

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALLEGANY**

JOANNE SCHOONMAKER

SUPPLEMENTAL
SUMMONS

Plaintiff,
vs.

Index No: 47103/2019

JOSEPH BACKHAUS, WELLSVILLE SECONDARY
SCHOOL, WELLSVILLE CENTRAL SCHOOL DISTRICT,
THE BOARD OF EDUCATION OF THE WELLSVILLE
CENTRAL SCHOOL DISTRICT,

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the amended complaint in this action (filed herewith) and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the amended complaint.

Venue is proper in this Court because this is the applicable Court in the jurisdiction where the majority of the defendants, or their parent organization, have their principal place of business and/or have operations, as well as where all or virtually all of the wrongdoing occurred.

DATED: May 21, 2021
New York, New York

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALLEGANY**

JOANNE SCHOONMAKER

SECOND AMENDED
COMPLAINT

Plaintiff

Index No: 47103/2019

vs.

JOSEPH BACKHAUS, WELLSVILLE SECONDARY
SCHOOL, WELLSVILLE CENTRAL SCHOOL DISTRICT,
THE BOARD OF EDUCATION OF THE WELLSVILLE
CENTRAL SCHOOL DISTRICT,

Defendants.

Plaintiff Joanne Schoonmaker (“Plaintiff”), by and through her undersigned attorneys, as and for her Complaint against the Defendants, alleges as follows:

NATURE OF ACTION

1. This action is brought under the auspices of New York’s *Child Victims Act*.¹ It concerns the repeated acts of sexual abuse and violence committed *for years* by, among others, a public middle and high school employee against Joanne Schoonmaker, who was a student of that school. Ms. Schoonmaker was a twelve year-old girl when the abuse began.

2. Ms. Schoonmaker asserts state law claims for negligence, sexual abuse of a child by a person of trust, negligent hiring, retention, and supervision, negligent and intentional infliction of emotional distress, assault, and battery. Ms. Schoonmaker also asserts federal claims for denial and due process violations of her constitutional and civil rights under the United States

¹ See Rule 214-g of New York Rules of Civil Practice Law & Rules (“CPLR”).

Constitution and 42 U.S.C. § 1983, as well as violations of Title IX of the Education Amendments Act (1972). Ms. Schoonmaker seeks monetary damages for the injuries she has suffered.

3. The incidents alleged in this Complaint occurred from in and around 1980 to in and around 1982 when Plaintiff was a student at Wellsville Secondary School (“Wellsville Secondary School” or the “School,” formerly known as “Wellsville Middle and High School”). These incidents constitute sexual offenses against a child fewer than eighteen years of age, as defined in Article 130 of the New York Penal Law.

4. Robert Alexander Wade (“Wade”), among others, sexually, and otherwise, abused Plaintiff by, on, and around the following locations: (i) Wellsville Secondary School property and secluded locations including the School’s boiler room; (ii) Plaintiff’s residence; (iii) the park across from Wellsville Secondary School; (iv) locations in Wellsville including the Wellsville roller rink; and (v) Wade’s Volkswagen van.

PARTIES

5. Plaintiff was born Joanne Monteleone on September 24, 1967, in Carmel, New York. Plaintiff now resides in Ellenburg Center, Clinton County, New York. At the time of the incidents in question, Plaintiff was a student at the Wellsville Secondary School.

6. Upon information and belief, Wade was born on March 14, 1954, and resides in the County of Ulster, New York. At the time of the incidents in question, Wade was employed by the Wellsville School District as a janitor at the Wellsville Secondary School. Upon information and belief, Wade is deceased.

7. Upon information and belief, Defendant Joseph Backhaus (“Backhaus”) is a resident of the County of Erie, New York. At the time of the incidents in question, Defendant Backhaus was employed by the Wellsville School District, as a teacher with mandatory reporter obligations.

Upon information and belief, Backhaus was the interim Principal at the Wellsville Secondary School when Schoonmaker directly reported her sexual abuse by Wade to the administration.

8. Defendant Wellsville Secondary School is a public middle and high school located at 126 West State Street, Wellsville, New York in Allegany County. Upon information and belief, Wellsville Secondary School is a public institution that receives federal and state funding and financial assistance, and benefits from federal funding for its educational curriculum and for its operation.

9. Defendant Wellsville Central School District is a public school district with an office address of 126 West State Street, Wellsville, New York 14895 in Allegany County.

10. Defendant The Board of Education of the Wellsville Central School District is a municipal corporation incorporated under the laws of the State of New York located at 126 West State Street, Wellsville, New York 14895 in Allegany County.

11. Defendants listed in paragraphs 8-10, above, are collectively referred to as the "Wellsville Defendants."

JURISDICTION AND VENUE

12. By reason of the foregoing, this Court has jurisdiction over the Defendants under Section 301 *et seq.* of the CPLR. This Court further has jurisdiction under 42 U.S.C. § 1983 *et seq.* and Title IX of the *Education Amendments Act* (1972), 20 U.S.C. § 1681 *et seq.*

13. Venue is proper in this county under CPLR § 503(a) because certain Defendants, including Wellsville Secondary School, Wellsville Central School District, The Board of Education of the Wellsville Central School District, are located and have their principal place of operation in Allegany County. Further, virtually all, if not all, events giving rise to the claims alleged here occurred in Allegany County.

FACTS

14. From in or around early spring 1980 to fall 1982, when Plaintiff was between the ages of twelve and fifteen and a student at Wellsville Secondary School, she was befriended, groomed, and repeatedly raped, molested, and abused by Wade. At that time, Wade was a janitor at the School.

Acts of Abuse While Plaintiff was in Seventh Grade and the Summer Following.

15. Plaintiff first met Wade in early 1980, while she was attending Wellsville Secondary School.

16. Shortly thereafter, Wade began dating Plaintiff's mother.

17. In or around spring 1980, Wade invited Plaintiff to help him put a bed into the back of his Volkswagen van. As Plaintiff assisted him, Wade stroked Plaintiff's hair and commented on how beautiful she was. This conduct instigated Wade's grooming of Plaintiff.

18. Several months later, in or around spring 1980, when Plaintiff was in seventh grade at Wellsville Secondary School, Wade instructed Plaintiff to "skip school and meet me in the park," which was located directly across from the school's campus. Upon doing so, Plaintiff approached Wade and another man. The other man inquired what Plaintiff was doing and asked her age. Before Plaintiff answered, Wade interjected that "she's 18."

19. Shortly after the other man left the area, Wade demanded that Plaintiff get into his van and climb atop the bed that they had previously installed together. As Wade cornered Plaintiff, he asked, "are you a virgin?" and "are you ready for this?" Plaintiff insisted to Wade that she was not ready. Wade then raped Plaintiff.

20. Plaintiff recalls screaming for help and blacking out soon thereafter. Wade then barked that Plaintiff “get out” of his van, and Plaintiff left the van, crossed the street, and returned to school.

21. Around this time, in spring 1980, Wade, in connection with dating Plaintiff’s mother, began spending an increasing number of nights in Plaintiff’s home.

22. Over the course of the school year, in or around 1980, Wade continued to rape Plaintiff under the threat of violence against Plaintiff and her family. Wade regularly informed Plaintiff: “I will kill you,” “I will kill your older brothers,” and “I will kill your entire family if you tell anyone.” Nearly every single day from early spring through summer 1980, Wade continued to sexually assault Plaintiff. The abuse would occur in Wade’s van, in the park across from school, and at the Wellsville roller rink.

23. Wade’s abuse of Plaintiff included, but was not limited to, forced vaginal intercourse, oral sex, and fondling of genitals.

24. The summer after Plaintiff completed seventh grade, Wade would routinely call Plaintiff’s family and invite Plaintiff to go for a walk. Upon meeting, Wade would walk Plaintiff to his van, parked along the Genesee, Pennsylvania - New York border. Wade would then direct Plaintiff to enter his van, where he would rape her repeatedly.

25. Wade continued to inject himself into Plaintiff’s daily life. The two would smoke marijuana and cigarettes together. Plaintiff recalls beginning to view Wade as a boyfriend; Plaintiff felt she loved him.

26. Sometime during the summer, before Plaintiff began eighth grade, Wade and Plaintiff’s mother ended their relationship. At around this time, Plaintiff informed her mother that Wade sexually abused Plaintiff.

Acts of Abuse While Plaintiff was in Eighth Grade.

27. Once Plaintiff began eighth grade at Wellsville Secondary School (and through spring 1981), Wade would call the School to ask to speak with her. The administration would summon Plaintiff to the main office to speak to him. On these calls, Wade would direct Plaintiff to leave campus to meet him. Wade would then sexually assault Plaintiff.

28. Wade began exerting greater control over Plaintiff's social life at school. He made statements to her including, but not limited to, "if you go to the Eighth Grade dance, I will kill your mother." Wade, whose younger sister was in Plaintiff's grade at the School, told Plaintiff that "my sister will be at the dance, so if you dance with anyone or even look at another boy, I will find out and kill your mom." Consequently, Plaintiff never attended a School dance out of fear that Wade would harm and or kill her family.

29. Concurrent to the threats, Wade would make remarks to Plaintiff including but not limited to: "I love you," "We're together," and "We are going to have a baby."

30. Over the course of the remaining school year, Wade continued to rape Plaintiff. He would also force her to perform oral sex on him and often left visible marks on her arms from pinning her down while she struggled to escape the sexual assault.

31. Wade would pick up Plaintiff at the bus stop when the bus would drop her off at School. Within the bus's line of sight, Plaintiff would disembark from the school bus at the beginning of the school day, walk up the sidewalk to Wade's van, and leave School premises.

32. Wade would on several occasions drop Plaintiff off at the same bus stop at the end of the day to allow Plaintiff to catch her bus home. If they passed someone Wade recognized, he would direct Plaintiff to drop to the floor of the van.

33. On at least five occasions, Wade would drive Plaintiff to the home of Howard Prokopchuck, who Plaintiff alleges, upon information and belief, worked at Wellsville Primary School as a custodian.

34. Upon being brought to Prokopchuck's home, Prokopchuck forcibly raped Plaintiff and performed oral sex on her. Plaintiff also recalls Prokopchuck's wife, who Plaintiff alleges, upon information and belief, worked as a secretary at Wellsville Primary School, seeing Plaintiff in their home.

35. Plaintiff's abuse by Wade over this period included, but was not limited to, forced vaginal intercourse, oral sex, and fondling of genitals.

36. Over the course of her eighth grade year, Plaintiff began to feel increasingly helpless about the abuse, fearing the ramifications. Plaintiff even attempted suicide by darting in front of a semi-truck. A passerby, however, shoved Plaintiff off the road before the truck collided with her.

37. On at least one occasion during Plaintiff's eighth grade year, Wade pushed Plaintiff into a door vestibule at the School, near the playground, where he then raped her.

38. In or around fall 1980, Plaintiff got into a fist fight with Wade's sister. Plaintiff informed Wade's sister that her brother had been sexually assaulting her. Wade's sister accused Plaintiff of lying and that her brother would never sexually assault someone. A fight broke out in the classroom, and Plaintiff's English teacher broke up the fight between the two girls.

39. Plaintiff was brought to Defendant Principal Joseph Backhaus 's office, where Plaintiff informed Defendant Principal Backhaus about her sexual interactions with Wade. Defendant Principal Backhaus instructed Plaintiff to "just stay away from [Wade]" and "just don't go meet him." At the end of the school year, Defendant Principal Backhaus, who never reported the abuse,

nor took any action to protect Plaintiff, wrote a note in Plaintiff's handmade graduation notebook that said "Take care of all the boys next year [in Ninth Grade]. Be good to all of them."

40. Despite these obvious indications that abuse occurred at the school, no employee or representative of Wellsville Secondary School ever reached out to discover the extent of Plaintiff's abuse, how it had occurred, and what, if anything, the School or Wellsville Central School District knew about Wade's prior or contemporaneous acts of abuse.

41. Furthermore, Defendants Wellsville Secondary, Wellsville Central School District, and Defendant Backhaus took no action to prevent Wade from having access to children again, at least in the immediate aftermath of the Defendant Principal Backhaus's learning of Plaintiff's abuse.

42. These failures run counter to the Wellsville Defendants' affirmative or implicit representation to minor children under their control (and their families), including Plaintiff, that staff members working at the school were safe to work with children and/or did not possess a history of sexually assaulting, molesting, or harassing children.

Acts of Abuse While Plaintiff was in Ninth Grade and Thenafter.

43. On the first day of ninth grade, in or around fall 1981, Plaintiff disembarked the school bus and saw Wade standing there wearing his janitor outfit alongside other school janitors. Plaintiff asked him why he was standing there, to which Wade responded, "Be cool, you fool."

44. For yet another school year, Wade proceeded to rape Plaintiff on a nearly daily basis. Wade directed Plaintiff to accompany or meet him at multiple locations, including but not limited to: the School's boiler room, the nearby park across from the School's campus, and his van.

45. Wade would then often make Plaintiff skip school. Plaintiff recalls that on one occasion Wade ejaculated onto her new Levi's jeans, permanently staining them with his semen.

46. Plaintiff began dating a high school boy during her ninth grade year in or around fall 1981. Upon discovering this new relationship, Wade once again threatened violence against Plaintiff and her family. Plaintiff refused to enter the school's boiler room for sex with Wade, and Wade would then pull her down the school stairs by the arm and violently rape her. Wade threatened her by saying such things as "I'm going to rape all of your girlfriends if you start seeing [the boy]." By the following year, after Plaintiff's brother was born, Wade began threatening Plaintiff by saying "I'm going to kill your baby brother."

47. Thereafter, Wade began to stalk Plaintiff in and around the School (where he continued to work). He would lurk outside classroom doors, stand in stairwells while Plaintiff would pass, and stand outside the School, looking through the window when Plaintiff would enter or exit.

48. On one occasion, Wade stared at Plaintiff through the glass in the door of Plaintiff's Spanish class. Plaintiff's Spanish teacher noticed Wade ominously staring at her, but he did nothing.

49. Plaintiff began experiencing intense anxiety, panic, and emotional distress as a result of Wade's stalking.

50. Wade continued to sexually abuse, rape, and molest Plaintiff throughout her ninth grade year, through the summer thereafter, and into tenth grade, which began in fall 1982. Wade subjected Plaintiff to forced sexual intercourse, oral sex, and fondling, continuing to violently assault Plaintiff both on and off campus.

Plaintiff's Life After the Abuse.

51. Plaintiff began to experience a cascade of symptoms and injuries related to her abuse immediately after the incidents at issue. Plaintiff dropped out of high school in or around October 1982. She moved to Salem, New York, to live with her father and brother.

52. As a direct result of the conduct of Wade and Defendants described herein, Plaintiff was prevented and will continue to be prevented from performing many normal daily activities and achieving full enjoyment of her life.

53. Defendants' sexual abuse, molestation, and harassment of Plaintiff, either directly or indirectly, have caused Plaintiff considerable emotional distress, including but not limited to: depression, anxiety, sleeplessness, and nervous twitching.

54. Plaintiff has struggled with suicidal ideation throughout her entire adolescence and adult life. Plaintiff has also sustained physical injuries, including a collapsed vagina, damage to her uterus, and damage to her bladder, which Plaintiff reasonably believes are related to her childhood sex abuse.

55. At the age of 31, Plaintiff underwent a hysterectomy to mitigate some of the damage. Plaintiff has had considerable damage to her intimate relationships, and she routinely suffers from flashbacks of the abuse.

56. Plaintiff has struggled with weight since the abuse began, becoming anorexic in middle school and high school.

57. Indeed, in 2007, Plaintiff had just moved to the Buffalo area and was checking sexual predator websites in the neighborhood. When she checked the records for Erie County, she saw a picture of Wade along with some information that he had been charged with rape in the third degree of another victim and had been released in or around March 2006. She also learned that he resided only about seven miles from her.

58. Plaintiff was terrified. She reached out to police, seeing if reporting her own sexual assault would have any effect. The police informed her that since the statute of limitations had expired, nothing could be done.

59. Upon discovering that Wade lived nearby her family and had been convicted of sexual assault, Plaintiff gained several hundred pounds of weight due to the stress and depression. The anxiety stemming from her abuse has triggered seizures, and Plaintiff has routinely woken up in the middle of the night unable to breathe.

60. The injuries impacted upon Plaintiff, through the collective and individual actions of Wade and Defendants, continue to incur expenses for mental health treatment, counseling, and therapy. Furthermore, Plaintiff's injuries resulted in her dropping out of high school, and residing on the streets for several months.

61. Based on information and belief, Plaintiff has and will continue to incur loss of income as well as loss of earning capacity.

CAUSES OF ACTION

COUNT 1 NEGLIGENCE CHILDHOOD SEXUAL ABUSE AND VICARIOUS LIABILITY (Against all Defendants)

62. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 61 above with the same force and effect as if more fully set forth here, and further alleges:

63. At all relevant times alleged herein, and during his employment, Wade was an employee of Wellsville Secondary School, and was thereby given access to Plaintiff during the course and scope of his duties, when his employer knew or should have known that Wade presented an unreasonable risk of harm to minor students.

64. Wade's repeated off-campus trips with Plaintiff constituted "red flags" that went unheeded, and because of the negligence of Defendant Backhaus and the Wellsville Defendants, Wade's actions went unchecked allowing him to continue to molest and abuse minor Plaintiff, for months between 1980 and 1982.

65. All Defendants had a non-delegable duty of care to protect their minor students, like Plaintiff, from unwanted sexual contact, sexual abuse, and the associated trauma resulting therefrom. Here, Defendants failed to take any reasonable steps to ensure the safety of their students, and Plaintiff in particular.

66. Wellsville Defendants, by and through their agents, servants and/or employees, had actual knowledge, knew, or reasonably should have known of Wade's dangerous and exploitative propensities and/or that Wade was an unfit agent because of his sexual interest in children.

67. It was reasonably foreseeable that if Wellsville Defendants did not adequately exercise or provide the duty of care owed to children in its control and care, including but not limited to Plaintiff, the children entrusted to their care who would be vulnerable to sexual abuse by Defendants' agents, servants, and/or employees, including Wade.

68. Each Defendant breached the duty of care he (or it) owed to Plaintiff by failing to protect her from foreseeable harm of sexual misconduct of its employees or personnel, including Wade.

69. As a result of the above-described conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, discomfort, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. She was prevented, and will continue to be prevented, from performing her daily activities and obtaining the full enjoyment of her life. She has sustained, and will continue to sustain, loss of earnings and earning capacity. She has incurred, and will continue to incur, expenses for medical and psychological treatment, therapy, and counseling.

70. Per CPLR § 1603, the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided under CPLR § 1602, including but not limited to CPLR §§ 1602(2), 1602(7).

COUNT II
NEGLIGENCE – HIRING/RETENTION
**(Against Defendants Wellsville Secondary School, Wellsville Central School District,
and Defendant Joseph Backhaus)**

71. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 70 above with the same force and effect as if more fully set forth here, and further alleges:

72. Wellsville Defendants and Defendant Backhaus each had a duty to protect Plaintiff when she was entrusted to their care by Plaintiff's parents. Consequently, Wellsville Defendants owed Plaintiff, in addition to a duty of ordinary care, the high duty of care for adults supervising children within their care and control. At minimum, while Plaintiff was receiving services from the Wellsville Defendants, the Wellsville Defendants owed her a duty to protect her from harm inflicted by Wade.

73. Wellsville Defendants, by and through their agents, servants, and/or employees, had actual knowledge, knew, or reasonably should have known of Wade's dangerous and exploitative propensities and/or that Wade was an unfit agent because of his sexual interest in children. It was reasonably foreseeable that if the Wellsville Defendants did not adequately exercise or provide the duty of care owed to children in their control and care, including but not limited to Plaintiff, she would be vulnerable to sexual abuse by Wellsville Defendants' agents, servants, and/or employees, including Wade.

74. Each of the Wellsville Defendants breached the duty of care it respectively owed to Plaintiff by failing to protect her from foreseeable harm of sexual misconduct of its employees or personnel, including Wade.

75. As a result of the above-described conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, discomfort, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of

enjoyment of life. She was prevented, and will continue to be prevented, from performing daily activities and obtaining the full enjoyment of life. She has sustained, and will continue to sustain, loss of earnings and earning capacity; She has incurred, and will continue to incur, expenses for medical and psychological treatment, therapy, and counseling.

76. Per CPLR § 1603, the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided under CPLR § 1602, including but not limited to CPLR §§ 1602(2), 1602(7).

COUNT III
NEGLIGENT SUPERVISION
**(Against Defendants Wellsville Secondary School, Wellsville Central School District,
and Defendant Joseph Backhaus)**

77. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 76 above with the same force and effect as if more fully set forth here, and further alleges:

78. Wellsville Defendants and Defendant Backhaus had a duty to provide reasonable supervision of their employee and agent, Wade, when he interacted with minor students and to follow up on any reports of misconduct.

79. It was reasonably foreseeable that those employees and agents of Wellsville Defendants with a sexual interest in children, including Wade, would act upon these interests and sexually abuse children, including the Plaintiff, unless properly supervised.

80. Defendant Backhaus and the Wellsville Defendants, by and through each entity's respective agents, servants and/or employees, had actual knowledge, knew, or reasonably should have known, of Wade's dangerous and exploitative propensities, and/or that Wade was an unfit agent, due to his sexual interest in children.

81. Despite such knowledge, Wellsville Defendants and Defendant Backhaus each breached their duty to provide reasonable supervision of Wade. These failures enabled Wade, who was routinely in a position of ready access to children, to sexually abuse Plaintiff.

82. At all times relevant hereto, including, but not limited to, during the sexual abuse of Plaintiff, Wade was acting in the course and scope of his employment with Wellsville Defendants as their agent, apparent agent, servant and/or employee.

83. As a result of the above-described conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, discomfort, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. She was prevented, and will continue to be prevented, from performing daily activities and obtaining the full enjoyment of life. She has sustained, and will continue to sustain, loss of earnings and earning capacity. She has incurred, and will continue to incur, expenses for medical and psychological treatment, therapy, and counseling.

84. Per CPLR § 1603, the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided under CPLR § 1602, including but not limited to CPLR §§ 1602(2), 1602(7).

COUNT IV
INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS
(Against all Defendants)

85. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 84 above with the same force and effect as if more fully set forth here, and further alleges:

86. By employing Wade, by choosing to place Wade in a position wherein he could work unsupervised and with close proximity to children, and by allowing Wade access to numerous children, Defendants caused Plaintiff to be sexually abused. Wellsville Defendants and Defendant

Backhaus acted with extreme and outrageous conduct, which intentionally and/or recklessly caused severe emotional distress and bodily harm to Plaintiff.

87. Wade, in his sexual grooming and abuse of Plaintiff, acted with extreme and outrageous conduct that would shock the conscious of a reasonable person when he repeatedly and brutally sexually abused a 12 and 13 year-old student. This conduct was atrocious and transcended all bounds of decency, such that this conduct would be utterly intolerable in a civilized society.

88. Plaintiff suffered severe emotional distress, including severe mental anguish, due to Defendants' intentional and/or reckless, extreme, and/or outrageous conduct.

89. Per CPLR § 1603, the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided under CPLR § 1602, including but not limited to CPLR §§ 1602(2), 1602(7).

COUNT V
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS
**(In the Alternative to Count IV, Against Defendants Wellsville Secondary School,
Wellsville Central School District, and Defendant Joseph Backhaus)**

90. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 89 above with the same force and effect as if more fully set forth here, and further alleges:

91. By employing Wade, by choosing to place him in a position wherein he could work unsupervised and in close proximity to children, and by allowing Wade access to numerous children, Defendants caused Plaintiff to be sexually abused. To the extent Wellsville Defendants' or Defendant Backhaus's acts do not constitute intentional infliction of emotional distress, Wellsville Defendants and Defendant Backhaus negligently placed Plaintiff in danger of bodily harm and thereby caused Plaintiff to suffer extreme physical injury and emotional distress as a result.

92. Wellsville Defendants' repeated failures by employing and continuing to employ Wade, holding out their premises as a safe environment for children, despite having reason to know of the potential dangers to children therein, thereby subjected Plaintiff to sexual abuse and harassment at the hands of Wade.

93. By employing Wade to work unsupervised with children and/or allowing him to use his broad, unsupervised access to campus facilities, Wellsville Defendants subjected Plaintiff to sexual abuse and harassment at the hands of Wade by allowing him to have ready, unfettered access to minor students, including Plaintiff, with whom to gratify his prurient desires.

94. Plaintiff suffered severe emotional distress, including severe mental anguish and physical injury, due to Wellsville Defendants' negligence and extreme recklessness.

95. Per CPLR § 1603, the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided under CPLR § 1602, including but not limited to CPLR §§ 1602(2), 1602(7).

COUNT VI
NEGLIGENT MISREPRESENTATION
(Against Wellsville Defendants)

96. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 95 above with the same force and effect as if more fully set forth here, and further alleges:

97. Wellsville Defendants each affirmatively represented to Plaintiff and her family that their campus, facilities, and programs were safe environments for children.

98. Wellsville Defendants each affirmatively represented to Plaintiff and her family that they had sufficient policies and procedures in place to ensure that children were safe in their facilities and programs.

99. Wellsville Defendants affirmatively represented to Plaintiff and her family that Wade did not have a history of abusing, harassing, and/or molesting children, that Wellsville Defendants did not know or suspect Wade had a history of molesting children, and/or that Wellsville Defendants did not know that Wade was a danger to children.

100. Each representation was material and false.

101. In addition to the representation made directly to Plaintiff and her parents, Wellsville Defendants, through their officials, made these representations with knowledge and intent that they would be communicated to the Plaintiffs through their parents/caregivers words and actions. Wellsville Defendants also had reason to believe that the representations would influence the amount and type of time spent in close proximity with Wade, Wade's access to Plaintiff, and Wade's ability to molest Plaintiff.

102. Based on information and belief, Wade had a history of molesting children, and was openly and notoriously grooming and abusing Plaintiff during the relevant timeframe, and Wellsville Defendants should have known that Wade had a history of sexually molesting children and/or that he posed an obvious and ongoing danger to children, specifically Plaintiff.

103. Plaintiff and her family justifiably relied upon Wellsville Defendants' misrepresentations, which caused Plaintiff to suffer harassment, molestation, and sexual abuse by Wade, as well as suffer other damages described herein.

104. Per CPLR § 1603, the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided under CPLR § 1602, including but not limited to CPLR §§ 1602(2), 1602(7).

COUNT VII
VIOLATIONS OF TITLE IX 20 U.S.C. §1681(a), et seq.
(Against the Wellsville Defendants)

105. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 104 above with the same force and effect as if more fully set forth here, and further alleges:

106. Plaintiff is a “person” under the Title IX statutory language.

107. Wellsville Defendants, based on information and belief, receive federal financial assistance for its education program and is therefore subject to the provisions of Title IX of the Education Act of 1972, 20 U.S.C. § 1681(a), *et seq.*

108. Wellsville Defendants were required under Title IX to investigate allegations of sexual assault, sexual abuse, and sexual harassment.

109. The U.S. Department of Education’s Office of Civil Rights has explained that Title IX covers all programs of a school, and extends to sexual harassment and assault by employees, students and third parties.

110. Wade’s conduct and actions toward Plaintiff, that being nonconsensual masturbation, fondling, and oral sex, constitutes sex discrimination under Title IX.

111. Wade’s grooming and solicitation of Plaintiff was an ‘open secret’ at Wellsville Secondary School during the relevant time frame, and these warning signs and unsanctioned one-on-one time away from school grounds, is precisely the kind of ‘red flag’ behavior that triggers a duty to investigate under Title IX.

112. Wellsville Defendants acted with deliberate indifference as its lack of response to the allegations of sexual assault, abuse, and molestation was clearly unreasonable in light of the known circumstances, Wade’s actions with Plaintiff, and his continued access to minor students.

113. Wellsville Defendants’ failure to promptly and appropriately investigate, remedy, and respond to the sexual assaults after they received notice, subjected Plaintiff to further

harassment and a sexually hostile environment, effectively denying her access to effective educational services.

114. As a result of the above-described conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress discomfort, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. She was prevented, and will continue to be prevented, from performing her daily activities and obtaining the full enjoyment of life. She has sustained, and will continue to sustain, loss of earnings and earning capacity. She has incurred, and will continue to incur, expenses for medical and psychological treatment, therapy, and counseling.

115. Per CPLR § 1603, the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided under CPLR § 1602, including but not limited to CPLR §§ 1602(2), 1602(7).

COUNT VIII
VIOLATIONS OF 42 U.S.C. §1983
(Against Defendant Principal Backhaus and Wellsville Defendants)

116. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 115 above with the same force and effect as if more fully set forth here, and further alleges:

117. At all times material hereto, Defendant Joseph Backhaus and Wellsville Defendants' agents were acting under the color of state law and participated in, authorized, ratified, approved, and/or sanctioned the violations of clearly established federal constitutional rights of which any reasonable official would have known. The federal constitutional deprivations described herein are fairly attributable to the individual Defendants.

118. Defendants failed to investigate, and/or prevent the abuse of Plaintiff by Wade, and failed to intercede during the period of his physical abuse, even though they had a reasonable

opportunity and legal duty to do so. Their actions were egregious and reckless and were driven by a reckless and callous indifference to Plaintiff's rights.

119. Defendants deprived Plaintiff of her civil rights while acting under color of state law in violation of the 5th and 14th Amendment to the United States Constitution by denying her substantive due process and equal protection under 18 U.S.C. § 1983, *et seq.*

120. As a result of the above-described conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress discomfort, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. She was prevented, and will continue to be prevented, from performing her daily activities and obtaining the full enjoyment of life. She has sustained, and will continue to sustain, loss of earnings and earning capacity. She has incurred, and will continue to incur, expenses for medical and psychological treatment, therapy, and counseling.

121. Per CPLR § 1603, the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided under CPLR § 1602, including but not limited to CPLR §§ 1602(2), 1602(7).

**COUNT IX
BREACH OF STATUTORY DUTY TO REPORT ABUSE**

**UNDER SOC. SERV. LAW §§ 413, 420
(Against Defendant Backhaus and the Wellsville Defendants)**

122. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 121 above with the same force and effect as if more fully set forth here, and further alleges:

123. Upon information and belief, Defendant Backhaus and the Wellsville Defendants each violated N.Y. Soc. Serv. Law §§ 413 and 420, as Defendant Backhaus and the Wellsville Defendants had a statutorily imposed duty to report reasonable suspicion of abuse of children in their care.

124. Defendant Backhaus and the Wellsville Defendants breached that duty by knowingly and willfully failing to report any reasonable suspicions of abuse by Robert Wade. These failures include, but are not limited, to the following:

- a. Upon receiving specific and credible complaints by Plaintiff, the Wellsville Defendants and Defendant Backhaus affirmatively chose to *not* report the abuse. During a fist fight with Wade's sister in class, Plaintiff and Wade's sister argued about whether Wade sexually assaulted Plaintiff. Plaintiff insisted that Wade had been sexually assaulting her in front of her classmates and instructor, a mandatory reporter with obligations to report suspected sexual abuse. Despite being within earshot of these complaints, Plaintiff's instructor, upon information and belief, did not report such facts giving rise to a reasonable suspicion of child abuse.
- b. The instructor broke up the fight, and sent Plaintiff to the office of Backhaus, who was, at that time, serving as interim principal. Plaintiff informed Backhaus that Wade was sexually abusing her. As noted *supra*, Backhaus instructed Plaintiff to "just stay away from [Wade]" and "just don't go meet him." At the end of that school year, Defendant Principal Backhaus, who never reported the abuse, nor took any action to protect Plaintiff, wrote a note in Plaintiff's handmade graduation notebook strongly implying that he was aware that Plaintiff was involved in sexual situations that would be inappropriate for an eighth grade student: "Take care of all the boys next year [in Ninth Grade]. Be good to all of them."
- c. In addition to ignoring Plaintiff's report of her sexual abuse by Wade to Principal Backhaus, Defendant Wellsville, by way of its employees/agents, ignored multiple facts that would have independently given rise to a reasonable suspicion of

Plaintiff's sexual abuse, which should have been reported pursuant to various Wellsville employees' mandatory reporter obligations. These facts include, but are not limited to: Wade repeatedly transporting Plaintiff off-campus in his personal vehicle; Wade staring at Plaintiff through the glass in the door of Plaintiff's Spanish class (which the teacher noticed, as alleged, *supra*, but, upon information and belief, did not investigate or report); and Wade repeatedly calling the school to summon Plaintiff to the main office to speak with him. Further, as noted during Plaintiff's deposition, her classmates brazeness in repeatedly groping Plaintiff's breasts and ripping open her shirt (in view of at least one instructor, Charles Warren) was due to the knowledge within Wellsville that Plaintiff was a target for sexual abuse.

- d. Upon information and belief, no Wellsville Defendant personnel, including Defendant Backhaus, upon learning of the credible complaints of sexual abuse against Wade, informed the police of abuse, nor any other state or local authority.

125. Schoonmaker experienced further sexual abuse by Wade, despite facts giving rise to a reasonable suspicion of sexual abuse and after explicitly informing Backhaus of her repeated sexual interactions with Wade (*see* paragraphs 44-50), and affirmed during Plaintiff's deposition on February 26, 2021). As a direct and/or indirect result of the failure of Defendant Backhaus and the Wellsville Defendants to report suspected instances of sexual abuse, Plaintiff has suffered injuries as described herein.

126. As a result of the above-described conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, discomfort, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. She was prevented, and will continue to be prevented, from

performing her daily activities and obtaining the full enjoyment of life. She has sustained, and will continue to sustain, loss of earnings and earning capacity. She has incurred, and will continue to incur, expenses for medical and psychological treatment, therapy, and counseling.

127. Per CPLR § 1603, the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided under CPLR § 1602, including but not limited to CPLR §§ 1602(2), 1602(7).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Joanne Schoonmaker respectfully requests that the Court enter judgment in her favor against Defendants, and issue an order containing the following relief:

- (a) Compensatory and punitive damages against each Defendant, jointly and severally, together with interest and costs of suit and in excess of any jurisdictional amount requiring compulsory jurisdiction, or arbitration.
- (b) Plaintiff's attorneys' fees and costs.
- (c) Such other and further relief as the Court may deem just and proper.

DATED: May 21, 2021
New York, New York

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