevent the remaining parties from attempting to blame a dismissed party to claim apportionment. However, Plaintiff will admit that her experts could not opine that any of Ms. Mainor's conduct was a cause of Jordan Rodriguez' injury or death. Defendant Mainor's Motion correctly points out that Plaintiff cannot show proximate cause. None of the co-defendants have offered any opinion that any conduct of Ms. Mainor was a proximate cause of Jordan's injuries or death either. Thus, while Plaintiff will not agree to the Motion for Summary Judgment, Plaintiff agrees that from a legal basis, it is an appropriate order. Plaintiff only requests that this court review the evidence and make a *legal finding* concerning summary judgment.

The claims against Ms. Caraballo's

Between 2013 and 2017, Nancy Caraballo, was employed as a Human Services Worker assigned to Larissa Rodriguez and her children. Nancy Caraballo was specifically tasked with visiting the Rodriguez family to provide nutritional education, training, home visits/checks, and counseling. (Ex. 2, Deposition of Nancy Caraballo Day 2, p. 31-32). Such services included infant nutrition, toddler nutrition, and how to make food for the family. (Ex. 2, p. 31-32). On August 4, 2016, Nancy Caraballo entered a visit summary stating she had visit with the Rodriguez family and provided handouts including "Avoiding Food Fights", "My Daily Food Plan", "Meals and Snacks at School" and "Tips for Adding Variety to your Child's Diet". Ex. 2, p. 33). Nancy Caraballo agreed that this was nutritional counseling being provided to Larissa Rodriguez which was for the benefit of the family. (Ex. 2, p. 33). Nancy continued to testify that the discussion that she had with Larissa was in order to ensure that she was providing the proper nutrition and things for her kids and that would include all of the kids in the family. (Ex. 2, p. 34). Nancy testified that she agreed that Larissa selling her EBT (Electronic Benefit Transfer Card) card to Nancy was neglect. (Ex. 2, p. 37).

Beyond providing counseling, education, and training regarding nutrition, Nancy Caraballo further was required to provide counseling with coping with stress. (Ex. 2, p. 39). She was allegedly trained on and was responsible for looking for signs and symptoms of abuse or neglect in any home she was servicing. As she admits, if she knew, believed, or suspected any neglect or abuse during at any time, she had an affirmative duty to report such to 911 or the Department of Child Services. (Ex. 2, p. 117)

Nancy Caraballo was responsible for making home visits to Larissa Rodriguez's home under Pelzer's supervision, and yet when there was an indication that the family had no food or was running out of food her supervisors, inclusive of Ms. Pelzer did nothing. (Ex. 1, p. 103) Ms.

Catholic Charities appeal has been dismissed or denied, Plaintiff would anticipate that many issues would have been decided in the earlier trial, narrowing the focus on Catholic Charities conduct in failing to supervise and train, negligent hiring and negligent policies, and result in a significantly narrowed trial.

Respectfully submitted,

/s/ Jay Paul Deratany

Russell A. Randazzo

Deratany & Kosner
221 N. LaSalle Suite 220
Chicago Illinois 60601

Russell Randazzo (0082221)
Randazzo Law, LLC
55 Public Square – Suite 2100
Cleveland, Ohio 44113
Tele: 216-350-4434
Fax: 216-274-9318
Email: Russell@randazzolaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that he served this Final Pre-Trial Statement only via electronic communication to Staff Attorney Lawrence Acton directly pursuant to this Court's Order.

Attorney for Defendants Catholic Charities
& Catholic Charities Diocese of Cleveland

Ms. Beth A. Sebaugh
Bonezzi Switzer Polito & Hupp Co. L.P.A.
1300 East 9th Street, Suite 1950
Cleveland, OH 44114
T: (216) 875-2062
F: (216) 875-1570
BSebaugh@bsphlaw.com
estoll@bsphlaw.com
DWilliams@bsphlaw.com

Attorney for Defendant Nancy Caraballo

Steven J. Forbes
Norchi Forbes, LLC
23240 Chagrin Blvd.
Suite 210
Cleveland, OH 44122
T: (216) 514-9500
F: (216) 514-4304
sforbes@norchilaw.com

Defendant – (Prose)

Christopher Rodriguez #A752141
Marion Correctional Institution
940 Marion-Williamsport Rd E
Marion, OH 43302

Attorney for Educational
Service Center of Northeast
Ohio, Porcia Mainor and
Tom Wetzel

Holly Marie Wilson, Esq.
Reminger Co., LPA
101 West Prospect Avenue,
Suite 1400
Cleveland, OH 44115
T: (216) 430-2238
F: (216) 687-1841
M (216) 407-8338
HWilson@reminger.com

Defendant – (Prose)

Larissa Rodriguez #W101415
Dayton Correctional
Institution
4104 Germantown Street
Dayton, OH 45417

Co-Counsel For Defendants
Catholic Charities and
Catholic Diocese

RICHARD H. BLAKE
(0083374)
JOSEPH M. MUSKA
(0089512)
THERESA M. LANESE
(0097897)
McDonald Hopkins LLC
600 Superior Avenue, East -
21st Floor Cleveland, Ohio
44114
Phone: (216) 348-5400 Fax:
(216)348-5474 Email:
rblake@mcdonaldhopkins.com
jmuska@mcdonaldhopkins.com

m
tlanese@mcdonaldhopkins.co
m

Co-Counsel For Defendants Catholic Charities and
Catholic Diocese

JOHN W. PATTON, JR.
Patton & Ryan
330 N. Wabash, Suite 3800
Chicago, Illinois 60611
Phone (312) 261-5166
Fax (312) 261-5161
Email j patton@pattonryan.com

Respectfully submitted,

/s/ Jay Paul Deratany

Russell A. Randazzo

Deratany & Kosner
221 N. LaSalle Suite 220
Chicago Illinois 60601

Russell Randazzo (0082221)
Randazzo Law, LLC
55 Public Square – Suite 2100
Cleveland, Ohio 44113
Tele: 216-350-4434
Fax: 216-274-9318
Email: Russell@rrandazzolaw.com

EXHIBIT 2

IN THE COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ,

Plaintiff/Appellee,

v.

CATHOLIC CHARITIES
CORPORATION, et al.,

Defendants/Appellants.

CASE NO.: CA-21-110743

TRIAL COURT


CASE NO.: CV-19-909566

AFFIDAVIT OF RICHARD H. BLAKE

NOW COMES Affiant, Richard H. Blake, and for his Affidavit states as follows:

1. I am an adult who is competent to make this Affidavit and I have first-hand knowledge of the facts set forth herein as one of the attorneys representing Catholic Charities Corporation in connection with Cuyahoga County Court of Common Pleas Case No. CV-19-909566.
2. Attached is a true and accurate copy of an email received by me on August 16, 2021, from Jay Paul Deratany concerning Plaintiff's intent to proceed with the trial scheduled for September 13, 2021.

FURTHER AFFIANT SAYETH NAUGHT.



RICHARD H. BLAKE

COUNTY OF CUYAHOGA) SS:
)

Sworn to and subscribed before me this 31st day of August, 2021, by the foregoing Affiant, who do swear or affirm it was his true act and deed.



NOTARY PUBLIC

KAREN E. SHAVER
NOTARY PUBLIC • STATE OF OHIO
My commission expires Oct. 8, 2025



From: Jay Paul Deratany <jpderatany@lawinjury.com>
Sent: Monday, August 16, 2021 3:55 PM
To: Beth A. Sebaugh; Steve Forbes; John Patton; Blake, Richard; Thomas Stewart; Russell Randazzo; Michael Kosner
Subject: [External] re: Rodriguez vs. Catholic Charities and Nancy Carabello

Dear Council,

Please be advised that the plaintiff intends to proceed to trial in this matter on September 13, regardless of any ill conceived attempts at appeal. If necessary we will proceed to trial against Nancy Carabello, individually and as agent of Catholic Charities. Ms. Carabello never filed a Summary Judgement motion alleging political subdivision immunity and there is nothing to prevent that part of the case from going forward.

I would imagine if Ms. Carabello is found to be an agent of Catholic Charities, this would act as res judicata or issue estoppel as to the issue of agency in any future trial.

--

Sincerely,

Jay Paul Deratany

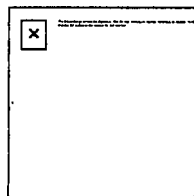
The Deratany Firm

221 North La Salle Street, Suite 2200

Chicago, IL 60601

T: (312) 857-7285

F: (312) 857-2004



Advocacy guided by passion

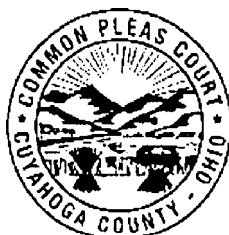
www.lawinjury.com

Electronically Filed 09/02/2021 13:04 / MOTION / CA 21 110743 / Confirmation Nbr. 2342752 / CLCEJ

[WARNING] This email originated outside of McDonald Hopkins.

Do not click links or open attachments unless you recognize the sender and know the content is safe. Do not provide your user ID or password!

EXHIBIT 3



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

AMENDED COMPLAINT \$75
October 7, 2020 13:26

By: RUSSELL A. RANDAZZO 0082221

Confirmation Nbr. 2089879

MICHELLE RODRIGUEZ

CV 19 909566

vs.

Judge: JOAN SYNENBERG

CATHOLIC CHARITIES CORPORATION, ET AL

Pages Filed: 34

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ as Administrator of the)
Estate of Jordan Rodriguez)
c/o Randazzo Law, LLC)
55 Public Square, Suite 2100)
Cleveland, OH 44113)

CV 19-909566

JUDGE JOAN SYNENBERG

Plaintiff,)

-VS-)

CATHOLIC CHARITIES CORPORATION)
c/o K. Patrick Gareau Registrant Agent)
7911 Detroit Ave)
Cleveland, OH 44102)

SECOND AMENDED
COMPLAINT AT LAW
WITH JURY DEMAND

and)

CATHOLIC CHARITIES DIOCESE of Cleveland)
7911 Detroit Ave)
Cleveland, OH 44102)

and)

NANCY CARABALLO, individually)
and as agent of)
Catholic Charities Corporation and/or)
Catholic Charities Diocese of Cleveland and/or)
Cuyahoga County)

and)

BRIGHT BEGINNINGS)
6393 Oak Tree Blvd, #201)
Independence, OH 44131)

and)

PORCIA MAINOR, individually)
1134 E. 66th Street)
Cleveland, Ohio 44103)

Defendants.)

SECOND AMENDED COMPLAINT

NOW COMES the Plaintiff MICHELLE RODRIGUEZ, as Administrator for the Estate of JORDAN RODRIGUEZ, Deceased, by her attorneys, DERATANY & KOSNER, RANDAZZO LAW LLC, complaining of the Defendants, CATHOLIC CHARITIES CORPORATION, CATHOLIC CHARITIES DIOCESE of Cleveland, NANCY CARABALLO individually and/or as agent of CATHOLIC CHARITIES CORPORATION and/or CATHOLIC CHARTIES DIOCESE of Cleveland, BRIGHT BEGINNINGS as a de facto corporation and/or corporation by estoppel, and PORCIA MAINOR, states as follows:

INTRODUCTION

1. This action is brought on behalf of Michelle Rodriguez administrator of the Estate of Jordan Rodriguez, for the loss of Jordan Rodriguez, who was a developmentally disabled five (5) year old child who required close oversight, attention and care in order to ensure his safety and health.

2. From 2016 through September 2017, Jordan suffered from abuse from his mother's boyfriend, Christopher Rodriguez, inclusive of spankings, whippings and beatings. This abuse should have been reported by CATHOLIC CHARITIES, but it was not.

3. From 2016 through September 2017 Jordan suffered from unconscionable neglect, especially and including nutritional neglect from his mother Larissa Rodriguez and CATHOLIC CHARITIES and their employee NANCY CARABALLO. This neglect resulted in the tragic death of Jordan. Jordan's body was discovered buried in the backyard of Larissa and Christopher in December 2017.

4. This action seeks to hold accountable the individuals, professionals and private corporations charged with reporting abuse, and neglect, and providing necessary services to Jordan and the family, who were professionally negligent.

5. The defendants individually, and collectively turned a blind eye to clear and present indications of ongoing physical abuse, and neglect, acting indifferently to Jordan's safety and well-being, leaving him exposed to longstanding and continuing harm due to abuse and nutritional neglect, and ultimately to his untimely death.

6. Further, defendants ignored mandated statutory requirements inclusive of reporting requirements to protect children from neglect and abuse, were grossly reckless in their duties, and acted in contravention of reasonable standards of care and practice.

7. As a result of the wrongful conduct described in this Complaint, Jordan Rodriguez, was abused, neglected, and malnourished, and died in September 2017, at age 5.

8. This action seeks remedies for his death and losses against the culpable parties, whose actions and inactions violated the letter of the law, ignored professional standards, and manifested an unforgivable and reckless indifference for the safety and health of this most vulnerable disabled child. This action seeks compensatory, exemplary and punitive damages for the horrific harms done to Jordan and his preventable death.

PARTIES

9. At all times relevant, decedent, Jordan Rodriguez hereinafter referred to as ("Jordan") resided at 1300 West 80th Street Cleveland, Cuyahoga County, Ohio, and other unknown addresses with his mother Larissa Rodriguez and his mother's boyfriend Christopher Rodriguez. Jordan was a developmentally disabled 5 year old who could not speak and had various medical conditions that required continued medical treatment.

10. MICHELLE RODRIGUEZ was appointed on December 28, 2018 as administrator of the Estate of Jordan Rodriguez, (order of appointment attached hereto as Exhibit "A" to this complaint).

employee of CATHOLIC CHARITIES.

16. NANCY CARABALLO was at all times relevant, and independently, a mandatory reporter of child abuse and neglect and suspected child abuse and neglect as provided in O.R.C. §5123.61 and O.R.C. §2151.421.

17. BRIGHT BEGINNINGS had a contractual relationship with CATHOLIC CHARITIES and was responsible for ensuring CATHOLIC CHARITIES provided social services to Jordan and Larissa Rodriguez, to reduce instances of abuse and neglect by providing parent coaching, education, medical services, social services inclusive of coordinating care for the child and mother as more fully stated in the contract between CATHOLIC CHARITIES and BRIGHT BEGINNINGS.

18. Defendant PORCIA MAINOR, was at all times relevant responsible for ensuring Jordan Rodriguez received the services provided by BRIGHT BEGINNINGS and was responsible for ensuring Jordan was properly referred to and logged into/registered with BRIGHT BEGINNINGS' system, and transferred to or referred to the care of CATHOLIC CHARITIES.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

19. Decedent Jordan Rodriguez was born November 5, 2012, to Larissa Rodriguez, his biological mother.

20. Jordan suffered from a developmental disability and could not speak. He also suffered from chronic lung disease, congenital abnormality of kidneys and was considered medically fragile and by the nature of his disability, needed extensive feeding support, various therapies, regular medical consults, and close supervision.

21. Jordan resided with his mother Larissa Rodriguez at 1300 W. 80th Street along with 6 of his siblings and his mother's boyfriend Christopher Rodriguez.

22. CATHOLIC CHARITIES, by and through its agents, apparent agents and/or employees

30. Larissa Rodriguez was issued an Electronic Benefits Card (hereinafter "EBT card") to buy food for her family which included Jordan and his siblings.

31. From 2015 through 2017 Larissa Rodriguez and NANCY CARABALLO had an arrangement where Larissa would leave several hundred dollars on her EBT card each month. NANCY CARABALLO would then pay Larisa Rodriguez a lower value, cents for each dollar remaining on the EBT card, thereby depriving the Rodriguez family of food and nutrition.

32. NANCY CARABALLO would retrieve the EBT card from Larissa Rodriguez, who deprived Jordan of necessary food and nutrition by selling the benefits from the card.

33. Between the autumn of 2016 through September 2017, NANCY CARABALLO met Larissa multiple times specifically to retrieve the EBT card and failed or refused to provide any or sufficient services to Jordan and his family as mandated by statute and contract during these visits.

34. CATHOLIC CHARITIES was paid for the falsified records and for services that were never provided to Jordan Rodriguez throughout 2016-2017.

35. Sometime after discovery of Jordan's body, NANCY CARABALLO filed false reports of her home visits to the Rodriguez house. These reports indicated visits occurred and NANCY CARABALLO provided services when she did not visit the home at all and/or visits when she was at the home but failed to provide any services to Jordan and his family. During these "visits" Caraballo instead retrieved the EBT card.

36. For at least a year prior to the Death of Jordan NANCY CARABALLO had not seen Jordan and failed to report he was missing or make reasonable inquiry.

37. In the Spring and Summer of 2017, NANCY CARABALLO was informed by Larissa Rodriguez that Christopher Rodriguez was abusing and beating both Larissa Rodriguez and Jordan Rodriguez, but failed to take action inclusive of reporting the incidents of abuse, which would have lead to the immediate removal of Jordan from a dangerous situation and lead to the discovery of his severely dehydrated and nutritionally neglected state.

38. In the months prior to September 2017, Jordan became nutritionally deprived, and began to lose function of his end organs inclusive of his kidneys, liver, and other organs and then suffered systemic organ failure which caused him great pain and suffering and eventually lead to his death.

39. On or about September 21, 2017 Jordan became unconscious and non-responsive. Christopher and/or Larissa laid him on a bed and did not call for medical assistance or an ambulance because she was afraid that her children would be taken away by DCFS, due to the scheme that she and CATHOLIC CHARITIES/ NANCY CARABALLO engaged in with regard to the food stamps. Jordan died on or about September 22, 2017 of nutritional and medical neglect.

40. On or about September 22, 2017 Christopher Rodriguez buried Jordan's body in the back yard.

41. In December 2017 Jordan's body was found buried in the backyard behind the house where he was living.

42. Larissa Rodriguez plead guilty to involuntary manslaughter, felonious assault, gross abuse of a corpse and endangering children. She was sentenced to serve time in the Ohio State Prison System.

43. NANCY CARABALLO plead guilty to trafficking in or illegal use of food stamps in violation of O.R.C. §2913.46(B) a third degree felony, grand theft in violation of O.R.C. 2913.02(A) (2) a fourth degree felony, and 2 counts of tampering with government records in violation of O.R.C. §2913.42(A)(1) a third degree felony and was sentenced to serve time in the Ohio State Prison System.

44. Christopher Rodriguez plead guilty to involuntary manslaughter, felonious assault, endangering children, and abuse of a corpse and was sentenced to serve time in the Ohio State Prison System.

45. CATHOLIC CHARITIES by and through their agent NANCY CARABALLO, and other employees, were responsible for reporting suspicions of child abuse and neglect and their failure

to report was reckless and indifferent to the known and obvious risks facing Jordan.

46. Starting in January 2017 and continuing until his death in September 2017, the condition and health of Jordan including his physical appearance and assessments, continued to decline such that a reasonable person in a similar position would have suspected physical abuse and nutritional neglect.

FIRST CAUSE OF ACTION
WRONGFUL DEATH-RECKLESS, WILLFUL, AND WANTON-
CATHOLIC CHARITIES INC, CATHOLIC CHARITIES DIOCESE OF CLEVELAND and
KARNESE MCKENZIE, DEEBONY PELZER AND NANCY CARABELLO AS AGENTS OF
CATHOLIC CHARITIES

47. Plaintiff Michelle Rodriguez as the administrator of the Estate of Jordan Rodriguez, restates and incorporates by reference, Paragraphs 1 through 46 of this Complaint as if fully re-written herein.

48. At all times relevant, CATHOLIC CHARITIES and/or Catholic Charities Diocese of Cleveland, by and through its agents and employees, were required to comply with all statutory mandatory reporting requirements, and had a duty not to take away the food and nutrition from the families they served, and had a duty to report any knowledge or suspicion of abuse or neglect to Jordan.

49. At all times relevant CATHOLIC CHARITIES by and through its agents and employees owed a duty of care to Jordan Rodriguez, pursuant to the contract that existed between BRIGHT BEGINNINGS and CATHOLIC CHARITIES, requiring CATHOLIC CHARITIES to provide social services, nutritional counseling, educational services and/or therapy services.

50. At all times relevant CATHOLIC CHARITIES had a common law duty, as well as a duty pursuant to its voluntary undertaking, to protect the health, safety and best interests of Jordan by continuing to maintain contact with the family and agreeing to provide, social services, nutritional counseling, and educational services to the Rodriguez family.

51. At all times relevant CATHOLIC CHARITIES and its agents or employees were a

the abuse and specifically contributing to the nutritional neglect, which was a proximate cause of Jordan's death.

58. Defendant CATHOLIC CHARITIES as a corporation, and/or through its employees Nancy Caraballo, Karnese McKenzie, and DeEbony Pelzer, breached its duty of care owed to Jordan by conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances through one or more of the following acts or omissions:

- a) NANCY CARABALLO, falsely and fraudulently reported that she visited the home of Jordan Rodriguez and provided services to the Rodriguez family from approximately November 2016 until November 2017 and specifically, on or about November 30, 2016, December 7, 2016, January 5, 2017, March 16, 2017, March 31, 2017, June 26, 2017, July 10, 2017, August 4, 2017, September 6, 2017, November 6, 2017, and November 20, 2017, when she did not go, thereby decreasing the likelihood the abuse and/or neglect of Jordan Rodriguez would be discovered;
- b) Failed to visit the home of Jordan Rodriguez and provide services to the Rodriguez family on or about November 30, 2016, December 7, 2016, January 5, 2017, March 16, 2017, March 31, 2017, June 26, 2017, July 10, 2017, August 4, 2017, September 6, 2017, November 6, 2017, and November 20, 2017, in violation of their contractual and statutory obligations;
- c) Deprived the Rodriguez family and specifically Jordan Rodriguez of proper food and nutrition by purchasing Larissa Rodriguez's EBT card;
- d) Failed to monitor the safety of Jordan Rodriguez by failing to perform the necessary services to Jordan Rodriguez including safety assessments, nutritional assessments, ensuring medical treatment and educational services;
- e) Failed to report abuse of Jordan Rodriguez despite Larissa Rodriguez's confession that the abuse was occurring and despite the obvious signs of abuse;
- f) Failed to report abuse and neglect to Cuyahoga County Department of Children and Family Services as statutorily mandated, including that Jordan was living in deplorable, unsanitary, cockroach and rat infested conditions;

- g) Failed to report to Cuyahoga County Department of Children and Family Services that Larissa Rodriguez and/or possibly Christopher Rodriguez had fractured multiple ribs on Jordan while inflicting abuse; that family, friends, and neighbors of Jordan had made complaints to CATHOLIC CHARITIES' agents and/or employees of abuse and neglect to Jordan;
- h) Failed to notify the proper authorities Jordan Rodriguez was missing;
- i) Failed to identify signs of abuse and neglect including Jordan Rodriguez's obvious failure to thrive, and his nutritional decline; the discontinuation of medical treatment to Jordan by his mother; and the disenrollment from preschool before Jordan ever transitioned into attending preschool
- j) Failed to recommend immediate transfer of Jordan Rodriguez to temporary protective custody or to Cuyahoga County Department of Children and Family Services custody when they knew or should have known that he had been neglected, or physically abused and nutritionally starved;
- k) Failed to report that Jordan Rodriguez was malnourished and not receiving the appropriate food and nutrition, when Larissa Rodriguez sold her EBT benefits to a CATHOLIC CHARITIES employee instead of providing nutrition to her child;
- l) DeEbony Pelzer and Karnese McKenzie failed to provide adequate supervision and training of CATHOLIC CHARITIES' caseworker, Nancy Caraballo;
- m) CATHOLIC CHARITIES failed to adhere to social services standards and requirements for hiring and training their employees;
- n) CATHOLIC CHARITIES hired and recruited unqualified individuals who lacked appropriate education requirements and/or experience with children with disabilities;
- o) CATHOLIC CHARITIES failed to have adequate management structure of social workers and professionals required of a social service organization;
- p) CATHOLIC CHARITIES failed to manage and execute policies and procedures and/or regulations under the standard of care, inclusive of maintaining conflicts of interest policies and gifts policies, which severely increased the likelihood of Jordan Rodriguez being injured.

59. As a direct and proximate result of one or more of the aforesaid acts or omissions,

Jordan, sustained injuries resulting in his death on or about September 21, 2017.

60. MICHELLE RODRIGUEZ is the duly appointed Special Administrator of the Estate of Jordan Rodriguez, Deceased, and this wrongful death action is brought on behalf of the Estate of Jordan Rodriguez, pursuant to O.R.C. §2125.02.

61. That on or about September 21, 2017, Jordan Rodriguez left surviving his siblings:

ANGEL ALVAREZ JR.	Brother	
GR	sibling	DOB unknown
MR	sibling	DOB 10/X/05
MA	sibling	DOB 12/X/10
NR	sibling	DOB 10/X/19
TW	sibling	DOB 10/X/14
MR	sibling	DOB 7/X/16
AC	sibling	DOB 9/X/13
AR	sibling	DOB 4/X/18

All the above have suffered pecuniary loss, including grief and sorrow and loss of society as a result of Jordan's death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendant, jointly and severally, in an amount in excess of \$25,000 in compensatory damages, exemplary or punitive damages, on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

recognize the signs of abuse, contributed to the abuse or looked the other way while knowing of the abuse.

68. Defendant CATHOLIC CHARITIES as a corporation, and/or through its employees Nancy Caraballo, Karnese McKenzie, and DeEbony Pelzer, breached its duty of care that was owed to Jordan by one or more of the following acts:

- a) NANCY CARABALLO, falsely and fraudulently reported that she visited the home of Jordan Rodriguez and provided services to the Rodriguez family from approximately November 2016 until November 2017 and specifically, on or about November 30, 2016, December 7, 2016, January 5, 2017, March 16, 2017, March 31, 2017, June 26, 2017, July 10, 2017, August 4, 2017, September 6, 2017, November 6, 2017, and November 20, 2017, when she did not go, thereby decreasing the likelihood the abuse and/or neglect of Jordan Rodriguez would be discovered;
- b) Failed to visit the home of Jordan Rodriguez and provide services to the Rodriguez family on or about November 30, 2016, December 7, 2016, January 5, 2017, March 16, 2017, March 31, 2017, June 26, 2017, July 10, 2017, August 4, 2017, September 6, 2017, November 6, 2017, and November 20, 2017, in violation of their contractual and statutory obligations;
- c) Deprived the Rodriguez family and specifically Jordan Rodriguez of proper food and nutrition by purchasing Larissa Rodriguez's EBT card;
- d) Failed to monitor the safety of Jordan Rodriguez by failing to perform the necessary services to Jordan Rodriguez including safety assessments, nutritional assessments, ensuring medical treatment and educational services;
- e) Failed to report abuse of Jordan Rodriguez despite Larissa Rodriguez's confession that the abuse was occurring and despite the obvious signs of abuse;
- f) Failed to report abuse and neglect to Cuyahoga County Department of Children and Family Services as statutorily mandated, including that Jordan was living in deplorable, unsanitary, cockroach and rat infested conditions;

- g) Failed to report to Cuyahoga County Department of Children and Family Services that Larissa Rodriguez and/or possibly Christopher Rodriguez had fractured multiple ribs on Jordan while inflicting abuse; that family, friends, and neighbors of Jordan had made complaints to CATHOLIC CHARITIES' agents and/or employees of abuse and neglect to Jordan;
- h) Failed to notify the proper authorities Jordan Rodriguez was missing;
- i) Failed to identify signs of abuse and neglect including Jordan Rodriguez's obvious failure to thrive, and his nutritional decline; the discontinuation of medical treatment to Jordan by his mother; and the disenrollment from preschool before Jordan ever transitioned into attending preschool
- j) Failed to recommend immediate transfer of Jordan Rodriguez to temporary protective custody or to Cuyahoga County Department of Children and Family Services custody when they knew or should have known that he had been neglected, or physically abused and nutritionally starved;
- k) Failed to report that Jordan Rodriguez was malnourished and not receiving the appropriate food and nutrition, when Larissa Rodriguez sold her EBT benefits to a CATHOLIC CHARITIES employee instead of providing nutrition to her child;
- l) DeEbony Pelzer and Karnese McKenzie failed to provide adequate supervision and training of CATHOLIC CHARITIES' caseworker, Nancy Caraballo;
- m) CATHOLIC CHARITIES failed to adhere to social services standards and requirements for hiring and training their employees;
- n) CATHOLIC CHARITIES hired and recruited unqualified individuals who lacked appropriate education requirements and/or experience with children with disabilities;
- o) CATHOLIC CHARITIES failed to have adequate management structure of social workers and professionals required of a social service organization;
- p) CATHOLIC CHARITIES ailed to manage and execute policies and procedures and/or regulations under the standard of care, inclusive of maintaining conflicts of interest policies and gifts policies, which severely increased the likelihood of Jordan Rodriguez being injured.

69. As a direct and proximate result of one or more of the aforesaid acts or omissions, Jordan, was caused to sustain injury to his organ system, causing damage to his kidneys, liver, and other internal organs resulting systemic shutdown of his organs and body and eventually resulting in his death on or about September 21, 2017.

70. MICHELLE RODRIGUEZ is the duly appointed Special Administrator of the Estate of Jordan Rodriguez, Deceased, and this wrongful death action is brought on behalf of the Estate of Jordan Rodriguez, pursuant to O.R.C. §2125.02.

71. That on or about September 21, 2017, Jordan Rodriguez left surviving his siblings:

ANGEL ALVAREZ JR.	Brother	
GR	sibling	DOB unknown
MR	sibling	DOB 10/X/05
MA	sibling	DOB 12/X/10
NR	sibling	DOB 10/X/19
TW	sibling	DOB 10/X/14
MR	sibling	DOB 7/X/16
AC	sibling	DOB 9/X/13
AR	sibling	DOB 4/X/18

All the above have suffered pecuniary loss, including grief and sorrow and loss of society as a result of Jordan's death.

WHEREFORE, Plaintiff Michelle Rodriguez Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendant, jointly and severally, in an amount in excess of \$25,000 in compensatory damages, on each cause of action in this complaint, as well as

other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

THIRD CAUSE OF ACTION
SURVIVAL ACTION-RECKLESS, WILLFUL, AND WANTON and NEGLIGENCE-
CATHOLIC CHARITIES INC, CATHOLIC CHARITIES DIOCESE OF CLEVELAND

72. Plaintiff MICHELLE RODRIGUEZ as administrator of the Estate of Jordan Rodriguez, restates and incorporates by reference, Paragraphs 1 through 71 of this Complaint as if fully re-written herein.

73. Prior to his death, Decedent Jordan Rodriguez endured great pain and suffering as a direct and proximate result of Defendants' willful and wanton and negligent acts and pursuant to the Ohio Survival Act, O.R.C. 2305.21, this cause of action, by reason of such pain and suffering has survived his death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendants, jointly and severally, in an amount in excess of \$25,000 in compensatory damages, on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

FOURTH CAUSE OF ACTION
WRONGFUL DEATH-NEGLIGENCE-NANCY
CARABALLO, INDIVIDUALLY

74. Plaintiff MICHELLE RODRIGUEZ, restates and incorporates by reference, Paragraphs 1 through 73 of this Complaint as if fully re-written herein.

75. At all times relevant, NANCY CARABALLO was acting in her professional capacity

and had a duty of care that she owed to Jordan Rodriguez.

76. Defendant NANCY CARABALLO, breached their duty of care owed to Jordan with a conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances through one or more of the following acts or omissions:

- a) Contributed and caused Jordan to become malnourished and starve as a result of purchasing Rodriguez's EBT benefits
- b) Failed to monitor the safety of Jordan by failing to perform required services, safety assessments, ensuring medical treatment for Jordan, and ensuring Jordan was properly monitored and logged into/registered with the BRIGHT BEGINNINGS system;
- c) Failed to provide the contractually required services to Larissa Rodriguez and Jordan Rodriguez, including providing therapy, counseling, parent education to Larissa despite the stress placed on her to care for 7 siblings and a medical complex child as Jordan;
- d) Failed to identify signs of abuse and neglect including Jordan's obvious failure to thrive; the discontinuation of medical treatment to Jordan by his mother and the discontinuation of educational services to Jordan;
- e) Failed to report abuse and neglect to Cuyahoga County Department of Children and Family Services as statutorily mandated, including that Jordan was living in deplorable, unsanitary, cockroach and rat infested conditions; that Larissa and Christopher had fractured multiple ribs on Jordan while inflicting abuse; that family, friends, and neighbors of Jordan had made complaints to CATHOLIC CHARITIES' agents and/or employees of abuse and neglect of Jordan.
- f) Failed to notify the proper authorities Jordan was missing;
- g) Falsely reported that she visited and monitored the home of Jordan and failed to ensure these visits and services were being provided;
- h) Failed to evaluate risk and assess whether Larissa Rodriguez and Christopher Rodriguez were a safety concern despite

allegations of abuse;

- i) Failed to recommend immediate transfer of Jordan to temporary protective custody when she knew or should have known that Jordan had been neglected, or physically abused and beaten;
- j) Failed to ensure Jordan was logged into/registered with the BRIGHT BEGINNINGS system to ensure he was properly provided services which he was entitled to and qualified for pursuant to Ohio state law being a developmentally disabled at risk child;
- k) Failed to ensure Jordan was receiving the proper services and care he was required to receive and qualified for being a developmentally, at risk child;
- l) Failed to properly notify the proper individuals that Jordan was not properly logged into the BRIGHT BEGINNINGS system when they knew or should have known he was not receiving the proper services he qualified for and was entitled to under Ohio State Law.

77. As a direct and proximate result of one or more of the aforesaid acts or omissions, Jordan Rodriguez, sustained injuries resulting in his death in September 2017 and suffered a wrongful death.

78. MICHELLE RODRIGUEZ is the duly appointed Administrator of the Estate of Jordan Rodriguez, Deceased, and this wrongful death action is brought on behalf of the Estate of Jordan Rodriguez, pursuant to O.R.C. §2125.02.

79. That on or about September 21, 2017, Jordan Rodriguez left surviving his siblings:

ANGEL ALVAREZ JR.	Brother	
GR	sibling	DOB unknown
MR	sibling	DOB 10/X/05
MA	sibling	DOB 12/X/10
NR	sibling	DOB 10/X/19

TW	sibling	DOB 10/X/14
MR	sibling	DOB 7/X/16
AC	sibling	DOB 9/X/13
AR	sibling	DOB 4/X/18

All the above have suffered pecuniary loss, including grief and sorrow and loss of society as a result of Jordan's death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendant, jointly and severally, in an amount in excess of \$25,000 in compensatory damages, exemplary or punitive damages on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

FIFTH CAUSE OF ACTION
SURVIVAL ACTION – NEGLIGENCE – NANCY CARABALLO, INDIVIDUALLY

80. Plaintiff MICHELLE RODRIGUEZ as administrator of the Estate of Jordan Rodriguez, restates and incorporates by reference, Paragraphs 1 through 79 of this Complaint as if fully re-written herein.

81. Prior to his death, Decedent Jordan Rodriguez endured great pain and suffering and sustained loss of his organs, inclusive of his kidneys, liver and other end organs which systemically shut down, and as a direct and proximate result of Defendants' negligent conduct and acts and pursuant to the Ohio Survival Act, O.R.C. 2305.21, this cause of action, by reason of such pain and suffering has survived his death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ as Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendants, jointly and severally, in an amount

in excess of \$25,000 in compensatory damages on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

SIXTH CAUSE OF ACTION
STATUTORY FAILURE TO REPORT-CATHOLIC CHARITIES INC. CATHOLIC
CHARITIES ARCH DIOCESE OF CLEVELAND, NANCY CARABALLO

82. Plaintiff MICHELLE RODRIGUEZ, restates and incorporates by reference, Paragraphs 1 through 81 of this Complaint as if fully re-written herein.

83. This cause of action is brought against NANCY CARABALLO and it is also brought under the doctrine of respondeat superior against Catholic Charities (for one or more of its agents or employees) and/or Catholic Charities Archdiocese of Cleveland (for one or more of its agents or employees). This cause of action is for compensatory and exemplary damages on behalf of Jordan Rodriguez, pursuant to O.R.C. § 2151.421(M).

84. Under O.R.C. §2151.421(A)(1)(b), NANCY CARABALLO and the agents/employees of Catholic Charities and/or Catholic Charities Archdiocese of Cleveland were mandatory reporters, being a private children services and/or providing educational services agency and/or a third party employed by a public children services agency to assist in providing child and family related services.

85. Each of the mandatory reporters failed to immediately report their knowledge of reasonable cause to suspect that Jordan suffered or faced the threat of suffering from neglect abuse or injury.

86. As a direct and proximate result of the mandatory reporter's failure to report, Jordan suffered harms, losses and a wrongful death.

87. In failing to report, each of the mandatory reporters exhibited a conscious disregard for the rights and safety of Jordan despite great probability that substantial harm would result from such failure. Accordingly, the imposition of exemplary or punitive damages is warranted. In connection with the award of such exemplary or punitive damages, the award of attorney fees as compensatory damage is also warranted.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ as Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendants, jointly and severally, in an amount in excess of \$25,000 in compensatory damages, exemplary, punitive on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

SEVENTH CAUSE OF ACTION
NEGLIGENT FAILURE TO SUPERVISE-
CATHOLIC CHARITIES INC, CATHOLIC CHARITIES DIOCESE OF CLEVELAND

88. Plaintiff MICHELLE RODRIGUEZ, restates and incorporates by reference, Paragraphs 1 through 87 of this Complaint as if fully re-written herein.

89. At all times relevant, and pursuant to the contractual relationship between BRIGHT BEGINNINGS and CATHOLIC CHARITIES and/or Catholic Charities Diocese of Cleveland, CATHOLIC CHARITIES was required to comply with BRIGHT BEGINNINGS' policies and procedures, in providing social services, educational services and therapeutic services to Jordan and his family.

90. At all times relevant NANCY CARABALLO and the agents/employees of CATHOLIC CHARITIES were under the direction, supervision and control of CATHOLIC CHARITIES and were otherwise their agents. CATHOLIC CHARITIES owed a duty to Jordan Rodriguez, pursuant to the

contract that existed between BRIGHT BEGINNINGS and CATHOLIC CHARITIES, requiring CATHOLIC CHARITIES to ensure Jordan was receiving the social services they were contracted to provide.

91. At all times relevant CATHOLIC CHARITIES' agents or employees were developmental disability caretakers as defined by O.R.C. §2903.341(A)(1). Their conduct created a substantial risk to the health and safety of a developmentally disabled person under their care, supervision and/or control, resulting in serious physical harm in violation of O.R.C. §2903.341(B) and (E)(3), and in violation of O.R.C. §2919.22(A) and (2)(c).

92. CATHOLIC CHARITIES through their agents, supervisors Karnese McKenzie and DeEbony Pelzer, failed to supervise these agents or employees and to ensure that they were present in the home of Jordan semimonthly to provide professional services on behalf of CATHOLIC CHARITIES and failed to monitor/supervise their agents or employees to ensure they were providing the services CATHOLIC CHARITIES had contracted to provide for Jordan and his family and to ensure the abuse was being reported to the proper agencies.

93. Defendant CATHOLIC CHARITIES through its employees breached its duty of care that was owed to Jordan by one or more of the following acts:

- a) Failed to supervise NANCY CARABALLO and other case workers/therapists to ensure they were providing the necessary services to Larissa Rodriguez, Jordan Rodriguez including safety assessments, ensuring medical treatment; and ensuring Jordan received educational services;
- b) Failed to supervise NANCY CARABALLO and other caseworkers to ensure that they identified critical risks to which Jordan were know about or should have been known about;
- c) Failed to ensure NANCY CARABALLO and other caseworkers and therapists provided the services, for which CATHOLIC

CHARITIES was being paid to do, were actually being undertaken by CATHOLIC CHARITIES' agents or employees;

- d) Failed to check submitted reports by NANCY CARABALLO and other caseworkers/therapists; failed to monitor the visits of NANCY CARABALLO and other caseworkers/therapists to ensure the accuracy of the submitted reports, and failed to conduct supervisor site visits to ensure the services were being provided to Jordan and his family;
- e) Failed to request, review, or evaluate any risk assessments provided by NANCY CARABALLO pertaining to safety concerns and allegations of abuse;
- f) Failed to monitor the work and/or conduct of NANCY CARABALLO from 2016 through 2017, failed to monitor/supervise NANCY CARABALLO when she siphoned the necessary resources from Jordan and his siblings when on a monthly basis she took their EBT card to purchase food for herself;
- g) Failed to ensure its agents and employees reported the abuse and neglect suffered by Jordan which they knew or should have known of, including Jordan's failure to thrive, the battery caused by Larissa and Christopher leading to broken ribs, and the complaints of abuse by family, neighbors and friends;
- h) Failed to conduct a thorough investigation when they knew Jordan was missing for several months. Failed to ensure its agents/employees reported Jordan missing to the proper authorities when they knew they had not seen him in several months and knew they had not provided him with the requisite care and services they were contracted to provide;
- i) Hired and recruited unqualified individuals who lacked appropriate education requirements and/or experience to perform their roles;
- j) Failed to maintain and enforce adequate and complete employee conduct policies, inclusive of gift policies and conflict of interest policies.

94. As a direct and proximate result of one or more of the aforesaid acts or omissions, Jordan, sustained injuries resulting in his death on September 21, 2017 and suffered a wrongful death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendant, jointly and severally, in an amount in excess of \$25,000 in compensatory damages on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

EIGHTH CAUSE OF ACTION
WRONGFUL DEATH-NEGLIGENCE- BRIGHT BEGINNINGS

95. Plaintiff MICHELLE RODRIGUEZ as the administrator of the Estate of Jordan Rodriguez restates and incorporates by reference, Paragraphs 1 through 94 of this Complaint at Law as if fully re-written herein.

96. At all times relevant BRIGHT BEGINNINGS by and through its agents and employees, were required to comply with all statutory mandatory reporting requirements, and had a duty to report any knowledge or suspicion of abuse or neglect of Jordan.

97. At all times relevant BRIGHT BEGINNINGS, by and through its agents and employees owed a duty of care to Jordan Rodriguez, pursuant to the contract that existed between BRIGHT BEGINNINGS and CATHOLIC CHARITIES, requiring BRIGHT BEGINNINGS to ensure CATHOLIC CHARITIES complied with all statutory requirements, in providing social services, educational services, care for, treatment, and protection for Jordan and his family, particularly as child who was developmentally disabled and required constant medical oversight and monitoring.

98. At all times relevant BRIGHT BEGINNINGS and its agents or employees were a developmental disability caretaker as defined by O.R.C. §2903.341(A)(1). Their conduct created a substantial risk to the health and safety of a developmentally disabled person under their care,

supervision and/or control, resulting in serious physical harm in violation of O.R.C. §2903.341(B) and (E)(3), and in violation of O.R.C. §2919.22(A) and (2)(c).

99. Defendant BRIGHT BEGINNINGS through its employees and agents, inclusive of PORCIA MAINOR, breached its duty of care owed to Jordan by negligently through one or more of the following acts or omissions:

- a) Failed to appropriately transfer or refer the care of Jordan to CATHOLIC CHARITIES, in order that CATHOLIC CHARITIES and Nancy Caraballo would have then performed ASQ and ASQ:SE testing on Jordan, which would have increased the likelihood that his injuries, and nutritional neglect would have been discovered;
- b) Failed to inform CATHOLIC CHARITIES that Jordan was not properly logged into the BRIGHT BEGINNINGS system to ensure he received the proper services when they knew or should have known that Jordan was a developmentally disabled, medical complex, child at risk to be neglected, or physically abused and beaten;
- c) Failed to monitor the safety of Jordan by failing to perform the required safety assessments, or ensure said safety assessment such as the ASQ and the ASQ:SE testing would be performed;
- d) Failed to identify signs of abuse and neglect including Jordan's obvious failure to thrive; the discontinuation of medical treatment to Jordan by his mother and the discontinuation of educational services to Jordan;
- e) Failed to report abuse and neglect to Cuyahoga County Department of Children and Family Services as statutorily mandated, including that Jordan was living in deplorable, unsanitary, cockroach and rat infested conditions;
- f) Failed to properly supervise or assess whether CATHOLIC CHARITIES was carrying out the terms of its contract.

100. As a direct and proximate result of one or more of the aforesaid acts or omissions, Jordan sustained injuries resulting in his death on September 21, 2017 and suffered a wrongful death.

101. MICHELLE RODRIGUEZ is the duly appointed Special Administrator of the Estate of Jordan Rodriguez, Deceased, and this wrongful death action is brought on behalf of the Estate of Jordan Rodriguez, pursuant to O.R.C. §2125.02.

102. That on or about September 21, 2017, Jordan Rodriguez left surviving his siblings:

ANGEL ALVAREZ JR.	Brother	
GR	sibling	DOB unknown
MR	sibling	DOB 10/X/05
MA	sibling	DOB 12/X/10
NR	sibling	DOB 10/X/19
TW	sibling	DOB 10/X/14
MR	sibling	DOB 7/X/16
AC	sibling	DOB 9/X/13
AR	sibling	DOB 4/X/18

All the above have suffered pecuniary loss, including grief and sorrow and loss of society as a result of Jordan's death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ as Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendants, jointly and severally, in an amount in excess of \$25,000 in compensatory damages on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

NINTH CAUSE OF ACTION
SURVIVAL ACTION-NEGLIGENCE- BRIGHT BEGINNINGS

103. Plaintiff MICHELLE RODRIGUEZ as administrator of the Estate of Jordan Rodriguez, restates and incorporates by reference, Paragraphs 1 through 102 of this Complaint as fully re-written herein.

104. Prior to his death, Decedent Jordan Rodriguez endured great pain and suffering as a direct and proximate result of Defendants' willful and wanton acts and pursuant to the Ohio Survival Act, O.R.C. 2305.21, this cause of action, by reason of such pain and suffering has survived his death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendants, jointly and severally, in an amount in excess of \$25,000, in compensatory damages, on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

TENTH CAUSE OF ACTION
WRONGFUL DEATH-NEGLIGENCE-PORCIA MAINOR

105. Plaintiff MICHELLE RODRIGUEZ, restates and incorporates by reference, Paragraphs 1 through 104 of this Complaint as if fully re-written herein.

106. At all times relevant PORCIA MAINOR was acting in her professional capacity and had a duty of care that she owed to Jordan Rodriguez.

107. Defendant PORCIA MAINOR breached her duty of care owed to Jordan by negligently through one or more of the following acts or omissions:

- a) Failed to ensure Jordan was logged into/registered within the BRIGHT BEGINNINGS system to ensure he was properly provided services which he was entitled to and qualified for

pursuant to Ohio state law being a developmentally disabled at risk child;

- b) Failed to inform CATHOLIC CHARITIES that Jordan was not properly logged into the BRIGHT BEGINNIGS/Visit Tracker system to ensure he received the proper services when they knew or should have known that Jordan was a developmentally disabled, medical complex, child at risk to be neglected, or physically abused and beaten.

108. As a direct and proximate result of one or more of the aforesaid acts or omissions, Jordan, sustained injuries resulting in his death on September 21, 2017 and suffered a wrongful death.

109. MICHELLE RODRIGUEZ is the duly appointed Special Administrator of the Estate of Jordan Rodriguez, Deceased, and this wrongful death action is brought on behalf of the Estate of Jordan Rodriguez, pursuant to O.R.C. §2125.02.

110. That on or about September 21, 2017, Jordan Rodriguez left surviving his siblings:

ANGEL ALVAREZ JR.	Brother	
GR	sibling	DOB unknown
MR	sibling	DOB 10/X/05
MA	sibling	DOB 12/X/10
NR	sibling	DOB 10/X/19
TW	sibling	DOB 10/X/14
MR	sibling	DOB 7/X/16
AC	sibling	DOB 9/X/13
AR	sibling	DOB 4/X/18

All the above have suffered pecuniary loss, including grief and sorrow and loss of society as a result of Jordan's death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ Administrator of the Estate of

Jordan Rodriguez, *deceased*, prays for judgment against each Defendants, jointly and severally, in an amount in excess of \$25,000 in compensatory damages, on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

ELEVENTH CAUSE OF ACTION
SURVIVAL ACTION - NEGLIGENCE-PORCIA MAINOR

111. Plaintiff MICHELLE RODRIGUEZ as administrator of the Estate of Jordan Rodriguez, restates and incorporates by reference, Paragraphs 1 through 110 of this Complaint as fully re-written herein.

112. Prior to his death, Decedent Jordan Rodriguez endured great pain and suffering as a direct and proximate result of Defendants' willful and wanton acts and pursuant to the Ohio Survival Act, O.R.C. 2305.21, this cause of action, by reason of such pain and suffering has survived his death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendants, jointly and severally, in an amount in excess of \$25,000 in compensatory damages, on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

Respectfully submitted,

/s/ Russell A. Randazzo

Russell Randazzo
Randazzo Law, LLC
Local Co-Counsel for Plaintiffs
55 Public Square — Suite 2100
Cleveland, Ohio 44113
Telephone: (216) 350-4434
Fax: (216) 274-9318
Email: Russell@rrandazzolaw.com

-and-

Jay Paul Deratany
Roosevelt Allen III
Deratany & Kosner
221 N. LaSalle Street
Suite 2200
Chicago, Illinois 60601
Telephone: (312) 857-7285
Fax: (312) 857-2004
Email: jpderatany@lawinjury.com
allen@lawinjury.com

PROBATE COURT OF CUYAHOGA COUNTY, OHIO
ANTHONY J. RUSSO, PRESIDING JUDGE
LAURA J. GALLAGHER, JUDGE

ESTATE OF: JORDAN A. RODRIGUEZ DECEASED

Case Number: 2018EST237795

ENTRY APPOINTING FIDUCIARY; LETTERS OF AUTHORITY
(For Executors and all Administrators)

Name of Fiduciary: MICHELLE RODRIGUEZ

On hearing in open court the application of the above fiduciary for authority to administer decedent's estate, the Court finds that:

Decedent died (check one of the following)

- testate
 intestate

on 09/20/2017, domiciled in CLEVELAND, OH 44102.

(Check one of the following)

- Bond is dispensed with by the Will
 Bond is dispensed with by law
 Applicant has executed and filed an appropriate bond, which is approved by the Court; and

Applicant is a suitable and competent person to execute the trust.

The court therefore appoints applicant as such fiduciary, with the power conferred by law to fully administer decedent's estate. This entry of appointment constitutes the fiduciary's letters of authority.

12/28/2018

Date appointed



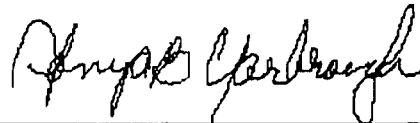
JUDGE ANTHONY J. RUSSO

CERTIFICATE OF APPOINTMENT AND INCUMBENCY

The above document is a true copy of the original kept by me as custodian of the records of this Court. It constitutes the appointment and letters of authority of the named fiduciary, who is qualified and acting in such capacity.

(Seal)

ANTHONY J. RUSSO, PRESIDING JUDGE



Deputy Clerk

12/28/2018
Issue Date

Exhibit A

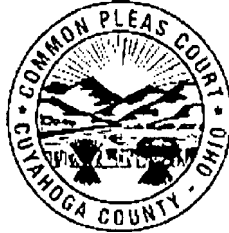
Electronically Filed 09/02/2020 13:28 / DOCUMENT / 2018EST237795 / Condition No. 2018EST237795 / DEUDLJ

ISSUED 12/28/2018 09:24:52 BY: TXY

ES4-5 - ENTRY APPOINTING FIDUCIARY; LETTERS OF AUTHORITY

(07/01/1977)

EXHIBIT 4



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

March 15, 2021 13:05

By: RICHARD H. BLAKE 0083374

Confirmation Nbr. 2203961

MICHELLE RODRIGUEZ

CV 19 909566

vs.

CATHOLIC CHARITIES CORPORATION, ET AL

Judge: JOAN SYNENBERG

Pages Filed: 24

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ,	)	CASE NO.: CV 19 909566
)	
Plaintiff,	)	JUDGE JOAN SYNENBERG
)	
v.)	
)	
CATHOLIC CHARITIES	)	<u>DEFENDANT CATHOLIC CHARITIES</u>
CORPORATION, <i>et al.</i>,	)	<u>CORPORATION'S MOTION FOR</u>
	)	<u>PARTIAL SUMMARY JUDGMENT AS</u>
Defendants.	)	<u>TO PLAINTIFF'S RESPONDEAT</u>
	)	<u>SUPERIOR-RELATED CLAIMS</u>

Pursuant to Rule 56 of the Ohio Rules of Civil Procedure, Defendant Catholic Charities Corporation ("Catholic Charities"), by and through undersigned counsel, hereby moves this Honorable Court for an entry of summary judgment in favor of Catholic Charities on all respondeat superior-related claims asserted by Plaintiff Michelle Rodriguez, as Administrator of the Estate of Jordan Rodriguez, Deceased (the "Plaintiff"). There are no genuine issues of material fact and Catholic Charities is entitled to judgment as a matter of law.

In all of the respondeat superior-related claims asserted against Catholic Charities, Plaintiff improperly attempts to fabricate liability upon Catholic Charities for the concealed, intentional, and self-serving criminal actions of Defendant Nancy Caraballo ("Caraballo"), which Plaintiff alleges caused Jordan Rodriguez's death. Summary judgment must be granted in favor of Catholic Charities for the following dispositive reason: Caraballo's rogue, deliberate, and selfish criminal actions were not committed within the scope of her employment of Catholic Charities and did not promote or facilitate the interests of Catholic Charities as a matter of well-settled Ohio law.

The grounds for this Motion are more fully set forth in the attached Memorandum in Support, which is incorporated herein.

Respectfully submitted,

/s/ Richard H. Blake

RICHARD H. BLAKE (0083374)
DAN L. MAKEE (0029602)
JOSEPH M. MUSKA (0089512)
THERESA M. LANESE (0097897)
McDonald Hopkins LLC
600 Superior Avenue, East, Suite 2100
Cleveland, OH 44114
Phone: (216) 348-5400
Fax: (216) 348-5474
Email: rblake@mcdonaldhopkins.com
dmakee@mcdonaldhopkins.com
jmuska@mcdonaldhopkins.com
tlanese@mcdonaldhopkins.com

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)
RONALD A. MARGOLIS (0031241)
BRIAN F. LANGE (0080627)
Bonezzi Switzer Polito & Hupp Co. L.P.A.
1300 East 9th Street, Suite 1950
Cleveland, Ohio 44114
Phone: (216) 875-2767
Fax: (216) 875-1570
Email: bsebaugh@bsphlaw.com
rmargolis@bsphlaw.com
blange@bsphlaw.com

/s/ John W. Patton, Jr.

JOHN W. PATTON, JR.
(Admitted Pro Hac Vice)
Patton & Ryan
330 N. Wabash, Suite 3800
Chicago, IL 60611
Phone: (312) 261-5166
Fax: (312) 261-5161
Email: jpatton@pattonryan.com

*Attorneys for Defendant Catholic Charities Corporation,
also identified in the Second Amended Complaint as
Catholic Charities Diocese of Cleveland*

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ,	)	CASE NO.: CV 19 909566
)	
Plaintiff,	)	JUDGE JOAN SYNENBERG
)	
v.)	
)	
CATHOLIC CHARITIES	)	<u>MEMORANDUM IN SUPPORT OF</u>
CORPORATION, <i>et al.</i>,	)	<u>DEFENDANT CATHOLIC CHARITIES</u>
	)	<u>CORPORATION'S MOTION FOR</u>
Defendants.	)	<u>PARTIAL SUMMARY JUDGMENT AS</u>
	)	<u>TO PLAINTIFF'S RESPONDEAT</u>
	)	<u>SUPERIOR-RELATED CLAIMS</u>

I. INTRODUCTION

This survivorship and wrongful death action arises out of the tragic death of Jordan Rodriguez in 2017, caused by the abuse and neglect from his mother, Larissa Rodriguez (“Larissa”), and her boyfriend, Christopher Rodriguez (“Christopher”). Both Larissa and Christopher pleaded guilty to involuntary manslaughter, felonious assault, endangering children, and abuse of a corpse and are currently serving time in prison for their wicked crimes. *See* Certified Copies of Journal Entry and Change of Plea transcripts *State of Ohio v. Larissa Rodriguez*, Cuyahoga C.P. No. CR-18-625525-A and *State of Ohio v. Christopher M. Rodriguez*, Cuyahoga C.P. No. CR-18-625525-B, attached as **Exhibit 8** and **Exhibit 9**, respectively.

From 2013 to 2017, Caraballo was a Human Service Worker II for Catholic Charities. In this role, Caraballo served as a “Parent Educator” providing parenting education services to Larissa for the benefit of her enrolled children under the Bright Beginnings’ “Parents as Teachers” (“PAT”) program. It is important to note that Jordan Rodriguez was never enrolled in the PAT program. During this time frame, and unbeknownst to Catholic Charities, Caraballo

committed food stamp fraud (“EBT”) with Larissa for her own benefit and falsified governmental records indicating she provided the PAT program services to Larissa and her enrolled children. After Jordan’s body was discovered in December 2017, police came to Caraballo’s home and questioned her about the EBT fraud with Larissa. It was not until after police became aware of Caraballo’s criminal actions that Caraballo reported her conduct to Catholic Charities. Catholic Charities immediately placed Caraballo on administrative leave and subsequently terminated her employment. Caraballo was sentenced for her criminal conduct and served seven months in prison. Now, in an attempt to hold Catholic Charities legally liable for Jordan’s death, Plaintiff alleges that Caraballo’s criminal conduct caused Jordan’s death and seeks relief under a thinly-veiled respondeat superior theory of liability.

This Motion for Summary Judgment addresses one deficient aspect of Plaintiff’s claims: the impermissible legal theory that Catholic Charities can be held liable under the doctrine of respondeat superior for the concealed, intentional and self-serving criminal actions of Caraballo. It is undisputed that Caraballo’s hidden criminal actions were committed outside the scope of her employment and those actions did not facilitate or promote Catholic Charities’ interests. Plaintiff’s respondeat superior related claims must be dismissed.

II. STATEMENT OF FACTS

A. When Caraballo joined Catholic Charities as a Parent Educator, she agreed to be bound by the policies of Catholic Charities.

In July 2013, Catholic Charities hired Caraballo for the position of a Human Service Worker II. See Caraballo Dep. Day 1, attached as **Exhibit 10** at 89:19-21, 109:4-9; see also M. Boclear Dep. attached as **Exhibit 11** at 27:11-14. In her role with Catholic Charities, Caraballo served as a “Parent Educator,” under which she conducted home visits and provided parenting education services to caregivers and their enrolled children under the Bright Beginnings’ PAT

program.¹ M. Boclear Dep. 27:15-20, 30:20-22; *see also* D. Pelzer Dep., at 154:20-155:11. Under the PAT program, Catholic Charities did not provide food stamps or other social work services to enrolled families. *See* J. Hinkelman Aff., attached as **Exhibit 15**. Rather, the PAT program covered parenting topics (i.e.: toilet training), connected parents to community resources, and encouraged utilization of those resources. M. Manos Dep. attached as **Exhibit 16** at 86:1-15; 94:25-95:10.

Shortly after Caraballo was hired, she participated in Catholic Charities' orientation program that consisted of many different training sessions. Caraballo Dep. Day 2, at 96:12-19. In connection with these training sessions, Caraballo received the following:

- Catholic Charities' Employee Handbook, which Caraballo acknowledged she received. *Id.*, at 94:10-17; 95:5-11, *see also* Receipt and Acknowledgment of Catholic Charities Health and Human Services Employee Handbook, attached as **Exhibit 17**.
- Catholic Charities' Conflict of Interest Policy, which Caraballo certified she reviewed, understood the provisions set forth therein, and agreed to fully comply with those provisions. Caraballo Dep. Day 2, at 95:12-96:11; *see also* Statement of Compliance Regarding Conflict of Interest Policy, attached as **Exhibit 18**.
- Catholic Charities' Statement of Ethics, which Caraballo acknowledged and signed, expressly required all employees to act in accordance with federal, state and local law. *See* Catholic Charities' Statement of Ethics, attached as **Exhibit 19**.
- Catholic Charities' Operations Manual. *See* Catholic Charities Operations Manual, attached as **Exhibit 20**.

In the Operations Manual, Catholic Charities expressly outlined its Standard of Conduct as follows:

¹ It is undisputed that Jordan Rodriguez was never enrolled in the PAT program. Pelzer Dep., attached as **Exhibit 12**, at 180:4-11. Rather, he was enrolled in a separate Bright Beginnings' program called the Early Intervention program due to developmental delays. J. Hinkelman Dep. attached as **Exhibit 13**, at 43:3-24. Catholic Charities was never contracted to provide any services under the Early Intervention program, only the PAT program. *Id.*, at 95:2-10. Under the PAT program, Caraballo in her role as a Parent Educator, was not required to lay eyes on a child who was not enrolled in the program. N. Caraballo Dep. Day 2, at 116:14-17, attached as **Exhibit 14**.

The commitment of Catholic Charities to conduct its business lawfully and ethically is fundamental to our existence as a system. Serving adults, children and families is a public trust that requires integrity and compassion. It is critically important that all employees meet the highest standards of legal and ethical conduct.

Id. at 109. To satisfy this Standard of Conduct, the Operations Manual contained the following prohibition on gifts:

Employees should **not** accept, receive, or benefit from any gift, gratuity, present, property, or service (of any value), which may be directly or indirectly offered as a result or in anticipation of an employee's position or performance of duties.

Id. The Operations Manual expressly identified types of prohibited activities, which included the following:

Providing dishonest, false information or misrepresenting self on employment application or other work records; lying about sick or personal leave; falsifying reason for a leave of absence or other data requested by Catholic Charities; alteration of Catholic Charities records or other documents.

Id., at 111. Further, the Operations Manual contained a Client/Staff Interaction policy for those providing community-based services, such as Caraballo. *Id.*, at 139. The policy stated as follows:

Social interaction between employees and the program participants (or former participants) is to be based upon the best interests of the participants and with the goals of the program in mind.

Staff members must tell directors about planned social interaction with program participants (or former participants) before the activity occurs.

Directors may prohibit social interaction away from the sites if the activity or event could be detrimental to program participants, former participants, or the program.

Id. The Operations Manual warned that “[f]ailure to adhere to these guidelines may result in disciplinary action up to and including discharge.” *Id.*, at 140. When Caraballo joined Catholic

Charities, she acknowledged the aforementioned policies (collectively referred to as the "Policies") and agreed to be bound by them.

B. Caraballo disregarded Catholic Charities' Policies and engaged in intentional and self-serving criminal conduct.

In her role as a Parent Educator, Caraballo was assigned to provide parenting education services to Larissa under the Bright Beginnings' PAT program. D. Pelzer Dep. at 101:2-13; *see also* Caraballo's Ans. No. 14 to Pl.'s First Set of Interrogatories, attached as **Exhibit 21** (Caraballo "provided parent education services to Larissa Rodriguez but provided no services to Jordan Rodriguez"). Beginning in July of 2015, instead of providing parenting education services, and hidden from her supervisor at Catholic Charities, Caraballo engaged in food stamp fraud, by purchasing a portion of Larissa's electronic benefits ("EBT") for half their value in exchange for cash. Caraballo Dep. Day 1, at 60:22-61:2. Even though Catholic Charities was not in the business of food stamp distribution, both Caraballo and Larissa believed this criminal side-deal benefited them individually. *See* J. Hinkelman Aff.; *see also* Caraballo Dep. Day 1, at 62:2-4; L. Rodriguez Dep. Day 1, attached as **Exhibit 22**, at 67:7-12. Under their private arrangement, Caraballo used the EBT to purchase groceries for herself and Larissa used the cash to pay rent, cell phone bills, and to even purchase diapers which she allegedly could not purchase with the EBT card. Caraballo Dep. Day 1, at 61:3-4; L. Rodriguez Dep. Day 1, at 67:13-24. Larissa also selfishly used the cash to pay for gas to drive to and from the jail in Medina County where C. Rodriguez was incarcerated for other offenses. L. Rodriguez Dep. Day 1, at 73:10-20. She also used the cash to pay for C. Rodriguez's phone calls and purchases from the prison commissary while he was incarcerated. *Id.* Even though Caraballo knew that her intentional and criminal conduct was prohibited by the law and the Policies of Catholic Charities, she disregarded them and entered into this criminal plot with Larissa. Caraballo Dep. Day 2, at 97:9-

25; 103:15-106:25. Caraballo never shared that Larissa sold a portion of her EBT to either Catholic Charities or children services because Caraballo feared criminal and legal consequences. *Id.*, at 100:13-101:13.

C. During the time Plaintiff alleges Caraballo heard about the abuse of Jordan Rodriguez from Larissa, Caraballo was entrenched in criminal activity that deviated from her scope of employment with Catholic Charities.

In her role as a Parent Educator, Caraballo had a duty to report suspected child abuse. Caraballo Dep. Day 1, at 297:22-298:2. Caraballo however, **never** saw or even suspected that Jordan Rodriguez, or any other child in the Rodriguez home, was being abused or neglected. *See* Caraballo's Ans. No. 5 to Pl.'s First Set of Interrogatories ("Caraballo did not have knowledge of any potential abuse until December 2017 when Jordan Rodriguez's body was found."); Caraballo's Ans. No. 5 to Pl.'s First Set of Interrogatories ("Caraballo did not receive information that a client was a victim of abuse, neglect, or went missing"). However, in an effort to divert responsibility from her own actions, Larissa now claims that she informed Caraballo on three occasions in 2017 that Christopher was abusing her children, **during** the time that she and Caraballo were engaged in their criminal side-deal. L. Rodriguez Dep. Day 1, at 29:4-6, 38:18-24, 40:8-17, *see also* L. Rodriguez Dep. Day 2, attached as **Exhibit 23**, at 49:2-15.

D. Caraballo further concealed her intentional and self-serving criminal conduct by falsifying governmental records.

To cover her tracks, Caraballo further concealed her intentional and self-serving criminal conduct when she falsified governmental records regarding home visits to the Rodriguez home on more than twelve (12) occasions from November 2016 to November 2017. Caraballo Dep. Day 1, at 137:16-138:9; *see also* Certified Copy of True Bill Indictment attached as **Exhibit 24**, *State of Ohio v. Nancy Caraballo*, Cuyahoga C.P. No. CR-18-625508-A. Caraballo falsely recorded in governmental records that she visited the Rodriguez family to provide parenting

education services, when in fact she never provided those services. Caraballo Dep. Day 1, at 137:16-138:9; *see also* L. Rodriguez Dep. Day 1, at 86:21-87:8. These fraudulent reports were submitted into the Visit Tracker System. Pelzer Dep. 76:3-9. Attached as **Exhibit 25** is a copy of one false report submitted by Caraballo.

During the time Caraballo engaged in the EBT fraud with Larissa, no one at Catholic Charities was aware of the EBT crimes or that the reports were fraudulent. Pelzer Dep. 106:20-107:3, 272:8-18; K. McKenzie Dep. attached as **Exhibit 26** at 16:16-19; 145:9-12. It was not until after Jordan Rodriguez's body was found and police became aware of Caraballo's criminal actions was Caraballo's concealed fraud revealed to Catholic Charities. N. Caraballo Dep. Day 2, at 100:13-16. Catholic Charities immediately placed Caraballo on administrative leave and subsequently terminated her employment. J. Hinkelman Dep. at 114:13-25.

E. Caraballo and Larissa each pleaded guilty to felony charges arising out of their criminal conduct.

Caraballo pleaded guilty to trafficking or illegal use of food stamps R.C. 2913.46(B) F3; grand theft (EBT benefits or services) R.C. 2913.02(A)(2) F4; and tampering with governmental records R.C. 2913.42(A)(1) F3. *See* Certified Copy of Journal Entry and Change of Plea transcript attached as **Exhibit 27**, *State of Ohio v. Nancy Caraballo*, Cuyahoga C.P. No. CR-18-625508-A. Notably, Caraballo was **never** criminally indicted with "failure to report suspected child abuse and neglect" under R.C. 2151.421. *See* Certified Copy of True Bill Indictment, *State of Ohio v. Nancy Caraballo*, Cuyahoga C.P. No. CR-18-625508-A. If authorities had suspected that Caraballo had abused or neglected her duty to report abuse relating to Jordan Rodriguez, she would have been charged with a crime, or at the very least, been identified as a suspect of abuse or neglect of duty to report abuse. Neither occurred. Caraballo was never charged nor convicted

of abusing Jordan, or failing to report abuse. *Id.* Her charges and punishment were limited to the EBT fraud with Larissa. *Id.*

Larissa also pleaded guilty to charges for trafficking in or illegal use of food stamps R.C. 2913.46(B) F3; grand theft (EBT benefits or services) R.C. 2913.02(A)(2) F4; telecommunications fraud R.C. 2913.05(A) F3; and additional money laundering prohibitions R.C. 1315.55(A)(1) F3. See Certified Copy of Journal Entry and Change of Plea transcript attached as **Exhibit 28**, *State of Ohio v. Larissa M. Rodriguez*, Cuyahoga C.P. No. CR-18-625508-B. Furthermore, Larissa (along with Christopher) pleaded guilty to causing the death of Jordan Rodriguez. See Certified Copy of Journal Entry and Change of Plea transcript, *State of Ohio v. Larissa Rodriguez*, Cuyahoga C.P. No. CR-18-625525-A; see also Certified Copy of Journal Entry and Change of Plea transcript, *State of Ohio v. Christopher M. Rodriguez*, Cuyahoga C.P. No. CR-18-625525-B.

Plaintiff now seeks to hold Catholic Charities legally liable for the criminal conduct of Caraballo, which according to Plaintiff, somehow caused the tragic death of Jordan Rodriguez.

III. LAW AND ARGUMENT

- A. **Catholic Charities is entitled to summary judgment on Plaintiff's respondeat superior-related claims because Caraballo's concealed, intentional and self-serving criminal conduct was (1) not committed within the scope of employment with Catholic Charities; and (2) did not facilitate or promote Catholic Charities' interests.**

Catholic Charities is entitled to summary judgment on Plaintiff's respondeat superior-related claims because Caraballo's concealed, intentional and self-serving criminal conduct was (1) not committed within the scope of her employment; **and** (2) did not facilitate or promote Catholic Charities' interests. Plaintiff's respondeat superior-related claims fail because there is

no genuine issue of material fact and Catholic Charities is entitled to judgment as a matter of law.

1. Whether Catholic Charities is legally liable for the criminal acts of Caraballo is a question of law that this Court must determine on summary judgment.

It is well-established Ohio law that for an employer to be liable for the tortious act of an employee under the doctrine of respondeat superior, the act **must** be committed within the scope of employment. *Byrd v. Faber*, 57 Ohio St.3d 56, 58, 565 N.E.2d 584, 587 (1991). Whether an employee acted within the scope of employment is a question of law when reasonable minds can come to one conclusion. *Estate of Barney v. Manning*, 8th Dist. Cuyahoga No. 94947, 2011-Ohio-480, ¶ 14 (affirming summary judgment in favor of employer when reasonable minds can conclude that the employee's tortious conduct falls beyond the scope of employment). There is no reasonable dispute that Caraballo's concealed, intentional and self-serving criminal conduct was outside the scope of her employment with Catholic Charities. Consequently, this Court must find in favor of Catholic Charities as a matter of law.

2. Caraballo's concealed criminal conduct was not committed within the scope of employment with Catholic Charities.

Summary judgment must be granted in favor of Catholic Charities because Plaintiff cannot prove as a matter of law that Caraballo acted within her "scope of employment" with Catholic Charities. Under Ohio law, the conduct of an employee is within the "scope of employment" when **each and every** one of the following three requirements is satisfied:

- (1) "It is of the kind he is employed to perform";
- (2) "It occurs substantially within the authorized time and space limits"; **and**
- (3) "It is actuated, at least in part, by a purpose to serve the master."

Amato v. Heinika Ltd., 8th Dist. Cuyahoga No. 84479, 2005-Ohio-189, ¶¶ 10-13, quoting Restatement (Second) of Agency § 228 (1958). Here, Caraballo's conduct that Plaintiff claims

caused the death of Jordan Rodriguez was not within her scope of employment with Catholic Charities.

- a. *Caraballo's criminal conduct was not the kind of conduct she was employed by Catholic Charities to perform.*

Caraballo's criminal conduct was not the type of conduct she was employed by Catholic Charities to perform for three independent, yet equally dispositive reasons: (1) intentional and criminal conduct is outside the scope of employment as a matter of law; (2) Caraballo's conduct violated the Policies of Catholic Charities; and (3) Catholic Charities was not engaged in the distribution of food stamps or providing other social work services.

First, an employee's intentional and criminal conduct falls outside the scope of employment as a matter of law. *Estate of Barney v. Manning*, 8th Dist. Cuyahoga No. 94947, 2011-Ohio-480, ¶ 15 (summary judgment in favor of employer was proper because employee's conversion of trust funds was outside scope of employment when theft was not related to services rendered by employer and employer was "unaware" of employee's concealed criminal acts); *Stephens v. A-Able Rents Co.*, 101 Ohio App.3d 20, 31, 654 N.E.2d 1315, 1322 (8th Dist.1995) (summary judgment in favor of employer on respondeat superior because employee's unprovoked felonious assault and attempted rape was outside the scope of employer's rental business); *Kuhn v. Youlten*, 118 Ohio App.3d 168, 177, 692 N.E.2d 226, 232-33 (8th Dist.1997) (summary judgment in favor of employer was proper and held that criminal act did not fall within scope of employee's employment with employer); *Sitton v. Massage Odyssey, LLC*, 2020-Ohio-4282, 158 N.E.3d 156, ¶ 10 (1st Dist.) (plaintiff "simply presented no evidence that Massage Odyssey somehow promoted sexual assault as part of its business, that it hired Mr. Miller for the purpose of engaging in such activities, or anything else probative that would suggest that he was actually acting in the scope of employment"); *Thomas v. Speedway*

Superamerica, LLC, 9th Dist. Wayne No. 06CA0004, 2006-Ohio-5068, ¶ (an employee's criminal act performed on the job was outside the scope of employment and summary judgment in favor of employer was affirmed).

Here, Caraballo's criminal and intentional acts are outside the scope of employment with Catholic Charities as a matter of law. See Certified Copy of Journal Entry and Change of Plea transcript, *State of Ohio v. Nancy Caraballo*, Cuyahoga C.P. No. CR-18-625508-A. Caraballo also concealed her criminal actions from Catholic Charities, which further removes her misconduct from scope of employment with Catholic Charities. Pelzer Dep. 272:12-15; 106:20-107:3; McKenzie Dep. at 145:9-12. Like the employers in *Manning* and *Sitton* that were unaware of their employee's criminal conduct, Catholic Charities was also not aware of Caraballo's criminal conduct because Caraballo concealed her crimes. It was only after Jordan Rodriguez's body was found and police became aware of Caraballo's criminal actions did Caraballo report her criminal conduct to Catholic Charities. N. Caraballo Dep. Day 2, at 100:13-16. Thereafter, she was terminated from Catholic Charities for her illegal conduct.² J. Hinkelman Dep. at 114:13-25. Catholic Charities never ratified or otherwise approved Caraballo's criminal conduct. *Id.*

Second, Caraballo's criminal conduct violated the Policies of Catholic Charities. A violation of an employer's policies also demonstrates that the employee's conduct is outside of the scope of employment. *Davis v. The May Dept. Stores Co.*, 9th Dist. Summit No. 20396, *7 (Sept. 26, 2001) ("manuals of instructions to employees or an employer's guidelines constitute some evidence tending to show that an employee was either acting outside or within the scope of

² The fact that Caraballo was terminated by Catholic Charities after Catholic Charities discovered Caraballo's criminal actions demonstrates that Caraballo's conduct was outside the scope of her employment, and certainly not tolerated or condoned by Catholic Charities. *Amato v. Heinika Ltd.*, 8th Dist. Cuyahoga No. 84479, 2005-Ohio-189, ¶ 17 (termination of employee from employment after misconduct supports that the employee acted outside of employment).

employment”). *See also* Restatement (Second) of Agency § 230 (1958), cmt. c. (“makes it more easy to find that the prohibited act is entirely beyond the scope of employment” if that act is prohibited by the employer).

Caraballo admitted that her criminal conduct violated the following Catholic Charities’ Policies, and acknowledged that her conduct was outside the scope of employment:

- Statement of Ethics - Catholic Charities expressly required all employees to act in accordance with federal, state and local law. Caraballo Dep. Day 2, at 100:1-12; 103:15-25.
- Operations Manual: Standard of Conduct - The commitment of Catholic Charities to conduct its business lawfully and ethically is fundamental to our existence as a system. Serving adults, children and families is a public trust that requires integrity and compassion. It is critically important that all employees meet the highest standards of legal and ethical conduct. *Id.*, at 104:9-22
- Operations Manual: Gifts and Gratuities - Employees should not accept, receive, or benefit from any gift, gratuity, present, property, or service (of any value), which may be directly or indirectly offered as a result or in anticipation of an employee’s position or performance of duties. *Id.*, at 104:23-105:10.
- Operations Manual: Unacceptable Activities - Providing dishonest, false information or misrepresenting self on employment application or other work records; lying about sick or personal leave; falsifying reason for a leave of absence or other data requested by Catholic Charities; alteration of Catholic Charities records or other documents. *Id.*, at 105:11-21.
- Operations Manual: Client/Staff Interaction - Social interaction between employees and the program participants (or former participants) is to be based upon the best interests of the participants and with the goals of the program in mind. Staff members must tell directors about planned social interaction with program participants (or former participants) before the activity occurs. Directors may prohibit social interaction away from the sites if the activity or event could be detrimental to program participants, former participants, or the program. *Id.*, at 105:22-106:25.

It is axiomatic that Catholic Charities did not promote food stamp fraud but rather expressly required employees to “act in accordance with federal, state and local law” and to “meet the highest standards of legal and ethical conduct.” *See* Catholic Charities’ Statement of

Ethics; *see also* Catholic Charities' Operations Manual. Caraballo's illegal conduct violated the Policies of Catholic Charities which further demonstrates that she acted outside the scope of her employment.

Third, Catholic Charities was not engaged in the distribution of food stamps or providing other social work services. It is rudimentary that the scope of employment requires an act that the employee **was employed to perform**. *Amato*, 2005-Ohio-189, ¶¶ 10-13, quoting Restatement (Second) of Agency § 228 (1958). It is undisputed that Caraballo's work-related duties did **not** include distribution of food stamps or providing other social work services. *See* J. Hinkelman Aff., D. *See also* Caraballo's Ans. No. 14 to Pl.'s First Set of Interrogatories. Caraballo was assigned to provide parenting education services to Larissa for the benefit of her enrolled children (Jordan was not an enrolled child) under the PAT program - nothing more. *Id.* Catholic Charities is **not** in the business of distributing food stamps and Caraballo's criminal conduct was completely unrelated to her work at Catholic Charities. *See* Hinkelman Aff. Catholic Charities did not hire Caraballo to distribute food stamps. *See* Caraballo Dep. Day 1, at 89:19-21, 109:4-9; *see also* M. Boclear Dep. at 27:11-14. Caraballo was not hired for the purpose of committing food stamp fraud as that would not promote any of the policies, goals or human service business that Catholic Charities was involved in through the Bright Beginnings' PAT program. N. Caraballo Dep. Day 2, at 97:3-25. Because Caraballo's criminal conduct fell **beyond** the scope of her employment, Catholic Charities, the unknowing employer, cannot be held liable for her criminal conduct. Pursuant to the binding precedent in *Amato* that follows the Restatement (Second) of Agency § 228 (1958), there can be no liability for Caraballo's acts relative to her criminal conduct.

- b. *Caraballo's criminal conduct did not occur substantially within the authorized limits of time and space.*

Another factor to consider when determining if the act was within the scope of employment is whether the wrongful conduct “occurs substantially within the authorized time and space limits” of the employee’s job responsibilities. *Amato*, 2005-Ohio-189, ¶¶ 10-13, quoting Restatement (Second) of Agency § 228 (1958). In this case, there were “plenty of times” where Caraballo would come over to pick up or drop off the EBT card when there was “no appointment” scheduled. *L. Rodriguez Dep. Day 1*, at 85:3-87:8. Caraballo engaged in this food stamp fraud on her own personal time and for her own personal benefit. *Caraballo Dep. Day 1*, at 62:2-4

Furthermore, Catholic Charities cannot be liable for Caraballo’s alleged failure to report the suspected abuse of Jordan Rodriguez because the alleged duty to report arose when Caraballo was on a “frolic” of her own when engaged in the food stamp crimes with Larissa. When Caraballo allegedly heard about the abuse (it is uncontroverted that Caraballo never witnessed the alleged abuse first-hand), she was deeply entrenched in criminal conduct, which was outside the scope of her employment with Catholic Charities. It is well-settled Ohio law that “[i]n circumstances where the individual is allegedly acting within the employment context, but is actually *engaged* in his *own activities*, that person is acting outside the employment relationship and is, therefore, on a “frolic and detour” of his or her own.” *Ludwig v. Niccum*, 6th Dist. Williams No. WM-99-004, 1999 WL 961446, *4 (Oct. 22, 1999) citing *Senn v. Lackner*, 157 Ohio St. 206, 210-13, 105 N.E.2d 49 (1952); *Lime City Mut. Ins. Assn. v. Mullins*, 83 Ohio App.3d 517, 523-24, 615 N.E.2d 305 (6th Dist.1992); *Smith v. Spriggs*, 98 Ohio App. 1, 127 N.E.2d 637, 640 (4th Dist.1954) (Emphasis in Original.)

Plaintiff alleges that in 2017 – **after** Caraballo and Larissa had already started their EBT criminal scheme - Caraballo purportedly heard about the abuse of Jordan Rodriguez from Larissa. L. Rodriguez Dep. Day 1, at 29:4-6, 38:18-24, 40:8-17, *see also* L. Rodriguez Dep. Day 2, at 49:2-15. Plaintiff will attempt to hold Catholic Charities legally accountable by vainly arguing that Caraballo had a duty to report any known or suspected child abuse, and that her failure to do so was committed within the scope of her employment.³ Plaintiff’s overly broad legal theory runs afoul of Ohio law. As an initial matter, Caraballo never saw or even suspected that Jordan Rodriguez, or any other child in the Rodriguez home, was being abused or neglected.⁴ N. Caraballo Dep. Day 2, at 116:18-117:5. Even if, *arguendo*, Caraballo knew or suspected abuse, her knowledge was acquired **after** and/or **during** the criminal EBT scheme with Larissa. L. Rodriguez Dep. Day 1, at 29:4-6, 38:18-24, 40:8-17, *see also* L. Rodriguez Dep. Day 2, at 49:2-15 (Larissa alleges that she told Caraballo about Christopher’s abuse of her children three times in 2017, which was during the EBT criminal scheme). After Caraballo markedly deviated from the path of providing parenting education services and engaged in concealed criminal activities, Caraballo was on a frolic of her own. Therefore, Catholic Charities cannot be liable for Caraballo’s alleged failure to report the suspected abuse of Jordan Rodriguez because this alleged duty to report arose when Caraballo was on a “frolic” as a matter of law.

³ In the Second Amended Complaint, Plaintiff mistakenly claims that Catholic Charities also owed Jordan Rodriguez a duty of care under R.C. 2903.341. There is no evidence that Catholic Charities was a “developmental disabilities caretaker” as defined in R.C. 2903.341(A)(1) because Catholic Charities was not a “developmental disabilities employee or any person who assumes the duty to provide for the care and protection of a person with a developmental disability on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction.”

⁴ Critically, Caraballo was **not** criminally charged with failure to report suspected abuse under R.C. 2151.421 or any crime related to causing the death of Jordan Rodriguez. *See* Certified Copy of Journal Entry and Change of Plea transcript, *State of Ohio v. Nancy Caraballo*, Cuyahoga C.P. No. CR-18-625508-A; *see also* Certified Copy of True Bill Indictment, *State of Ohio v. Nancy Caraballo*, Cuyahoga C.P. No. CR-18-625508-A.

Even if Caraballo suspected abuse, and **even if** Caraballo acted within the scope of her employment (both of which are not true), Catholic Charities is **still not** liable under respondeat superior because Caraballo's alleged failure to report her own alleged abuse of Jordan Rodriguez cannot be imputed to Catholic Charities. Under Ohio law, an employer is **not** liable for its agent's failure to report their **own** abuse of the victim-plaintiff. *See Craig v. Lima City Schools Bd. of Educ.*, 384 F.Supp.2d 1136, 1150-51 (N.D.Ohio 2005) (holding that a school board cannot be liable under a theory of respondeat superior for failure to report under R.C. 2151.421 for a teacher's failure to report his **own** abuse of the plaintiff reasoning that "it is a ridiculous proposition that an abuser would report himself.") There is no Ohio authority that obligates a perpetrator (like Caraballo), who also happens to allegedly be a mandatory reporter, to report their own misconduct under R.C. 2151.421. Like plaintiff's unavailing theory of liability in *Craig*, Plaintiff's similarly-flawed theory of liability against Catholic Charities must be summarily rejected. Because Caraballo was a mandatory reporter and diverted sustenance from Jordan Rodriguez as a result of the EBT criminal scheme, Catholic Charities cannot be legally liable for Caraballo's own failure to report her own misconduct under *Craig* and Ohio law.

This Court must dismiss any attempt by the Plaintiff to fabricate liability under any far-fetched legal theory. Caraballo engaged in a frolic of criminal activities on her own, strikingly deviated from her obligation to provide parenting education services, and Catholic Charities is not liable under any circumstances.

c. *Caraballo's criminal conduct was not actuated by a purpose to serve Catholic Charities.*

"The test of a master's liability is not whether a given act was done during the existence of the servant's employment, but whether such act was done by the servant while engaged in the service of and while acting for the master in the prosecution of the master's business." *Senn v.*

Lackner, 157 Ohio St. 206, 213, 105 N.E.2d 49 (1952). Indeed, “[w]here an act has no relation to the conduct of the master’s business, it may not be argued that the servant was acting upon the scope of his authority.” *Rockwell v. Ullom*, 8th Dist. Cuyahoga No. 73961, 1998 WL 563967, *4 (Sept. 3, 1998) citing *Finley v. Schuett*, 8 Ohio App.3d 38, 39, 455 N.E.2d 1324 (1st Dist.1982). “The fact that the conduct constituting the tort was committed while the employee was on duty and supposedly performing services for his employer, does not render the employer liable where the employee deviated or departed from his employer’s business to engage upon a matter for his own personal purposes without benefit to the employer.” *Estate of Barney v. Manning*, 8th Dist. Cuyahoga No. 94947, 2011-Ohio-480, ¶ 13, quoting *Caruso v. State*, 136 Ohio App.3d 616, 621, 737 N.E.2d 563, 567 (10th Dist.2000) (“An intentional and willful tort committed by an employee for his own personal purposes constitutes a departure from his employment, so that the employer is not responsible.”).

Here, Caraballo’s criminal conduct was not actuated by a purpose to serve Catholic Charities. It is undisputed that Caraballo’s actions of committing food stamp fraud with Larissa was for her own benefit. *See* Caraballo Dep. Day 2, at 97:17-25. Caraballo used the EBT to purchase groceries for herself. Caraballo Dep. Day 1, at 61:3-6. Caraballo knew her food stamp fraud would not promote any of the policies, goals, or interests of Catholic Charities through the PAT program. Caraballo Dep. Day 2, at 97:20-25. No reasonable jury could find that Caraballo’s criminal conduct was actuated by a purpose to serve Catholic Charities when indeed, Caraballo sought only to benefit herself. Caraballo’s concealed criminal conduct was so far outside the scope of her employment that Catholic Charities, as a matter of law, cannot be held liable for her criminal conduct through respondeat superior.

3. Caraballo's intentional and self-serving criminal actions did not facilitate or promote Catholic Charities' interests.

Even if Plaintiff could establish that Caraballo's concealed criminal actions were committed within the scope of employment with Catholic Charities (which Plaintiff cannot as a matter of law), Plaintiff still must prove that those intentional, self-serving and illegal actions facilitated or promoted the interests of Catholic Charities. There is no evidence that Caraballo's criminal actions facilitated or promoted the interests of Catholic Charities.

Under well-settled Ohio law, an employer is **not** liable for independent self-serving acts of its employees that do not facilitate or promote its business. *Byrd*, 57 Ohio St.3d at 59; *see also Little Miami R. Co. v. Wetmore*, 19 Ohio St. 110, 132 (1869); *Szydlowski v. Ohio Dept. of Rehab. & Corr.*, 79 Ohio App.3d 303, 305-306, 607 N.E.2d 103, 104-05 (10th Dist.1992) (affirming that the psychological aide's sexual conduct constitutes independent, self-serving pursuits unrelated to the operation of the reformatory and committed solely for his personal benefit, rather than for the benefit of the state); *Vrabel v. Acri*, 156 Ohio St. 467, 473-74, 103 N.E.2d 564 (1952) (holding that defendant's husband's willful and malicious attack on plaintiff was not within the scope of the business of operating the tavern, so that the employer is not responsible); *Sitton*, 2020-Ohio-4282, 158 N.E.3d 156, ¶ 10 (holding that defendant's intentional criminal conduct could not have reasonably been calculated to promote or facilitate Massage Odyssey's business); *Taylor v. Doctors Hosp. (W.)*, 21 Ohio App.3d 154, 156-57, 486 N.E.2d 1249, 1251 (10th Dist.1985) (employee who "acted from intensely personal motives" and "indisputably outside his appointed tasks * * * to gratify his impulses" is in no way served to further or promote the business of the employer).

An employee's "motivations and the self-interested nature" of their actions are "necessary considerations" in a scope-of-agency inquiry. *Auer v. Paliath*, 140 Ohio St.3d 276,

2014-Ohio-3632, 17 N.E.3d 561, ¶ 22 (2014), citing *Theobald v. Univ. of Cincinnati*, 111 Ohio St.3d 541, 2006-Ohio-6208, 857 N.E.2d 573, ¶ 28 (“if an employee's actions are self-serving or have no relationship to the employer's business, then the conduct is ‘manifestly outside the scope of employment’ * * *”).

Here, Caraballo’s criminal conduct was self-serving and motivated by personal desires as admitted by Caraballo herself at deposition:

Q: You engaged in that criminal scheme for your own benefit, correct?

A: Yes.

Q: Okay. You knew that it would not promote any of the policies or goals or human service business that Catholic Charities was involved in through the Bright Beginnings program, correct?

A: Yes.

See Caraballo Dep. Day 2, at 97:17-25. Caraballo also engaged in falsifying governmental records to cover up her selfish crime. Caraballo Dep. Day 1, at 137:16-138:9. Carballo’s activities were eventually discovered and she pleaded guilty to trafficking in or illegal use of food stamps R.C. 2913.46(B) F3; grand theft (EBT benefits or services) R.C. 2913.02(A)(2) F4; and tampering with governmental records R.C. 2913.42(A)(1) F3. See Certified Copy of Journal Entry and Change of Plea transcript, *State of Ohio v. Nancy Caraballo*, Cuyahoga C.P. No. CR-18-625508-A.⁵

Caraballo knew that her conduct was illegal and constituted multiple violations of Catholic Charities’ Policies. Caraballo Dep. Day 2, at 97:3-16. None of Caraballo’s criminal

⁵ It is well-settled law that a judgment of conviction rendered in a criminal prosecution with a guilty plea is admissible as evidence in a civil case. *Conley v. Hayslip*, 12th Dist. Clinton No. CA90-12-024, 1991 WL 106023, *1 (June 17, 1991) (citations omitted); see also *State v. C.A.*, 10th Dist. Franklin Nos. 14AP-738, 14AP-746, 2015-Ohio-3437, ¶ 17 (“Ohio law considers guilty pleas in a subsequent civil case as equivalent to any other confession evidence.”) Caraballo’s guilty pleas are admissible in this civil case to prove Caraballo knowingly engaged in her criminal conduct.

conduct was committed for the benefit of Catholic Charities. *Id.*, at 97:17-125. She knew her illegal conduct would not facilitate the interests of Catholic Charities. *Id.*, at 98:10-99:14. Rather, Caraballo knew that her criminal conduct would harm the business principles of Catholic Charities. *Id.* No reasonable jury could find that any of Caraballo's intentional and self-serving criminal actions facilitated or promoted Catholic Charities' interests. To the contrary, Caraballo's criminal actions harmed the reputation and ethical standards of Catholic Charities. The extreme nature of the criminal acts, in conjunction with being directly adverse to Catholic Charities' business interests, demonstrates that Caraballo acted on her own rather than on behalf of Catholic Charities.

Therefore, Caraballo's concealed, intentional and self-serving criminal conduct was committed, as a matter of law, outside the scope of her employment with Catholic Charities and did not facilitate or promote the interests of Catholic Charities, but rather harmed its reputation and ethical standards. Accordingly, summary judgment must be granted in Catholic Charities favor on all of Plaintiff's respondeat superior-related claims.

IV. CONCLUSION

Based on the foregoing reasons, summary judgment must be granted in favor of Catholic Charities on all of Plaintiff's respondeat superior-related claims.

Respectfully submitted,

/s/ Richard H. Blake

RICHARD H. BLAKE (0083374)
DAN L. MAKEE (0029602)
JOSEPH M. MUSKA (0089512)
THERESA M. LANESE (0097897)
McDonald Hopkins LLC
600 Superior Avenue, East, Suite 2100
Cleveland, OH 44114
Phone: (216) 348-5400
Fax: (216) 348-5474
Email: rblake@mcdonaldhopkins.com
dmakee@mcdonaldhopkins.com
jmuska@mcdonaldhopkins.com
tlanese@mcdonaldhopkins.com

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)
RONALD A. MARGOLIS (0031241)
BRIAN F. LANGE (0080627)
Bonezzi Switzer Polito & Hupp Co. L.P.A.
1300 East 9th Street, Suite 1950
Cleveland, Ohio 44114
Phone: (216) 875-2767
Fax: (216) 875-1570
Email: bsebaugh@bsphlaw.com
rmargolis@bsphlaw.com
blange@bsphlaw.com

/s/ John W. Patton, Jr.

JOHN W. PATTON, JR.
(Admitted Pro Hac Vice)
Patton & Ryan
330 N. Wabash, Suite 3800
Chicago, IL 60611
Phone: (312) 261-5166
Fax: (312) 261-5161
Email: jpatton@pattonryan.com

*Attorneys for Defendant Catholic Charities Corporation,
also identified in the Second Amended Complaint as
Catholic Charities Diocese of Cleveland*

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2021, a copy of the foregoing **Defendant Catholic Charities Corporation's Motion for Summary Judgment as to Plaintiff's Respondeat Superior-Related Claims** was filed electronically and served upon the following parties by Regular U.S. Mail. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

LARISSA RODRIGUEZ
Inmate No. W101415
C/o Warden Shelbie Smith
Dayton Correctional Institution
4104 Germantown Street
Dayton, Ohio 45417

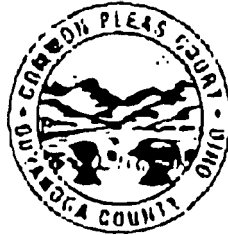
CHRISTOPHER RODRIGUEZ
Inmate No. A752141
c/o Warden Lyneal Wainwright
Marion Correctional Institution
940 Marion-Williamsport Road
Marion, Ohio 43302

/s/ Richard H. Blake

RICHARD H. BLAKE (0083374)

One of the Attorneys for Defendant Catholic Charities Corporation, also identified in the Second Amended Complaint as Catholic Charities Diocese of Cleveland

EXHIBIT 5



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

BRIEF IN OPPOSITION
April 12, 2021 19:22

By: RUSSELL A. RANDAZZO (0082221)

Confirmation Nbr. 2226524

MICHELLE RODRIGUEZ

CV 19 909566

vs.

Judge: JOAN SYNENBERG

CATHOLIC CHARITIES CORPORATION, ET AL

Pages Filed: 40

Jordan died from the protracted and excruciating process of nutritional neglect. At the time of his death it is clear Jordan had also suffered from severe physical abuse during his short life. There were fractures found in his ribs and his ulna (forearm) was fractured. These fractures are believed to have occurred approximately one month prior to his death, and as a result of abuse.

Jordan was born prematurely, and with disabilities to, Larissa Rodriguez on November 5, 2012. In March 2016 Christopher Rodriguez (coincidentally of the same last name, no relation), moved into the home as a live-in boyfriend to Larissa. Their relationship began to decline by December 2016, and he began to physically abuse both Larissa and Jordan in 2017. Beginning in March 2017, Christopher abused, neglected, and starved this defenseless child. According to the experts, Jordan was starved for a period of about three to six months before he finally died. This is also supported by two independent eye-witnesses who reported that Jordan was “skin and bones” in July 2017. (Ex 1 Deposition of Karen Custer, p. 62); (Ex. 2, Deposition of Jacob Wanger, p. 171).

Christopher and Larissa were convicted and are in prison for their conduct. However, Catholic Charities and their employee Nancy Carballo, utterly and wholly abandoned and used the Rodriguez family for the last 1, 1,572 days of his life—all while cashing in on “home visits” that were never made.

Catholic Charities, through its employee Nancy Carballo, was contractually required to provide “parent education” services as part of the Parents as Teachers program to Jordan, his siblings, and his mother, which contractually includes providing nutritional counseling and home safety monitoring. As a parent educator, Catholic Charities sent Nancy Carballo to Jordan’s home to provide his family with nutritional counseling and to monitor the safety of the children.

Catholic Charities provided these services as an independent contractor that was paid for their services.

Catholic Charities presented the State of Ohio with their code of conduct, and policies in order to obtain the contract. It was required, that the parent educator position be filled by someone with specialized education. Nancy Carballo was a high school graduate with no education in nutritional counseling, no education in child-care, no education in special education or social work. Catholic Charities hired Carballo to perform the job despite Carballo not meeting any of the Parent as Teacher requirements and assigned her as the Rodriguez family parent educator in 2013. To add to this recipe for disaster, before she was their parent educator, Carballo was a personal friend of Larissa Rodriguez and the two had known each since at least 2004. (Ex. 3, Deposition of Larissa Rodriguez Day 1, p. 41-44). This was a conflict of interest.

Once assigned to the Rodriguez family, Carballo—as could be expected by someone without the required skill set—failed to conduct necessary safety assessments and nutritional assessments, she failed to ensure Jordan was receiving necessary medical treatment, she failed to ensure he was receiving educational services, and she even failed to realize Jordan and his brothers were being abused by Christopher Rodriguez because she believed the beatings that Larissa disclosed to her were happening, *were a way of instilling good “discipline.”* (Ex. 3, p. 36).

Perhaps most egregious was Carballo’s inept nutritional counseling. It is uncontested that over the last year of Jordan’s life Carballo purchased Larissa Rodriguez’s Electronic Benefit Transfer card (hereinafter “EBT”) from her multiple times. The EBT card was a form of government assistance that allowed Rodriguez to purchase certain groceries for herself and her family. Carballo did so out of a misguided belief that by giving Rodriguez cash for her EBT

card, it was “helping” the family, because it allowed Rodriguez to purchase items she could not buy with the EBT card, like diapers. (Ex. 3, p. 67); (Ex. 4, Deposition of Nancy Caraballo Day 2, p. 138).

Purchasing the EBT card and failing to provide adequate monitoring and nutritional counseling proved to be a fatal mistake as Jordan was allowed to starve to death under the putative “care” of Catholic Charities and its employee Nancy Caraballo. Catholic Charities failed to adequately perform its job in almost every conceivable way possible and because of that, Jordan Rodriguez is dead. Under the laws of Ohio, Catholic Charities can be held accountable for their employee’s acts and this Court must deny the Defendant’s motion.

I. STATEMENT OF FACTS

Defendants “statement of facts” contains significant omissions and outright misstatements,¹ which Plaintiff corrects as follows:

a. Catholic Charities hired Nancy Caraballo as a Parent Educator to provide nutritional counseling, safety assessments and home monitoring though she was not educated or qualified per contract.

Catholic Charities was awarded a contract with the state of Ohio to provide parent educators in order to implement the “Parents as Teachers” program. The contract required to ensure Catholic Charities parent educators met the “minimum qualifications for education (by HMG).” (Ex. 5 Deposition of DeEbony Pelzer, Deposition Exhibit 10, p. 10, Section 4.5.1). The minimum requirement was for parent educators to have an “Associate’s Degree (or at least 60 hours of college credit) with at least 2 years supervised work experience with young children and/or parents.” (Ex. 6, Deposition of Dr. Kathleen Faller, Deposition Exhibit 37, p. 3). Indeed, a

¹ Curiously in their statement of facts, Defendant refers to “some” facts helpful to their side, then agrees that there are also facts which contradict their position, which by definition defeats summary judgment.

memo from the state of Ohio sent to Catholic Charities just months before Caraballo was hired, even warned contractors like Catholic Charities to be vigilant about maintaining educational standards in their new hires. (Ex. 6, Deposition Exhibit 37, p. 3).

Carballo was hired despite only having a high school diploma. (Ex. 7, Deposition of Nancy Caraballo Day 1, p. 13). Caraballo being entrusted with an important position at Catholic Charities despite being underqualified was not unique; Caraballo's supervisor from 2014 until she was fired, DeEbony Pelzer, similarly did not meet the mandatory educational requirements of her position. (Ex. 6, Deposition Exhibit 37, p. 5).

b. Catholic Charities had conflicting policies, which Caraballo attempted to follow.

Expert testimony reveals that the ethics guidelines were insufficient to provide a conflict of interest policy that would prohibit Caraballo providing services to a personal friend of hers, like Larissa Rodriguez. (Ex. 8, Affidavit of Dr. Montorio-Archer, Affidavit Exhibit 1, p. 2-3). While Defendant points out that Catholic Charities had a prohibition on gifts and gratuities, they failed to prohibit business transactions between a client and their parent educator.

Defendant neglects to mention that Catholic Charities' employee handbook includes a requirement that "in the event of a dispute or conflicting directives, the Religious and Ethical Directives of the Catholic Church shall supersede all other codes of ethics." (Ex. 4, p. 137). This is an inadequate policy, according to expert testimony. (Ex. 8, Affidavit Exhibit 1, p. 4-5). Further, Caraballo never received any specific training on what those religious and ethical directives were, but she believed they generally required her to "help someone out" when they needed it and that "when a client needed something" she would "find a way to do it for them." (Ex. 4, p. 139-141). Caraballo testified she believed she was following policy and engaging in a

business transaction that was helpful to the Rodriguez family when she purchased the EBT cards, not the exchange of a gift or gratuity. (Ex. 4, p. 142).²

Because Carballo was required by Catholic Charities to “*find a way*” to help her clients when they needed it, Carballo did things like help Larissa find a baby crib when she needed one. (Ex. 4, p. 140). By helping clients out, Larissa believed she was fulfilling her “job responsibilities working for Catholic Charities” and that was “exactly what [she] did with the EBT card” by purchasing it from Larissa. (Ex. 4, p. 140-141). Carballo believed that she was “helping” Larissa when she bought the EBT card. (Ex. 4, p. 138). The EBT card is heavily restricted on what it can purchase so by exchanging cash for the card, it allowed Larissa Rodriguez to buy things like “diapers” and “bills” and pay her “rent.” (Ex. 3, p. 67).

Defendant, in their statement of facts, curiously admits that Carballo believed purchasing the EBT card “benefitted” Larissa Rodriguez, but again seems to be advising the Court to believe their version of the facts and not Plaintiff’s. (Defendant’s Motion, p. 5) Carballo testified that she simply did not realize that despite putatively helping the Rodriguez family by giving Larissa cash, she was providing negligent nutritional counseling and guidance for the Rodriguez family and harming Jordan. (Ex. 4, p. 35-36). Carballo thought she was following Catholic Charities policy.

Defendant’s statement that Nancy did not tell Catholic Charities about her purchasing the EBT card because she feared legal consequences is simply not true. When asked why she did not directly tell Catholic Charities, Carballo said “I don’t know. I just never told Catholic Charities.” (Ex. 4, p. 100).

² Not even Defendant’s own expert opined that any of Catholic Charities’ policies were sufficient to prohibit Carballo’s conduct.

c. Catholic Charities/Nancy Caraballo's contractual obligations were to the Rodriguez family.

Defendant provides a skewed and inaccurate factual explanation of what Nancy Carballo "did not provide" as part of her job with Catholic Charities. The Senior Director of Family Services for Catholic Charities admitted that Catholic Charities gave Nancy Carballo vast responsibility to conduct nutritional counseling, safety screenings, and to prevent child abuse and neglect. (Ex. 9, Deposition of Joan Hinkleman, p. 8, 45-46, 74, 81-83).

Defendant's claim that Larissa Rodriguez was the only Rodriguez family member entitled to receive services is shocking. Catholic Charities contract is absolutely clear that the parents as teacher's services are provided to the entire "family." (Ex. 5, Deposition Exhibit 10, p. 4-5, Section 3.1.2);(Ex. 8, Affidavit Exhibit 1, p. 4). Joan Hinkleman, also testified that Jordan was "to receive the benefits of the program" provided by Catholic Charities. (Ex. 9, p. 42). She further testified that Jordan "would have benefited from any referrals that were made to the [Rodriguez] family" (Ex. 9, p. 41).

d. It is untrue that Caraballo and Catholic Charities did not know of abuse.

The issue in this civil case, is whether Caraballo and Catholic Charities performed their responsibilities as parent educators/child welfare workers, below the standards of acceptable care. One can commit a crime, but still fail to do their job.

In "section C" of their "facts" Defendant wildly throws out a self-serving statement made by Caraballo, as an undisputed "fact" but then, again admits this fact is clearly in dispute:

"Caraballo however, never saw or even suspected that Jordan Rodriguez or any other child in the Rodriguez home was being abused or neglected"

Larissa Rodriguez clearly and unequivocally testified that she disclosed to Nancy Caraballo in 2017 on three different occasions that Christopher Rodriguez was physically beating her. (Ex. 3,

this juncture, the Court cannot appreciate the manner in which Ms. Pelzer testified, but a jury will see the squirming, side eye glances to her counsel, and Defendant will not get away with repeated coaching that counsel gave to Ms. Pelzer during the portion of her testimony, regarding whether she knew of the falsified records. (Ex. 5, p. 143-154).

Catholic Charities was paid by the state of Ohio for each visit their parent educators completed. In 2016, Catholic Charities changed its contract with the state of Ohio and instead of being paid a lump sum for the total amount of enrolled families they were servicing, they were paid per visit, for each visit made to an enrolled family. (Ex. 6, Deposition Exhibit 37, p. 3). Of the 11 admitted falsified visits, Catholic Charities received payment for nine of them and claims to be unsure whether they received payment for the other two. (Ex. 10, Defendant's Answer to Request to Admit, 10-6-20). Caraballo submitting her visit tracker was the mechanism that allowed Catholic Charities to take money from Ohio tax payers.

Thus, each visit was important in order to receive payment.

Caraballo's supervisor, Ms. Pelzer also testified that the only system to check that Caraballo's visits occurred, was to call the client. (Ex. 5, p. 135). Yet, not once did Pelzer or anyone else at Catholic Charities take steps to verify Caraballo's visits occurred and instead, Catholic Charities submitted the visits in order to receive payment. (Ex. 5, p. 135-138). Failing to check any of these visits, is a deviation of accepted standards according to Plaintiff's expert Dr. Faller. (Ex. 6, Deposition Exhibit 37, p. 3). More importantly however, the fact that the supervisors never checked any of the false visits raises the question of whether they were simply "looking the other way" in order to get paid. Thus, there are questions of fact regarding the false visits, and Catholic Charities' knowledge.

ARGUMENT

I. SUMMARY OF ARGUMENT

Not only should summary judgement be denied to the defendant on the issue of respondeat superior, but in fact, Plaintiff would request that this Court grant summary judgement *in their favor*, on this issue, because there is simply no question that Nancy Carballo's actions were within the scope of her employment with Catholic Charities. Under Ohio case law, Catholic Charities is liable for their employee's grossly negligent nutritional counseling, home visits, home monitoring, and case services to Jordan Rodriguez and his family. Plaintiff's complaint specifically alleges Catholic Charities is liable for failing to *inter alia* identify and report child abuse, conduct required safety assessments, provide nutritional counseling, identify Jordan was not receiving necessary medical treatment, and failing to ensure Jordan was enrolled in school. Each and every one of those acts or failures to act were within the scope of Nancy Carballo's employment.

Twisting the concept of respondeat superior on its head, Defendant engages in an unintelligent garbling of facts and law in an attempt to equate the facts at hand with a litany of inapposite cases where an employee committed a violent assault, battery or rape against a plaintiff, and that individual attempted to hold the employer liable for the violent crime. Catholic Charities unmitigated nerve to request summary judgement, in their favor, by equating those cases to the instant case, is pure hutzpah.

Section I argues that defendant is clearly not entitled to summary judgement.

Section II illustrates that Catholic Charities is responsible for Carballo's negligent actions because they occurred within the scope of her employment, and therefore respondeat superior should not be an issue for the jury to decide because Plaintiff is entitled to summary judgment.

I. DEFENDANT IS NOT ENTITLED TO PARTIAL SUMMARY JUDGEMENT ON THE ISSUE OF RESPONDEAT SUPERIOR

Summary judgment for a defendant on the issue of respondeat superior is only possible where an employee commits an intentional violent criminal act *against an individual, and that individual* is attempting to hold the employer responsible for the criminal conduct. *Auer v. Paliath*, 140 Ohio St. 3d 276, 280, 2014-Ohio-3632, P20, 17 N.E.3d 561, 566, 2014 Ohio LEXIS 2041, *9; *Citing Posin v. A.B.C. Motor Court Hotel, Inc.*, 45 Ohio St.2d 271, 278 (1976) *Osborne v. Lyles*, 63 Ohio St.3d at 329, 587 N.E.2d at 828-829.

Yet, even in such circumstances where an employee commits a violent crime against the individual plaintiff, summary judgement is usually rejected. *Wells v. Bowie*, 87 Ohio App. 3d 730, 736, 622 N.E.2d 1170, 1174, 1993 Ohio App. LEXIS 2804, *11 (summary judgment overturned on the basis that it was a question of fact whether multiple sexual assaults committed by nurse against patient was within scope of employment); *Kearns v. Porter Paint Co.*, 61 Ohio St. 3d 486, 491, 575 N.E.2d 428, 432, 1991 Ohio LEXIS 2081, *9, 63 (Ohio Supreme Court overturning grant of summary judgment to defendant employer because question of fact existed whether store manager's repeated sexual assault of employee was within scope of employment); *Thomas v. Ohio Dept. of Rehab. & Corr.* (1988), 48 Ohio App.3d 86, 548 N.E.2d 991 (whether a corrections officer's assault on a prison inmate was within the scope of his employment was a question of fact). Even malicious and willfully harmful conduct by an employee does not per se constitute actions outside the scope of employment. *Stephens v. A-Able Rents Co.*, 101 Ohio App. 3d 20, 30, 654 N.E.2d 1315, 1321, 1995 Ohio App. LEXIS 242, *15-16; *Citing Osborne* at 330, 587 N.E.2d at 829.

In fact, Ohio courts have made it perfectly clear that granting summary judgement for defendants can only be granted under the "clear departure" rule. *Wells v. Bowie*, 87 Ohio App.

3d 730, 736, 622 N.E.2d 1170, 1174, 1993 Ohio App. LEXIS 2804, *11. A “clear departure” is present where an employee commits “an intentional and willful attack... to vent his own spleen or malevolence against the injured person.” *Wells v. Bowie*, 87 Ohio App. 3d 730, 736, 622 N.E.2d 1170, 1174, 1993 Ohio App. LEXIS 2804, *11 (emphasis added); *Citing Vrabel v. Acri* (1952), 156 Ohio St. 467, 474, 46 O.O. 387, 390, 103 N.E.2d 564, 568. Here, the victim of Nancy Caraballo’s crime was the state of Ohio, not Jordan Rodriguez. Unlike *every single case* cited by Defendant, here, Caraballo did not violently assault, batter, or rape Jordan.

In *Osborne*, an off-duty police officer assaulted a civilian outside of a bar and because the assault took place while the officer believed he was securing “the scene of an accident” and “attempt[ing] to . . . make an arrest,” it was a question of fact for the jury to determine scope of employment. *Osborne v. Lyles*, 63 Ohio St. 3d 326, 334, 587 N.E.2d 825, 832, 1992 Ohio LEXIS 501, *20. The Supreme Court in *Osborne* favorably cited the California case *Mary M. v. Los Angeles* (1991), 54 Cal.3d 202, 285 Cal.Rptr. 99, 814 P.2d 1341 which upheld a determination that a police officer who raped a woman he pulled over, did so within the scope of his employment because he used his position as a police officer to facilitate his actions. *Osborne*, 63 Ohio St.3d at 332, 587 N.E.2d at 830-831.

In light of *Osborne*, Defendant’s claim that “criminal conduct” is per se beyond the scope of employment is truly off the rails. As a matter of logic if this Court (or any court) were to adopt such a position, “every traffic accident where the employee is at fault (failure to yield, speeding, drunk driving, red light violation) would be outside the scope of employment, since it would be a ‘criminal’ act.” *Whelan v. Vanderwist of Cincinnati, Inc.*, 2008-Ohio-2135, P44, 2008 Ohio App. LEXIS 1839, *20, 2008 WL 1934484.

To be clear, Defendant is asking this Court to create an entirely new doctrine—and the exact one that the *Whelan* court characterized politely as unworkable—yet not a single case cited by Defendant supports their nonsensical legal position. For example, *Estate of Barney v. Manning*, specifically limited its holding that summary judgment was appropriate, to its own facts and not as a matter of generally applicable law. 2011-Ohio-480, P15, 2011 Ohio App. LEXIS 403, *8, 2011 WL 346293. (“In our case, we find that reasonable minds could only conclude...”). Further, the facts of *Barney* are inapposite because it was weighing whether an employer is liable for the *intentional* tortious crime of their employee; this is a crucial distinction because the respondeat superior analysis for an employee’s intentional tort is not just different, but more stringent than the analysis for an employee’s merely negligent act. Not only does Defendant fail to actually allege or argue that Caraballo’s *torts* were intentional, as a matter of law, they were not. Nancy Caraballo did not intend to starve Jordan, or hurt Jordan. She was just a very inept caseworker and her negligence, or even gross negligence in performing her job was a cause of harm to Jordan.

Defendant lobs case after case of intentional criminal attacks by an employee against the plaintiff-victim, to justify their tortured argument for summary judgement. Defendant’s reliance on *Kuhn v. Youlten*, further evinces their desperation 118 Ohio App. 3d 168, 177, 692 N.E.2d 226, 232, 1997 Ohio App. LEXIS 320, *13. *Kuhn* also dealt with an employee who had committed an intentional crime against the individual suing-- a skating instructor that deliberately molested one of his clients. Likewise, *Thomas v. Speedway Superamerica, LLC*, 2006-Ohio-5068, P17, 2006 Ohio App. LEXIS 4978, ¶ 2, involved a gas station employee who poisoned a customer out “of ill-will” towards that specific customer. *Sitton v. Massage Odyssey, LLC*, 2020-Ohio-4282, P10, 158 N.E.3d 156, 160, 2020 Ohio App. LEXIS 3196, *7, 2020 WL

5240459, is yet another case where the question was whether an employer is vicariously liable for a rape committed by their employee against the plaintiff. *Amato v. Heinika Ltd.*, arose out of a case where an employee committed an intentional criminal assault and battery against a store patron. 2005-Ohio-189, P14, 2005 Ohio App. LEXIS 206, *1.

In each of the cases cited by Defendant, the victim of the intentional crime, was the plaintiff. This is not the case with Jordan. Here, Plaintiff is not alleging Catholic Charities is liable for an intentional crime committed against Jordan, by Nancy Caraballo. Caraballo did not beat Jordan, nor starve him, nor commit any individual crime against Jordan. Two things can be true: that she committed a crime against the state of Ohio, and she negligently performed her job in providing nutritional counseling, safety assessments, and home monitoring to Jordan and his family.

Further, there are independent claims of negligence against Catholic Charities for failing to perform their job as a child welfare company. Catholic Charities knew or should have known that Nancy was missing appointments or failing to meet the requirements of a Parent Educator. Nancy Caraballo's supervisor, DeEbony Pelzer—who was also unqualified for her position (Ex. 5, Deposition Exhibit 37, p. 5)—was supposed to monitor the services Caraballo provided, to ensure she was doing her job correctly. Plaintiff's unrefuted expert's opinion is that there should have been closer monitoring to determine if Caraballo was giving services to the Rodriguez family. (Ex. 6, Deposition Exhibit 37, p. 5-6); (Ex. 8, Affidavit Exhibit 1, p. 3). Moreover, as indicated in the Plaintiff's statement of facts, Ms. Pelzer's countenance was anything but reassuring. She had no excuse for 'failing' to see that her employee was falsely claiming to attend visits to the Rodriguez home—which legitimately raises the possibility that Catholic Charities knew, but looked the other way to missed visits because they wanted to get paid.

not Caraballo followed policy, but rather whether she acted negligently while in the scope of her employment.

a. Defendant is liable for failing to adhere to minimum standards of care in the performance of her job, regardless of whether or not Nancy Caraballo committed a crime.

If the state of Ohio did not have a criminal statute which bars an individual from buying or selling food stamps, Plaintiffs' claims would be the same. The same holds true of the falsified records. The fact that Caraballo also committed a crime, when she filled out false reports and bought the EBT card, is not relevant to the issue of civil liability for failing to perform the job of parent educator which required she go to the home, report possible abuse, and give adequate nutritional counseling.

Therefore, Defendant's attempt to argue that "the only" way that Plaintiff can prevail is to show that the crime was done to "facilitate or promote" the interests of Catholic Charities is simply wrong. Plaintiff is not attempting to hold Defendant liable purely for a "crime" committed by Caraballo. The question of whether the employee committed a crime, which "facilitated or promoted" the interests of their employer is only relevant if Plaintiff was attempting to hold Defendant liable for purely the crime itself, which is not the case here. The crime was against the state of Ohio, not against Jordan Rodriguez, and it is irrelevant whether it is a crime to buy the EBT card or not buy it. The act was wrong in a civil context because it was not in compliance with providing adequate nutrition and nutritional counseling to a family of ten—that is the basis of Plaintiffs' claims.

Furthermore, intent to harm the individual, is the crux of defining intentional tort, for purposes of alleviating liability for an employer. The Ohio Supreme Court has adopted the 2d Restatement of Torts' definition of "intentional tort" which states that intent "denotes that the actor desires *to cause consequences of his act*" and further clarifies that "intent" is a "reference

b. Plaintiff could meet the heightened standard.

While Defendant never specifies what exact conduct of Nancy Caraballo they believe should be held to the heightened standard, they seem to focus on the purchasing of the EBT card. To that end, even assuming *arguendo* purchasing the EBT card did constitute an intentional tort, (which it did not) summary judgment would still be inappropriate for Defendant.

Caraballo acted to directly facilitate and promote Catholic Charities' interests. Carballo stated that she purchased the EBT card in accordance with Catholic Charities' primary ethical directive to act in accordance with the religious and ethical considerations of the Catholic Church. (Ex. 4, p. 137). This directive trumped "all other" ethical considerations in the event of a "dispute or conflict[]." (Ex. 4, p. 137). Thus, Nancy Caraballo's testimony at minimum, creates a question of fact as to what her true motivations were.

Defendant's claim that Nancy Caraballo's "falsifying governmental records" was not to the benefit of Catholic Charities is laughable. To the contrary, Nancy Caraballo submitted those false records to ensure that Catholic Charities would be paid by the state for rendering services to the Rodriguez family. (Ex. 11, Deposition of Karnese McKenzie, p. 134-138). And Catholic Charities was paid for at least 9 visits that never occurred. (Ex. 10). Clearly Caraballo filled out the visit forms for the benefit of Catholic Charities.

Defendant filed their ill-conceived motion without reading case law, or analyzing the facts. Perhaps they filed to suss out plaintiff's position, or to simply throw out the proverbial 'hail mary', but regardless, their request for summary judgement is simply absurd and must be denied.

II. SUMMARY JUDGEMENT SHOULD BE GRANTED IN PLAINTIFF'S FAVOR ON THE ISSUE OF *RESPONDEAT SUPERIOR*

Where the defendant files a Motion for Summary Judgement, but the court determines that certain questions of fact may be determined as a matter of law it is appropriate for the court to enter such judgement.

The uncontested facts establish that Caraballo's actions were within the scope of her employment because they were (1) related to the kind of work she was meant to perform; (2) they occurred in the authorized time and space of her job; and (3) they were motivated in some part to serve her employer. Since the overwhelming evidence shows Plaintiff satisfies all three elements of respondeat superior, summary judgment on this issue in favor of the Plaintiff is appropriate.

a. **Caraballo's tortious actions were directly related to the kind of work she was meant to perform.**

As a parent educator Nancy Caraballo's job was to travel to the Rodriguez home and provide services to Larissa Rodriguez and her family. (Ex. 9, p. 41, 42).³ When she was in the home, Nancy Caraballo was not only required to provide educational tools to Larissa and her children, but she was also required to monitor their safety and provide "nutritional counseling." (Ex. 4, p. 31); (Ex. 5, p. 95).

Therefore when Caraballo failed to recognize the signs that Jordan was starving to death, over the last "3-6 months" of his life, this was the failure to provide adequate nutritional

³ On that point, it is ironic Defendant cites only to Nancy Caraballo's answer to interrogatories, to claim that Caraballo was not supposed to provide services to Jordan. (Defendant's Motion, p. 13). This only further reveals just how poorly trained Caraballo was, by Catholic Charities. (Ex. 8, Affidavit Exhibit 1, p. 4). As testified to by Catholic Charities Director of Family Services, Joan Hinkleman, the Catholic Charities contract plainly requires them to provide services to the "family," which means Nancy Caraballo was required to provide services to Jordan. (Ex. 9, p. 41, 42).

judgement for the plaintiff on the issue of respondeat superior and the appellate court affirmed. 83 Ohio App. 3d 517, 524, 615 N.E.2d 305, 309, Ohio App. LEXIS 5635, *13. *Lime* reiterates the well-known doctrine that “so long as his servant has an intent, ‘even though it be a subordinate one, to serve the master’s purpose’” an employee’s actions are not a frolic. *Id.* at 524; *Citing* Prosser & Keeton, *The Law of Torts* (5 Ed.1984) 503.

Thus if an employee’s actions are motivated by even a miniscule desire to serve their employer’s interests, their actions are not a frolic. In *Lime*, the issue was whether a defendant-employer shipping company was liable under respondeat superior after one of its truck drivers crashed into a home, even though the driver was not transporting any goods for the company. At the time of the crash, the employee-truck driver was driving his own truck from Michigan to Chicago, and was not hauling any goods for their employer, nor had they been instructed to drive to Chicago. *Id.* at 2-3. The employee was simply driving to Chicago in the hope of work being available there at some future date. The court held as a matter of law, that the driver was acting within the scope of employment, because the employee’s purpose was partially motivated by a desire to benefit their employer, by being readily available to ship goods for them. The court held that it “was to [the employer’s] benefit that he be there” and their unrequested road trip was not a frolic. *Id.* at 13-14.

The instant case is far more worthy of summary judgement in favor of Plaintiff than the *Lime* case. In *Lime*, the driver was driving his own vehicle, driving to a location that was not assigned by his employer, and did not even have any of his employer’s goods within the vehicle. Here, Caraballo was at the location specified by her employer, and was doing the work assigned by her employer. Here, Caraballo’s acts—including the purchasing of the EBT card—were at a minimum partially done for the purpose of benefitting Catholic Charities and conducting her job.

Caraballo purchased the EBT card to “help” the Rodriguez family attain financial stability, which is in furtherance of her job’s responsibilities to help clients. (Ex. 4, p. 138-140). This is further evidenced by the fact that Caraballo submitted time sheets stating she provided services on the days which she purchased the EBT cards. (Ex. 7, p. 137-138). Caraballo made sure her employer would be able to get paid by the state for her visits. Caraballo, ensuring that her employer got paid even for her negligent work shows that she was acting at least partially, in Catholic Charities’ interests.

Defendant argues this Court should create another entirely brand new doctrine which would hold that if an employee engages in one frolic in January and another frolic in May of the same year, then any conduct in between these dates is also considered part of the same frolic and outside the bounds of respondeat superior liability. This is a sweeping and dramatic change to existing law. Even assuming *arguendo* that any of Caraballo’s actions were a “frolic,” once a particular frolic “is ended and the employee returns to his or her” job duties, “the employee is again within the scope of employment.” *Houston v. Liberty Mut. Fire Ins. Co.*, 2005-Ohio-4177, P47, 2005 Ohio App. LEXIS 3801, *21; *Citing Prosser & Keeton, The Law of Torts* (5th ed. 1984) 504. Defendant provides no contrary case law to contradict this well-established and indeed, common-sense approach.

Defendant only addresses Caraballo’s failure to report abuse as an action by Carballo they believe is outside the boundaries of respondeat superior liability because it happened while Caraballo was “deeply entrenched” in between frolics. This is a bizarre and legally unsupported argument. There is no question that when Caraballo was at the Rodriguez home for a visit as a parent educator and was told by Larissa Rodriguez that Christopher Rodriguez was beating Jordan, herself, and the other children, that this occurred during the time and space Caraballo

was authorized to work inside of. Therefore, even assuming *arguendo* purchasing the EBT card was a frolic, under *Houston*, Caraballo's failure to report was a negligent act undertaken within the scope of her responsibility. 2005-Ohio-4177, P47. Accordingly summary judgement for Plaintiff would be appropriate.

Caraballo believed that by purchasing the EBT card she was following the Catholic Charities' directive that "superseded" all other rules, by doing whatever she could to help Larissa Rodriguez. However, even if her acts had been specifically forbidden by policy, "An act, although forbidden, or done in a forbidden manner, may be within the scope of employment." Restat 2d of Agency, § 230.

Plaintiff must also briefly address Defendant's claim that Caraballo was never aware "or even suspected" Jordan was being abused. This claim is actually refuted by the Defendant in their very same paragraph when they note that Larissa Rodriguez testified she told Caraballo at least three different times Christopher Rodriguez was inflicting abuse on her and her children. (Defendant's Motion, p. 15). Moreover, it is wholly irrelevant that Caraballo was not criminally charged for failing to report abuse. It must be taken as fact, that Larissa Rodriguez informed Caraballo about the horrific abuse and it is also fact that Caraballo never reported the abuse.

Finally, apparently due to an easily remedied mistake Defendant cites to *Craig v. Lima City Schools Bd. Of Education*'s holding that "an employer is not liable for its agent's failure to report their own abuse of the victim-plaintiff". 84 F.Supp.2d 1136, 1150-51 (N.D. Ohio 2005). The mistake is that Defendant believes Catholic Charities is allegedly liable for Caraballo's failure to report abuse *she* inflicted on Jordan or his family. With a shocking level of confidence, Defendant even states as fact that Plaintiff "will attempt to hold Catholic Charities legally accountable by vainly[sic]" making such an argument. This is simply non compos mentis.

Plaintiff is alleging Caraballo failed to report known or suspected abuse of Jordan and his family, perpetrated by Christopher Rodriguez, *not Nancy Caraballo* herself. Defendant's very own motion 'frolics' into a discussion of whether Caraballo committed child abuse herself, whether she had a duty to report that abuse, and whether Catholic Charities is vicariously liable for such failure. This tangent should be disregarded.

Ultimately, Caraballo traveled to the home of Jordan Rodriguez, as required by her job, and while she was there, she negligently performed the duties of that job. Caraballo's acts took place within the time and space required in her role.

c. Caraballo's actions were actuated at least in part, by a purpose to serve Catholic Charities.

Caraballo's actions that Catholic Charities is liable for, were all at least partially conducted by a purpose to serve Catholic Charities and the actions are all directly related to her role as a parent educator. All that is required is that Caraballo was motivated "at least in *part*" to serve Catholic Charities. *Rockwell v. Ullom*, 1998 Ohio App. LEXIS 4101, *10, 1998 WL 563967. That standard is surpassed here where Caraballo was acting mostly, to serve Catholic Charities.

Again, when Caraballo purchased the EBT card from Larissa Rodriguez, Caraballo believed that she was acting in accordance with Catholic Charities' command to put Catholic "religious and ethical" directives above and before any other directives issued by Catholic Charities. When Larissa Rodriguez informed Caraballo that Jordan was being abused, Caraballo received that information as part of her job; she just negligently failed to act and make a report to DCFS because she did not understand that Jordan being dragged by his ear was abuse and not appropriate discipline.

Caraballo created falsified “visit trackers” clearly for Catholic Charities benefit. How can it be said Caraballo acted *only* for her own benefit, when the paperwork she submitted was to allow her employer to get paid by the state? Further, it is a fact that Catholic Charities employees had too large of caseloads (Ex. 5, p. 129). Caraballo was providing poor, truncated services to Jordan and his family and filling out forms which her employer repeatedly confirmed, so that Catholic Charities could collect money.

When Catholic Charities hired Nancy Caraballo, an employee who was shockingly unqualified for her job as a parent educator and someone who was a personal friend of Larissa Rodriguez, it is to be expected that Caraballo would commit dangerous mistakes in providing nutritional counseling. Defendant’s case law is inapplicable because unlike in their cases, here, Caraballo did not act to maliciously harm the victim, Jordan Rodriguez. She was plainly incompetent to carry out her role and as anyone would expect, she did in fact disastrously perform her duties. As Plaintiff’s expert Dr. Faller explains, Caraballo could simply not be expected to know what she was doing was wrong. (Ex. 6, Deposition Exhibit 37, p. 4).

Estate of Barney v. Manning, 8th Dist. Cuyahoga No. 94947, 2011-Ohio-480, 13 and *Caruso v. State*, 136 Ohio App.3d 616, 621, 737 N.E.2d 563, 567 (10th Dist.2000) are both cases where the courts were weighing whether respondeat superior liability existed for an employee’s *intentional* torts. This is again, not the case here and the entirely different standards applied in *Barney* and *Caruso* make the cases inapplicable.

Ultimately it does not matter that Nancy Caraballo used the EBT cards to purchase groceries for herself because the transaction was still motivated by a *partial* desire to serve the interests of Catholic Charities. Caraballo believed she was helping and that is sufficient to meet the standard of respondeat superior. (Ex. 4, p. 139-141).

CERTIFICATE OF SERVICE

The undersigned certifies that he served this Plaintiff's response to Defendant's Motion for Summary Judgement regarding Respondeat Superior *and* Plaintiffs Counter Motion for Summary Judgment in Plaintiff's favor as to the issue of Respondeat Superior, to the below listed counsel of record via the Court's electronic filing notification and persons listed by United States First Class Mail on April 12, 2021:

**Attorney for Defendants Catholic Charities
& Catholic Charities Diocese of Cleveland**

Ms. Beth A. Sebaugh
Bonezzi Switzer Polito & Hupp Co. L.P.A.
1300 East 9th Street, Suite 1950
Cleveland, OH 44114
T: (216) 875-2062
F: (216) 875-1570
BSebaugh@bsphlaw.com
estoll@bsphlaw.com
DWilliams@bsphlaw.com

Attorney for Defendant Nancy Caraballo

Steven J. Forbes
Norchi Forbes, LLC
23240 Chagrin Blvd.
Suite 210
Cleveland, OH 44122
T: (216) 514-9500
F: (216) 514-4304
sforbes@norchilaw.com

Defendant – (Prose)

Christopher Rodriguez #A752141
Marion Correctional Institution
940 Marion-Williamsport Rd E
Marion, OH 43302

**Attorney for Educational
Service Center of Northeast
Ohio, Porcia Mainor and
Tom Wetzel**

Holly Marie Wilson, Esq.
Reminger Co., LPA
101 West Prospect Avenue,
Suite 1400
Cleveland, OH 44115
T: (216) 430-2238
F: (216) 687-1841
M (216) 407-8338
HWilson@reminger.com

Defendant – (Pro se)

Larissa Rodriguez
#W101415
Dayton Correctional
Institution
4104 Germantown Street
Dayton, OH 45417

1. My name is Dr. Charles A. Montorio-Archer, PhD., ESQ., MPA, I am under no medical or legal disability, and, on my personal knowledge, state and depose as follows:
2. I am the CEO of the non-profit social services agency, One Hope United. I have decades of experience operating and managing non-profit organizations providing services to children and families, like Catholic Charities.
3. I was contracted by Deratany & Kosner to provide my expert opinions about the facts of this case, particularly relating to whether Catholic Charities acted negligently in its hiring, retention, and supervision practices and policies.
4. In order to reach my opinions, I reviewed and relied primarily upon Catholic Charities' policies, Catholic Charities' contracts, Catholic Charities' parent educator and supervisor case notes, and deposition transcripts of Catholic Charities employees and other parties from this case.
5. I prepared a report which accurately summarizes and outlines my findings, conclusions, and opinions to a reasonable degree of professional certainty. A complete and accurate copy is attached as Exhibit 1. Included in my report attached as Exhibit 1 is a fuller explanation of my opinions in this matter. I hereby incorporate and endorse my written report.
6. A true and accurate copy of my CV is attached as Ex. 2 and this more fully sets out my experience and qualifications to opine on this subject.



Dr. Charles A. Montorio-Archer, PhD., ESQ., MPA

Subscribed and sworn to this 12th day of April, 2021



Charles A. Montorio – Archer, PhD., ESQ., MPA

347 W 39th Street, #12 North
New York, New York 10018
1 (347) 578 - 3557

December 8, 2020

Jay Paul Deratany, Esq.
Deratany & Kosner
221 North LaSalle Street, Suite 2200
Chicago, Illinois 60601

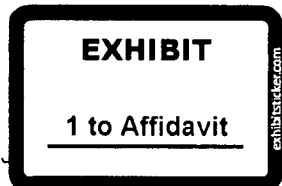
RE: Michelle Rodriguez vs. Catholic Charities Corporation, et al;
Court No. 19-CV-909566

Dear Mr. Deratany,

I provide here my opinion as an expert in not-for-profit corporate leadership and management on issues, identified below, that have arisen in the above referenced matter. The facts on which I rest my opinions and the bases for those conclusions are discussed in further detail below. Be advised that the following depositions and documents were reviewed as I conducted a thorough, fair and impartial review of this matter:

Deposition Reviewed

- Denise Bell
- Michelle Boclear
- Nancy Caraballo
- Susan Carlin, M.D.
- Pia Debose – Donald
- Bethalyn Fox
- Hope Gula
- Patricia Forrai Gunter
- Robin Hamker
- Joan Hinkleman
- Patricia Holian
- Krista Van Horn
- Emily Kotting
- Kathryn Mahoney
- Porcia Mainor
- Melissa Manos
- Janene Mazanec
- Robert Mengerink



- Karnese McKenzie
- Karen Mintzer
- DeEbony Pelzer
- Larissa Rodriguez
- Michelle Rodriguez
- Maria Ruiz
- David Siefert
- Kenyana Smith
- Jennifer Stabb, RN
- Christopher Upton
- Jacob Wagner
- William G. Weston, Jr.
- Tom Wetze
- Donna Yohel

Document Reviewed

- Catholic Charities Operations Manual, 2016
- Catholic Charities Records
- **Cuyahoga County Medical Examiner's Office**
- **Cuyahoga County Coroner's Office**
- Cuyahoga County Department of Children and Family Services
- Hope Gula: Subject to Protective Order – Exhibit A
- Hope Gula: Subject to Protective Order – Exhibit B
- Hope Gula: Subject to Protective Order – Exhibit C
- **Plaintiff's Proposed Second Amended Complaint**
- The Help Me Grow Plan for Bright Beginnings Program 2016 Guidelines
- The Bright Beginnings Plan for Parents as Teachers Program 2017 Guidelines

Based upon a reasonable degree of certainty in the field of non-for-profit corporate leadership, management and malfeasance, and based upon my review of the records, and depositions and my education and experience, it is my opinion the Catholic Charities deviated from the minimally accepted standards of care required for said not-for-profit corporations in the following ways:

1. At the time that Nancy Caraballo was first hired by Catholic Charities, in July 2013, Catholic Charities deviated from accepted standards of care, required of a similar corporate organization contractually responsible for childcare services. Catholic Charities had an obligation to investigate and assess Ms. Caraballo's past clients, and whether Ms. Caraballo had a potential conflict of interest with any of the past clients, and they failed to do so. Nancy was originally hired by Michelle Boclear. Ms. Boclear failed to inquire about the potential conflicts and failed to do a new intake for the clients that Nancy Caraballo was bringing over to Catholic Charities from Spanish American Committee.
2. Catholic Charities failed in its ongoing duty to assess and inquire whether their employees would have any conflicts of interest with their clients. The corporation is

required to complete conflict of interest forms and there were years in which the conflicts forms were either non-existent or not appropriately filled out, and this created a vacuum in which Nancy Caraballo was allowed to pursue a friendship with her client, Larissa Rodriguez.

3. Nancy Caraballo should not have been assigned to the Larissa Rodriguez or Jordan Rodriguez case. There was a clear conflict of interest, because the two acted as "friends." It is clear from reading the deposition of Larissa Rodriguez that she did not have an understanding as to Nancy Caraballo's role. She thought of Nancy Caraballo as "her social worker", which likely led to Larissa Rodriguez believing that she could rely upon Nancy Caraballo as her sole protector from Christopher Rodriguez abuse to her and her family including her son, Jordan Rodriguez. The supervisors, De Ebony Pelzer, and Karnese McKenzie, had a minimum duty to communicate with Nancy Caraballo's past clients, that were now becoming Catholic Charities clients, to determine what if any conflicts arose, and then to make an independent determination as to whether the client should be assigned to Nancy Caraballo. Instead, they simply accepted Nancy Caraballo's prior clients without any investigation or inquiry. This was a deviation from acceptable corporate supervision and practice. It was Catholic Charities' duty to identify the conflict of interest and to identify the intimate nature of the relationship between Nancy Caraballo and Larissa Rodriguez and then act accordingly to prevent, avoid and eliminate all conflicts in the best interest of Jordan Rodriguez, Larissa Rodriguez and Catholic Charities.

4. Had Catholic Charities made proper inquiry from the beginning and continued to properly and adequately address potential and existing conflicts then they would have more likely than not prevented Nancy Caraballo's exploitation of her relationship with Larissa Rodriguez for personal gain.

5. Catholic Charities deviated from acceptable standards of corporate oversight by hiring and retaining De Ebony Pelzer as Nancy Caraballo's supervisor. De Ebony Pelzer was not a license social worker nor was Nancy Carballo. While it is not required that the caseworker have a degree in social work, at minimum, the supervisor should have a social work degree. De Ebony Pelzer was not qualified to know, nor instruct and train her subordinate Nancy Caraballo on recognizing the signs and symptoms of neglect and abuse. It was also a deviation of the standard of care for Catholic Charities to hire and then assign Nancy Caraballo to Jordan Rodriguez's case because of his disabilities and other special needs. Nancy Caraballo was wholly unqualified and lacked appropriate education requirements and/or experience to serve children with disabilities.

6. Under the contract that Catholic Charities had with the State of Ohio, Catholic Charities was required to provide nutritional counseling and observe for signs and symptoms of neglect and abuse. Catholic Charities failed to do so, and this constitutes a deviation of the standard of care.

7. Catholic Charities deviated from the standard of care regarding the administration and execution of their Parents as Teachers (PAT) and their Bright Beginnings program. Since Catholic Charities was funded by the state to run the program, they had an obligation to adequately and correctly identify each client, who is the client, and what services would be provided to said client. It is clear that the supervisors had conflicting testimony about the role that Nancy had with respect to Jordan Rodriguez. It is not up to the client to "figure out" what services would be provided and to which family member, this responsibility rest upon the company providing the services to be clear. The Catholic Charities supervisors seem to suggest that Jordan Rodriguez was not Nancy Caraballo's responsibility, yet this goes against the contract. Further, Ms. Pelzer and Ms. McKenzie seemed confused as to what responsibilities Catholic Charities employees had with respect to Jordan Rodriguez. This is unacceptable practice for a corporation such as Catholic Charities.

8. There is a deviation of the standard of acceptable practice for Porcia Mainor not to ensure proper transfer or referral was executed. Ms. Mainor was responsible for ensuring that the facsimile transfer was sent to Catholic Charities, and she failed to do that—and thus Porcia Mainor did not act within the minimally accepted standards of care. Further, though Nancy Caraballo knew that she was to provide services for the entire Rodriguez family, she did not fill out the necessary ASQ and ESQ-SA forms. Nancy Caraballo should have done that, but also if Porcia Mainor had correctly effectuated the transfer then it would have increased the likelihood that the forms would have been filled out and the abuse would have been more likely to have been discovered.

9. Catholic Charities was paid for services in 2016 and 2017 that were supposedly provided by Nancy Caraballo but were in fact not provided. Nancy Caraballo admitted to fraudulently filling out eleven (11) or so personal visit records for visits that did not occur. If Catholic Charities supervisors had appropriately done their job within the acceptable standards of care required of a corporation, such as Catholic Charities, then it more likely than not would have been discovered. Proper procedure, protocol and practice would require spot checks, and comparisons of records to ensure compliance. There was no written or stated policy, procedure or practice which included spot checks, verification of visits, or culture survey, which is a deviation of policy, procedure and practice for an organization such as Catholic Charities. It appears that Nancy Caraballo's personal visit records were in fact not subject to any oversight, and that her supervisors simply "rubber stamped" them.

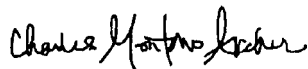
Catholic charities were paid for services that were not provided, and therefore they are absolutely responsible for the actions of their employees since they received benefit from their employee's actions.

10. Catholic Charities failed to have adequate management structure of social workers and professionals required of social service organization; and failed to manage and execute policies, procedures, regulations and practices under the standard of care,

inclusive of maintaining conflicts of interest policies and gifts policies, which severely increased the likelihood of Jordan Rodriguez being injured.

In analyzing the issues discussed above, I believe that I have addressed all the important aspects and issues raised by the facts. I would, of course, be prepared to consider additional questions and respond to possible questions that you or others may have concerning my analysis. With respect to the scope of issues, I have had to proceed on the basis of my present understanding of the facts.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Charles A. Montorio".

Charles A. Montorio – Archer, PhD., ESQ., MPA

LEGAL PRACTICE ADMISSIONS

- United States Supreme Court
- Eastern District of New York
- District of Columbia
- New York State
- Southern District of New York



EDUCATION

- Lincoln University, Lincoln University, PA
- B.S. Business Administration and Accounting, 1996
- CUNY/Baruch College, New York, NY
- Master of Public Administration, 2011
- Health Care Compliance Association
- Certified Health Care Compliance Professional, 2012
- Emory University, Atlanta, Georgia
- Six Sigma, Black Belt and Green Belt, 2014
- Brooklyn Law School, Brooklyn, NY
- Jurist Doctor, 2001
- Society of Corporate Compliance and Ethics
- Certified Compliance and Ethics Professional, 2011
- Harvard University, JFK School of Government
- Executive Education - Driving Government Performance, 2012
- Walden University, Minneapolis, Minnesota
- Doctor of Philosophy, Public Management & Leadership, 2017

EXPERIENCE

One Hope United, Chicago, Illinois January 2019 – Present
President and Chief Executive Officer

One Hope United is a private human service organization with a 125 year legacy of helping children and families live life without limits by providing early education, foster care and adoption, counseling, residential, and other support programs. With a staff of over 800, One Hope United directly serves over 10,000 children, youth, and families each year in Illinois, Florida, Wisconsin, and Missouri. A Multi-State Non-Profit Organization, with an annual budget of \$62 million, that increases opportunities for children and families by providing quality solutions that enhance lives, communities and futures.

Developed a strategic thinking, planning and governance process with Board of Directors. Engaged with key stakeholders including children, youth, families, employees, colleagues, funders and donors. Oversaw effective Fund Development Go Blue campaign for Child Abuse Prevention Month and annual Governing Board event, Hope In Action and inaugural Hope After Dark. Established The Hope Academy, a personal growth and professional development opportunity for all OHU employees. Restructured Florida operations. Successfully completed the Council of Accreditation review process. Increased operating revenue by \$4 million in first year.

The THRIVE Network, Brooklyn, New York November 2007 – September 2018
Co – Founder and Chief Executive Officer
Co - Founder and Chief Operating Officer April 1996 – August 2001

A Non-Profit Organization, with an annual budget of \$35 Million, that exists to advocate and serve the interests of children, adults and families with intellectual and developmental disabilities.

Generated over \$25 Million through development proposals, grants and diversified funding streams in the past 6 years. Growth resulted in an over a 200% increase of revenue with expansion of supports and services. Transformed program outreach and impact from 300 to 1200 individuals and families. Designed and implemented workforce investment for over 650 team members. Assembled and trained highly competent executive, management and other emerging organizational leaders. Directed full scope of projects, from initial concept and proposal presentation through specification, resource allocation, design, manufacture and progress reporting against milestones. Monitored and analyzed program operations, audit processes, compliance requirements and business viability. Partnered with the Board of Directors, associations, funders and community leaders. Maintained collaborative relationships with State, City and Federal agencies influencing policy, procedural and regulatory reform. Negotiated agency contracts including residential leases and purchases. Appointed to serve on City and Statewide commissions, councils and boards that transform social service and healthcare

systems, promote policy and regulatory reform and create sustainable communities for disenfranchised groups. Successfully merged the organization with The Foundling in September 2018.

Bernard Baruch College, City University of New York, New York, New York
Adjunct Professor, School of Public Affairs

September 2006 – August 2010

InterAgency Council of Mental Retardation & Developmental Disability Agencies, New York, New York

Associate Executive Director

November 2004 – November 2007

Introduced, monitored and passed legislation concerning the rights and entitlement of disabled persons. Served as liaison to state agencies and community and government organizations. Coordinated public education efforts with City, State, and Federal legislators and officials. Provided direction and support in the areas of program and policy development. Collaborated with inter-governmental agencies that fund non-profit organizations (DOH, OPWDD, OMH, OASAS, SED and NYCDHMH).

Office of The District Attorney – Kings County, Brooklyn, New York

Assistant District Attorney

September 2001 – November 2004

Prosecuted criminal matters on behalf of the Kings County District Attorney. Engaged in criminal trials and motion practice. Authorized and executed plea dispositions. Managed extensive trial calendar and caseload. Drafted complaint reports and memoranda of law. Maintained contact with complainants, police officers, witnesses and defense counsel. Worked closely with alternative sentences programs and probation on monitoring techniques.

BOARD OF DIRECTOR, COUNCIL and COMMISSION APPOINTMENTS

- Advance Care Alliance
- Advance of Greater New York
- Berkley College Business School
- Black Agency Executives
- Brooklyn Chamber of Commerce
- Charlottesville Surgical Center
- Diaspora Community Services
- Human Services Council Priority and Strategy Council
- Human Services Council Value Based Payment Commission
- Inter-Agency Council of Developmental Disabilities Agencies
- Lutheran Family Health Center (apart of Lutheran Hospital)
- Metropolitan College of New York
- Office of People With Developmental Disabilities Transformation Committee
- Office of People With Developmental Disabilities Value Based Payment Committee
- School of Business, Metropolitan College of NY
- Seafarers and International House

COMMUNITY and PROFESSIONAL AFFILIATIONS

- Illinois Coalition On Youth
- Florida Coalition for Children
- City Club of Chicago
- Advance Care Alliance
- American Bar Association
- Brooklyn Chamber of Commerce
- Caribbean American Chamber of Commerce and Industry
- InterAgency Council of Developmental Disabilities Agencies
- New York State Bar Association
- NYS Association of Community and Residential Agencies
- One Hundred Black Men, Inc.
- Phi Beta Sigma Fraternity Incorporated
- American Association on Intellectual and Developmental Disabilities (Cuba Delegation)
- Division of International Special Education & Services (Ireland Delegation)
- Alliance for Strong Families and Communities
- Forefront
- Chicago Council on Global Affairs
- Advance of Greater NY
- Brooklyn Bar Association
- Brooklyn Law School Alumni Association
- Health Care Compliance Association
- National Center for Non-Profit Boards
- New York City Bar Association
- Nonprofit Coordinating Committee of New York
- PENCIL, Inc.
- Society of Corporate Compliance and Ethics

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ,) CASE NO. CV-19-909566
)
Plaintiff,) JUDGE JOAN SYNENBERG
)
Vs.) *First Supplementation to Defendant*
) *Catholic Charities Corporation's*
CATHOLIC CHARITIES) *Answers, Responses and Objections to*
CORPORATION, ET AL.,) PLAINTIFF'S REQUEST TO
) ADMIT TO DEFENDANT CATHOLIC
Defendants.) CHARITIES CORPORATION

As a First Supplementation to Defendant Catholic Charities Corporation's Answers, Responses and Objections to Plaintiff's Request to Admit to Defendant Catholic Charities Corporation (hereinafter referred to as "Catholic Charities" or "Defendant"), Catholic Charities states as follows:

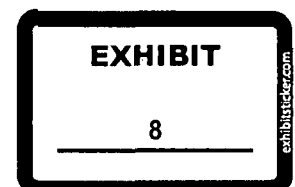
REQUESTS TO ADMIT NO. 12

12. Catholic Charities received payment for the visits Nancy Caraballo reported to have conducted pursuant to her role as a Parent Educator to the home of Larissa Rodriguez, on the following dates:

November 30, 2016;
December 7, 2016;
January 5, 2017;
March 16, 2017;
March 31, 2017;
June 26, 2017;
July 10, 2017;
August 4, 2017;
September 6, 2017;
November 6, 2017; and
November 20, 2017

SUPPLEMENTAL ANSWER: This Request is admitted as to the dates of:

December 7, 2016;
January 5, 2017;
March 16, 2017;



March 31, 2017;
June 26, 2017;
August 4, 2017;
September 6, 2017;
November 6, 2017; and
November 20, 2017.

With respect to November 30, 2016 and July 10, 2017, this Request can be neither admitted nor denied based upon the information presently available to answering Defendant. Discovery is still in progress and this Response will be supplemented if/as information sufficient to address the foregoing two dates in this Request is discovered and/or located.

This Answering Defendant incorporates by reference all of the General Objections set forth in Defendant's Answers, Responses and Objections to Plaintiff's Request to Admit to Defendant Catholic Charities Corporation.

As to Objections:

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)
RONALD A. MARGOLIS (0031241)
BRIAN F. LANGE (0080627)

*Attorneys for Defendant
Catholic Charities Corporation*

CERTIFICATE OF SERVICE

The foregoing has been served via electronic mail this 6th day of October 2020 upon:

Russell Randazzo, Esq.
Randazzo Law, LLC
55 Public Square, Suite 2100
Cleveland, Ohio 44113
Via russell@rrandazzolaw.com

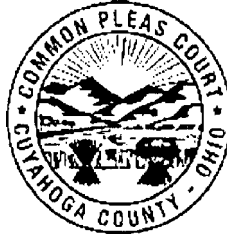
Jay P. Deratany, Esq.
Roosevelt Allen, Esq.
The Deratany Firm
221 North LaSalle Street, Suite 220
Chicago, Illinois 60601
Via jpderatany@lawinjury.com
Via allen@lawinjury.com
Counsel for Plaintiff

Steven J. Forbes, Esq.
Norchi Forbes LLC
Commerce Park IV
23240 Chagrin Boulevard, Suite 210
Cleveland, Ohio 44122
Via sforbes@norchilaw.com
Counsel for Defendant Nancy Caraballo

Holly Marie Wilson, Esq.
Reminger Co., L.P.A.
101 West Prospect Avenue, Suite 1400
Cleveland, Ohio 44115
Via hwilson@reminger.com
Counsel for Defendant Porcia Mainor

/s/ Beth A. Sebaugh
BETH A. SEBAUGH (0008518)
RONALD A. MARGOLIS (0031241)
BRIAN F. LANGE (0080627)
*Attorneys for Defendant
Catholic Charities Corporation*

EXHIBIT 6



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

BRIEF IN OPPOSITION
April 12, 2021 16:54

By: STEVEN J. FORBES 0042410

Confirmation Nbr. 2226427

MICHELLE RODRIGUEZ

CV 19 909566

vs.

Judge: JOAN SYNENBERG

CATHOLIC CHARITIES CORPORATION, ET AL

Pages Filed: 39

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ, ADMX, of the
E/O JORDAN RODRIGUEZ,

Plaintiff,

vs.

CATHOLIC CHARITIES CORPORATION,
et al.,

Defendants.

) CASE NO. CV-19-909566

) JUDGE JOAN SYNENBERG

) DEFENDANT NANCY CARABALLO'S
) BRIEF IN OPPOSITION TO CO-
) DEFENDANT CATHOLIC CHARITIES
) CORPORATION'S MOTION FOR
) SUMMARY JUDGMENT ON THE
) ISSUE OF RESPONDEAT SUPERIOR

I. INTRODUCTION.

Plaintiff Michelle Rodriguez, Administrator of the Estate of Jordan Rodriguez ("the Estate"), seeks recovery from Defendant Nancy Caraballo for the suffering and eventual death of Jordan Rodriguez, a four-year-old boy. The Estate claims, in part, that Ms. Caraballo performed her job negligently causing harm to Jordan. The Estate seeks recovery from Catholic Charities, Ms. Caraballo's former employer, based on *respondeat superior*.

Catholic Charities moved for summary judgment contending that it is not liable for Ms. Caraballo because she acted outside the course and scope of her employment when allegedly harming Jordan. Catholic Charities ignores the Estate's claim based on Ms. Caraballo's negligence and recasts the Estate's complaint as being based solely on Ms. Caraballo's intentional conduct.

Catholic Charities' motion fails for the following reasons:

1. The Estate's claims are based primarily on Ms. Caraballo's alleged negligent performance of her job which is – by definition -- within the course and scope of her employment; and
2. To the extent the Estate's claims are based on Ms. Caraballo's criminal actions, well-established Ohio law provides that these acts are not automatically considered outside the course and scope of employment and are generally found to be questions of fact for the jury.

Because Catholic Charities is liable for any harm caused by Ms. Caraballo's negligent performance of her job and there are material questions of fact regarding whether Catholic Charities should be held liable for Ms. Caraballo's criminal actions, this Court should deny Catholic Charities' Motion for Summary Judgment on the issue of *Respondeat Superior*.

II. FACTS.¹

Catholic Charities employed Ms. Caraballo as a parent educator. As a parent educator Ms. Caraballo conducted home visits and provided services to caregivers and their enrolled children under Cuyahoga County's Parents as Teachers Program ("PAT"). Exhibit 27, M. Boclear Dep. at 27.² The PAT Program covered parenting topics (such as toilet training and nutrition), connected parents to community services and encouraged use of those services. Exhibit 16, Manos Dep. at 86, 94.

When Jordan was born in November 2012, Ms. Caraballo was providing services to Larissa Rodriguez, Jordan's mother, and two of her children. Exhibit 10, Day 1 of Dep.

¹ As the Court is aware, at this stage in the case, the Court must view the facts in the light most favorable to the party opposing the motion. For this motion, Ms. Caraballo is aligned with the Plaintiff and the Court (and Ms. Caraballo) must view the facts in that plaintiff favoring light. Ms. Caraballo will present a different view of the facts if the case proceeds to trial.

² Ms. Caraballo will reference Catholic Charities' exhibits by the same numbers used by Catholic Charities in its Brief. The exhibits added by Ms. Caraballo are identified by letters.

of N. Caraballo at 97-98. Because Jordan was developmentally disabled, he was not enrolled in the parent educator program. Instead, he was referred to and accepted in, a separate Bright Beginnings program known as Help Me Grow Early Intervention. Exhibit 12, D. Pelzer Dep. at 43; Exhibit 13, J. Hinkleman Dep. at 43. Catholic Charities did not contract to provide services for the Early Intervention Program and Ms. Caraballo never provided services to Jordan. Ex. 12 at 95. She, however, continued to provide services to Larissa Rodriguez and her children under the age of three until Jordan's death was discovered in December 2018. Ex. 10 at 201-204.

The medical examiner, Thomas Gilson, M.D. found that Jordan had suffered a broken wrist and six broken ribs prior to his death. Deposition of Janice Ophoven (cited portions as attached as Exhibit A), at 65; Coroner's Verdict and Autopsy (attached together as Exhibit B).³ The medical examiner concluded that Jordan's cause of death was "Homicide by unspecified means." Id. at B. Larissa Rodriguez and her boyfriend Christopher Rodriguez were held responsible for Jordan's death pleading guilty to involuntary manslaughter, felonious assault, child endangering and abuse of a corpse. Exhibits 8 and 9. Larissa Rodriguez also pleaded guilty to illegal use of foods stamps and theft. Exhibit 28. Ms. Caraballo pleaded guilty to illegal use of food stamps, theft of food stamps and tampering with government records. Exhibit 27.

The Estate alleges that Ms. Caraballo negligently caused the suffering and death of Jordan. See Second Amended Complaint, Counts II, II, and VI. In the Second Amended Complaint, the Estate claims that Ms. Caraballo and other Catholic Charities

³ Ms. Caraballo is also attaching the Coroner's Verdict and Autopsy collectively as Exhibit B. Although these documents have not been formally authenticated, they are the source of Dr. Ophoven's testimony and Ms. Caraballo does not expect any party to challenge the authenticity of these documents.

A. Ms. Caraballo's allegedly negligent acts were within the course and scope of her employment.

Catholic Charities' motion for summary judgment is based entirely on the mistaken belief that all the Estate's claims are based on Ms. Caraballo's criminal conduct. Catholic Charities correctly states that if the claims were based entirely on Ms. Caraballo's crimes, the Estate would have to prove her criminal conduct was in the course and scope of her employment and promoted Catholic Charities' interests. Catholic Charities Brief at 8. This argument, however, ignores the allegations in the Estate's Complaint and the Estates' expert testimony which set forth a claim based on the negligence of Ms. Caraballo. The Estate's claim of employee negligence completely undermines Catholic Charities argument that Ms. Caraballo's crimes place her outside the course and scope of her employment. *Williams v. El Camino Props. I, LLC*, 2017-Ohio-1230 (6th Dist. 2017) citing *Byrd v. Faber* 57 Ohio St. 3d 56, 58 (1991) (finding that "whether the conduct giving rise to the tort was calculated to facilitate or promote the business of the employer is relevant only where it is alleged that the employer should be held responsible for an employee's intentional tort.")

For claims not seeking recovery for intentional torts, an employee acts within the course and scope of her employment when the following requirements are met:

- (1) It is of the kind he is employed to perform;
 - (2) It occurs substantially within the authorized time and space limits;
- and

crime is distinguishable. In that case, the plaintiff attempted to recover from a law firm when one of the firm's employed lawyers stole from the plaintiff. The lawyer, however, was not providing legal services (the business of the law firm) to the plaintiff, the plaintiff did not consider the lawyer to be her lawyer, and the law firm did not receive any payment from the lawyer's interaction with the plaintiff. *See Estate of Barney v. Manning*, 2011-Ohio-480, 14-17 (8th Dist. 2011). Here, Ms. Caraballo provided parent education services (one of the services Catholic Charities provided) to Larissa Rodriguez, Larissa Rodriguez recognized Ms. Caraballo as her parent educator, and Catholic Charities was paid for the services Ms. Caraballo provided.

(3) It is actuated, at least in part, by a purpose to serve the master.

Amato v. Heinika Ltd., 2005-Ohio-189, ¶¶ 10-13 (8th Dist. 2005), quoting Restatement (Second) of Agency § 228 (1958).

Here, the Estate's allegations that Ms. Caraballo negligently performed her job and the evidence the Estate has developed supporting those allegations satisfies this requirement. As a Parent Educator, Ms. Caraballo was a mandatory reporter and was, as part of her job, required to report abuse.⁵ The Estate will cite Larissa Rodriguez's testimony that she told Ms. Caraballo Christopher Rodriguez was abusing her and argue that Ms. Caraballo should have reported that abuse. The Estate also claims that Ms. Caraballo was negligent in the day-to-day performance of her job and supports those claims with the expert opinion of Dr. Faller. The Estate's allegations, supported by sworn testimony, prove it is seeking recovery for Ms. Caraballo's performance as a parent educator. These allegations arise from actions Ms. Caraballo was employed to perform, occurred where she worked (Larissa Rodriguez's home) and were, for the most part, services that furthered Catholic Charities' purpose and resulted in payment to Catholic Charities.

Based on these allegations, this Court should conclude that a significant portion of the Estate's case is based on claims that Ms. Caraballo did not meet the standard of care

⁵ Catholic Charities attempts to argue that at some point Ms. Caraballo stopped performing her job and went on a frolic of her own. To support this position, it cites several car accident cases that relate to either insurance coverage or whether an employee should be considered working when the accident happened. See Catholic Charities Brief at 14-20. These cases are not related to the question in this case. Here, the Estate has alleged that Ms. Caraballo negligently performed her job. Nothing in those cases transform the alleged claim of negligent job performance into an unrelated frolic. In the midst of this argument, Catholic Charities argues that it cannot be held liable for Ms. Caraballo's failure to report her own abuse. Catholic Charities Brief at 16, citing *Craig v. Lima City Schools Bd. Of Educ.*, 384 F. Supp.2d 1136, 1150-51 (N.D. Ohio 2005). Again, the Estate's complaint is not based on Ms. Caraballo's failure to report her crime, it is based, in part, on her failure to report the abuse of members of the Rodriguez family by other members of that family. The consequences of this report for Ms. Caraballo are irrelevant to a determination of whether the reporting and the abuse was in the course and scope of her employment – which it obviously was.

when performing her job. Performing her job is – without question – within the course and scope of her employment.

B. There is a question of fact as to whether Plaintiff's criminal conduct was within the course and scope of her employment as defined by Ohio law.

Merely because an act is criminal does not mean it is outside the course and scope of employment. *Aurer v. Paliath*, 140 Ohio St. 3d at ¶¶ 13. The question is whether the intentional tort is committed within the course and scope of the employment. *Id.* at ¶¶ 17. To be within the course and scope of employment the employee's act must facilitate or promote the employer's interest. *Id.*⁶

Here, Ms. Caraballo purchased Larissa Rodriguez's food stamps for half of the face value of those stamps. This exchange benefitted both Ms. Caraballo – she received inexpensive food – and Larissa Rodriguez– she received a medium of exchange (cash) that she could use for items other than food. In committing the crime of misusing this government money, neither Ms. Caraballo nor Ms. Rodriguez were committing an intentional tort against Jordan. Importantly, the Estate is not alleging that Catholic Charities should be held responsible for Ms. Caraballo's crime – misusing the money. Rather, the Estate is claiming that Catholic Charities is responsible for Ms. Caraballo's failure to educate Ms. Rodriguez to use the money for its proper purpose – feeding her

⁶ Catholic Charities contends that the Court should rely on Ms. Caraballo's failure to follow its employment policies as support for finding that Ms. Caraballo was acting outside the course and scope of her employment. The case it relies on, however, explicitly states that an employee's failure to follow company policy does not require a court to find the employee acted outside the course and scope of her employment and, in fact, the court found the employer vicariously liable. *Davis v. the May Company Dept. Stores Co.* 2001-Ohio-1362 (9th Dist. 2001). Again, the Estate is seeking to recover because it believes Ms. Caraballo performed her job negligently. Her failure to follow Catholic Charities' policies does not change the fundamental nature of this claim.

family, including Jordan.⁷ Second Amended Complaint at ¶68. Because the Estate has alleged that this conduct is related to Ms. Caraballo's job – assisting in obtaining services – it is arguably within Ms. Caraballo's course and scope of employment.

Similarly, Ms. Caraballo's fraudulently characterizing her visits to Ms. Rodriguez's home – that were related to the misuse of the food stamp card – as visits to provide parent education services is also related to her failure to provide the services that were the core of her job. Also, as the Estate is sure to highlight, Catholic Charities accepted payment for these visits confirming that the visits were inextricably linked to Ms. Caraballo's job duties. The Estate is not seeking to recover from Catholic Charities for Ms. Caraballo's fraudulently report to Catholic Charities, instead it seeks recovery for Ms. Caraballo's failure to visit Larissa Rodriguez's home as required -- a task which is the essence of the parent educator job.

IV. CONCLUSION.

Catholic Charities bases its motion for summary judgment on the mistaken presumption that the Estate is not alleging that Ms. Caraballo's negligence during the day-to day performance of her job caused harm to Jordan. The Estate's Second Amended Complaint and sworn deposition testimony prove conclusively that this presumption is wrong. Because the Estate seeks recovery for Ms. Caraballo's negligent performance of her job and the performance of her job is within the course and scope of her employment, Catholic Charities' motion for summary judgment fails.

⁷ There is overwhelming evidence, however, that Larissa Rodriguez had sufficient food to feed her children and that she and Christopher Rodriguez chose not to feed Jordan as a form of abuse. None of her other four children living in the home at the time of Jordan's death was malnourished. Deposition of Robert Shapiro at 106 (cited portions of Shapiro Dep. are attached as Exhibit D).

Also, even the Estate's claims related to Ms. Caraballo's criminal conduct involve Ms. Caraballo's job duties and so are arguably within the course and scope of her employment. The illegal misuse of food stamps is, potentially, related to Ms. Caraballo's parent educator role to assist Larissa Rodriguez with the appropriate use of available government services. Similarly, Ms. Caraballo's falsification of government records regarding the purported visits to Ms. Rodriguez's home are related to Ms. Caraballo's obligation to conduct those visits and, in the Estate's theory of the case, might have contributed to Ms. Caraballo failing to notice the abuse of Jordan. This question, however, should not be decided as a matter of law. Rather the question of whether Ms. Caraballo's criminal conduct was within the course and scope of her employment is a question of fact for the jury.

Wherefore, Ms. Caraballo requests that this Court deny Catholic Charities Corporation's Motion for Summary Judgment as to Plaintiff's Respondeat Superior-Related Claims.

Respectfully submitted,

/s/ Steven J. Forbes

STEVEN J. FORBES (0042410)

NORCHI FORBES LLC

Commerce Park IV

23240 Chagrin Boulevard, Suite 210

Cleveland, Ohio 44122

Telephone: (216) 514-9500

Facsimile: (216) 514-4304

E-mail: sforbes@norchilaw.com

Counsel for Defendant Nancy Caraballo

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April 2021, a copy of the foregoing Brief in Opposition to the Motion for Summary Judgment regarding *Respondeat Superior* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties can access this document through the Court's system.

I further certify that a copy has been sent via first class U.S. mail to Third-Party Defendants, Larissa Rodriguez and Christopher Rodriguez at the addresses listed below:

Larissa Rodriguez
c/o Warden, Ronette Burkes
Ohio Reformatory for Women
1479 Collins Avenue
Marysville, OH 43040
Third-Party Defendant

Christopher Rodriguez
c/o Warden, Kimberly Clipper
Lorain Correctional Institution
2075 South Avon-Belden Road
Grafton, OH 44044
Third-Party Defendant

/s/ Steven J. Forbes
Steven J. Forbes
Counsel for Defendant Nancy Caraballo

900.0338

Janice Jean Ophoven, M.D.

Michelle Rodriguez vs. Catholic Charities Corporation, et al.

March 23, 2021



Western Reserve Building
1468 West 9th Street, Suite 440
Cleveland, OH 44113
Phone: 216.861.9270

cadystaff@cadyreporting.com
www.cadyreporting.com

65

1 health problems present, yes. Was the child at
2 risk for targeting, yes. So when you say -- I
3 can't tell if it's one, two, or three. I can't
4 exclude all three.
5 Q Were there other children living in the home
6 with Jordan during the eight months prior to
7 his death?
8 A Yes.
9 Q They were placed in foster homes after Jordan's
10 body was discovered.
11 Is there any evidence any of those other
12 children were malnourished?
13 A No.
14 Q Jordan had at least four broken bones; a wrist,
15 and three or four ribs, correct?
16 A Yes.
17 Q Was there any evidence that any of the other
18 children were intentionally targeted with
19 violent abuse, such that they had broken bones
20 or physical injuries during the last year --
21 MR. DERATANY: Objection.
22 Foundation.
23 Q Did you answer, Doctor?
24 A I don't have the details of all of their
25 records. So I would have to pass on that
CADY REPORTING SERVICES, INC.

66

1 question.
2 Q But based on the boxes of material that you
3 have, there's nothing in there that shows that
4 the other children living in the home with
5 Jordan, Larissa, and Christopher Rodriguez had
6 physical injuries?
7 MR. DERATANY: Objection.
8 Mischaracterization. Also foundation and asked
9 and answered.
10 Q During the last year of Jordan's life.
11 A I can't reliably answer that question at this
12 point. I would have to go back over their
13 records. I know there were concerns about
14 abuse. I know there were concerns about
15 children abusing children. So it clearly was
16 not a safe environment, but I can't say whether
17 or not there was evidence that would have
18 been identified as abuse for certain.
19 Q How does malnutrition affect the individual's
20 ability to heal broken bones? Let me try
21 again. Sorry, Doctor.
22 Does malnutrition affect an individual's
23 ability to heal broken bones?
24 A It can. It doesn't necessarily.
25 Q What do you base that testimony on?
CADY REPORTING SERVICES, INC.

67

1 A Just my experience in kids who have been abused
2 and starved.
3 Q Is there any other research that supports
4 anything you learned about in your educational
5 experience, in your career, your testifying,
6 anything that supports -- anything written,
7 research that supports that opinion?
8 A Well, I think in general malnutrition affects
9 the ability of the body to mobilize an immune
10 response and an effective inflammatory response
11 and since healing has to do with inflammation,
12 it certainly can affect the body's ability to
13 heal, but there's nothing predictive.
14 Q What do you mean by "there's nothing
15 predictive"?
16 A Well, there's nothing. You can't look at a
17 bone like the bones in this case, the sections
18 of bones that were identified at autopsy, and
19 say there's malnutrition here in the bone.
20 Q Based on your report, Jordan's broken wrist
21 healed within the last month of his life?
22 A Or more.
23 Q Does it say "or more"? If you turn to your
24 report.
25 A It says callus formation indicates that it
CADY REPORTING SERVICES, INC.

68

1 occurred a month or so prior to his death.
2 Q When you say "or so," what time period are you
3 talking about? Two months?
4 A I can't say for certain because the degree of
5 healing and the rate of healing is -- it
6 varies. I can just say that it didn't occur
7 near the time of his death.
8 Q Well, it depends -- but it could have occurred
9 at least within a month is what you're telling
10 us, correct?
11 A It could, yeah. I mean when we look at
12 radiographic changes or look at histologic
13 changes, once you get to bony callus forming,
14 then you're out three plus weeks, but it hadn't
15 completely ossified through and through. So it
16 had not reformed normal bones. So it's a month
17 or so, plus or minus. You know, it could have
18 been six weeks, eight weeks. Once you get
19 past -- once you get past three to four weeks,
20 there's no -- there's no solid calendar.
21 Q You relied on the testimony of Jacob Wagner and
22 Karen Custer?
23 A Yeah. Yes. I considered their testimony to be
24 important in determining the cause of death,
25 yes.
CADY REPORTING SERVICES, INC.



**Cuyahoga County
Medical Examiner's Office
11001 Cedar Avenue, Cleveland, Ohio 44106
MEDICAL EXAMINER'S VERDICT**

Thomas P. Gilson, M.D.
Medical Examiner

THE STATE OF OHIO,
SS.
CUYAHOGA COUNTY

CASE NUMBER: IN2017-02529

Be it Remembered, That on the 19th day of December, 2017 information was given to me, Thomas P. Gilson, M.D., Medical Examiner of said County, that the dead body of a boy supposed to have come to his death as the result of criminal or other violent means, or by casualty, or by suicide, or suddenly when in apparent health, or in any suspicious or unusual manner, (Sec. 313-11, 313-12 R.C. Ohio) had been found in bags, in ground, outside of home, at 1361 West 80th Street in Cleveland of Cuyahoga County, on the 19th day of December, 2017.

I viewed or caused to be viewed the said body at the Medical Examiner's Office. After the viewing and making inquiry into the circumstances that caused the death of the said person, I obtained further information, to-wit: (CPD #2017-00403952). I also carefully examined or caused to be examined the said dead body at 8:30AM on the 20th day of December, 2017 and I find as follows: to wit:

I, Thomas P. Gilson, M.D., Medical Examiner of said county, having diligently inquired, do true presentment make in what manner Jordan A. Rodriguez, whose body was at the Medical Examiner's Office on the 20th day of December, 2017 came to his death. The said Jordan A. Rodriguez was never married, 5 years of age, a resident of Cleveland, Cuyahoga County, Ohio, and a native of Cleveland, Ohio; was of the White race, and had indeterminate eyes, brown hair, -- beard, -- mustache, was 35 Inches in height, and weighed 15 pounds.

Upon full inquiry based on all the known facts, I find that the said Jordan A. Rodriguez came to his death officially on the 19th day of December, 2017 in bags, in ground, outside of home, at 1361 West 80th Street and was officially pronounced dead at 4:40 P.M., by Thomas P. Gilson, M.D., Medical Examiner. There is history that on the afternoon of December 19th, 2017, Cleveland Police responded to a call of remains found at the aforementioned location. On arrival, the remains were determined to be human, and the County Medical Examiner's Office was notified. On arrival, the remains, later identified as the said Jordan A. Rodriguez, of the same address, were pronounced dead at the aforementioned time and date. It was also apparent that this boy had expired some time prior to this date. Esposito Mortuary Services was dispatched, and the said Jordan A. Rodriguez was then transported to the Medical Examiner's Office where an autopsy was performed, which revealed: homicide by unspecified means. It was determined that on an unknown date in September of 2017, this boy expired in an unspecified homicidal circumstance, while in his home at 1361 West 80th Street, and was subsequently found on the aforementioned date, in the aforementioned circumstance. That death in this case was the end result of: Homicide by unspecified means, and was homicidal in nature.

Cause of Death: Homicide by unspecified means.
HOMICIDE.

EXHIBIT B

Electronically Filed 04/12/2024, 10:54:05 AM / CV 19 909566 / Confirmation No. 02264271 / BATCH 1, M.D.
(Name of Deceased) Jordan A. Rodriguez Cuyahoga County Medical Examiner



**Cuyahoga County
Medical Examiner's Office
11001 Cedar Avenue, Cleveland, Ohio 44106
REPORT OF AUTOPSY**

Thomas P. Gilson, M.D.
Medical Examiner

THE STATE OF OHIO,
SS.
CUYAHOGA COUNTY

CASE NUMBER: IN2017-02529

REPORT OF AUTOPSY OF: Jordan A. Rodriguez
ADDRESS: 1361 West 80th Street, Cleveland, Ohio

I, Thomas P. Gilson, M.D., Medical Examiner of Cuyahoga County, Ohio, Certify that on the 20th day of December, 2017 at 10:00 AM in accordance with Section 313.13 of the Revised Code, of the State of Ohio, an autopsy was performed on the body of Jordan A. Rodriguez.

The following is the report of autopsy to the best of my knowledge and belief: This person was a male, never married, aged 5 years, of the White race; had indeterminate eyes, brown hair, fair teeth, was 35 inches in height, weighing 15 pounds; a native of Cleveland, Ohio.

ANATOMIC DIAGNOSES:

- I. Blunt force injuries of the trunk and left arm
 - A. Healing fractures, left distal ulna
 - B. Healing fractures, right 6th, 8th-10th ribs and left 8th rib
 - C. Recent fractures, right 6th, 9th, and 10th ribs
- II. Reported clinical history of multicystic dysplastic kidney, left
- III. Reported clinical history of bronchopulmonary dysplasia
 - A. Patchy interstitial fibrosis, bilateral
- IV. Reported clinical history of developmental delay
- V. Postmortem decomposition, advanced

Cause of Death: Homicide by unspecified means.
HOMICIDE.

Amanda Spencer, D.O.
(Name of Pathologist)

Amanda Spencer, D.O. 2-2-18

Pathologist Signature

Electronically Filed 10/27/2017 10:54 AM BRIEF / CV 19-909566 / Confirmation No. 2226427 / BATCH _____, M.D.

Jordan A. Rodriguez
(Name of Deceased) Cuyahoga County Medical Examiner

AUTOPSY REPORT

NAME: Jordan Rodriguez

CASE#: INOU2017-2529

I hereby certify that I, Amanda Spencer, D.O., Medical Examiner Fellow, have performed an autopsy on the body of Jordan Rodriguez on the 20th day of December, 2017 commencing at 9:00 am in the mortuary of the Cuyahoga County Medical Examiner's Office.

As initially viewed on the scene, the body is that of small child in an advanced state of decomposition. The body is found buried in the backyard of a single-family home in a residential neighborhood. See separate Trace Evidence report.

The body is identified by Medical Examiners tags attached to the bilateral great toes. Positive identification is obtained via DNA testing.

The body is received in a secured body bag.

EXTERNAL EXAMINATION:

The body is that of an approximately 35-inch, 15-pound, white male child, whose appearance is consistent with the reported age of 5 years. The body is in an advanced state of decomposition, which significantly limits evaluation.

EXTERNAL EXAMINATION:

The remaining scalp hair is short, fine and brown. There is an approximate 4" x 3" area of the superior frontal scalp exhibiting no hair. The eyes are flaccid within the orbits and darkly pigmented. The conjunctivae are without hemorrhage, petechia, or jaundice. The natural teeth are in the maxilla and mandible, and the left lateral upper incisor is absent with granulation tissue present within the gingival socket. The head measures 19" in circumference, the thoracic circumference is 16 ¼", and the abdominal circumference is 13 ¼".

The oral mucosa appears atraumatic. The facial bones are intact to palpation and direct observation, following removal of the overlying soft tissues. The ears and neck are unremarkable. The trachea is in the midline.

The anterior and posterior aspects of the torso are unremarkable. There is a palpable nodular deformity of the left distal ulna. The remaining upper and lower extremities are without palpable fractures, deformities, or edema. The external genitalia are of a male child with testes in the scrotal sac. The anus is unremarkable.

Postmortem Changes: Rigor mortis is absent. Livor mortis is not appreciated. The body is cold. There is diffuse green-grey discoloration of the skin, and sloughing of the hair and skin seen diffusely over the body. The left knee is disarticulated due to extensive decomposition of the surrounding soft tissues. The subcutaneous soft tissue is largely replaced with adipocere. The nails of the left hand and bilateral feet are absent.

Scars: None noted.

Tattoos: None noted.

Clothing: The body is received wrapped in blue and white blankets. The body is clothed in a long-sleeve guitar design shirt, black pants, and is wearing a pull-up diaper on the head.

Therapeutic Procedures: None noted.

External and Internal Injuries:

1. Fibrous non-union fracture of the left distal ulna.
2. Fracture calluses of the right posterior 6th, 8th-10th ribs and left posterior 8th rib.
3. Recent fractures of the calluses on the right 6th, 9th, and 10th ribs.

INTERNAL EXAMINATION:

General: The thoracic and abdominal viscera exhibit significant decompositional changes, consisting primarily of pink-grey autolyzed tissue, which markedly hinders their evaluation.

Head: The scalp has no visible contusion. The skull has no fracture. The bilateral frontal skull is irregular and bosselated. Plagiocephaly is noted on the right posterior aspect of the skull. There is no epidural, subdural, or subarachnoid hemorrhage. The 805-gram brain and spinal cord are markedly decomposed, and sectioning after fixation reveals no discernable preserved internal anatomic structures. No areas of hemorrhage are identified.

Neck: The cervical vertebrae, hyoid bone, tracheal and laryngeal cartilages, and the paratracheal soft tissues are without lesion. Following dissection of the anterior and posterior neck musculature, no hemorrhages are identified. The upper airway is not obstructed. The tongue is unremarkable.

Body Cavities: The organ situs is normal. There is approximately 30 ml of brown-red decompositional fluid within the right pleural cavity, and approximately 100 ml of brown-red decompositional fluid in the left pleural cavity. There are no significant fluid accumulations in the pericardial or peritoneal cavities.

Cardiovascular System: The aorta is unremarkable. The venae cavae and pulmonary arteries are without thrombus or embolus. The 20-gram heart has a normal distribution of coronary arteries on the epicardial surface. The myocardium is brown, grey and soft with no apparent hemorrhage, pallor, or fibrosis. The left ventricle is 0.4 cm thick; the right ventricle is 0.1 cm thick. The endocardial surfaces and cardiac valves are unremarkable. There are no thrombi.

Respiratory System: The right lung weighs 55.9 grams; the left lung weighs 43.8 grams. Both lungs are pink-grey and crepitant with diffuse putrefactive changes. The parenchyma is free of apparent consolidation and mass lesions. The vasculature is unremarkable. The bronchi are not obstructed. On section the cut surface reveals no significant abnormalities.

Liver, Gallbladder, and Pancreas: The 110.2-gram liver has a smooth dull capsule with homogeneous brown-grey parenchyma that is free of fibrosis and mass lesions. The gallbladder contains no bile; however, the mucosa is bile stained. The extrahepatic bile ducts appear unremarkable. The pancreas is tan, lobulated and soft. It is free of hemorrhage, necrosis, and calcification.

Hemic and Lymphatic System: The 4.9-gram spleen is dark brown to black, with an intact capsule. The brown-black parenchyma is markedly diffuent upon sectioning and is without visible lesion. There is no lymph node enlargement.

Genitourinary System: The right kidney weighs 12.6 grams; the left kidney weighs 7.7 grams. The right kidney exhibits smooth subcapsular surfaces with poorly demarcated cortices and medullae. The pelvis and vasculature of the right kidney are unremarkable. The left kidney primarily consists of irregular fibrous tissue, exhibiting extensive decompositional changes. The ureters maintain normal caliber into an unremarkable bladder containing no urine.

The prostate gland is not enlarged. The testes are unremarkable.

Endocrine System: The pituitary gland is markedly decomposed. The thyroid gland is brown-grey and without nodularity. The adrenal glands exhibit significant decomposition.

Digestive System: The esophagus and gastroesophageal junction appear unremarkable. There are no stomach contents. The small intestine, appendix, and large intestine are unremarkable and contain a small amount of granular red-brown material. No formed stool is found within the large intestine.

Musculoskeletal System: Very little subcutaneous fat, present as adipocere, is seen over the entire body. Dissection of the anterior and posterior trunk, and extremities reveal no subcutaneous hemorrhage or additional fractures. The remaining axial and appendicular skeleton appears unremarkable.

Case: IN2017-02529
Name: Jordan A. Rodriguez

County: Cuyahoga

Toxicology: Specimens of the pleural cavity fluid and tissues of the heart, lungs, liver, spleen, kidney, muscle, and bone are submitted for toxicologic analysis as indicated. A separate report will be attached.

Note: Dr. Thomas Gilson was present during the autopsy 

Microscopy: Sections of brain, spinal cord, dura, temporal bones, heart, lungs, thymus, liver, kidney, pancreas, and bone fractures are submitted for histopathologic analysis.

Microscopic Diagnosis:

Note: Several sections show advanced autolysis which precludes detailed analysis.

TEMPORAL BONE: There is autolysis of normal woven bone with no significant pathologic abnormality identified

**BRAIN, DURA,
SPINAL CORD,
THYMUS, HEART,
LIVER, PANCREAS,
RIGHT KIDNEY:**

The sections show extensive autolytic and putrefactive decompositional changes with scattered foci of bacterial overgrowth with near complete effacement of histologically recognizable anatomic structures

LUNGS:

Patchy interstitial fibrosis and cystically dilated air spaces are identified
No siderophages are noted

LEFT ULNA:

There is autolysis with the presence of a healing fracture callus exhibiting fibrous non-union
Endochondral ossification appears normal elsewhere
The marrow space is not interpretable

**RIGHT 10th AND
LEFT 8th RIBS:**

Healing fractures with callus
No hemorrhage or discernable acute inflammatory infiltrates are identified
The marrow space is not interpretable

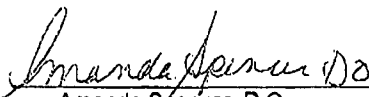
LEFT KIDNEY:

Sections demonstrate cystic dilatation with fibrosis

OPINION: The autopsy does not reveal a definitive cause of death, but the examination and evaluation are markedly compromised by advanced postmortem change. The autopsy evidence present is consistent with past inflicted injuries. Based on the complete investigation of this death, it is my opinion that Jordan Rodriguez, a 5-year-old white male, died as a result of a homicide by unspecified means.

CAUSE OF DEATH: Homicide by unspecified means.

MANNER OF DEATH: Homicide.


Amanda Spencer, D.O.

2-2-18
Date

Kathleen May Lawton Coulborn Faller, Ph.D.,
ACSW, DCSW, LMSW

Michelle Rodriguez vs. Catholic Charities Corporation, et al.

March 15, 2021



Western Reserve Building
1468 West 9th Street, Suite 440
Cleveland, OH 44113
Phone: 216.861.9270

cadystaff@cadyreporting.com
www.cadyreporting.com

81

1 We'll break now for 30 minutes, Doctor, and
2 then if you need to break again for lunch for
3 yourself, just interrupt me whenever and let me
4 know and we'll break for that too.
5 THE WITNESS: Okay.
6 MS. SEBAUGH: I'm not asking
7 you or anyone else to not eat.
8 THE WITNESS: Fair enough.
9 THE VIDEOGRAPHER: We're off the
10 record. The time is now 12:38.
11 - - - - -
12 (Recess taken.)
13 - - - - -
14 THE VIDEOGRAPHER: We're back on
15 the record. The time is now 1:14.
16 MS. SEBAUGH: Thank you.
17 BY MS. SEBAUGH:
18 Q Dr. Faller, I neglected to ask you if you were
19 ready, but you look like --
20 A I'm ready.
21 Q Okay. Thank you.
22 - - - - -
23 (Defendants' Exhibit 37 was marked.)
24 - - - - -
25 Q I'm having my assistant place on the screen now
CADY REPORTING SERVICES, INC.

82

1 what I have marked as Defendants' Exhibit 37.
2 Do you see that on the screen, Doctor?
3 A I do.
4 Q Okay. I will ask you what that is, to identify
5 that, please.
6 A So this is my opinion on the Michelle Rodriguez
7 versus Catholic Charities case.
8 Q All right. This is your opinion report dated
9 December 1 of 2020, correct?
10 Doctor, is your report there dated
11 December 1, 2020?
12 MR. DERATANY: Did we lose
13 her?
14 Q Hello?
15 THE VIDEOGRAPHER: I think we did.
16 MS. SEBAUGH: I think we lost
17 her.
18 THE VIDEOGRAPHER: Let's go off
19 the record.
20 We're off the record. The time is now
21 1:15.
22 - - - - -
23 (Off the record.)
24 - - - - -
25 THE VIDEOGRAPHER: We're back on
CADY REPORTING SERVICES, INC.

83

1 the record. The time is now 1:15.
2 Q Doctor, before we had that little technology
3 glitch, you were looking at a document that's
4 dated December 1, 2020, which is your opinion
5 report in this matter, correct?
6 A That's correct.
7 Q That's marked as Defendants' Exhibit 37.
8 Will you agree with me that it's an
9 18-page document?
10 A I can.
11 Q Have you prepared any opinion reports
12 subsequent to December 1 of 2020?
13 A No, I have not.
14 Q Okay. This is the only report that compares --
15 that contains the opinions and conclusions that
16 you will be offering as an expert in social
17 work in this matter?
18 A Yes. I would say an expert in child welfare.
19 Q Okay. Is there a difference between child
20 welfare -- do you make a distinction between
21 child welfare and social work?
22 A So social work is a broader category. Child
23 welfare has to do with expertise in delivering
24 both public and voluntary services to children
25 who may be in need of child welfare services.
CADY REPORTING SERVICES, INC.

84

1 Q When you say "expertise," what type of
2 expertise are you referring to as it relates to
3 child welfare?
4 A Both knowledge of child welfare services and
5 service delivery, knowledge of the research
6 that's associated with child welfare practice
7 and child welfare policy. Included in that is
8 a practice about, you know, understanding the
9 vulnerability of children in certain
10 circumstances and ways to ameliorate those
11 vulnerabilities.
12 Q Thank you, Doctor.
13 - - - - -
14 (Defendants' Exhibit 38 was marked.)
15 - - - - -
16 Q I'm going to ask my assistant to now place on
17 the screen what's been marked as Defendants'
18 Exhibit 38.
19 Undereath the Family Assessment Clinic
20 heading, the heading of this document is
21 "Michelle Rodriguez versus Catholic Charities
22 Corporation, et al.
23 "List of Documents."
24 Do you see that?
25 A I do. Yes.
CADY REPORTING SERVICES, INC.



FAMILY ASSESSMENT
CLINIC

Mailing Address: PO Box 1052,
Ann Arbor, MI 48106
Office Location: 2245 S. State St.,
Ann Arbor, MI 48104
Telephone: 734.436.4236
Fax: 734.769.0224

Date: December 1, 2020

The Family Assessment Clinic, located at Jewish Family Services in Ann Arbor, Michigan, provides three primary services. These are comprehensive assessments of families affected by abuse and trauma, referred primarily by agencies in Michigan, evidence-based, trauma-informed treatment to children and families affected by abuse and trauma, and record reviews and expert opinions on cases involved in civil litigation, which come from all over the United States. The Family Assessment Clinic also trains graduate students from various universities in child welfare best practice.

Contractual arrangement:

The Family Assessment Clinic has contracted with Deratany & Kosner (AKA The Deratany Firm), through Kathleen Coulborn Faller, Ph.D. A.C.S.W., L.M.S.W, D.C.S.W. and her expert colleagues to provide opinions regarding the standard of care afforded Jordan Rodriguez

The contract specifies a retainer of \$3,000 and a fee of \$350 an hour for all work on this case (document review, report writing, deposition, and court testimony) paid to the Family Assessment Clinic, plus expenses.

Brief bio-sketch:

KATHLEEN COULBORN FALLER, Ph.D., A.C.S.W., D.C.S.W., is Marion Elizabeth Blue Professor Emerita of Children and Families at the University of Michigan. She is also Co-Director of the Family Assessment Clinic in Ann Arbor, Michigan.

She is involved in research, clinical work, teaching, training, and writing in the area of child welfare, child sexual abuse, and the child welfare workforce. Her primary practice and research areas are child sexual abuse and forensic interviewing. She conducts case record reviews where the issues are child maltreatment, child welfare, and social work best practice. She has been qualified as an expert witness in Federal, State, and County courts, in child protection cases, criminal cases, domestic relations cases, and civil litigation.

She is the recipient of the Sol Gothard Lifetime Achievement Award, the National Organization of Forensic Social Workers (2018), Michigan Child Abuse and Neglect Social Work Award (2014), the Institute on Violence, Abuse and Trauma (IVAT) William Friedrich Memorial Child Sexual Abuse Research, Assessment and/or Treatment Award (2012), the Michigan Chapter of the National Association of Social Workers' Lifetime Achievement

Award (2012), the National Children's Advocacy Center's Outstanding Lifetime Achievement Award (2011), the University of Michigan School of Social Work Distinguished Faculty Award (2010), the American Professional Society on the Abuse of Children's Outstanding Research Achievement Award (2008), and the American Professional Society on the Abuse of Children's Outstanding Service Award. (1998).

She is the author, editor, or co-editor of 10 books, *Social Work with Abused and Neglected Children* (The Free Press, 1981), *Child Sexual Abuse: An Interdisciplinary Manual for Diagnosis, Case Management, and Treatment* (Columbia University Press, 1988), *Understanding Child Sexual Maltreatment* (Sage Publications, 1990), *Child Sexual Abuse: Intervention and Treatment* (U.S. Department of Health and Human Services, 1993), the American Professional Society on the Abuse of Children Study Guide: *Interviewing Children Suspected of Having Been Sexually Abused* (Sage Publications, 1996), *Maltreatment in Early Childhood: Tools for Research-based Intervention* (Haworth Press, 2000), *Understanding and Assessing Child Sexual Maltreatment, Second Edition* (Sage Publications, 2003), *Interviewing Children about Sexual Abuse: Controversies and Best Practice* (Oxford University Press, 2007), *Seeking Justice in Child Sexual Abuse: Shifting Burdens and Sharing Responsibilities* (Columbia University Press, 2010) and *Contested Issues in Child Sexual Abuse Evaluation* (Routledge Press, 2014), as well as approximately 100 research and clinical articles. She has conducted over 300 juried professional conference presentations at international national, and state conferences and provided over 250 workshops for child welfare professionals.

Process of review

Attached is the list of documents reviewed.

Questions addressed

- 1. Did Catholic Charities deviate from accepted standards of care in operating their organization?**

There are a number of domains in which Catholic Charities deviated from standards of care.

Catholic Charities requires that a Human Services Worker II carry a caseload of 40 families. Help Me Grow Bright Beginnings has a maximum allowable caseload under the contract between Catholic Charities Corporation and Educational Service Center of Cuyahoga County of 25 families. **Catholic Charities thereby deviated from the accepted standard of care.** (See Caraballo Exhibit 15; Pelzer Exhibit 10).

A review of the supervision documents found in Nancy Carabello's personnel folder indicates that she would often have a maximum of 23-26 active cases as well as recruit families. For example, on Oct. 15, 2014, Ms. Caraballo had 25 active families and 18 recruits (Bates # 00046); on Nov. 6, 2014, she had 26 active families and 19 recruits (Bates # 00045). It is not clear what the requirements were for recruit families, whether they required more or fewer visits than active families.

A requirement was that each active family should receive two visits per month. The expectation was that a Parent Educator, which was the position that Nancy Caraballo held as an employee at Catholic Charities, was visits to two families per day. Assuming on average 22 working days per month, it is almost possible to achieve 2 visits per family per month, but that calculation does not take into account visits that need to be made to recruits.

Beginning in 2016, Catholic Charities' contract changed, and Catholic Charities was paid by the number of visits Parent Educators completed per month, not by child contacts. It appears that the only consistent mechanisms for assuring that visits were conducted were the Personal Home Visit Reports and the Visit Tracker. According to her responses in her deposition of October 26, 2019, DeEbony Pelzer, who was Nancy Caraballo's supervisor, did not do regular checking to assure that home visits had occurred. If she thought the Personal Visit Report was bogus, she would call the client. Catholic Charities did not have a policy of randomly checking on each family to be sure visits were made and services were provided. In her deposition, Ms. Pelzer stated she never made such a call to Larissa Rodriguez. In her 2019 deposition, Nancy Caraballo admitted to falsifying 11 Personal Visit Reports in Larissa Rodriguez's case. She denied falsifying other visitation logs. Since Nancy Caraballo initially lied to the police, this assertion raises questions.

Catholic Charities fee for service agreement, with payment contingent upon completion of visits, with high caseloads sets up a system where Human Services workers are pressured to complete visits. This is more likely than not to result in superficial service delivery, including failure to prevent, observe, and report child abuse and neglect. One of the goals of the Bright Beginnings program was to prevent child abuse and neglect.

Focusing now on qualifications for positions held by Nancy Caraballo and DeEbony Pelzer, her supervisor, neither had the qualifications for the positions they held. **Hiring them for positions for which they were not qualified falls below the standard of care.**

When Nancy Caraballo was hired as a Human Services Worker II in 2013, she had a high school diploma (See her personnel file) and had taken 9 hours of general courses at Cuyahoga Community College (See Caraballo Exhibit 1). A requirement for Human Services Worker II was the equivalent of an associate's degree in early childhood development (See Caraballo Exhibit 2). Nancy Caraballo misrepresented her education on her application to become a Human Services Worker II, stating she was pursuing an early childhood development degree. No one at Catholic Charities ever bothered to ask for her transcripts from Cuyahoga Community College. When asked during her deposition on Oct. 29, 2019 about her college education, she admitted it was not in early childhood development and that her attendance was "off and on." She stated she "did not remember" if she flunked out or quit.

A memo from Wendy Grove, Ph.D., Help Me Grow Program Administrator, dated November 20, 2012 (Ms. Caraballo was hired by Catholic Charities in July 2013) specifically notes that many of the staff hired to work in Help Me Grow programs do not meet the requirements for credentialing because of lack of appropriate education, noting that home visitors and

service coordinators must have an associate's degree in a field related to early childhood development. The memo states that it is the responsibility of the contract manager, e.g., Catholic Charities, to assure that persons working in the Help Me Grow system have the required qualifications, which includes a review of the applicant's transcripts prior to making an offer of employment. (See Caraballo Exhibit 3.)

Evidently, Catholic Charities privileged the fact that Ms. Carballo had worked at Spanish American Committee as a Parent Educator and a Home Visitor in Bright Beginnings. Her very brief references for the Parent Educator position at Catholic Charities were conducted by phone by Michelle Boclear. References written by the referee are preferred because they are firsthand and allow the referee an opportunity for reflection. One of Ms. Caraballo's references is Miriam Cuevas, the mother of Ms. Caraballo's boyfriend. (See Caraballo Exhibit 1.) Ms. Cuevas, with Ms. Caraballo, committed fraud by using Larissa Rodriguez's EBT card (See Caraballo Exhibits 71 & 72). According to her deposition dated July 13, 2020, Ms. Boclear, who was Nancy Caraballo's first supervisor, never inquired about dual relationships with Nancy Caraballo's clients. If she had done so, she would have discovered that Nancy Caraballo and Larissa had a relationship that began in 2000, and arguably was more of a friendship than a professional relationship.

Nancy Caraballo stated during her 2019 deposition and as reflected in her personnel file that she received on the job training, but such training does not substitute for college degree education in human services. An individual with a high school diploma simply does not have the appropriate background. For example, in 2016, Ms. Caraballo attended 5.5 hours of training on DSM-5 (American Psychiatric Association's Diagnostic and Statistical Manual) (Site Sup File 00099). The DSM-5 defines 20 different psychiatric disorders, applicable to both adults and children. Each disorder has subcategories. For example, Trauma and Stress-related Disorders has 12 subcategories. Each subcategory has a list of symptoms. For each subcategory, an individual must have a specified number of the symptoms and must manifest them for a given time period in order to receive the diagnosis (American Psychiatric Association. 2013. *Desk Reference to the Diagnostic Criteria from DSM-5*) Suffice it to say that the DSM-5 is a complex classification system of psychiatric disorders that would be above Ms. Caraballo's ability to comprehend and make use of in her work.

Finally, Nancy Caraballo answered many questions in her deposition that she "did not remember," suggesting she was either being disingenuous or has memory deficits, which would disqualify her to engage in an important service delivery role at Catholic Charities. She did not even remember what her grade point average was for those community college courses. Again, no one at Catholic Charities followed up on her assertion that she was studying early childhood development at Cuyahoga Community College or requested her transcripts.

Catholic Charities' failures to give careful consideration of Nancy Caraballo's qualifications for the important position of a Parent Educator at Catholic Charities fall below the standard of care.

I now turn to DeEbony Pelzer. When she was hired as a Human Services Worker II in 2010, she had recently been awarded an associate's degree in early childhood development. She was therefore qualified for this position.

In 2014, Ms. Pelzer was promoted to be supervisor/manager of both Catholic Charities Bright Beginnings Parent Educator program and Home Visiting program. The qualifications for those programs were a master's degree in social work, counseling, or closely related field. The position also required 3-5 years of fiscal, administrative, management and supervisory experience. (See Pelzer Exhibit 3). According to her deposition on October 28, 2019, Ms. Pelzer had neither of these requirements when she was promoted. Indeed, when she was deposed, she was still working on a master's degree in early childhood development.

Especially of relevance is Ms. Pelzer's lack 3-5 years of fiscal, administrative, management and supervisory experience. Thus, she did not have qualification for overseeing caseworkers under her supervision.

Both her deposition of October 28, 2019 and her personnel file indicate Ms. Pelzer was supervising/managing two programs, both Help Me Grow Bright Beginnings and the Home Visitor program, together having responsibility for 10 caseworkers, when she first started as a manager/supervisor in 2014. According to her deposition, over time the number of staff she had to supervise decreased, but in her Performance Evaluation of 2018, when she supervised nine staff members, she described managing two programs as "taxing" (Pelzer Exhibit 12).

Finally, of considerable concern in Ms. Pelzer's deposition was how frequently she answered, "I don't recall" to questions that were relevant to her position as a program supervisor, memory competence that would be necessary to do her job. For example, despite the fact that she was a Human Services Worker II for four years, she says she does not recall the qualifications and requirements for that position. Such responses reflect either serious memory problems or disingenuousness.

Although Ms. Pelzer was seeking to better herself by obtaining additional education, that Catholic Charities promoted her to manager/supervisor without having required qualifications falls below the standard of care.

2. Did the supervisors Karnese McKenzie and DeEbony Pelzer fail to appropriately supervise and or train their employee Nancy Caraballo?

In her deposition dated October 28, 2019, DeEbony Pelzer does not recall if she trained her workers when she was program manager for Bright Beginnings and the Home Visiting Program at Catholic Charities. Presumably, this would be something Ms. Pelzer would recall.

There are notes in Ms. Caraballo's personnel folder that indicate she received supervision from DeEbony Pelzer. These begin August 19, 2014. There are no supervision notes for Ms.

Caraballo's first year of employment at Catholic Charities, when she was supervised by Michelle Boclear. **The failure to document supervision during the first year of Ms. Caraballo's employment at Catholic Charities falls below the standard of care.**

Beginning in August 2014, there are supervision notes signed off on by DeEbony Pelzer. According to the Bright Beginnings Plan, Parent Educators must receive 2 hours individual reflective supervision per month plus 2 hours staff meetings per month (See Dec. 29, 2014 Plan, p. 9). According to the supervision notes, sessions range from an hour to an hour 45 minutes. There is no evidence in Ms. Caraballo's personnel file that she attended staff meetings.

Individual supervision sessions vary in frequency, but generally are monthly, and there are significant gaps in supervision notes. The dates are: 8/19/14, 9/12/14, 10/8/14, 10/15/14, 11/6/14, 12/10/14, 2/11/15, 3/4/15, 3/18/15, 3/25/15, 4/8/15, 11/17/15, 2/17/16, 5/11/16, 6/15/16, 7/29/16, 9/13/16, 10/14/16, 11/13/16, 6/21/17, 8/3/17, 9/7/17, 10/4/17 (Bates # 00011-49). In her 2019 deposition, Ms. Caraballo stated she met weekly with Pelzer, or at least twice monthly if Pelzer was really busy. The supervision notes do not reflect the frequency of supervision required for the Bright Beginnings program. There are six supervision notes in 2014, six in 2015, seven in 2016, and four in 2017.

If the notes are reflective of Ms. Caraballo's supervision, the low frequency of supervision falls below the standard of care. If the notes are indicative of the failure to include supervisions notes in Ms. Caraballo's personnel file, this failure falls below the standard of care.

During these supervision sessions, Ms. Caraballo and Ms. Pelzer would typically go over Ms. Caraballo's entire caseload. As noted, Ms. Caraballo carried a heavy caseload, either over the maximum of 25 cases, at the maximum, or slightly below the maximum. In addition as noted, Ms. Caraballo also had recruits to visit, the numbers ranging from 2 to 19, but mostly the number of recruits in the teens. From the supervision notes, the focus of supervision appears to be on making sure that all the forms that represented the requirements for Bright Beginnings were in the case files, with occasional brief reference to a case or two.

Both the supervision notes and email exchanges between Ms. Pelzer and Ms. Caraballo about the deficiencies in her work, found in the personnel file, indicate that Ms. Caraballo was a mediocre worker at best, with many delinquencies in her work. Yet she continued to be employed by Catholic Charities until she was fired for her use of Larissa Rodriguez's EBT card and perhaps for her falsifying Personal Visit Reports.

Of note, in DeEbony Pelzer's deposition, she denied any knowledge about Nancy Caraballo's admission in her deposition and evidently to law enforcement to falsifying 11 Personal Visit Reports indicating visits to the Rodriguez family (See Pelzer's deposition).

What is clear from Ms. Caraballo's personnel file is that supervision by Ms. Pelzer was focused narrowly on making sure the forms were completed and not on "reflective

individual supervision” in accordance with social work principles. There can be no other explanation for how the plight of Jordan Rodriguez could have been overlooked. Although Jordan is at times referred to in Nancy Caraballo’s Personal Visit Reports, he does not appear to have been discussed in Ms. Caraballo’s supervision. At times, Larissa Rodriguez would refer to difficulty getting services for Jordan; Ms. Caraballo would make reference to this in her Personal Visit Reports, but she did not take on an advocacy role in seeking services for Jordan. **The failure to attend to the needs of Jordan Rodriguez in case work and in supervision falls below the standard of care.**

The systems in place in Cuyahoga County successfully identified the special needs of Jordan in that his family was receiving the services of a Home Educator through Bright Beginnings from the time of his premature birth and that Early Intervention Services were provided through Help Me Grow from 10/2013 through 03/2014 (when Jordan was 1.8 to 2.1 years old). The history of failures by Catholic Charities to ensure that Jordan, who’s needs for services were clearly identified, are outlined below:

March 2014: Despite being in the home in her role as a Parent Educator, when Early Intervention services terminated, Ms. Caraballo did not ensure that two-year-old Jordan was referred to her program, Bright Beginnings, for services. A referral to Bright Beginnings made by the Early Intervention staff at that time was somehow lost and never received by the Bright Beginnings central intake. Those clerical errors happen in the social services environment. What is expected in those circumstances is that responsible and concerned staff, specifically Nancy Caraballo, DeEbony Pelzer, and Karnese McKenzie, follow up to ensure that the vulnerable child does not fall through the cracks. The case records indicate that as of July 2016, more than two years after exiting Early Intervention, Jordan was still not enrolled in services to meet his needs as a child who was “at risk for developmental delays, abuse, and neglect” (Pelzer Exhibit 10, p.1). Both the Catholic Charities Bright Beginnings Contract (Pelzer Exhibit 10) and the Help Me Grow Plan for Bright Beginnings Program (years 2014-2018) repeatedly refer to **families** as the unit of service. Since Ms. Caraballo was in the home that entire time and receiving supervision about the needs of her caseload, it is not clear how it is possible that Jordan’s needs were ignored.

March 2016: Two full years after termination with the Early Intervention program, Ms. Rodriguez elected to pursue an evaluation of Jordan with the Cleveland Metropolitan School District. If Jordan had been enrolled in the Bright Beginnings program, the expectation would be that this referral would have happened a full year earlier when he turned three-years-old. He was found eligible for special education services in March 2016, but Ms. Rodriguez never engaged Jordan with those service providers. One of the roles of Bright Beginnings Parent Educators was to manage the transition from Bright Beginnings

to the public-school system. Catholic Charities did not assist in this transition and did not explore the reasons why Ms. Rodriguez was keeping Jordan from these needed services.

July 2016: Ms. Caraballo assured a worker from the Department for Children and Families who was investigating an allegation of child abuse/neglect, that she was servicing Milton and “would pick up Jordan’s needs as well”. This statement is remarkable in that Jordan had been certified as eligible for special education, but Ms. Rodriguez had not initiated the services with the school. Ms. Caraballo was not monitoring the transfer of services to the public school programs and was not exploring the reasons why Ms. Rodriguez was not making Jordan available for this necessary intervention. Further, her promise to pick up Jordan’s needs was made despite the fact that Jordan was 4.4 years old at the time and no longer eligible for her program.

Turning now to Karnese McKenzie, who was DeEbony Pelzer’s supervisor, and who was deposed on June 11, 2020. First, I point out that she is not aware she has a social work degree. She has an undergraduate degree from Wilberforce University and a Masters Degree in Social Service Administration from Case Western Reserve University (CWRU). The Mandel School of Social Service Administration at CWRU is a school of social work. Yet when asked in her deposition if her degree was in social work, Ms. McKenzie answered “no.” That Ms. McKenzie did not appreciate her degree was in social work makes one wonder about her comprehension of her education and of the social work field.

Second, in her deposition, she was asked about Larissa Rodriguez’s housing not being approved for Section 8; she was not familiar with the requirements for Section 8. Section 8 is a Federal Program under the U.S. Department of Housing and Urban Development (HUD). It is administered locally and provides vouchers to persons who qualify, usually on the basis of low income. The voucher amount is paid directly to the landlord, and the family pays the difference between the rent and the voucher amount (https://www.hud.gov/topics/housing_choice_voucher_program_section_8). The dwelling has to be inspected and pass the inspection to qualify for Section 8. That Ms. McKenzie whose agency, Catholic Charities, works with low income individuals and families is not familiar with the requirements for Section 8 is very concerning.

There is no evidence that Karnese McKenzie reviewed any Personal Visit Reports or other required documents with Ms. Caraballo, which would have been reflected in additional notes by her as an administrator. In fact, the only documents found among those I reviewed related to Ms. McKenzie’s involvement with Ms. Caraballo were that she signed off on Ms. Caraballo’s annual Performance Evaluations. There were eight areas reviewed by Ms. Pelzer in completing Ms. Caraballo’s performance evaluations. In 2015-16, five of those areas were rated 3 (satisfactory) and three areas were rated 2 (needs improvement). There is no evidence in Ms. Caraballo’s personnel file that either Ms. Pelzer or Ms. McKenzie followed up on those negative evaluations. There was no performance evaluation done on Ms. Caraballo the following year, 2016-2017. **The failure of Ms. Pelzer and Ms. McKenzie**

to use the performance evaluations as an ongoing tool to improve Ms. Caraballo's job performance falls below the standard of care.

3. Did Catholic Charities have adequate policies to prevent the conduct of illegally purchasing the EBT card?

The Operations Manual references conflicts of interest and requires that staff sign a conflict of interest statement annually. It also prohibits staff from "exchanges of gifts, money, gratuities, and exploiting opportunities for personal gain" (p. 24). The Operations Manual does not address specifically clients' EBT cards. There is no evidence in Nancy Caraballo's personnel file that she signed the conflict of interest statement on an annual basis, only when she was hired on July 22, 2013 and that was two years before Ms. Caraballo started fraudulently using Larissa Rodriguez's EBT card (Bates # Caraballo PF 00046). Had Nancy Caraballo been reminded annually about conflict of interest by having to sign the form on a yearly basis, this process might have inhibited her from buying SNAP benefits from Larissa Rodriguez at half price. **If annual signing of the conflict of interest form was accompanied by supervisory instruction about what is and is not appropriate in worker-client relationships, chances of Catholic Charities preventing the abuse by Ms. Caraballo would have been greatly increased.**

Although Nancy Caraballo stated in her deposition, dated Oct. 29, 2019, that she knew that what she did was illegal, she stated this violation of the law was beneficial for both her and Larissa Rodriguez. Nancy Caraballo got food stamps at half price to buy food for her family and Larissa got cash. In both her 2019 deposition and her 2020 deposition, Nancy Caraballo admitted, however, that her action resulted in inadequate nutrition for the Rodriguez family which ultimately contributed to the death of Jordan Rodriguez from malnutrition. Nancy Caraballo is someone with a high school diploma and not a trained social worker, who would be bound by the NASW Code of Ethics.

In her deposition, Ms. Pelzer stated that she knew it was illegal to use someone else's SNAP benefits, but said, "I don't recall" when asked how she knew this. She also said, "I don't recall" when asked if she ever trained workers about conflict of interest or ever trained her workers not to use a client's SNAP benefits. Such training would have reduced the likelihood of Ms. Caraballo exploiting the Rodriguez family.

The failure to have Nancy Caraballo sign the conflict of interest declaration annually falls below the standard of care. The apparent failure to provide training on conflict of interest falls below the standard of care.

4. If Catholic Charities had properly supervised Nancy Caraballo would it be more likely than not, they would have prevented the purchase of the EBT card?

Yes. See responses to questions 2 and 3.

5. **Did Nancy Caraballo deviate from accepted standards of care by purchasing the EBT card, and/or by failing to go to the home on 10-11 occasions that was required?**

Nancy Caraballo egregiously deviated from the standard of care when she purchased Larissa Rodriguez's EBT card, paying half price for the SNAP benefits on the card. She also facilitated her boyfriend, Miguel Ortis, and his mother, Miriam Cuevas's use of the card. Caraballo Exhibit 71 is the Cleveland Police Department report after the warrant search of Nancy Caraballo's residence on January 10, 2018. Initially Nancy Caraballo lied and said she never used Larissa's EBT card. When told that her Sam's Club record and surveillance videos implicated her, she confessed but minimized her use. Caraballo Exhibit 72 is comprised of text messages on her phone which document numerous exchanges among her, Cuevas, Miguel Ortiz, and Larissa Rodriguez. Larissa received \$1,000 a month in SNAP benefits. She would leave \$200-350 on the card, which Caraballo or Cuevas would buy at half value. They would return EBT card to Larissa in two days. The estimated amount of fraud between July 2015 and December 2017 was \$10,058.18. According to law enforcement, Cuevas, Caraballo, and Rodriguez acted as a criminal enterprise. Nancy Caraballo pleaded to fraudulently using Larissa Rodriguez's EBT card and served seven months in prison.

Nancy Caraballo's job description and ongoing supervision by DeEbony Pelzer makes it patently clear what the visitation expectations were for a Parent Educator, which was the position Ms. Caraballo held. **That Nancy Caraballo failed to conduct these visits and falsified her Personal Visit Reports falls below the standard of care.**

6. **Were there other ways in which Nancy Caraballo, her supervisors fell below the standard of care in service delivery to the Rodriguez family?**

Records available to Nancy Caraballo and Catholic Charities make it very clear that Larissa Rodriguez was a high risk parent; she did not merely give birth to high risk children. Bright Beginnings requires a Family Intake/Assessment (Pelzer Exhibit 7, p. 13). There is a referral to Help Me Grow made by DCFS worker Keith Grahl received on June 24, 2013 with an Intake set for Aug. 21, 2013 at 1:00, but no Family Intake/Assessment could be found in the Rodriguez file. The child's name is redacted, but the child was a male. If there had been an adequate intake/assessment of Larissa Rodriguez which included a social history, it would have been obvious that she had many risk factors as a parent. These risk factors are described in the depositions of the Rodriguez sisters, Michelle, Ana, and Larissa.

Larissa Rodriguez had been removed from her mother's care at an early age by the child welfare system. She, Ana, and Michelle were removed when Michelle, the oldest, was about 3 or 4 (Michelle Rodriguez deposition dated June 23, 2020). Larissa, Ana, and Michelle Rodriguez document their subsequent traumatic experiences in the child welfare system (Larissa Rodriguez deposition, dated Aug. 10, 2020; Ana Rodriguez deposition, dated June 24, 2020; Michelle Rodriguez deposition, dated June 23, 2020).

Michelle stated in her deposition first they were in a foster family, then a children's home, and then bounced around to foster homes until they were teenagers. Michelle, Larissa, and Ana credit Michelle with keeping them together. They got adopted by the Rodriguez family, when Michelle was 14, and Michelle stayed with the adoptive family until she was 18 and graduated from high school. Michelle stated Larissa moved out of the Rodriguez family at age 14, when she became pregnant, and in with her boyfriend. She then found Emma Rojas, their biological mother, and lived off and on with her. Emma Rojas had 18 children, according to both Michelle and Ana. Larissa's first children were Angel Alvarez, Jr. and Gilberto by Angel Alvarez, Sr. Both children were removed from Larissa's care at birth. Both were legally adopted.

In her 2019 deposition, Nancy Caraballo, who had been working with Larissa Rodriguez since 2000, initially stated she did not know in 2000 whether Maryianna was Larissa's first pregnancy. She denied knowledge of Larissa's older children, but then stated that she knew there were two older boys who did not live with Larissa. Ms. Caraballo never had a conversation with Larissa about why they were removed or where they lived. **Since Ms. Caraballo was responsible for the wellbeing of children in Larissa's care, the failure to inquire about the reason Angel, Jr. and Gilberto were not in Larissa's custody falls below the standard of care.**

Had anyone from Catholic Charities reached out to Michelle and Ana, they would have discovered Larissa's dysfunction as a mother. In her deposition, Michelle Rodriguez described Larissa as seeking her out when Larissa needed something, such as money, being driven to food banks on Saturday (3 different food banks), being driven to pay her bills, and needing a ride to Jordan's medical appointments. Michelle stated if she confronted Larissa about something, for example her children having lice, Larissa would cut Michelle off, until she needed another favor from Michelle. Michelle sometimes could not afford to give Larissa money and would refuse; Larissa would become angry.

Michelle also stated in her deposition that she did not approve of the men Larissa engaged in liaisons with. They were frequently abusive. Arguably Christopher Rodriguez was the worst because he physically abused Larissa but also abused vulnerable little five year old Jordan Rodriguez, a special needs, non-verbal boy, was instrumental in his death, and was primarily responsible for Jordan being buried in the yard.

The first report of Nancy Caraballo's knowledge of Larissa's propensity to choose violent men as partners dated from Dec. 2, 2013 (Catholic Charities Bates # 00383-84). It is not clear from Ms. Caraballo's Personal Visit Report which of Larissa's many partners was the perpetrator, but the police had arrived at Larissa's dwelling with a warrant for his arrest. Ms. Caraballo did inquire if Larissa wanted a referral for domestic violence services, but Larissa declined, and evidently Ms. Caraballo did not pursue this issue of domestic violence further.

In her deposition, Ana Rodriguez documented additional concerns about Larissa's parenting. Ana understandably wanted to have a relationship with her sister, Larissa, and lived with her off and on over the years. Similar to Michelle's experience, if she confronted

Larissa about her choice in men, abusive treatment of the children, or the filthy condition of the house, Larissa would kick Ana out. Ana reported Larissa to Child Protective Services twice. Ana described Larissa's house as always filthy.

Ana reports that Nancy Caraballo would visit the home when it was in these deplorable conditions. Moreover, Ana stated Ms. Caraballo never made referrals for Larissa for services. In truth, during the approximately five years Ms. Caraballo was Larissa's Parent Educator at Catholic Charities of the 18 years Ms. Caraballo worked with Larissa (records from Spanish American Committee are not available), referrals are scant. They include a referral to Christ Child for cribs when DCFS would not close its case without beds for the children, for a layette for a soon to be born baby, and the provision of formula and diapers. The range of referrals that Parent Educators could provide was extensive.

During her deposition on August 10, 2020, Larissa Rodriguez provided more information about her tragic childhood. Her recollection is somewhat different from that recalled by her older sister, Michelle. Larissa stated she lived with her biological mother until 1 year old. Then, she was with a foster family until age 5. She was removed from that foster home because the 18-year-old foster brother sexually assaulted her. She was then with one family from 5 to 14 years old, the Rodriguez family, who adopted her. She ran away at 14 and went to stay with her biological mother for a couple months, then to her oldest son's father's mother's house. She was only there a couple of months before being placed in a girl's residential facility called Mercycrest. She was there for 3.5 years. She went to another foster home for a year after Mercycrest but eventually ran away and got established in her own place. This appears to have been when she first had Nancy Caraballo as a worker. **The failure of Catholic Charities to appreciate and act on high risk factors Larissa Rodriguez brought to her parenting role falls below the standard of care.**

In 2013, 2014, 2015, 2016, Larissa Rodriguez and Nancy Caraballo signed "Authorization & Consent for Release of Information" forms, which allowed for mutual sharing of information among the professionals and agencies serving the Rodriguez family. These agencies varied somewhat by year, but included DCFS, Help Me Grow (statewide), MetroHealth (where Jordan received his medical care), St. Martin De Porres, Christ Child, First Call for Help, and Cuyahoga County Mental Health. (Bates # Catholic Charities 00013-18; Catholic Charities 00089-95)

Yet Nancy Caraballo in her deposition of 2019 stated that she did not know of Jordan's hospital visits for physical abuse and injuries. In June 2015, Jordan was admitted to the hospital because he had a closed head injury. In July 2015, he was taken to the hospital because he had lesions. In August 2015, Jordan was taken to the emergency room because he had a lacerated right eye. In October 2015, he was taken to the emergency room because he had a laceration on the right side of his face; Jordan needed stitches, but Larissa refused to have his wound stitched. (See Caraballo deposition pp. 280-90)

Moreover, in her deposition of 2019, Ms. Caraballo denied knowledge of CPS reports made about Larissa Rodriguez. That said, Caraballo Exhibit 56a, which is one of her Personal Visit Reports, documents that DCFS worker Krista Van Horn was present during the visit. Ms.

Caraballo also noted that Van Horn would make a couple of more visits before closing the case. In several subsequent Personal Visit Reports, Larissa told Nancy Caraballo that the CPS case was still open, and this was causing her stress.

Indeed, there were at least seven reports of child maltreatment made about Larissa and her family, beginning in 2010. In 2010, Nancy Caraballo was Larissa's Parent Educator at Spanish American Committee. These reports continued until 2018, when all of Larissa's children were removed after the discovery of Jordan's body buried in the yard of her dwelling.

The CPS reports are documented, as is Nancy Caraballo's awareness of these reports. When DCFS would contact Ms. Caraballo, she would assert that Larissa was a good parent. Nancy Caraballo's vouching for Larissa Rodriguez and stating that Larissa was a good parent not only contributed to the failures to substantiate allegations of child maltreatment in the Rodriguez home, but also resulted in decisions by DCFS not to provide services that might have resulted in interventions to protect Larissa's children, including special needs boy, Jordan Rodriguez. (See Appendix 1.)

The failure of Catholic Charities staff and supervisors to recognize and respond to the increased risk of neglect and abuse in families that have generated multiple protective services reports falls below the standard of care.

7. Do other agencies that provided services to Jordan bear responsibility for his "falling through the cracks" and his ultimate demise?

The other agencies who at various times provided services to Jordan Rodriguez do not bear responsibility for lack of services for Jordan, nor for his death by starvation. Catholic Charities, through its Bright Beginnings program, was the one agency consistently in the home since 2013. Moreover, Nancy Caraballo, who was Larissa Rodriguez's parent educator when the Rodriguez family was on her caseload at Spanish American Committee, went to the hospital at Jordan's birth because his birth was at 26 weeks. Thus, Ms. Caraballo knew from the time Jordan came into the world that he was a special needs child, who would require services. Yet she did nothing to assure he received services. It was during 2016 and 2017 that Ms. Caraballo admits that she falsified 11 of her home visits to the Rodriguez home.

In addition to the Rodriguez family receiving services from Catholic Charities Parent Educator Nancy Caraballo, Jordan received medical care at MetroHealth, he was evaluated for special education by the Cleveland Metropolitan School District, and he was in the Rodriguez family which was the subject to reports to DCFS.

As noted above, DCFS CPS investigated reports made about the Rodriguez family, but none was substantiated until 2018, after Jordan's body was discovered; all the children in the Rodriguez home were then removed. None of the CPS reports were made specifically about Jordan, except indirectly the final one, after his body was found. According to her Oct. 5, 2020 deposition, when CPS worker Hope Gula investigated a report of sexual abuse of

Neveah by Maryianna in October 2013 and a May 2015 report that all of the Rodriguez children were outside the house in their underwear, she found Jordan to be in good health and no evidence of malnutrition. She obtained Jordan's records from MetroHealth. This was six months before MetroHealth made its first observation that Jordan was suffering from failure to thrive during a Nov. 10, 2015 MetroHealth visit. In May 2015, Ms. Gula also offered to make a referral for Jordan for mental health services, but Larissa Rodriguez said a referral was already in progress through MetroHealth. Ms. Gula stated in her deposition, that although neither of the cases were substantiated, she nevertheless did not close the case, but referred it to ongoing CPS because the family was high risk. Ms. Gula's case management decisions met the standard of care.

It appears that Jordan's last appointment at MetroHealth was in December 2015 for an audiology appointment. When MetroHealth staff noted that Jordan was not getting routine care, Larissa Rodriguez would assure them that she would follow up. However, he did not have any visits to MetroHealth in 2016 or 2017.

Jordan was evaluated for special education services by Cleveland Metropolitan School District, referred in November 2015. He was found to be eligible for special education services in March 2016, but his mother did not enroll him at that time. In September 2016, Ms. Rodriguez withdrew Jordan from school services, falsely stating the family was moving to Texas. The school system had no mechanism for determining that Ms. Rodriguez was lying.

These are my opinions to a reasonable degree of professional certainty. I reserve the right to augment my opinions should I review additional relevant information and/or more information should become available.

Respectfully submitted,



Kathleen Coulborn Faller, Ph.D., A.C.S.W.
 Marion Elizabeth Blue Professor Emerita of Children and Families
 School of Social Work, University of Michigan
 Co-Director, Family Assessment Clinic

Appendix 1: Protective Services Report Summary

Date	Intake ID # and Bates #	Allegation	Child Subject	Disposition	Comments
11/02/10	4888438	Phys Abuse	Mariana	Unsubstantiated,	Nancy Caraballo tells PS worker that she has never

	000028			02/21/11	had any concerns for the girls. She states that Ms. Rodriguez is a loving and nurturing mother (000037).
2/23/11	4968263 000052	Phys Abuse and DV	?	Unsubstantiated, 04/21/11	Phone call to Nancy Caraballo who stated she did not have any concerns for the children. Stated Ms. Rodriguez is a good mother who takes excellent care of her children. Ms. Rodriguez was referred to a DV program
3/23/12	5282684 000073	Phys Abuse	Maryianna	Unsubstantiated, 06/07/12	Alleged physical abuse and verbal abuse toward Maryianna. Maryianna was interviewed at daycare. Her statements were inconsistent, but she did say that mom's boyfriend hit her, and she did not get enough food (she was plump). The worker went to the Rodriguez

					home. Neveah was there but too young to be interviewed. She was clean, the house was clean, and there was food.
10/18/13	7381611 000140	Sexual Abuse	Neveah	Unsubstantiated, 09/14/14?	Neveah's father reports "hickie-like" marks on her inner thigh. Worker called Nancy Caraballo in September, 2014 and she denied any maltreatment (000177)
7/6/14	7381611 001471-81			Unsubstantiated, 09/12/14?	At 001480, worker reports phone call with Nancy Caraballo who states she is active with Milton and will also pick up Jordan's needs. Nancy Caraballo "denies any maltreatment."
5/19/15	9343639 000211	Neglect	All kids	5/28/15?	Apparently, a neighbor called the police because children were out in the yard one morning in diapers and boxers. Alleged

					neglect. At. 000217, CPS worker states that although sexual abuse and neglect was unsubstantiated, family is high risk: 1) 8 referrals since 2010 2) 5 children, 4 under age of 4, and 3) serious behavior problems from one of the children (referring to Milton's aggressive behavior)
6/4/15	Unclear if this is a new referral			Unsubstantiated,	At 000227, worker states that Nancy Caraballo was in the home when they came to investigate.
01/27/17	12634403 000247			Unsubstantiated,	Ms. Rodriguez claims that allegations were made by Marianna's father who is filing for custody. CPS worker concludes there are no concerns at this time.

01/09/18	136727 05 000801	Abuse	All Rodriguez children	Substantiated	
----------	------------------------	-------	------------------------------	---------------	--

Dr. Robert Shapiro

Michelle Rodriguez vs. Catholic Charities Corporation, et al.

March 12, 2021



Western Reserve Building
1468 West 9th Street, Suite 440
Cleveland, OH 44113
Phone: 216.861.9270

cadystaff@cadyreporting.com
www.cadyreporting.com

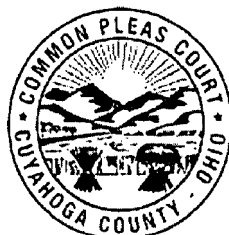
1 you were saying was there. There's no way to
2 know from your review of the records whether
3 that malnutrition was caused by the care
4 providers having a lack of resources or the
5 care providers abusing or mistreating Jordan
6 Rodriguez?
7 MR. DERATANY: Well, let me
8 object to the extent of foundation. He's not
9 an expert on that particular area that you're
10 asking him about, which is social services
11 standard. You're asking him basically
12 something different than medical care in that
13 question.
14 Q But from your position as a pediatrician in
15 this particular review, you don't know whether
16 the malnutrition was caused by a lack of
17 resources or whether the malnutrition was
18 caused by abuse, the intentional deprivation of
19 food?
20 A You know, Mr. Forbes, it's a little convoluted
21 when I think about answering that question. So
22 of course I'm aware of the allegations that it
23 was food stamp, or whatever it was, fraud, and
24 that the resources to provide food for the
25 family were not being utilized. So I assume
CADY REPORTING SERVICES, INC.

1 that that means that they were needed and that
2 they weren't provided. So that was an
3 allegation, I think, in this case. Maybe it's
4 truth.
5 And also the description that others gave
6 of how emaciated he was coupled with the broken
7 bones that he had lead me to conclude that the
8 likelihood that this was a result of abuse and
9 neglect is great.
10 Did that answer your question? I'm
11 having a hard time answering exactly your
12 question. I apologize.
13 Q That's all right.
14 You're aware that Jordan lived with other
15 children in the home, correct?
16 A Yeah.
17 Q After Jordan's death when those other children
18 were removed from the home and placed in foster
19 homes or with other caregivers, are you aware
20 if they showed signs of malnutrition?
21 A I don't remember that, no. That's relevant of
22 course.
23 Q Why is it relevant?
24 A Well, if all of the kids were malnourished,
25 none of them were being fed. So it's relevant.
CADY REPORTING SERVICES, INC.

1 Q Those children were all sufficiently nourished?
2 A I'm sorry. Say that again.
3 Q Those children were all sufficiently nourished?
4 MR. DERATANY: Objection.
5 Improper hypothetical and foundation.
6 Q You can answer.
7 A Well, if all of the other children were
8 malnourished, it would seem that one would have
9 to ask were there something that made it
10 impossible for Jordan to eat or was Jordan
11 being singled out among siblings that -- so he
12 was not being given food but the other kids
13 were. There's lots of possibilities here. I
14 mean that's certainly the task for the
15 investigator, to find out what went on in that
16 home during this time.
17 Q Are you aware of the -- what crimes Larissa and
18 Christopher Rodriguez were convicted of?
19 A I don't recall.
20 MR. DERATANY: We're pretty
21 far field. He's not the social worker on the
22 case.
23 MR. FORBES: Jay, let me go
24 on. I'm almost done.
25 Q Those convictions and the admissions of guilt
CADY REPORTING SERVICES, INC.

1 from Larissa Rodriguez and Chris Rodriguez had
2 no role in your opinions?
3 A Say that again.
4 Q The admissions of guilt and convictions of the
5 various crimes that Larissa Rodriguez and
6 Christopher Rodriguez were convicted of played
7 no role in your opinion?
8 A No. I was asked to provide an opinion about
9 the care at MetroHealth and I determined that
10 the care provided at MetroHealth was unrelated
11 to this child's death, and the other is of
12 course of interest, but I don't see -- I did
13 not -- I don't see that was relevant to the
14 MetroHealth care.
15 Q It wasn't related to your opinions as to cause
16 of death?
17 A Oh, sure it was.
18 Q How so?
19 MR. DERATANY: Is what
20 related? Whether --
21 Q The criminal convictions of Larissa and
22 Christopher Rodriguez, were they related to
23 your opinions regarding cause of death?
24 A Well, they're related. The cause of death was
25 not particularly mysterious in this case. Now,
CADY REPORTING SERVICES, INC.

EXHIBIT 7



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

ANSWER AND THIRD PARTY COMPLAINT \$75
October 9, 2020 17:35

By: BETH A. SEBAUGH 0008518

Confirmation Nbr. 2092164

MICHELLE RODRIGUEZ

CV 19 909566

vs.

CATHOLIC CHARITIES CORPORATION, ET AL

Judge: JOAN SYNENBERG

Pages Filed: 60

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ, etc.	)	CASE NO. CV 19 909566
)	
Plaintiff	)	JUDGE JOAN SYNENBERG
)	
vs.)	
	)	<u>SEPARATE ANSWER and THIRD-</u>
CATHOLIC CHARITIES	)	<u>PARTY COMPLAINT OF DEFENDANT</u>
CORPORATION, et al.	)	<u>CATHOLIC CHARITIES</u>
	)	<u>CORPORATION, ALSO IDENTIFIED</u>
Defendants	)	<u>IN THE SECOND AMENDED</u>
	)	<u>COMPLAINT AS CATHOLIC</u>
vs.	)	<u>CHARITIES DIOCESE OF</u>
	)	<u>CLEVELAND</u>
LARISSA RODRIGUEZ)	
Inmate No. W101415	)	[Jury Demand Endorsed Hereon]
c/o Warden Shelbie Smith)	
Dayton Correctional Institution)	
4104 Germantown Street)	
Dayton, Ohio 45417)	
)	
and)	
)	
CHRISTOPHER RODRIGUEZ)	
Inmate No. A752141)	
c/o Warden Lyneal Wainwright)	
940 Marion-Williamsport Road)	
Marion, Ohio 43302)	
)	
Third-Party Defendants)	

SEPARATE ANSWER TO
SECOND AMENDED COMPLAINT

Now comes Defendant, Catholic Charities Corporation, also identified in the Second Amended Complaint as Catholic Charities Diocese of Cleveland (hereinafter referred to as "Catholic Charities" or "Defendant"), by and through counsel, and for its Answer to the Plaintiff's Second Amended Complaint, states the following:

1. Denies Paragraph 1 for lack of knowledge or information sufficient to form a belief

as to the truth of the matters asserted therein

2. Denies Paragraph 2 and each and every allegation set forth therein as against this Answering Defendant and denies all other allegations in Paragraph 2 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

3. Denies Paragraph 3 and each and every allegation contained therein as related to this Answering Defendant and further denies any remaining allegations in Paragraph 3 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

4. Denies Paragraph 4 and each and every allegation contained therein for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

5. Denies Paragraph 5 and each and every allegation contained therein as related to this Answering Defendant and further denies any remaining allegations in Paragraph 5 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

6. Denies Paragraph 6 and each and every allegation contained therein as related to this Answering Defendant and further denies any remaining allegations in Paragraph 6 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

7. Denies Paragraph 7 and each and every allegation contained therein as related to this Answering Defendant and further denies any remaining allegations in Paragraph 7 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

8. Denies Paragraph 8 and each and every allegation contained therein as related to this Answering Defendant and further denies any remaining allegations in Paragraph 8 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

9. Denies Paragraph 9 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

10. While not intending to deny that attached as Exhibit A is a copy of a document entitled *Entry Appointing Fiduciary; Letters of Authority*, denies any remaining allegations in Paragraph 10 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

11. Admits that Catholic Charities is a licensed not-for-profit Ohio corporation that employs parent educators for provision of parenting educational services to adult caregivers identified to be in at-risk families and denies any remaining allegations contained in Paragraph 11 of the Second Amended Complaint.

12. Denies Paragraph 12 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

13. Admits that Catholic Charities entered into a contractual relationship with Educational Service Center of Cuyahoga County (hereinafter "ESC"), said entity contracting on behalf of Bright Beginnings (hereinafter "BB") and denies any remaining allegations contained in Paragraph 13 of the Second Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the remaining allegations are not directed at this Answering Defendant.

14. Denies Paragraph 14 and each and every allegation contained therein.

15. Without intending to deny that at a point in time Nancy Caraballo was an employee of Catholic Charities in the position of a Parent Educator, any remaining allegations in Paragraph 15 of the Second Amended Complaint are denied.

16. Admits Paragraph 16 of the Second Amended Complaint.
17. Admits that ESC had a contractual relationship with Catholic Charities, said entity contracting on behalf of BB, for a period of time and denies any remaining allegations in Paragraph 17 of the Second Amended Complaint.
18. Denies Paragraph 18 and each and every allegation contained therein as related to this Answering Defendant and further denies any remaining allegations in Paragraph 18 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.
19. Admits Paragraph 19 of the Second Amended Complaint.
20. Denies Paragraph 20 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.
21. Upon information and belief, admits that Jordan resided with his mother, Larissa Rodriguez, at 1300 West 80th Street for a period of time, and denies Paragraph 21 of the Second Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.
22. Denies Paragraph 22 of the Second Amended Complaint.
23. Without intending to deny that for a period of time, Nancy Caraballo was employed by Catholic Charities and denies any and all remaining allegations in Paragraph 23 of the Second Amended Complaint.
24. Denies Paragraph 24 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.
25. Denies Paragraph 25 of the Second Amended Complaint and each and every allegation contained therein.

26. Denies Paragraph 26 and each and every allegation contained therein as related to this Answering Defendant and further denies any remaining allegations in Paragraph 26 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

27. Denies Paragraph 27 of the Second Amended Complaint and each and every allegation contained therein as related to this Answering Defendant and further denies all remaining allegations for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

28. Denies Paragraph 28 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

29. Denies Paragraph 29 and each and every allegation contained therein as related to this Answering Defendant and further denies any remaining allegations in Paragraph 29 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

30. Without intending to deny that at a point in time Larissa Rodriguez was issued an Electronic Benefits Card (hereinafter "EBT card"), any remaining allegations in Paragraph 30 of the Second Amended Complaint are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

31. Denies Paragraph 31 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and further states that the conduct of Defendant Nancy Caraballo, as alleged in Paragraph 31 of the Second Amended Complaint, to the extent that the same occurred, was conduct outside the course and scope of any employment and/or agency relationship between Catholic Charities and Nancy Caraballo, and denies any remaining

allegations for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

32. Denies Paragraph 32 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and further states that the conduct of Defendant Nancy Caraballo as alleged in Paragraph 32, to the extent that the same occurred, was conduct outside the course and scope of any employment and/or agency relationship between Catholic Charities and Nancy Caraballo, and denies any remaining allegations for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

33. Denies Paragraph 33 and each and every allegation contained therein as related to this Answering Defendant, and further denies any remaining allegations in Paragraph 33 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and further states that the actions of Defendant Nancy Caraballo as alleged in Paragraph 33 of the Second Amended Complaint, to the extent that the same occurred, were actions outside the course and scope of any employment and/or agency relationship between Catholic Charities and Nancy Caraballo.

34. Denies Paragraph 34 and each and every allegation contained therein.

35. Denies Paragraph 35 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and further states that the allegations in Paragraph 35, to the extent that the same occurred, were actions undertaken by Nancy Caraballo which were outside the course and scope of any employment and/or agency relationship between Catholic Charities and Nancy Caraballo.

36. Denies Paragraph 36 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

37. Denies Paragraph 37 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

38. Denies Paragraph 38 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

39. Denies Paragraph 39 and each and every allegation contained therein as related to this Answering Defendant, and further denies any remaining allegations in Paragraph 39 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and further states that the actions of Defendant Nancy Caraballo as alleged in Paragraph 39 of the Second Amended Complaint, to the extent that the same occurred, were actions outside the course and scope of any employment and/or agency relationship between Catholic Charities and Nancy Caraballo.

40. Denies Paragraph 40 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

41. Upon information and belief, admits Paragraph 41 of the Second Amended Complaint.

42. Upon information and belief, admits that Larissa Rodriguez pled guilty to various felonies and was sentenced to serve time in the Ohio State Prison System and denies any remaining allegations in Paragraph 42 of the Second Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

43. Upon information and belief, admits that Nancy Caraballo pled guilty to various felonies and was sentenced to serve time in the Ohio State Prison System and denies any remaining allegations in Paragraph 43 of the Second Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

44. Admits, upon information and belief, that Christopher Rodriguez pled guilty to various felonies and was sentenced to serve time in the Ohio State Prison System and denies any remaining allegations in Paragraph 44 of the Second Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

45. Denies Paragraph 45 of the Second Amended Complaint.

46. Denies Paragraph 46 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

47. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 46 above.

48. The allegations contained in Paragraph 48 of the Second Amended Complaint are legal conclusions, not factual allegations and thus no admission or denial is required. To the extent Paragraph 48 contains any factual allegations, the same are denied.

49. Denies Paragraph 49 and each and every allegation contained therein.

50. Denies Paragraph 50 and each and every allegation contained therein.

51. Denies Paragraph 51 and each and every allegation contained therein.

52. Denies Paragraph 52 and each and every allegation contained therein.

53. Denies Paragraph 53 and each and every allegation contained therein.

54. Denies Paragraph 54 and each and every allegation contained therein.

55. Denies Paragraph 55 and each and every allegation contained therein.

56. Denies Paragraph 56 and each and every allegation contained therein.

57. Denies Paragraph 57 and each and every allegation contained therein.

58. Denies Paragraph 58 and each and every allegation contained therein.

59. Denies Paragraph 59 and each and every allegation contained therein.

60. Denies Paragraph 60 and each and every allegation contained therein for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

61. Denies Paragraph 61 and each and every allegation contained therein for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

62. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 61 above.

63. The allegations in Paragraph 63 of the Second Amended Complaint set forth legal conclusions, not factual allegations, and thus no admission or denial is required. To the extent that Paragraph 63 contains any factual allegations, the same are denied.

64. Denies Paragraph 64 and each and every allegation contained therein.

65. Denies Paragraph 65 and each and every allegation contained therein.

66. Denies Paragraph 66 and each and every allegation contained therein.

67. Denies Paragraph 67 and each and every allegation contained therein.

68. Denies Paragraph 68 and each and every allegation contained therein.

69. Denies Paragraph 69 and each and every allegation contained therein.

70. Denies Paragraph 70 and each and every allegation contained therein for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

71. Denies Paragraph 71 and each and every allegation contained therein for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

72. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 71 above.

73. Denies Paragraph 73 and each and every allegation contained therein as related to this Answering Defendant, and further denies the remaining allegations in Paragraph 73 as related to all other named Defendants for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

74. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 73 above.

75. Denies Paragraph 75 and each and every allegation therein to the extent same is related to this Answering Defendant, and further denies all allegations in Paragraph 75 as related to all other named Defendants for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

76. Denies Paragraph 76 and each and every allegation contained therein as related to this Answering Defendant, and further denies any remaining allegations in Paragraph 76 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and further states that the conduct of Defendant Nancy Caraballo, as alleged in Paragraph 76 of the Second Amended Complaint, to the extent that the same occurred, was conduct outside the course and scope of any employment and/or agency relationship between Catholic Charities and Nancy Caraballo.

77. Denies Paragraph 77 because the same is not directed at this Answering Defendant and to the extent that Paragraph 77 is construed to be directed against this Answering Defendant, all allegations in Paragraph 77 are denied.

78. Denies Paragraph 78 and each and every allegation contained therein for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

79. Denies Paragraph 79 and each and every allegation contained therein for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

80. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 79 above.

81. Denies Paragraph 81 because the same is not directed at this Answering Defendant and to the extent that Paragraph 81 is construed to be directed against this Answering Defendant, all allegations in Paragraph 81 are denied.

82. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 81 above.

83. Paragraph 83 of the Second Amended Complaint sets forth legal conclusions, not factual allegations, and thus no admission or denial is required. To the extent that Paragraph 83 is deemed to contain any factual allegations, the same are denied by this Answering Defendant and any such factual allegations, as to any other named Defendant, are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

84. Paragraph 84 of the Second Amended Complaint sets forth legal conclusions, not factual allegations, and thus no admission or denial is required. To the extent that Paragraph 84 is deemed to contain any factual allegations, the same are denied by this Answering Defendant and any such factual allegations, as to any other named Defendant, are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

85. Denies Paragraph 85 and each and every allegation contained therein as related to this Answering Defendant and further denies each and every remaining allegation in Paragraph 85

as related to all other named Defendants for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

86. Denies Paragraph 86 and each and every allegation contained therein as related to this Answering Defendant and further denies the remaining allegations in Paragraph 86 as related to all other named Defendants for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

87. Denies Paragraph 87 and each and every allegation contained therein as related to this Answering Defendant and further denies the remaining allegations in Paragraph 87 as related to all other named Defendants for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

88. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 87 above.

89. Denies Paragraph 89 and each and every allegation contained therein.

90. Denies Paragraph 90 and each and every allegation contained therein and further states that the criminal actions of Defendant Nancy Caraballo as alleged in the Second Amended Complaint were outside the course and scope of her employment and/or agency relationship with Answering Defendant Catholic Charities.

91. Denies Paragraph 91 and each and every allegation contained therein.

92. Denies Paragraph 92 and each and every allegation contained therein.

93. Denies Paragraph 93 and each and every allegation contained therein.

94. Denies Paragraph 94 and each and every allegation contained therein.

95. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 94 above.

96. Denies Paragraph 96 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

97. Denies Paragraph 97 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

98. Denies Paragraph 98 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

99. Denies Paragraph 99 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

100. Denies Paragraph 100 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

101. Denies Paragraph 101 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

102. Denies Paragraph 102 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

103. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 102 above.

104. Denies Paragraph 104 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations in Paragraph 104 are not directed at this Answering Defendant.

105. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 104 above.

106. Denies Paragraph 106 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

107. Denies Paragraph 107 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

108. Denies Paragraph 108 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

109. Denies Paragraph 109 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

110. Denies Paragraph 110 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

111. This Answering Defendant restates and incorporates by reference, as if fully rewritten herein, each and every admission, denial, and other statement set forth in Paragraphs 1 through 110 above.

112. Denies Paragraph 112 for lack of knowledge or information sufficient to form a belief as to the truth of the matters asserted therein and/or because the allegations are not directed at this Answering Defendant.

FIRST AFFIRMATIVE DEFENSE

113. Any allegation within the Second Amended Complaint not specifically admitted to be true is hereby denied.

SECOND AFFIRMATIVE DEFENSE

114. Plaintiff's Second Amended Complaint fails to state a claim upon which relief may be granted as against this Answering Defendant.

THIRD AFFIRMATIVE DEFENSE

115. Plaintiff has failed to name all parties necessary for a just adjudication of this action as required by Rules 19 and 19.1 of the Ohio Rules of Civil Procedure.

FOURTH AFFIRMATIVE DEFENSE

116. Plaintiff lacks standing to bring all and/or a portion of the claims asserted in Plaintiff's Second Amended Complaint.

FIFTH AFFIRMATIVE DEFENSE

117. To the extent that Plaintiff has assigned any portion of Plaintiff's claims to any other person or entity, including subrogated medical insurers, Plaintiff has failed to bring this action in the name of the real party in interest as required by Rule 17 of the Ohio Rules of Civil Procedure.

SIXTH AFFIRMATIVE DEFENSE

118. This Answering Defendant reserves the right to assert that all and/or a portion of the Plaintiff's claims are barred by one or more applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

119. The injuries and damages of which Plaintiff complains were the direct and proximate results of the actions and/or inactions of third persons and/or entities over whom this Answering Defendant had no control and/or right to control.

EIGHTH AFFIRMATIVE DEFENSE

120. All or part of the injuries or damages alleged in Plaintiff's Second Amended Complaint were caused by the acts or omissions of another or others, whose conduct this Answering Defendant had no reason to anticipate and for whose conduct this Answering Defendant is and was not legally responsible.

NINTH AFFIRMATIVE DEFENSE

121. The Plaintiff's alleged injuries and/or damages may be attributable to one or more persons and/or entities from whom the Plaintiff does not seek to recover in this action pursuant to Ohio Revised Code §2307.23(C).

TENTH AFFIRMATIVE DEFENSE

122. Plaintiff's alleged damages are limited by statutes and Plaintiff is not entitled to collect damages on more than one count as the same would provide an improper double recovery.

ELEVENTH AFFIRMATIVE DEFENSE

123. Plaintiff's claimed damages were proximately caused by the negligent, reckless and/or intentional acts, omissions, or conduct of persons or entities other than this Answering Defendant and over whom this Answering Defendant had no responsibility or control.

TWELFTH AFFIRMATIVE DEFENSE

124. Any harm suffered by Plaintiff was not proximately caused by any actions and/or inactions by this Answering Defendant and Plaintiff is not entitled to damages from Answering Defendant Catholic Charities because any such harm and/or damages were caused by the intervening and/or superseding and/or pre-existing conditions over which this Answering Defendant had no control and no right to control.

THIRTEENTH AFFIRMATIVE DEFENSE

125. Any recovery by Plaintiff is subject in whole or in part to recoupment and/or offset.

FOURTEENTH AFFIRMATIVE DEFENSE

126. Defendant reserves the right to assert that Plaintiff has failed to mitigate her alleged injuries and/or damages.

FIFTEENTH AFFIRMATIVE DEFENSE

127. Defendant is entitled to a review of any non-economic award in tort under Ohio Revised Code §2315.19, should it be determined that Defendant is liable for any of Plaintiff's alleged damages.

SIXTEENTH AFFIRMATIVE DEFENSE

128. Defendant's liability to the Plaintiff, if any, is limited to Defendant's proportionate share, if any, pursuant to the provisions of Ohio Revised Code §2307.22, et seq.

SEVENTEENTH AFFIRMATIVE DEFENSE

129. Defendant is entitled to contribution from any other persons or entities who may be liable in tort for the Plaintiff's alleged injuries and damages for any amount that this Answering Defendant may be obligated to pay in excess of its proportionate share of liability, if any, pursuant to Ohio Revised Code §2307.22, et seq.

EIGHTEENTH AFFIRMATIVE DEFENSE

130. Any damage, loss or liability sustained by Plaintiff must be reduced, diminished and/or barred in proportion to the wrongful conduct of persons and/or entities other than this Answering Defendant, under the principles of equitable allocation, recoupment, set-off, proportionate responsibility, and comparative fault.

NINETEENTH AFFIRMATIVE DEFENSE

131. The claims of Plaintiff against this Answering Defendant are barred because this Defendant did not directly or proximately cause or contribute to any damage or loss sustained by Plaintiff.

TWENTIETH AFFIRMATIVE DEFENSE

132. Defendant is entitled to a separate trial for any claims involving punitive damages pursuant to Rule 42 of the Ohio Rules of Civil Procedure and/or Ohio Revised Code §2315.21.

TWENTY-FIRST AFFIRMATIVE DEFENSE

133. This Answering Defendant is immune from any claim for liability and/or punitive damages under provisions of state law, including, but not limited to, Ohio Revised Code §2744.01, *et seq.*

TWENTY-SECOND AFFIRMATIVE DEFENSE

134. This Answering Defendant expressly reserves the right to amend its Answer to set forth further affirmative defenses should discovery reveal the existence of any additional affirmative defenses.

WHEREFORE, having fully answered the Plaintiff's Second Amended Complaint, Defendant prays that the within action be dismissed against it, forthwith, with costs to the Plaintiff.

Respectfully submitted,

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)

RONALD A. MARGOLIS (0031241)

BRIAN F. LANGE (0080627)

Bonezzi Switzer Polito & Hupp Co. L.P.A.

1300 East 9th Street, Suite 1950

Cleveland, Ohio 44114

Phone (216) 875-2767

Fax (216) 875-1570

Email bsebaugh@bsphlaw.com

rmargolis@bsphlaw.com

blange@bsphlaw.com

Attorneys for Defendant, Catholic Charities Corporation, also identified in the Second Amended Complaint as Catholic Charities Diocese of Cleveland

JURY DEMAND

Defendant demands a trial by jury, said jury to be composed of the maximum number of jurors allowed by law, with respect to all issues triable by jury.

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)

RONALD A. MARGOLIS (0031241)

BRIAN F. LANGE (0080627)

Attorneys for Defendant, Catholic Charities

Corporation, also identified in the Second Amended

Complaint as Catholic Charities Diocese of

Cleveland

THIRD-PARTY COMPLAINT

Third-Party Plaintiff, Catholic Charities Corporation, also identified in the Second Amended Complaint as Catholic Charities Diocese of Cleveland, for its Third-Party Complaint against Third-Party Defendants Larissa Rodriguez and Christopher Rodriguez states as follows:

1. Third-Party Plaintiff, without admitting the allegations contained in Plaintiff's Second Amended Complaint, hereby incorporates the allegations contained in Plaintiff's Second Amended Complaint for pleading purposes only. (A copy of Plaintiff's Second Amended Complaint is attached hereto as Exhibit A).

2. Third-Party Plaintiff realleges all of the admissions, denials, averments and defenses contained in its Answer to Plaintiff's Second Amended Complaint as if fully rewritten herein.

3. Plaintiff's Second Amended Complaint alleges that Third-Party Defendants repeatedly neglected and/or abused Plaintiff's decedent.

4. Plaintiff has alleged that Third-Party Defendant Larissa Rodriguez terminated Plaintiff's decedent's registration with the Cleveland Metropolitan School District to enter preschool in September 2016 and terminated Plaintiff's decedent's medical care in December 2016.

5. Plaintiff has alleged that Third-Party Defendant Christopher Rodriguez physically abused Plaintiff's decedent resulting in multiple rib fractures.

6. Plaintiff has also alleged that Third-Party Defendant Larissa Rodriguez deprived Plaintiff's decedent of food and nutrition.

7. Plaintiff's Second Amended Complaint alleges that Third-Party Defendant Larissa Rodriguez plead guilty to involuntary manslaughter, felonious assault, gross abuse of a corpse, and endangering children.

8. Plaintiff's Second Amended Complaint further alleges that Third-Party Defendant Christopher Rodriguez plead guilty to involuntary manslaughter, felonious assault, endangering children, and abuse of a corpse.

9. Plaintiff has alleged that Third-Party Plaintiff knew or should have known of the abuse and/or neglect to Plaintiff's decedent and did not report the suspected or known abuse and/or neglect proximately resulting in Plaintiff's decedent's injuries and death.

10. Third-Party Plaintiff denies any negligence, liability, or wrongdoing on its part.

FIRST CAUSE OF ACTION
(Implied Indemnity – Larissa Rodriguez)

11. Third-Party Plaintiff refers to and incorporates by reference each and every allegation contained in Paragraphs 1 through 10 of this pleading at though fully set forth herein.

12. Third-Party Plaintiff alleges that it is not legally responsible for the events giving rise to Plaintiff's claims for relief asserted in Plaintiff's Second Amended Complaint nor for the damages sustained by Plaintiff as alleged in the Second Amended Complaint.

13. Third-Party Plaintiff further alleges that any damages suffered by Plaintiff were a direct and proximate result of the negligent, reckless, willful, wanton, intentional, and/or criminal conduct of Third-Party Defendant Larissa Rodriguez.

14. If Third-Party Plaintiff is held to be liable for all or any part of the claim for damages of Plaintiff as asserted in the Second Amended Complaint, it will be due to the negligent, reckless, willful, wanton, intentional, and/or criminal conduct of Third-Party Defendant Larissa Rodriguez, and Third Party Plaintiff is entitled to be indemnified by Third-Party Defendant Larissa Rodriguez.

WHEREFORE, Third-Party Plaintiff, Catholic Charities Corporation, prays for judgment against Third-Party Defendant Larissa Rodriguez for any and all settlements, compromises, and/or

judgments entered into by and/or against Third-Party Plaintiff as a result of the Second Amended

Complaint, for attorneys' fees, court costs, investigative costs and other expenses incurred in the defense of the Second Amended Complaint according to proof, and any other relief to which this Honorable Court deems just and equitable.

SECOND CAUSE OF ACTION
(Contribution – Larissa Rodriguez)

15. Third-Party Plaintiff refers to and incorporates by reference each and every allegation contained in Paragraphs 1 through 14 of this pleading at though fully set forth herein.

16. Third-Party Plaintiff denies any negligence, liability, or wrongdoing on its part, and denies all liability to Plaintiff as alleged in the Second Amended Complaint.

17. Any damages suffered by Plaintiff are as a direct and proximate result of the negligent, reckless, willful, wanton, intentional, and/or criminal conduct of Third-Party Defendant Larissa Rodriguez.

18. If Third-Party Plaintiff is found to be liable in whole or in part, it is believed that Third-Party Defendant Larissa Rodriguez will also be found liable.

19. If Third-Party Plaintiff is determined to be liable in whole or in part to Plaintiff and is required to pay more than its proportionate share of liability, Third-Party Plaintiff has a right of contribution under R.C. 2307.25 against Third-Party Defendant Larissa Rodriguez.

WHEREFORE, Third-Party Plaintiff, Catholic Charities Corporation, prays for judgment against Third-Party Defendant Larissa Rodriguez based upon the relative percentage of fault of each party as it relates to the Second Amended Complaint and for any other relief to which this Honorable Court deems just and equitable.

THIRD CAUSE OF ACTION
(Implied Indemnity – Christopher Rodriguez)

20. Third-Party Plaintiff refers to and incorporates by reference each and every

allegation contained in Paragraphs 1 through 19 of this pleading at though fully set forth herein.

21. Third-Party Plaintiff alleges that it is not legally responsible for the events giving rise to Plaintiff's claims for relief asserted in Plaintiff's Second Amended Complaint nor for the damages sustained by Plaintiff as alleged in the Second Amended Complaint.

22. Third-Party Plaintiff further alleges that any damages suffered by Plaintiff were a direct and proximate result of the negligent, reckless, willful, wanton, intentional, and/or criminal conduct of Third-Party Defendant Christopher Rodriguez.

23. If Third-Party Plaintiff is held to be liable for all or any part of the claim for damages of Plaintiff as asserted in the Second Amended Complaint, it will be due to the negligent, reckless, willful, wanton, intentional, and/or criminal conduct of Third-Party Defendant Christopher Rodriguez, and Third Party Plaintiff is entitled to be indemnified by Third-Party Defendant Christopher Rodriguez.

WHEREFORE, Third-Party Plaintiff, Catholic Charities Corporation, prays for judgment against Third-Party Defendant Christopher Rodriguez for any and all settlements, compromises, and/or judgments entered into by and/or against Third-Party Plaintiff as a result of the Second Amended Complaint, for attorneys' fees, court costs, investigative costs and other expenses incurred in the defense of the Second Amended Complaint according to proof, and any other relief to which this Honorable Court deems just and equitable.

FOURTH CAUSE OF ACTION
(Contribution – Christopher Rodriguez)

24. Third-Party Plaintiff refers to and incorporates by reference each and every allegation contained in Paragraphs 1 through 23 of this pleading at though fully set forth herein.

25. Third-Party Plaintiff denies any negligence, liability, or wrongdoing on its part, and denies all liability to Plaintiff as alleged in the Second Amended Complaint.

26. Any damages suffered by Plaintiff are as a direct and proximate result of the negligent, reckless, willful, wanton, intentional, and/or criminal conduct of Third-Party Defendant Christopher Rodriguez.

27. If Third-Party Plaintiff is found to be liable in whole or in part, it is believed that Third-Party Defendant Christopher Rodriguez will also be found liable.

28. If Third-Party Plaintiff is determined to be liable in whole or in part to Plaintiff and is required to pay more than its proportionate share of liability, Third-Party Plaintiff has a right of contribution under R.C. 2307.25 against Third-Party Defendant Christopher Rodriguez.

WHEREFORE, Third-Party Plaintiff, Catholic Charities Corporation, prays for judgment against Third-Party Defendant Christopher Rodriguez based upon the relative percentage of fault of each party as it relates to the Second Amended Complaint and for any other relief to which this Honorable Court deems just and equitable.

Respectfully submitted,

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)

RONALD A. MARGOLIS (0031241)

BRIAN F. LANGE (0080627)

Bonezzi Switzer Polito & Hupp Co. L.P.A.

1300 East 9th Street, Suite 1950

Cleveland, Ohio 44114

Phone (216) 875-2767

Fax (216) 875-1570

Email bsebaugh@bsphlaw.com

rmargolis@bsphlaw.com

blange@bsphlaw.com

Attorneys for Defendant, Catholic Charities Corporation, also identified in the Second Amended Complaint as Catholic Charities Diocese of Cleveland

JURY DEMAND

Defendant demands a trial by jury, said jury to be composed of the maximum number of jurors allowed by law, with respect to all issues triable by jury.

/s/ Beth A. Sebaugh

BETH A. SEBAUGH (0008518)

RONALD A. MARGOLIS (0031241)

BRIAN F. LANGE (0080627)

*Attorneys for Defendant, Catholic Charities
Corporation, also identified in the Second Amended
Complaint as Catholic Charities Diocese of
Cleveland*

CERTIFICATE OF SERVICE

Pursuant to 5(B)(2)(f), the foregoing has been filed and served by operation of the Court's electronic filing system and upon the following, not receiving electronic service, via ordinary U.S.

Mail this 9th day of October 2020:

Bright Beginnings
6393 Oak Tree Boulevard, Suite 201
Independence, Ohio 44131
Defendant

/s/ Beth A. Sebaugh
BETH A. SEBAUGH (0008518)
RONALD A. MARGOLIS (0031241)
BRIAN F. LANGE (0080627)
*Attorneys for Defendant, Catholic Charities
Corporation, also identified in the Second Amended
Complaint as Catholic Charities Diocese of
Cleveland*

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE RODRIGUEZ as Administrator of the)
Estate of Jordan Rodriguez)
c/o Randazzo Law, LLC)
55 Public Square, Suite 2100)
Cleveland, OH 44113)

CV 19-909566

JUDGE JOAN SYNENBERG

Plaintiff,

-VS-

CATHOLIC CHARITIES CORPORATION)
c/o K. Patrick Gareau Registrant Agent)
7911 Detroit Ave)
Cleveland, OH 44102)

SECOND AMENDED
COMPLAINT AT LAW
WITH JURY DEMAND

and)

CATHOLIC CHARITIES DIOCESE of Cleveland)
7911 Detroit Ave)
Cleveland, OH 44102)

and)

NANCY CARABALLO, individually)
and as agent of)
Catholic Charities Corporation and/or)
Catholic Charities Diocese of Cleveland and/or)
Cuyahoga County)

and)

BRIGHT BEGINNINGS)
6393 Oak Tree Blvd, #201)
Independence, OH 44131)

and)

PORCIA MAINOR, individually)
1134 E. 66th Street)
Cleveland, Ohio 44103)

Defendants.)



SECOND AMENDED COMPLAINT

NOW COMES the Plaintiff MICHELLE RODRIGUEZ, as Administrator for the Estate of JORDAN RODRIGUEZ, Deceased, by her attorneys, DERATANY & KOSNER, RANDAZZO LAW LLC, complaining of the Defendants, CATHOLIC CHARITIES CORPORATION, CATHOLIC CHARITIES DIOCESE of Cleveland, NANCY CARABALLO individually and/or as agent of CATHOLIC CHARITIES CORPORATION and/or CATHOLIC CHARTIES DIOCESE of Cleveland, BRIGHT BEGINNINGS as a de facto corporation and/or corporation by estoppel, and PORCIA MAINOR, states as follows:

INTRODUCTION

1. This action is brought on behalf of Michelle Rodriguez administrator of the Estate of Jordan Rodriguez, for the loss of Jordan Rodriguez, who was a developmentally disabled five (5) year old child who required close oversight, attention and care in order to ensure his safety and health.
2. From 2016 through September 2017, Jordan suffered from abuse from his mother's boyfriend, Christopher Rodriguez, inclusive of spankings, whippings and beatings. This abuse should have been reported by CATHOLIC CHARITIES, but it was not.
3. From 2016 through September 2017 Jordan suffered from unconscionable neglect, especially and including nutritional neglect from his mother Larissa Rodriguez and CATHOLIC CHARITIES and their employee NANCY CARABALLO. This neglect resulted in the tragic death of Jordan. Jordan's body was discovered buried in the backyard of Larissa and Christopher in December 2017.
4. This action seeks to hold accountable the individuals, professionals and private corporations charged with reporting abuse, and neglect, and providing necessary services to Jordan and the family, who were professionally negligent.

5. The defendants individually, and collectively turned a blind eye to clear and present indications of ongoing physical abuse, and neglect, acting indifferently to Jordan's safety and well-being, leaving him exposed to longstanding and continuing harm due to abuse and nutritional neglect, and ultimately to his untimely death.

6. Further, defendants ignored mandated statutory requirements inclusive of reporting requirements to protect children from neglect and abuse, were grossly reckless in their duties, and acted in contravention of reasonable standards of care and practice.

7. As a result of the wrongful conduct described in this Complaint, Jordan Rodriguez, was abused, neglected, and malnourished, and died in September 2017, at age 5.

8. This action seeks remedies for his death and losses against the culpable parties, whose actions and inactions violated the letter of the law, ignored professional standards, and manifested an unforgivable and reckless indifference for the safety and health of this most vulnerable disabled child. This action seeks compensatory, exemplary and punitive damages for the horrific harms done to Jordan and his preventable death.

PARTIES

9. At all times relevant, decedent, Jordan Rodriguez hereinafter referred to as ("Jordan") resided at 1300 West 80th Street Cleveland, Cuyahoga County, Ohio, and other unknown addresses with his mother Larissa Rodriguez and his mother's boyfriend Christopher Rodriguez. Jordan was a developmentally disabled 5 year old who could not speak and had various medical conditions that required continued medical treatment.

10. MICHELLE RODRIGUEZ was appointed on December 28, 2018 as administrator of the Estate of Jordan Rodriguez, (order of appointment attached hereto as Exhibit "A" to this complaint).

11. Defendant CATHOLIC CHARITIES CORPORATION and CATHOLIC CHARITIES DIOCESE OF CLEVELAND (collectively referred to as CATHOLIC CHARITIES), were licensed Ohio corporations, that employed social workers, case managers, case workers, teachers, therapists, and educators to provided social services including but not limited to parent coaching, educational services, services for individuals with Developmental Disabilities, counseling services, and evaluations and services for at risk Ohio families.

12. BRIGHT BEGINNINGS (formerly sued as ESC/Bright beginnings) has at all times relevant, acted as a de facto corporation and/or corporation by estoppel, conducting itself as a corporation, by having an executive director, insurance coverage, board of directors, charitable events and other conduct and activities which would hold itself out to the public and third parties as a corporation.

13. Defendant CATHOLIC CHARITIES had a contractual relationship with BRIGHT BEGINNINGS. The mission of BRIGHT BEGINNINGS, inter alia, was to reduce instances of abuse and neglect by providing parent coaching, education medical services and other therapy to at risk families.

14. CATHOLIC CHARITIES and its employees were mandatory reporters pursuant to O.R.C. §5123.61 and O.R.C. § 2151.421 requiring them to report suspected child abuse and neglect or actual child abuse and neglect as outlined in the aforementioned statutes, and were subject to the provisions of O.R.C. §2151.421(N) for failure to report abuse.

15. Defendant NANCY CARABALLO, was at all times relevant, a primary service provider and case worker who provided services to the family of Larissa Rodriguez inclusive of Jordan in the course and scope of her employment with CATHOLIC CHARITIES. NANCY CARABALLO was at all times an agent and/or apparent agent and/or constructive agent and/or

employee of CATHOLIC CHARITIES.

16. NANCY CARABALLO was at all times relevant, and independently, a mandatory reporter of child abuse and neglect and suspected child abuse and neglect as provided in O.R.C. §5123.61 and O.R.C. §2151.421.

17. BRIGHT BEGINNINGS had a contractual relationship with CATHOLIC CHARITIES and was responsible for ensuring CATHOLIC CHARITIES provided social services to Jordan and Larissa Rodriguez, to reduce instances of abuse and neglect by providing parent coaching, education, medical services, social services inclusive of coordinating care for the child and mother as more fully stated in the contract between CATHOLIC CHARITIES and BRIGHT BEGINNINGS.

18. Defendant PORCIA MAINOR, was at all times relevant responsible for ensuring Jordan Rodriguez received the services provided by BRIGHT BEGINNINGS and was responsible for ensuring Jordan was properly referred to and logged into/registered with BRIGHT BEGINNINGS' system, and transferred to or referred to the care of CATHOLIC CHARITIES.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

19. Decedent Jordan Rodriguez was born November 5, 2012, to Larissa Rodriguez, his biological mother.

20. Jordan suffered from a developmental disability and could not speak. He also suffered from chronic lung disease, congenital abnormality of kidneys and was considered medically fragile and by the nature of his disability, needed extensive feeding support, various therapies, regular medical consults, and close supervision.

21. Jordan resided with his mother Larissa Rodriguez at 1300 W. 80th Street along with 6 of his siblings and his mother's boyfriend Christopher Rodriguez.

22. CATHOLIC CHARITIES, by and through its agents, apparent agents and/or employees

including NANCY CARABALLO, developmental therapists, and other caseworkers, were charged with providing necessary services to Jordan and his family between 2014-2017.

23. NANCY CARABALLO was employed by CATHOLIC CHARITIES as a Parent Educator and was responsible for visiting the Rodriguez home on a semimonthly basis to provide to Jordan and the family between 2013- 2017.

24. Starting in or about autumn of 2016, and continuing to his death, Larissa Rodriguez and Christopher Rodriguez began to inflict repeated abuse against Jordan.

25. Beginning in 2016 and continuing through 2017, there were multiple instances of abuse and/or neglect to Jordan which CATHOLIC CHARITIES knew or should have known occurred and did not report.

26. Larissa terminated Jordan's medical care and stopped taking Jordan to his medical providers in December 2016. CATHOLIC CHARITIES and NANCY CARABALLO were aware of this termination and did not report this suspected neglect and/or abuse.

27. On September 13, 2016 Larissa terminated Jordan's registration with the Cleveland Metropolitan School District to enter preschool, before he ever transitioned to attending preschool, thereby terminating his ability to receive an intensive education program provided by Cleveland Metropolitan School District. Catholic Charities and NANCY CARABALLO knew of this abuse and did not report it to the appropriate agency.

28. In the spring/summer of 2017 Jordan suffered multiple fractures to his ribs. Ribs 6, 8, 9, and 10 on the right side were fractured and Rib 8 on the left side was fractured, all by Christopher Rodriguez

29. Prior to September 2017 Jordan suffered from malnourishment and at the time of his autopsy Jordan was 5 years old and weighed 151lbs. CATHOLIC CHARITIES by and through their agents were aware of this malnourishment and abuse, participated in this abuse, and failed to report it.

30. Larissa Rodriguez was issued an Electronic Benefits Card (hereinafter "EBT card") to buy food for her family which included Jordan and his siblings.

31. From 2015 through 2017 Larissa Rodriguez and NANCY CARABALLO had an arrangement where Larissa would leave several hundred dollars on her EBT card each month. NANCY CARABALLO would then pay Larisa Rodriguez a lower value, cents for each dollar remaining on the EBT card, thereby depriving the Rodriguez family of food and nutrition.

32. NANCY CARABALLO would retrieve the EBT card from Larissa Rodriguez, who deprived Jordan of necessary food and nutrition by selling the benefits from the card.

33. Between the autumn of 2016 through September 2017, NANCY CARABALLO met Larissa multiple times specifically to retrieve the EBT card and failed or refused to provide any or sufficient services to Jordan and his family as mandated by statute and contract during these visits.

34. CATHOLIC CHARITIES was paid for the falsified records and for services that were never provided to Jordan Rodriguez throughout 2016-2017.

35. Sometime after discovery of Jordan's body, NANCY CARABALLO filed false reports of her home visits to the Rodriguez house. These reports indicated visits occurred and NANCY CARABALLO provided services when she did not visit the home at all and/or visits when she was at the home but failed to provide any services to Jordan and his family. During these "visits" Caraballo instead retrieved the EBT card.

36. For at least a year prior to the Death of Jordan NANCY CARABALLO had not seen Jordan and failed to report he was missing or make reasonable inquiry.

37. In the Spring and Summer of 2017, NANCY CARABALLO was informed by Larissa Rodriguez that Christopher Rodriguez was abusing and beating both Larissa Rodriguez and Jordan Rodriguez, but failed to take action inclusive of reporting the incidents of abuse, which would have lead to the immediate removal of Jordan from a dangerous situation and lead to the discovery of his severely dehydrated and nutritionally neglected state.

38. In the months prior to September 2017, Jordan became nutritionally deprived, and began to lose function of his end organs inclusive of his kidneys, liver, and other organs and then suffered systemic organ failure which caused him great pain and suffering and eventually lead to his death.

39. On or about September 21, 2017 Jordan became unconscious and non-responsive. Christopher and/or Larissa laid him on a bed and did not call for medical assistance or an ambulance because she was afraid that her children would be taken away by DCFS, due to the scheme that she and CATHOLIC CHARITIES/ NANCY CARABALLO engaged in with regard to the food stamps. Jordan died on or about September 22, 2017 of nutritional and medical neglect.

40. On or about September 22, 2017 Christopher Rodriguez buried Jordan's body in the back yard.

41. In December 2017 Jordan's body was found buried in the backyard behind the house where he was living.

42. Larissa Rodriguez plead guilty to involuntary manslaughter, felonious assault, gross abuse of a corpse and endangering children. She was sentenced to serve time in the Ohio State Prison System.

43. NANCY CARABALLO plead guilty to trafficking in or illegal use of food stamps in violation of O.R.C. §2913.46(B) a third degree felony, grand theft in violation of O.R.C. 2913.02(A) (2) a fourth degree felony, and 2 counts of tampering with government records in violation of O.R.C. §2913.42(A)(1) a third degree felony and was sentenced to serve time in the Ohio State Prison System.

44. Christopher Rodriguez plead guilty to involuntary manslaughter, felonious assault, endangering children, and abuse of a corpse and was sentenced to serve time in the Ohio State Prison System.

45. CATHOLIC CHARITIES by and through their agent NANCY CARABALLO, and other employees, were responsible for reporting suspicions of child abuse and neglect and their failure

to report was reckless and indifferent to the known and obvious risks facing Jordan.

46. Starting in January 2017 and continuing until his death in September 2017, the condition and health of Jordan including his physical appearance and assessments, continued to decline such that a reasonable person in a similar position would have suspected physical abuse and nutritional neglect.

FIRST CAUSE OF ACTION
WRONGFUL DEATH-RECKLESS, WILLFUL, AND WANTON-
CATHOLIC CHARITIES INC, CATHOLIC CHARITIES DIOCESE OF CLEVELAND and
KARNESE MCKENZIE, DEEBONY PELZER AND NANCY CARABELLO AS AGENTS OF
CATHOLIC CHARITIES

47. Plaintiff Michelle Rodriguez as the administrator of the Estate of Jordan Rodriguez, restates and incorporates by reference, Paragraphs 1 through 46 of this Complaint as if fully re-written herein.

48. At all times relevant, CATHOLIC CHARITIES and/or Catholic Charities Diocese of Cleveland, by and through its agents and employees, were required to comply with all statutory mandatory reporting requirements, and had a duty not to take away the food and nutrition from the families they served, and had a duty to report any knowledge or suspicion of abuse or neglect to Jordan.

49. At all times relevant CATHOLIC CHARITIES by and through its agents and employees owed a duty of care to Jordan Rodriguez, pursuant to the contract that existed between BRIGHT BEGINNINGS and CATHOLIC CHARITIES, requiring CATHOLIC CHARITIES to provide social services, nutritional counseling, educational services and/or therapy services.

50. At all times relevant CATHOLIC CHARITIES had a common law duty, as well as a duty pursuant to its voluntary undertaking, to protect the health, safety and best interests of Jordan by continuing to maintain contact with the family and agreeing to provide, social services, nutritional counseling, and educational services to the Rodriguez family.

51. At all times relevant CATHOLIC CHARITIES and its agents or employees were a

developmental disability caretaker as defined by O.R.C. §2903.341(A)(1). Their conduct created a substantial risk to the health and safety of a developmentally disabled person under their care, supervision and/or control, resulting in serious physical harm in violation of O.R.C. §2903.341(B) and (E)(3), and in violation of O.R.C. §2919.22(A) and (2)(c).

52. At all times relevant, Nancy Caraballo, DeEbony Pelzer, and Karnese McKenzie were acting as agents of CATHOLIC CHARITIES and in their professional capacity as agents and employees of CATHOLIC CHARITIES, were developmental disability caretakers as defined by O.R.C. § 2903.341(A)(1) and pursuant to O.R.C. 2903.341 (B) and (E)(3) and O.R.C. 2151.421 were required to comply with regulations in providing social services. Their conduct created a substantial risk to the health and safety of a developmentally disabled person under their care, supervision and/or control resulting in serious physical harm and was in violation of O.R.C. §2903.341(B).

53. At all times relevant, DeEbony Pelzer and Karnese McKenzie were agents and employees of CATHOLIC CHARITIES and hired, trained and supervised NANCY CARABALLO and were responsible to act within the acceptable standards of care required of a social service agency in the hiring, training, and supervision of their employees.

54. On or about 2015, and continuing to his death, these Defendants owed a duty to Jordan to report suspicions of or actual physical abuse in accordance with O.R.C. §2151.421(A)(1)(a).

55. At all times from September 2016 up through March 17, 2017, Defendants had a duty of care to Jordan imposed through their contract.

56. Defendants had a statutory duty to report suspicion or knowledge of abuse or neglect to Jordan as a mandatory reporter.

57. CATHOLIC CHARITIES' agents or employees, inclusive of NANCY CARABALLO, were either present in the home of Jordan or should have been present in the home of Jordan semimonthly providing professional services on behalf of CATHOLIC CHARITIES. They were negligent in their professional care having either failed to recognize the signs of abuse, contributing to

the abuse and specifically contributing to the nutritional neglect, which was a proximate cause of Jordan's death.

58. Defendant CATHOLIC CHARITIES as a corporation, and/or through its employees Nancy Caraballo, Karnese McKenzie, and DeEbony Pelzer, breached its duty of care owed to Jordan by conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances through one or more of the following acts or omissions:

- a) NANCY CARABALLO, falsely and fraudulently reported that she visited the home of Jordan Rodriguez and provided services to the Rodriguez family from approximately November 2016 until November 2017 and specifically, on or about November 30, 2016, December 7, 2016, January 5, 2017, March 16, 2017, March 31, 2017, June 26, 2017, July 10, 2017, August 4, 2017, September 6, 2017, November 6, 2017, and November 20, 2017, when she did not go, thereby decreasing the likelihood the abuse and/or neglect of Jordan Rodriguez would be discovered;
- b) Failed to visit the home of Jordan Rodriguez and provide services to the Rodriguez family on or about November 30, 2016, December 7, 2016, January 5, 2017, March 16, 2017, March 31, 2017, June 26, 2017, July 10, 2017, August 4, 2017, September 6, 2017, November 6, 2017, and November 20, 2017, in violation of their contractual and statutory obligations;
- c) Deprived the Rodriguez family and specifically Jordan Rodriguez of proper food and nutrition by purchasing Larissa Rodriguez's EBT card;
- d) Failed to monitor the safety of Jordan Rodriguez by failing to perform the necessary services to Jordan Rodriguez including safety assessments, nutritional assessments, ensuring medical treatment and educational services;
- e) Failed to report abuse of Jordan Rodriguez despite Larissa Rodriguez's confession that the abuse was occurring and despite the obvious signs of abuse;
- f) Failed to report abuse and neglect to Cuyahoga County Department of Children and Family Services as statutorily mandated, including that Jordan was living in deplorable, unsanitary, cockroach and rat infested conditions;

- g) Failed to report to Cuyahoga County Department of Children and Family Services that Larissa Rodriguez and/or possibly Christopher Rodriguez had fractured multiple ribs on Jordan while inflicting abuse; that family, friends, and neighbors of Jordan had made complaints to CATHOLIC CHARITIES' agents and/or employees of abuse and neglect to Jordan;
- h) Failed to notify the proper authorities Jordan Rodriguez was missing;
- i) Failed to identify signs of abuse and neglect including Jordan Rodriguez's obvious failure to thrive, and his nutritional decline; the discontinuation of medical treatment to Jordan by his mother; and the disenrollment from preschool before Jordan ever transitioned into attending preschool
- j) Failed to recommend immediate transfer of Jordan Rodriguez to temporary protective custody or to Cuyahoga County Department of Children and Family Services custody when they knew or should have known that he had been neglected, or physically abused and nutritionally starved;
- k) Failed to report that Jordan Rodriguez was malnourished and not receiving the appropriate food and nutrition, when Larissa Rodriguez sold her EBT benefits to a CATHOLIC CHARITIES employee instead of providing nutrition to her child;
- l) DeEbony Pelzer and Karnese McKenzie failed to provide adequate supervision and training of CATHOLIC CHARITIES' caseworker; Nancy Caraballo;
- m) CATHOLIC CHARITIES failed to adhere to social services standards and requirements for hiring and training their employees;
- n) CATHOLIC CHARITIES hired and recruited unqualified individuals who lacked appropriate education requirements and/or experience with children with disabilities;
- o) CATHOLIC CHARITIES failed to have adequate management structure of social workers and professionals required of a social service organization;
- p) CATHOLIC CHARITIES failed to manage and execute policies and procedures and/or regulations under the standard of care, inclusive of maintaining conflicts of interest policies and gifts policies, which severely increased the likelihood of Jordan Rodriguez being injured.

59. As a direct and proximate result of one or more of the aforesaid acts or omissions,

Jordan, sustained injuries resulting in his death on or about September 21, 2017.

60. MICHELLE RODRIGUEZ is the duly appointed Special Administrator of the Estate of Jordan Rodriguez, Deceased, and this wrongful death action is brought on behalf of the Estate of Jordan Rodriguez, pursuant to O.R.C. §2125.02.

61. That on or about September 21, 2017, Jordan Rodriguez left surviving his siblings:

ANGEL ALVAREZ JR.	Brother	
GR	sibling	DOB unknown
MR	sibling	DOB 10/X/05
MA	sibling	DOB 12/X/10
NR	sibling	DOB 10/X/19
TW	sibling	DOB 10/X/14
MR	sibling	DOB 7/X/16
AC	sibling	DOB 9/X/13
AR	sibling	DOB 4/X/18

All the above have suffered pecuniary loss, including grief and sorrow and loss of society as a result of Jordan's death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendant, jointly and severally, in an amount in excess of \$25,000 in compensatory damages, exemplary or punitive damages, on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

SECOND CAUSE OF ACTION
WRONGFUL DEATH-NEGLIGENCE-CATHOLIC CHARITIES INC, CATHOLIC
CHARITIES DIOCESE OF CLEVELAND, and AGENTS NANCY CARABALLO, KARNESE
MCKENZIE AND DEEBONY PELZER

62. Plaintiff MICHELLE RODRIGUEZ, restates and incorporates by reference, Paragraphs 1 through 61 of this Complaint as if fully re-written herein.

63. At all times relevant, CATHOLIC CHARITIES and/or Catholic Charities Diocese of Cleveland, by and through its agents and employees, were required to comply with all statutory mandatory reporting requirements and had a duty to report any knowledge or suspicion of abuse or neglect of Jordan.

64. At all times relevant CATHOLIC CHARITIES by and through its agents and employees owed a duty of care to Jordan Rodriguez, pursuant to the contract that existed between BRIGHT BEGINNINGS and CATHOLIC CHARITIES, requiring CATHOLIC CHARITIES to provide social services, educational services and/or therapeutic services to Jordan and his family.

65. At all times relevant CATHOLIC CHARITIES had voluntarily undertaken a duty of care to Jordan by continuing to maintain contact with the family and agreeing to provide social services.

66. At all times relevant CATHOLIC CHARITIES' agents or employees were developmental disability caretakers as defined by O.R.C. §2903.341(A)(1). Their conduct created a substantial risk to the health and safety of a developmentally disabled person under their care, supervision and/or control, resulting in serious physical harm in violation of OR.C. §2903.341(B) and (E)(3), and in violation of O.R.C. §2919.22(A) and (2) (c).

67. CATHOLIC CHARITIES' agents or employees were present in the home of Jordan or should have been present in the home of Jordan semimonthly, providing professional services on behalf of CATHOLIC CHARITIES. They were negligent in their professional care having either failed to

recognize the signs of abuse, contributed to the abuse or looked the other way while knowing of the abuse.

68. Defendant CATHOLIC CHARITIES as a corporation, and/or through its employees Nancy Caraballo, Karnese McKenzie, and DeEbony Pelzer, breached its duty of care that was owed to Jordan by one or more of the following acts:

- a) NANCY CARABALLO, falsely and fraudulently reported that she visited the home of Jordan Rodriguez and provided services to the Rodriguez family from approximately November 2016 until November 2017 and specifically, on or about November 30, 2016, December 7, 2016, January 5, 2017, March 16, 2017, March 31, 2017, June 26, 2017, July 10, 2017, August 4, 2017, September 6, 2017, November 6, 2017, and November 20, 2017, when she did not go, thereby decreasing the likelihood the abuse and/or neglect of Jordan Rodriguez would be discovered;
- b) Failed to visit the home of Jordan Rodriguez and provide services to the Rodriguez family on or about November 30, 2016, December 7, 2016, January 5, 2017, March 16, 2017, March 31, 2017, June 26, 2017, July 10, 2017, August 4, 2017, September 6, 2017, November 6, 2017, and November 20, 2017, in violation of their contractual and statutory obligations;
- c) Deprived the Rodriguez family and specifically Jordan Rodriguez of proper food and nutrition by purchasing Larissa Rodriguez's EBT card;
- d) Failed to monitor the safety of Jordan Rodriguez by failing to perform the necessary services to Jordan Rodriguez including safety assessments, nutritional assessments, ensuring medical treatment and educational services;
- e) Failed to report abuse of Jordan Rodriguez despite Larissa Rodriguez's confession that the abuse was occurring and despite the obvious signs of abuse;
- f) Failed to report abuse and neglect to Cuyahoga County Department of Children and Family Services as statutorily mandated, including that Jordan was living in deplorable, unsanitary, cockroach and rat infested conditions;

- g) Failed to report to Cuyahoga County Department of Children and Family Services that Larissa Rodriguez and/or possibly Christopher Rodriguez had fractured multiple ribs on Jordan while inflicting abuse; that family, friends, and neighbors of Jordan had made complaints to CATHOLIC CHARITIES' agents and/or employees of abuse and neglect to Jordan;
- h) Failed to notify the proper authorities Jordan Rodriguez was missing;
- i) Failed to identify signs of abuse and neglect including Jordan Rodriguez's obvious failure to thrive, and his nutritional decline; the discontinuation of medical treatment to Jordan by his mother; and the disenrollment from preschool before Jordan ever transitioned into attending preschool
- j) Failed to recommend immediate transfer of Jordan Rodriguez to temporary protective custody or to Cuyahoga County Department of Children and Family Services custody when they knew or should have known that he had been neglected, or physically abused and nutritionally starved;
- k) Failed to report that Jordan Rodriguez was malnourished and not receiving the appropriate food and nutrition, when Larissa Rodriguez sold her EBT benefits to a CATHOLIC CHARITIES employee instead of providing nutrition to her child;
- l) DeEbony Pelzer and Karnese McKenzie failed to provide adequate supervision and training of CATHOLIC CHARITIES' caseworker, Nancy Caraballo;
- m) CATHOLIC CHARITIES failed to adhere to social services standards and requirements for hiring and training their employees;
- n) CATHOLIC CHARITIES hired and recruited unqualified individuals who lacked appropriate education requirements and/or experience with children with disabilities;
- o) CATHOLIC CHARITIES failed to have adequate management structure of social workers and professionals required of a social service organization;
- p) CATHOLIC CHARITIES ailed to manage and execute policies and procedures and/or regulations under the standard of care, inclusive of maintaining conflicts of interest policies and gifts policies, which severely increased the likelihood of Jordan Rodriguez being injured.

69. As a direct and proximate result of one or more of the aforesaid acts or omissions, Jordan, was caused to sustain injury to his organ system, causing damage to his kidneys, liver, and other internal organs resulting systemic shutdown of his organs and body and eventually resulting in his death on or about September 21, 2017.

70. MICHELLE RODRIGUEZ is the duly appointed Special Administrator of the Estate of Jordan Rodriguez, Deceased, and this wrongful death action is brought on behalf of the Estate of Jordan Rodriguez, pursuant to O.R.C. §2125.02.

71. That on or about September 21, 2017, Jordan Rodriguez left surviving his siblings:

ANGEL ALVAREZ JR.	Brother	
GR	sibling	DOB unknown
MR	sibling	DOB 10/X/05
MA	sibling	DOB 12/X/10
NR	sibling	DOB 10/X/19
TW	sibling	DOB 10/X/14
MR	sibling	DOB 7/X/16
AC	sibling	DOB 9/X/13
AR	sibling	DOB 4/X/18

All the above have suffered pecuniary loss, including grief and sorrow and loss of society as a result of Jordan's death.

WHEREFORE, Plaintiff Michelle Rodriguez Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendant, jointly and severally, in an amount in excess of \$25,000 in compensatory damages, on each cause of action in this complaint, as well as

other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

THIRD CAUSE OF ACTION
SURVIVAL ACTION-RECKLESS, WILLFUL, AND WANTON and NEGLIGENCE-
CATHOLIC CHARITIES INC, CATHOLIC CHARITIES DIOCESE OF CLEVELAND

72. Plaintiff MICHELLE RODRIGUEZ as administrator of the Estate of Jordan Rodriguez, restates and incorporates by reference, Paragraphs 1 through 71 of this Complaint as if fully re-written herein.

73. Prior to his death, Decedent Jordan Rodriguez endured great pain and suffering as a direct and proximate result of Defendants' willful and wanton and negligent acts and pursuant to the Ohio Survival Act, O.R.C. 2305.21, this cause of action, by reason of such pain and suffering has survived his death.

WHEREFORE, Plaintiff MICHELLE RODRIGUEZ Administrator of the Estate of Jordan Rodriguez, *deceased*, prays for judgment against each Defendants, jointly and severally, in an amount in excess of \$25,000 in compensatory damages, on each cause of action in this complaint, as well as other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

FOURTH CAUSE OF ACTION
WRONGFUL DEATH-NEGLIGENCE-NANCY
CARABALLO, INDIVIDUALLY

74. Plaintiff MICHELLE RODRIGUEZ, restates and incorporates by reference, Paragraphs 1 through 73 of this Complaint as if fully re-written herein.

75. At all times relevant, NANCY CARABALLO was acting in her professional capacity

and had a duty of care that she owed to Jordan Rodriguez.

76. Defendant NANCY CARABALLO, breached their duty of care owed to Jordan with a conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances through one or more of the following acts or omissions:

- a) Contributed and caused Jordan to become malnourished and starve as a result of purchasing Rodriguez's EBT benefits
- b) Failed to monitor the safety of Jordan by failing to perform required services, safety assessments, ensuring medical treatment for Jordan, and ensuring Jordan was properly monitored and logged into/registered with the BRIGHT BEGINNINGS system;
- c) Failed to provide the contractually required services to Larissa Rodriguez and Jordan Rodriguez, including providing therapy, counseling, parent education to Larissa despite the stress placed on her to care for 7 siblings and a medical complex child as Jordan;
- d) Failed to identify signs of abuse and neglect including Jordan's obvious failure to thrive; the discontinuation of medical treatment to Jordan by his mother and the discontinuation of educational services to Jordan;
- e) Failed to report abuse and neglect to Cuyahoga County Department of Children and Family Services as statutorily mandated, including that Jordan was living in deplorable, unsanitary, cockroach and rat infested conditions; that Larissa and Christopher had fractured multiple ribs on Jordan while inflicting abuse; that family, friends, and neighbors of Jordan had made complaints to CATHOLIC CHARITIES' agents and/or employees of abuse and neglect of Jordan.
- f) Failed to notify the proper authorities Jordan was missing;
- g) Falsely reported that she visited and monitored the home of Jordan and failed to ensure these visits and services were being provided;
- h) Failed to evaluate risk and assess whether Larissa Rodriguez and Christopher Rodriguez were a safety concern despite

allegations of abuse;

- i) Failed to recommend immediate transfer of Jordan to temporary protective custody when she knew or should have known that Jordan had been neglected, or physically abused and beaten;
- j) Failed to ensure Jordan was logged into/registered with the BRIGHT BEGINNINGS system to ensure he was properly provided services which he was entitled to and qualified for pursuant to Ohio state law being a developmentally disabled at risk child;
- k) Failed to ensure Jordan was receiving the proper services and care he was required to receive and qualified for being a developmentally, at risk child;
- l) Failed to properly notify the proper individuals that Jordan was not properly logged into the BRIGHT BEGINNINGS system when they knew or should have known he was not receiving the proper services he qualified for and was entitled to under Ohio State Law.

77. As a direct and proximate result of one or more of the aforesaid acts or omissions, Jordan Rodriguez, sustained injuries resulting in his death in September 2017 and suffered a wrongful death.

78. MICHELLE RODRIGUEZ is the duly appointed Administrator of the Estate of Jordan Rodriguez, Deceased, and this wrongful death action is brought on behalf of the Estate of Jordan Rodriguez, pursuant to O.R.C. §2125.02.

79. That on or about September 21, 2017, Jordan Rodriguez left surviving his siblings:

ANGEL ALVAREZ JR.	Brother	
GR	sibling	DOB unknown
MR	sibling	DOB 10/X/05
MA	sibling	DOB 12/X/10
NR	sibling	DOB 10/X/19