UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,	:	
Plaintiff,	:	Case No. 3:19-cv-00700 (CSH)
v.	:	
EDGEWOOD ELM HOUSING, INC.; F.O.H., INC.; EDGWEOOD VILLAGE, INC.; EDGEWOOD CORNERS, INC.; AND YEDIDEI HAGAN, INC.,	:	
Defendants.	:	AUGUST 5, 2019

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Joshua W. Cohen
Richard P. Colbert
Kevin C. Brown
DAY PITNEY LLP
195 Church Street, 15th Floor
New Haven, CT 06510
T: (203) 752-5000
F: (203) 752-5001
jwcohen@daypitney.com
rpcolbert@daypitney.com
kbrown@daypitney.com

Attorneys for Defendants Edgewood Elm Housing, Inc., F.O.H., Inc., Edgewood Village, Inc., Edgewood Corners, Inc., and Yedidei Hagan, Inc.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

Defendants Edgewood Elm Housing, Inc., F.O.H., Inc., Edgewood Village, Inc., Edgewood Corners, Inc., and Yedidei Hagan, Inc. (collectively, the "Defendants") respectfully submit this memorandum of law in support of their motion, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss the Complaint filed by Plaintiff Eliyahu Mirlis ("Plaintiff") in this action.

PRELIMINARY STATEMENT

The Complaint suffers from two insurmountable defects. First, while Plaintiff alleges that Daniel Greer ("Mr. Greer") dominates and controls the Defendants and that the Defendants fail to follow corporate formalities, Plaintiff makes no connection between these allegations and Plaintiff's inability to collect his judgment. Plaintiff does not allege that Mr. Greer or the Yeshiva of New Haven, Inc. (the "Yeshiva") transferred ***any of their respective assets*** to the Defendants to shield them from Plaintiff. Plaintiff also fails to allege that Mr. Greer or the Yeshiva intentionally arranged their relationships with or among the Defendants to purposefully render either Mr. Greer or the Yeshiva judgment proof.

Instead, Plaintiff alleges that the Defendants have assets and therefore, because Mr. Greer dominates and controls the Defendants, they should be forced to pay Plaintiff's judgment. The allegations in the Complaint do not reveal any financial impropriety that would justify such a result. Because no assets have been transferred from Mr. Greer or the Yeshiva to the Defendants in an effort to remove those assets from the Plaintiff's reach, there is no link between Plaintiff's alleged inability to collect on his judgment and Mr. Greer's alleged control of the Defendants. ***The simple reality of this case is that the money flows in the opposite (and wrong) direction***.

Second, this is a reverse veil piercing case. Plaintiff is asking this Court to hold the Defendants liable for Mr. Greer's and the Yeshiva's debts. The Complaint downplays the fact that each of the Defendants is a Connecticut nonstock corporation established many years ago for

the charitable purpose of providing affordable housing and improving the Edgewood Park neighborhood of New Haven. At all times since their formation, the Defendants have operated in accordance with and in furtherance of that charitable purpose. Despite the fact that the Connecticut courts have clearly and repeatedly held that it is improper to reverse pierce a corporate veil where doing so would harm innocent third parties, Plaintiff makes almost no mention of the Defendants' donors and beneficiaries who would be substantially harmed by a decision to pierce their corporate veils. Plaintiff urges an expansion of the reverse veil piercing doctrine that presents a significant public policy risk.[1] Plaintiff asks the Court to force the liquidation of dozens of properties in New Haven that are currently dedicated to providing affordable housing for the community. This would be a disastrous result not only for the New Haven community, but for all nonprofit corporations in Connecticut who could no longer assure donors and volunteers that their contributions will serve their intended purposes.

This is a collection action, not a child sex abuse case. Plaintiff has already litigated his abuse allegations against Mr. Greer and the Yeshiva. Although Plaintiff obtained a significant award against Mr. Greer and the Yeshiva, the trial court's judgment is on appeal to the United States Court of Appeals for the Second Circuit. Subject to the outcome of the pending appeal, Plaintiff filed this separate collection action with a Complaint that is long on invective and suggestions of purposeful corporate mismanagement, but fatally short on substance related to the actual claims. Therefore, the Court should dismiss the Complaint.

SUMMARY OF ALLEGATIONS

The following is a summary of the allegations in the Complaint that are relevant to this motion to dismiss.

[1] Connecticut law no longer recognizes claims for reverse veil piercing. Public Act 19-181.

On June 6, 2017, Plaintiff obtained a judgment against Mr. Greer and the Yeshiva (collectively, the "Judgment Debtors") in the amount of $21,749,041.10 in a separate action in this Court asserting claims based on alleged sexual abuse by Mr. Greer of the Plaintiff (the "Judgment"). The Judgment remains unsatisfied, (Complaint ("C") ¶1), and is currently pending appeal before the Second Circuit, *Mirlis, et al. v. Greer, et al.*, No. 17-4023.

Each of the Defendants in this collection action is a non-stock corporation incorporated under the laws of Connecticut with its principal place of business in New Haven. (C ¶¶9-13) Defendants own "approximately forty-eight properties" in New Haven, (C ¶53), which they rent out. (*See* C ¶¶4, 54) The assets Plaintiff seeks to recover in this reverse veil piercing action are the Defendants' properties and the rents they have collected from tenants at those properties.

Plaintiff does not allege that the Defendants have failed to advance their nonprofit, charitable purposes or that they are sham organizations in any way. Rather, Plaintiff alleges broadly that as president and director of Defendants and the Yeshiva, "D. Greer completely dominated and controlled Defendants, which at all relevant times together with D. Greer and the Yeshiva operated as a single enterprise," (C ¶¶2, 22), that "Defendants and the Yeshiva exhibited a complete lack of corporate formalities," (C ¶21), and that "D. Greer solely directed the transfer of assets among Defendants and ***from*** Defendants ***to*** himself, the Yeshiva, and S[arah] Greer," who is Mr. Greer's wife. (C ¶33 (emphasis added))

In particular, Plaintiff makes the following allegations about transfers of funds and assets between Defendants and the Judgment Debtors:

- "Defendants' funds were taken ***from the Defendants*** for the personal and other use of D. Greer and S. Greer" (C ¶21 (emphasis added))
- "At all relevant times D. Greer solely directed the transfer of assets among Defendants and ***from Defendants*** to himself, the Yeshiva, and S. Greer." (C ¶33 (emphasis added))

- Mr. Greer's wife, Sarah Greer, is an employee of the Yeshiva "and she has received and continues to ***receive a regular salary*** from the Yeshiva," as well as ***retirement benefits***. (C ¶¶35-36 (emphasis added))

- "At all relevant times, D. Greer was employed by Edgewood Elm and ***receives*** a ***regular salary*** as well as ***retirement benefits*** from it." (C ¶37 (emphasis added))

- Defendant Edgewood Village, Inc. acquired a property in New Haven from itself, Mr. Greer, and Harold Hack in 2014 for $95,000, which was less than reasonably equivalent value. (C ¶56)

- Defendants Edgewood Corners, Inc., Edgewood Village, Inc., and F.O.H., Inc. (referred to in the Complaint as the "Upstream Entities") use their rental income to pay their expenses and distribute the excess to Defendants Yedidei Hagan, Inc. and Edgewood Elm, Inc. (referred to as the "Downstream Entities"). "The Downstream Entities are used in order to hold funds received from the Upstream entities, which are then distributed ***to the Yeshiva, D. Greer, and S. Greer*** in incremental amounts." (C ¶57 (emphasis added)) The Upstream Entities hold significant cash and liquid assets. (C ¶¶58, 60)

- The Upstream Entities acquired properties to generate income, "which income would be held by the Downstream Entities to be distributed at D. Greer's instruction ***to the Yeshiva, D. Greer, and S. Greer***." (C ¶67 (emphasis added))

- Defendant Yedidei Hagan, Inc. "distributes funds ***to the Yeshiva*** or on the Yeshiva's behalf as directed solely by D. Greer." (C ¶59)

- In turn, the "Yeshiva uses funds it receives, *inter alia*, ***to pay S. Greer*** and fund her retirement account." (C ¶61 (emphasis added))

From these facts, Plaintiff arrives at the unsupported conclusion that assets have been transferred among the Defendants and to the Judgment Debtors "to hinder Plaintiff's collection of his Judgment against" the Judgment Debtors. (C ¶64) Plaintiff's theory is that Mr. Greer has "orchestrated" a scheme in which he receives a salary and retirement benefits from Defendant Edgewood Elm, while Sarah Greer receives a salary and retirement benefits from the Yeshiva. (C ¶64; *see* C ¶¶36-37, 61) This was done, Plaintiff alleges, as part of a long-running effort to frustrate Plaintiff's collection of his Judgment, in which Mr. Greer uses his salary to "pay the expenses and make charitable contributions of both D. Greer and S. Greer," while Sarah Greer's salary and retirement funds are saved and preserved. (C ¶65; *see* C ¶61-66) However, Plaintiff

fails to allege that anything about the Greers' employment relationships or the compensation they receive is somehow improper. More importantly, Plaintiff makes no allegation establishing a causal connection between his inability to collect on the Judgment and either this alleged scheme by Mr. Greer, or the management and operation of the Defendants.

Plaintiff alleges that the Defendants, nonprofit corporations serving the affordable housing needs of the New Haven community, should be liquidated to satisfy the Judgment, but that Mr. Greer chooses not to do that. Instead the Yeshiva receives funds from the Defendants, Mr. Greer receives only a salary and retirement benefits from Defendant Edgewood Elm, and Sarah Greer receives only a salary and retirement benefits from the Yeshiva. (*See* C ¶68) Plaintiff does ***not*** allege that either Mr. Greer or the Yeshiva contributed or transferred assets to the Defendants, either directly or indirectly. Nor does Plaintiff allege that the Greers' compensation is excessive or otherwise improper. The Complaint is devoid of allegations establishing that assets that otherwise would have been available to satisfy the Judgment have been transferred or otherwise removed from the reach of Plaintiff. Again, ***the money flows in the wrong direction.***

LEGAL STANDARD

A complaint must be dismissed under Rule 12(b)(6) when it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive scrutiny under this provision, a complaint must plead "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted). "[L]abels," "conclusions," and "formulaic recitation[s] of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Further, "the tenet that a court must accept as true all of the allegations contained in a complaint" has no application to legal conclusions. *Iqbal*, 556 U.S. at 678.

ARGUMENT

Plaintiff fails to state a claim for reverse piercing of the corporate veil as to any of the Defendants. As an initial matter, "veil piercing is not lightly imposed. '[C]orporate veils exist for a reason and should be pierced only reluctantly and cautiously' … '[T]he corporate veil is pierced only under exceptional circumstances.'" *Comm'r of Envtl. Prot. v. State Five Indus. Park, Inc.*, 304 Conn. 128, 139 (2012) (citations omitted). Having clearly held that veil piercing is an extraordinary remedy that should be used sparingly, the Connecticut Supreme Court held in *McKay v. Longman*,

> [T]he following is the proper test to apply when an outsider seeks to reverse pierce the corporate veil. We reiterate that the inquiry is a three part process. In part one, the outsider must first prove that [liability should be imposed] under the instrumentality and/or identity rules, as set forth in traditional veil piercing cases . . . If the outsider prevails on part one, then, in part two, trial courts must . . . consider the impact of reverse piercing on innocent shareholders and creditors. In part three . . . trial courts must consider whether adequate remedies at law are available.

332 Conn. 394, 440 (2019).

Plaintiff fails at step one of the *Longman* test because he cannot establish the elements of either the traditional instrumentality test or the identity test. Plaintiff fails to allege a link between the alleged domination and control of the Defendants, on the one hand, and Plaintiff's inability to collect on the Judgment, on the other hand.

Plaintiff also fails at step two of the *Longman* test because he is attempting to reverse pierce the corporate veils of nonstock, charitable corporations but he does not – and cannot – allege that this can be accomplished without significantly harming the New Haven community that the Defendants serve, or the reasonable expectations of those who donated to Defendants. Reverse piercing a charity would be an expansion of the doctrine that is entirely inconsistent

with the existing Connecticut Supreme Court decisions, as well as very recent Connecticut legislation that now prohibits reverse veil piercing claims in all future cases.

I. PLAINTIFF DOES NOT ALLEGE THE ELEMENTS OF A VEIL PIERCING CLAIM

Plaintiff asserts that both the instrumentality and identity tests are met here, but both claims fail for essentially the same reason – there is no connection between Mr. Greer's control of the Defendants and Plaintiff's inability to collect on his Judgment.

The instrumentality rule requires a showing of proximate cause between a wrongful exercise of control over the corporation and the plaintiff's inability to collect. *Zaist v. Olson*, 154 Conn. 563, 575 (1967). Plaintiff's allegations do not support any such connection because Mr. Greer has not used the Defendants to hold his assets and to shield them from Plaintiff; in fact he receives money from the Defendants, which results in Mr. Greer having more assets available for Plaintiff to collect directly. There is nothing about Mr. Greer's alleged control of the Defendants that frustrates Plaintiff's collection efforts because Defendants have no assets to which Plaintiff has any entitlement as a result of the Judgment.

As for the identity rule, the problem with Plaintiff's case is similar. The identity rule requires a showing that the alleged control over a corporation is used improperly to benefit the collective enterprise of ego and alter ego. *Id.* at 576. In the typical case, an undercapitalized corporation is used as a front to take on contractual liabilities it could not possibly meet, while the contractual benefits flow through the corporation to the alter ego. The enterprise benefits from the wrongful control exercised over the corporation, to the creditor's detriment. But here, the underlying liability is the Judgment arising out of alleged sexual abuse of the Plaintiff. Plaintiff does not allege that the Defendants controlled Mr. Greer, that Plaintiff's inability to

collect on the Judgment (or the alleged sexual abuse) was part of an enterprise-wide plan, or that anyone obtained an improper benefit.

A. Plaintiff Alleges No Harm Resulting From Defendants' Relationship With Mr. Greer, as Required Under the Instrumentality Rule

The Connecticut Supreme Court first recognized traditional veil piercing, and adopted the instrumentality rule in *Zaist v. Olson*, as follows:

> The instrumentality rule requires, in any case but an express agency, proof of three elements: (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of plaintiff's legal rights; and (3) ***The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of***.

154 Conn. at 575 (emphasis added); *see State Five*, 304 Conn. at 147 ("[T]o justify imposing the entire obligation of the 2001 judgment on State Five, the plaintiffs needed to show that Joseph exercised his control over State Five to divert or secrete assets ***that otherwise would have been available to satisfy the judgment*** . . . and, further, that these maneuvers were the ***proximate cause*** of the plaintiffs' inability to collect . . . ." (emphasis in original)); *Angelo Tomasso, Inc. v. Armor Constr. & Paving, Inc.*, 187 Conn. 544, 553 (1982).

With respect to the Yeshiva, Plaintiff does not allege the control element; instead, Plaintiff alleges that Mr. Greer controls both the Yeshiva and the Defendants, not that the Yeshiva controls the Defendants. For this reason, the instrumentality rule cannot serve as the basis for piercing the Defendants' corporate veils to satisfy any debt of the Yeshiva. As for the Plaintiff's allegations concerning Mr. Greer, the final element, proximate cause, is missing from the Complaint as shown below.

In *Commissioner of Environmental Protection v. State Five Industrial Park, Inc.*, the state Commissioner of Environmental Protection obtained a judgment against an individual, Joseph, and a group of affiliated corporations. 304 Conn. 128 (2012). The Commissioner then brought a separate action against State Five, seeking to collect the judgment on a reverse veil piercing theory. The trial court entered judgment for the Commissioner, finding that Joseph wrongly exercised control over State Five, which control he used to wrongly transfer assets from an affiliated corporation to State Five, to improperly commingle, divert and use State Five's funds for his own benefit, all while not paying the underlying judgment.

The Supreme Court, in the first reverse veil piercing case ever before the Court, disagreed and explained,

> The chief problem with this analysis is that it fails to establish with specificity the necessary connection between Joseph's improper actions vis—vis State Five and the plaintiffs' inability to collect on the 2001 judgment. In short, to justify imposing the entire obligation of the 2001 judgment on State Five, the plaintiffs needed to show that Joseph exercised his control over State Five to divert or secrete assets ***that otherwise would have been available to satisfy that judgment***, namely, assets that belonged to him personally or to his corporations, and, further, that these maneuvers were the ***proximate cause*** of the plaintiffs' inability to collect $3.8 million that it otherwise would have been able to recover.

Id. at 147 (emphasis in original).

Although Joseph had dominated and controlled State Five, the ***money moved in the wrong direction –*** from State Five to Joseph. Joseph did not transfer his assets to State Five in an effort to shield them from his creditors. Quite the opposite, Joseph had been making personal use of State Five's funds, which, as the court observed, "although certainly offensive to State Five's interests, was not contrary to the plaintiffs' rights and was not the proximate cause of their inability to collect the judgment against Joseph. If anything, payment of a judgment debtor's expenses by nonliable third parties ***enhances*** a creditor's ability to collect from the judgment debtor, in this case Joseph." *Id.* at 149 (emphasis in original).

The allegations in this case parallel the facts of *State Five*. Plaintiff here alleges that Mr. Greer improperly controls the Defendants, who make funds available to the Yeshiva, and to the Greers in the form of salary and benefits. Plaintiff further argues that the Court should pierce the corporate veil because Mr. Greer has not used this alleged control to make the Defendants' assets available to the Plaintiff. This presents the same problem as existed in *State Five*: there is no connection here between Mr. Greer's alleged conduct and Plaintiff's inability to collect on his Judgment. There is no allegation (nor could such an allegation ever be made) that the Judgment Debtors have secreted assets away with the Defendants. Rather, the money flows in the opposite (and wrong) direction. Also like *State Five*, the fact that the Greers draw regular salary and benefits from Defendants, and that the Yeshiva also receives funds from the Defendants, ***enhances*** Plaintiff's ability to collect on his judgment because there are more assets in the Judgment Debtors' possession as a result of those payments.

Contrast this case and *State Five* with *Litchfield Asset Management Corp. v. Howell*, 70 Conn. App. 133, 135-36 (2002), and *McKay v. Longman*, 332 Conn. 394 (2019), the only Connecticut appellate decisions to uphold the application of reverse piercing. The debtor in *Howell* sought to escape collection of a judgment against her prior interior design business. To accomplish this, she conspired with her immediate family members to form two new limited liability companies to carry on the business, which she funded using loans taken against her life insurance policies, thereby putting those assets out of reach of the plaintiff. The debtor then used the new business to pay personal expenses directly, so she benefitted from the funds but they never came into her personal possession. On these facts, the Appellate Court upheld the trial court's judgment allowing the reverse veil piercing claim.

In *Longman*, the debtor fraudulently transferred properties located in Ridgefield and Greenwich, Connecticut to limited liability companies (Sapphire and Lurie) that were controlled by the debtor, Longman, for the purpose of avoiding creditors. 332 Conn. at 451. The trial court found that the LLCs were "vehicles created for financial 'hide the pea' exercises." *Id.* And, like *Howell*, the trial court found there was "pervasive payment of personal expenses of Longman family members," again in a scenario where assets that should have been available to plaintiff McKay were placed behind a corporate veil and then misused for Longman's indirect gain. *Id.* at 454.

The present case is not one in which a judgment debtor formed a new corporation (either alone or in concert with other wrongdoers), contributed personal assets to that corporation, and then used the corporation as a personal checkbook, as was the case in *Howell* and *Longman*. Instead, as Plaintiff acknowledges, the Defendants have been in existence for decades. (*See* C ¶¶53, 55) There is no allegation that Mr. Greer or the Yeshiva secreted assets to the Defendants, that the Defendants were established to shield Mr. Greer and the Yeshiva from their creditors, or that the Defendants used any assets that should have been available to Plaintiff to instead improperly pay personal expenses of the Greers or the Yeshiva in an effort to avoid the Plaintiff's judgment.[2] As noted earlier, the Plaintiff acknowledges in the Complaint that the Defendants have been in existence for decades. (*See* C ¶¶53, 55) Moreover, the Complaint

[2] Plaintiff does allege that there was a property in New Haven owned by Defendant Edgewood Village, Inc., Mr. Greer, and Harold Hack; and that Edgewood Village, Inc. bought out Mr. Greer and Mr. Hack in 2014 for $95,000, which was less than reasonably equivalent value. (C ¶56) In *State Five*, the debtor had transferred a piece of land to State Five for no consideration ***several years prior to the commencement of the underlying suit***. 304 Conn. at 148. "Given that circumstance, it cannot be argued that the transfer was contrary to the plaintiffs' legal rights and proximately caused their inability to collect on their judgment." *Id.* ***Here, the property transaction occurred in 2014, but Plaintiff did not file the underlying lawsuit against the Judgment Debtors until 2016.***

contains no allegation that the operation of the Defendants changed in any way following entry of the Judgment.

As the *State Five* court concluded, "It is not enough, however, simply to show that a judgment remains unsatisfied . . . . There must be some wrong beyond the creditors' inability to collect, which is contrary to the creditor's rights, and that wrong must have proximately caused the inability to collect." 304 Conn. at 150. This is the link that is missing in the present case. Plaintiff alleges that Mr. Greer sexually abused him. He alleges that Mr. Greer controls the Defendants. He alleges his judgment has gone unsatisfied. But he alleges no wrongful act connecting Mr. Greer's control over Defendants to Plaintiff's inability to collect.[3]

Mr. Greer is under no duty to strip the Defendants of their assets to satisfy Plaintiff's judgment; to the contrary, doing so would be an outrageous breach of his legal duties to Defendants and his moral duties to the needy members of the New Haven community that Defendants serve.

B. Plaintiff Alleges No Benefit to Defendants From Mr. Greer's Alleged Sexual Abuse of Plaintiff, as Required Under the Identity Rule

A plaintiff can pierce the corporate veil under the identity rule only as follows:

> If plaintiff can show that there was such a unity of interest and ownership that the independence of the corporations had in effect ceased or had never begun, an adherence to the fiction of separate identity would serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an ***operation conducted by one corporation for the benefit of the whole enterprise***.

---

[3] Perhaps recognizing this flaw in his theory of the case, Plaintiff specifically alleges that he suffered sexual abuse at properties owned by the Defendants. That allegation might, at best, suggest some ***direct*** liability by the Defendants to Plaintiff; it is irrelevant to this collection action. In fact, Plaintiff sued Defendants F.O.H., Inc. and Edgewood Village, Inc. in the underlying sexual abuse action on various tort theories, but, likely in recognition of the weakness of those claims, dropped both as defendants before trial. In any event, the "wrong" at issue in a veil piercing case must be "contrary to the ***creditor's*** rights, and that wrong must have proximately caused the ***inability to collect***." *State Five*, 304 Conn. at 150 (emphasis added). Plaintiff's allegations go to the underlying harm – the sexual abuse he claims he suffered – and not to his inability to collect on the Judgment. The location of the alleged abuse has no bearing on Plaintiff's ability to collect on his Judgment.

Olson, 154 Conn. at 576 (emphasis added) (quoting *Mull v. Colt Co.*, 31 F.R.D. 154, 163 (S.D.N.Y. 1962)); *see State Five*, 304 Conn. at 136 n.11.

In *Olson*, the plaintiff had contracted to provide clearing and grading services to several parcels of land for a corporation (named East Haven). East Haven and a sister corporation, Olson, Inc., were "completely dominated and controlled" by their owner, Olson, who used East Haven as the contractual counterparty for the plaintiff's services, which were conducted on land that "after being juggled about, came to rest in Olson or Olson, Inc." *Olson*, 154 Conn. at 576-77. East Haven had been "used by Olson for the benefit of Olson and Olson, Inc." while East Haven was left with no funds or property. *Id.* at 577. "The only reasonable meaning to attach to the transaction spread upon this record is that East Haven undertook no obligation of its own to the plaintiffs, was financially unable to cope with the actual transaction, and reaped no benefit from it." *Id.* at 577-78. On that basis, the court upheld the application of the identity rule to allow the plaintiff to collect the outstanding debt for its clearing services from Olson and Olson, Inc.

Similarly, in *Toshiba America Medical Systems, Inc. v. Mobile Medical Systems, Inc.*, the defendant Petonito owned a medical van business, A-K Machine, and subsequently formed a second corporation, Mobile, which was thinly-capitalized, observed no corporate formalities, and operated from the same premises as A-K Machine. 53 Conn. App. 484 (1999). Petonito caused Mobile to enter into an agreement with Toshiba to purchase medical diagnostic equipment for installation into vans for sale. Mobile delivered the vans to customers, the sale proceeds were distributed to Petonito and A-K Machine, and no funds were then held by Mobile to pay Toshiba for the equipment. The Appellate Court agreed with the trial court that both the identity and instrumentality rules justified piercing Mobile's corporate veil. As to the identity rule, "Mobile

existed as a shell that permitted Petonito to make unsupported withdrawals and payments to A-K Machine, a corporation of which he was the sole shareholder." *Id.* at 491. Petonito and A-K Machine reaped a benefit by misusing Mobile's corporate form.

What these cases have in common is that the debtors abused the corporate form through an "operation conducted by one corporation for the benefit of the whole enterprise." *Olson*, 154 Conn. at 576 (quoting *Mull*, 31 F.R.D. at 163). The debtors created corporate shells and used those shells to take on liabilities they could not meet, while retaining assets in the other members of the enterprise. No such corporate abuses are present in this case. While Plaintiff alleges domination and control of the Defendants, there is no allegation that the Defendants completely controlled and dominated Mr. Greer for the purpose of shielding them from future liability Mr. Greer might cause from alleged, intentional child sex abuse. As described above, there are no allegations that assets were transferred from Mr. Greer to the Defendants. Perhaps most importantly, Plaintiff alleges that he was sexually abused by Mr. Greer, but not that the Defendants or anyone else benefitted from that abuse (if that were even possible). The same is true for the Yeshiva. The Defendants obviously did not create or completely dominate or control the Yeshiva for the purpose of shielding the Defendants from future judgments against the Yeshiva for alleged negligent supervision of Mr. Greer's alleged child sex abuse. Consequently, there is no basis for a reverse veil piercing claim under the identity rule.

II. REVERSE VEIL PIERCING A CHARITY IMPERMISSIBLY HARMS ITS STAKEHOLDERS IN VIOLATION OF CONNECTICUT LAW

Reverse veil piercing a nonstock, nonprofit, charity would violate Connecticut law because it would impermissibly take assets donated or raised for charitable purposes and divert them to pay an insider's unrelated debt. This would harm not only the intended beneficiaries of the charity but also donors, volunteers, and everyone else associated with the charity who

reasonably expects that their contributions will ultimately serve the charity's intended purpose – and will not be seized instead by a third party judgment creditor. Reverse veil piercing is simply unavailable under such circumstances.

A. A Charitable, Nonstock Corporation Cannot be Reverse Pierced Without Harming Innocent Third Parties, in Violation of Connecticut Law

As noted earlier, piercing a corporate veil in the traditional sense – to attach liability to a shareholder for the corporation's debts – is an equitable remedy which should be used "only under exceptional circumstances." *Angelo Tomasso, Inc.*, 187 Conn. at 557 (internal quotation marks and citation omitted); *see State Five*, 304 Conn. at 139 ("[C]orporate veils exist for a reason and should be pierced only reluctantly and cautiously." (quoting *Cascade Energy & Metals Corp. v. Banks*, 896 F.2d 1557, 1576 (10th Cir. 1990)). Piercing the corporate veil in reverse – to attach liability to a corporation for the debts of a shareholder – presents even greater concerns because corporations have multiple stakeholders who would be harmed by diversion of the corporation's assets. Collecting a shareholder's debt from a corporation deprives the corporation of assets that could otherwise be used to pay its creditors or make distributions to its innocent shareholders. Reverse veil piercing therefore carries a public policy concern that investment will be discouraged where investors cannot ensure that the corporate form will protect their investment. *See State Five*, 304 Conn. at 141 n.14. For these reasons, reverse veil piercing has been limited or disallowed entirely in many jurisdictions. *See id.* at 140.

The Connecticut Supreme Court acknowledged these concerns over collateral damage to innocent third parties in both *State Five* and *McKay v. Longman*. First, "[w]hen corporate assets are attached directly for the benefit of the creditors of an individual, it prejudices the rightful creditors of the corporation, who relied on the entity's separate corporate existence when extending it credit." *State Five*, 304 Conn. at 140. Second, a "key factor in any outsider reverse

piercing controversy is the presence of corporate shareholders other than the insider against whom the outsider is asserting the primary claim. If other shareholders do exist, allowance of a reverse pierce would prejudice those shareholders by allowing the outsider to attach assets in which they have an interest." *Id.* at 141 (quoting Gregory S. Crespi, *The Reverse Pierce Doctrine: Applying Appropriate Standards*, 16 J. Corp. L. 33, 65 (1990)). Third is the availability of remedies at law, such as attaching the debtor's shares or garnishing his wages from the corporation, rather than reverse piercing the corporation's veil. *See id.*

In short, courts must "consider the impact of reverse piercing on innocent shareholders and creditors" and "whether adequate remedies at law are available." *Longman*, 332 Conn. at 440; *see State Five*, 304 Conn. at 142 ("[A] court considering reverse veil piercing must weigh the impact of such action on innocent investors . . . [and] innocent secured and unsecured creditors." (quoting *C.F. Trust, Inc. v. First Flight, Ltd. P'ship*, 580 S.E. 2d 806, 811 (Va. 2003)). Reverse veil piercing can be used "only when it is ***proven*** that it achieves its equitable purpose ***without harming third parties***." *State Five*, 304 Conn. at 138 n.13 (emphasis added). This is a burden Plaintiff cannot meet.

The Connecticut appellate decisions invoking the reverse piercing doctrine have done so only where no innocent third parties would be harmed. In *Howell*, which predated *State Five* and *Longman*, the Appellate Court recognized that reverse veil piercing could only be imposed "to achieve an equitable result and when unfair prejudice will not result." 70 Conn. App. at 151. The court acknowledged that other courts had expressed concern about prejudice to innocent shareholders from reverse piercing, but held that concern was not implicated by the *Howell* facts because the defendant's family members had contributed only $30 to the new entities and had no role in the business. *Id.* at 151 n.14. In other words, the only stakeholder in the new entities was

the judgment debtor herself. Similarly, in *Longman*, the trial court found that there was no basis for a concern over the entities' creditors, and that there were no nonculpable equity holders who would be prejudiced. 332 Conn. at 452, 457-58.

By contrast, in *State Five,* the Supreme Court reversed the trial court's application of reverse veil piercing because the trial court had not properly considered the potential harm either to the debtor's sons, who owned 20 percent of State Five, or to the corporation's lender under a credit facility. 304 Conn. at 142-45. The court noted that "the factual scenario presented by [*Howell*] differs substantially from the factual scenario in the present appeal." *Id.* at 138 n.13.

No Connecticut court has reverse pierced the corporate veil of a nonstock, charitable corporation. However, the concern about the corporation's stakeholders in a reverse veil piercing is even more pressing in the context of a nonprofit corporation. Charitable nonprofit corporations, such as the Defendants, do not have shareholders, but they do have many constituents and stakeholders whose interests would be harmed by a reverse piercing decision, including the beneficiaries that the charity serves, donors, and the overall community. Reverse veil piercing of a nonprofit corporation would take assets away from its charitable mission, leaving the beneficiaries without the charity's services, and it would defeat the reasonable expectations of volunteers and donors who contribute their time and money to advancing the charity's mission.

Plaintiff makes no allegations in this case to meet his burden under *State Five* and *Longman* to prove that reverse veil piercing "achieves its equitable purpose without harming third parties." *State Five*, 304 Conn. at 138 n.13; *see Longman*, 332 Conn. at 440 (endorsing

State Five approach to potential third-party harm).[4] The Complaint alleges nothing – except a wholly inaccurate and conclusory assertion in paragraph 80[5] - about the Defendants' very real, innocent stakeholders who would unquestionably be harmed by a decision to strip the corporations of their assets to satisfy Plaintiff's Judgment. The Defendants whose veils the Plaintiff seeks to pierce have been operating for many years as charities in New Haven where they are responsible not only to the people they serve but also to their donors. Plaintiff makes no allegation that these are sham charities or that they otherwise do not serve their stated, intended purpose. Thus, the Complaint does not state a cause of action for reverse veil piercing because it contains no allegations in support of part two of the *Longman* reverse veil piercing test.

Reverse piercing the Defendants' corporate veils to seize assets that have been dedicated to the public good would be in clear violation of Connecticut law because it would impermissibly harm the beneficiaries of those assets, would impair the reasonable expectations of Defendants' donors, and would call into question the reasonable expectations of donors and volunteers to all nonprofit corporations in Connecticut. *C.f. State Five*, 304 Conn. at 141 n.14 (noting that "the general expectations of investors that their corporations will be free from liability for claims against corporate insiders may be impaired. This impairment of investor expectation ultimately could reduce the usefulness of the corporate form as a vehicle for raising

[4] Although the complaint in this action was filed before the *Longman* decision issued, the existing case law in Connecticut already made clear that reverse veil piercing is impermissible where it would harm third parties. *See State Five*, 304 Conn. at 138 n.13; *Howell*, 70 Conn. App. at 151 (reverse veil piercing can be used only "to achieve an equitable result and when unfair prejudice will not result").

[5] Plaintiff alleges simply, "Reverse-piercing the corporate veil of Defendants to hold them liable for the Judgment will not cause harm to innocent third parties, and therefore is fair and equitable." This is plainly insufficient under *Iqbal*, 556 U.S. at 678, and *Twombly*, 550 U.S. at 570.

and deploying capital.") (quoting G.S. Crespi, *supra*, 16 J. Corp. L. at 64). Connecticut law does not allow this result.

B. Connecticut's Articulated Public Policy Prohibits Expansion of the Reverse Veil Piercing Doctrine

The Connecticut Supreme Court issued its decision in *Longman* on July 23, 2019. The decision recognizes reverse veil piercing in a limited circumstance: where the corporation's veil can be pierced without harming third parties, and where the plaintiff has no other adequate remedy at law. Chief Justice Robinson wrote a separate concurring opinion, in which he stressed that the court's adoption of the reverse piercing doctrine is a "narrow approach." *Longman*, 332 Conn. at 461 (Robinson, C.J., concurring). Chief Justice Robinson noted that "we do not overstep our institutional bounds by incrementally extending the doctrine" to recognize reverse veil piercing, because there had been no action from the legislature on veil piercing despite more than a century of traditional veil piercing case law. *Id.* at 470.

However, during the period between the argument and the decision in *Longman*, the Connecticut General Assembly unanimously passed Public Act 19-181, titled *An Act Concerning the Use of Veil Piercing to Determine the Personal Responsibility of an Interest Holder of a Domestic Entity for the Debts, Obligations or Other Liabilities of Such Entity and the Responsibility of a Domestic Entity for the Debts, Obligations or Other Liabilities of An Interest Holder*. The Governor signed that bill into law on July 9, 2019.[6] Section 3 of Public Act 19-181 specifically provides, "No domestic entity shall be responsible for a debt, obligation or other liability of an interest holder of such entity based upon a reverse veil piercing doctrine, claim or remedy." While the new statute expressly provides that it only applies prospectively, it clearly establishes that ***there should be no reverse veil piercing of a Connecticut corporation***.

[6] A copy of Public Act 19-181 is attached hereto as Exhibit A.

In a footnote, the *Longman* court acknowledged that the legislature had passed Public Act 19-181, but determined that the legislation is not retroactive and therefore did not "affect our decision to uphold the trial court's application of reverse veil piercing." 332 Conn. at 432 n.27. The result is that the Supreme Court has "adopt[ed] a very limited approach to the doctrine of reverse piercing of the corporate veil for cases filed before July 9, 2019." *Id.* at 472 (Robinson, C.J., concurring).

While it is true that this present case was filed just before July 9, 2019, the Supreme Court's narrow approach to the reverse veil piercing remedy – which focuses on avoiding harm to innocent third parties - and the complete prospective ban on all reverse veil piercing suggests this Court should continue to approach reverse veil piercing in a conservative, narrow fashion consistent with *Longman*. *See Austen v. Catterton Partners V, LP*, 729 F. Supp. 2d 548, 553-54 (D. Conn. 2010) ("To the extent that the case law is unsettled, this Court's role as a federal court sitting in diversity is not to adopt innovative theories that may distort established state law. Instead, the Court's only role is to predict how the state's highest court would resolve any identified uncertainty or ambiguity." (internal quotation marks and citations omitted)). Moreover, the underlying judgment in *Longman* dated back to 1996 and the reverse veil piercing action had been pending for nine years before the Supreme Court issued its recent decision. It is therefore clear that the *Longman* decision hinged on McKay's decade-long reliance on the reverse veil piercing doctrine and the tremendous prejudice he would have suffered had the Court not recognized the doctrine. Here, no such reliance or prejudice exists where Plaintiff's veil piercing action was filed just 2 months ago.

Expanding the doctrine to allow for reverse piercing of a charity at this juncture would be a dramatic expansion of the doctrine not previously recognized in Connecticut and contrary to the legislature's intent in enacting a total ban on reverse veil piercing.

CONCLUSION

For the foregoing reasons, the Defendants respectfully request that the Court grant this motion and dismiss Plaintiff's Complaint.

DEFENDANTS,
EDGEWOOD ELM HOUSING, INC.; F.O.H., INC.; EDGWEOOD VILLAGE, INC.; EDGEWOOD CORNERS, INC.; AND YEDIDEI HAGAN, INC.,

By: */s/ Joshua W. Cohen*

Joshua W. Cohen
Richard P. Colbert
Kevin C. Brown
DAY PITNEY LLP
195 Church Street, 15th Floor
New Haven, CT 06510
T: (203) 752-5000
F: (203) 752-5001
jwcohen@daypitney.com
rpcolbert@daypitney.com
kbrown@daypitney.com

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2019, the foregoing Memorandum of Law in Support of Defendants' Motion to Dismiss was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Joshua W. Cohen
Joshua W. Cohen

EXHIBIT A

Substitute House Bill No. 7340

Public Act No. 19-181

AN ACT CONCERNING THE USE OF VEIL PIERCING TO DETERMINE THE PERSONAL RESPONSIBILITY OF AN INTEREST HOLDER OF A DOMESTIC ENTITY FOR THE DEBTS, OBLIGATIONS OR OTHER LIABILITIES OF SUCH ENTITY AND THE RESPONSIBILITY OF A DOMESTIC ENTITY FOR THE DEBTS, OBLIGATIONS OR OTHER LIABILITIES OF AN INTEREST HOLDER OF SUCH ENTITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage and applicable to any civil action filed on or after the effective date of this section*) As used in this section and sections 2 and 3 of this act:

(1) "Affiliate" means with respect to any specified person, any other person directly or indirectly controlling, controlled by or under common control with such specified person. As used in this subdivision, "control" has the same meaning given to that term in 17 CFR 240.12b-2, as amended from time to time;

(2) "Domestic entity" means an entity whose internal affairs are governed by the law of this state;

(3) "Entity" means (A) a business corporation, (B) a nonstock corporation, (C) a limited liability partnership, (D) a limited partnership, including a limited liability limited partnership, (E) a

limited liability company, or (F) any other person that (i) has a separate legal existence, and (ii) is subject to a provision of the general statutes which provides that an interest holder of such person is not personally liable for a debt, obligation or other liability of such person solely by reason of being or acting as such interest holder;

(4) "Governance interest" has the same meaning as provided in section 34-600 of the general statutes;

(5) "Governor" has the same meaning as provided in section 34-600 of the general statutes;

(6) "Interest" means (A) a governance interest in an entity, (B) a transferable interest in an entity, or (C) a share, membership interest or other ownership interest in an entity;

(7) "Interest holder" has the same meaning as provided in section 34-600 of the general statutes;

(8) "Person" has the same meaning as provided in section 34-600 of the general statutes; and

(9) "Transferable interest" has the same meaning as provided in section 34-600 of the general statutes.

Sec. 2. (NEW) (*Effective from passage and applicable to any civil action filed on or after the effective date of this section*) (a) A statutory limitation on the liability of an interest holder of a domestic entity for a debt, obligation or other liability of such domestic entity, including without limitation, the limitation set forth in section 33-673 or 34-251a of the general statutes, may not be disregarded based upon a veil piercing doctrine, claim or remedy in connection with a transaction to which the entity is a party, unless a court finds by a preponderance of the evidence that: (1) The interest holder exerted complete domination and control over the management, finances, policies and activities of such

entity with respect to such transaction; (2) such domination and control was used by the interest holder to (A) commit fraud or other intentional wrong against the person asserting such doctrine, claim or remedy, (B) intentionally violate a statutory or common law duty to such person, or (C) commit a deceitful or other unlawful act against such person; and (3) the domination and control exerted by the interest holder and the breach of duty or other act proximately caused injury or loss to the person asserting such doctrine, claim or remedy.

(b) In making a determination under subdivision (1) of subsection (a) of this section, a court shall consider factors that include, but are not limited to, whether: (1) The entity was adequately capitalized, (2) assets of the entity were distributed or otherwise transferred from the entity to the interest holder or any affiliate of such interest holder without any lawful business purpose, (3) there were overlapping interest holders, governors or other management personnel between the entity and the interest holder or any affiliate of such interest holder, (4) the interest holder or any affiliate of such interest holder shared office spaces, addresses and telephone numbers with the entity without payment of fair consideration, (5) transactions involving the entity and the interest holder or any affiliate of such interest holder were at arm's length and for fair consideration, (6) funds of the entity were commingled with funds of the interest holder or any affiliate of such interest holder, (7) the entity was treated as a separate legal entity for financial and other business purposes as evidenced by having its own contractual relationships, bank accounts, books of account and financial statements, (8) the entity was insolvent or rendered insolvent by the acts of the interest holder or any affiliate of such interest holder, and (9) the property of the entity was used by the interest holder or any affiliate of such interest holder without payment of fair consideration.

(c) The burden of proof shall be on the person seeking to hold the

interest holder of a domestic entity responsible for the debts, obligations or other liabilities of such entity.

(d) The failure of a domestic entity to observe formalities relating to the exercise of its powers or the management of its activities and affairs is not grounds for imposing personal liability on an interest holder of such entity for a debt, obligation or other liability of such entity based upon a veil piercing doctrine, claim or remedy.

(e) When determining whether a statutory limitation on the liability of an interest holder of a domestic entity for a debt, obligation or other liability of such domestic entity, including without limitation, the limitation set forth in section 33-673 or 34-251a of the general statutes, may be disregarded based upon on a veil piercing doctrine, claim or remedy, a court shall make such determination exclusively in accordance with the provisions of this section and section 1 of this act.

Sec. 3. (NEW) (*Effective from passage and applicable to any civil action filed on or after the effective date of this section*) No domestic entity shall be responsible for a debt, obligation or other liability of an interest holder of such entity based upon a reverse veil piercing doctrine, claim or remedy.

Approved July 9, 2019