

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,

Plaintiff,

v.

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

Defendants.

Case No. 3:19-cv-00700 (CSH)

November 19, 2021

**DEFENDANTS’ REPLY MEMORANDUM IN SUPPORT OF
MOTION TO MODIFY TEMPORARY RESTRAINING ORDER**

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 reply memorandum in support of their Motion to Modify the Temporary Restraining Order entered on August 25, 2020. (ECF Doc. Nos. 43, 69).¹

A. Allowing Reasonable Legal Fees To Be Paid Does Not “Thwart” Plaintiff’s Collection of the Underlying Judgment

Plaintiff’s histrionic opposition attempts to portray Defendants’ limited modification of the TRO as improperly thwarting Plaintiff’s rights to collect the underlying Judgment. Plaintiff continues to prematurely assume that he has the right to collect his judgment against the Defendants *before* he has actually proven his claims against them (*by clear and convincing*

¹ Capitalized terms, to the extent not otherwise defined herein, shall have the meanings ascribed to them as set forth in Defendants’ Motion to Modify the Temporary Restraining Order. (ECF Doc. No. 69).

evidence)². Moreover, just as Plaintiff's attorneys have a right to be paid for representing their client's interests, so do the attorneys representing Greer and the Yeshiva have the right to be paid for their representation. While Plaintiff believes that any effort by anyone to represent Greer and the Yeshiva is frivolous, such position is obviously not reasonable.

Defendants' narrow request to modify the TRO: (i) to pay outstanding (and future) criminal³ and civil legal fees and costs incurred on behalf of Greer and the Yeshiva; and (ii) to allow Defendants to provide funds to the Yeshiva to satisfy the foreclosure action, is entirely consistent with the by-laws of Defendant Edgewood Elm Housing that provide for indemnification of Greer, as well as with the benevolent purpose of the Defendants since their inception to financially support the Yeshiva.

The fairness of this limited request is also underscored by the reasonable amount of attorneys' fees and costs (incurred by Greer and the Yeshiva) that the Defendants are seeking to pay when compared to the substantial aggregate value of the Defendants' fifty-two (52) rental

² This heightened standard of proof is required based on Plaintiff's allegations of fraud in connection with the veil piercing claims and is relevant to whether Plaintiff is able to show at this stage a likelihood of success on the merits greater than the \$10 million in real estate already secured by the TRO.

³ The Court should be aware that on November 15, 2021, Greer through his long-standing counsel, Carmody Torrance Sandak & Hennessey LLP filed a Petition for New Trial in the case of *State of Connecticut v. Daniel Greer* (New Action Docket No. NNH-CV-21-6119016-S) (J.D. of New Haven); (Prior Action Docket No. NNH-CR17-0177934-T (J.D. of New Haven). The new action is based on newly discovered and now available testimony from a witness by the name of Avid S. Hack, a former principal of the Yeshiva during Mirlis' years at the school. Mr. Hack was previously an unavailable witness (due to his now admitted, substantial efforts to avoid service) whose deposition was offered by Mirlis in support of his claims. Mr. Hack has now sworn, in part, as follows in an affidavit: "I now wish to share my knowledge of the events relevant to this case, and am willing to testify as well in support of this affidavit....Specifically, I affirm under penalty of perjury that, to my knowledge, no acts of misconduct by Daniel Greer toward EM occurred prior to EM 16th birthday. The first such act, to my memory, occurred in or about January 2004." This sworn statement nullifies the essential element of the state criminal charges, thereby showing Greer's innocence and the related importance of allowing the Yeshiva to be saved from foreclosure.

properties, from which they also continue to derive rental income. As shown in prior filings, Defendants own, in total, fifty-two rental properties that in the aggregate have an approximate value of \$10 million based on the city of New Haven tax assessor's records.⁴ Significantly, Plaintiff does not dispute this value. Given the relatively minor amount of attorneys' fees and costs sought to be paid, particularly in light of the years and years of legal work (and thousands of hours expended) as well as the considerable value of the Defendants' rental properties, it is apparent that Plaintiff would not be materially affected by modification of the TRO in the limited manner requested. This should assuage Plaintiff's main concern that he would not be able to extract enough value from the Defendants if successful on his reverse-veil piercing claim in this action.

Moreover, in light of Plaintiff's objection that funds given by the Defendants to the Yeshiva to satisfy the foreclosure deprives him of such assets should he later prove his veil piercing claims, the Defendants have a simple and logical solution to that concern. Rather than the Defendants giving funds to the Yeshiva so that the Yeshiva can satisfy its foreclosure action and still retain ownership of the property, the Defendants will instead agree themselves to *purchase* the Yeshiva building for the fair-market value found by the court in the foreclosure action. In addition, the Defendants will agree that such ownership of the Yeshiva building (likely by defendant Yedidei Hagan, Inc. for continuing religious purposes) shall then still be an asset available to Plaintiff should he later prove his veil piercing claims against the Defendant(s). Thus, Plaintiff will be paid the \$620,000 court ordered fair market value of the property, in cash, and *still* have the ability to collect *a second time* against the Yeshiva building should he later

⁴ These figures are based upon voluminous public records attached as *Exhibit Z* to Defendants' Memorandum of Law in Opposition to Motion to Deny Summary Judgment Pending Completion of Discovery (ECF Doc. No. 60).

recover a judgment in this action. Plaintiff suffers no harm whatsoever by the Court allowing the Defendants to purchase the Yeshiva building out of foreclosure under these circumstances.

In an abundance of caution, Defendants want to mention that they may need to sell one of their properties to satisfy the judgment of strict foreclosure.⁵ As explained in the opening motion, however, if this Court allows for the requested modification of the TRO and the Defendants indeed satisfy the judgment of strict foreclosure and then become the owners of the Yeshiva's school building, the building would also become subject to the TRO in this case as property owned by the Defendants. Plaintiff cannot claim any prejudice in this arrangement where the judgment of strict foreclosure is satisfied and the value of the Yeshiva school building is still subject to the TRO in this case—and therefore may be part of any judgment in the event that Plaintiff succeeds on his reverse-veil piercing claim.

In his opposition, Plaintiff speculates about a parade of horrors that will occur if the Court allows for this limited modification of the TRO. For example, Plaintiff suggests that the Defendants—nonprofits that have been serving the Edgewood Park neighborhood since 1984—would simply decide to “forego maintenance of their respective real properties, thereby allowing the properties to fall into further disrepair,” for the sole purpose of “reducing the potential value of the assets that could be available to Mr. Mirlis to recover” in this lawsuit. (Pl.'s Opp. at 2–3). This is an insult to the Defendants and the benevolent services that they have provided for decades. It is also pure speculation, as there is no evidence whatsoever that the Defendants' properties are in a state of disrepair or that the Defendants have ever foregone maintenance on

⁵ Whether cash is used or proceeds from the sale of another of Defendants' properties, the Defendants assets remain the same when they use such assets to acquire an asset of equal value in the Yeshiva building.

said properties. Plaintiff seemingly fails to comprehend that the Defendants exist for reasons other than to satisfy his Judgment.

On this point, Defendants are astounded that Plaintiff's opposition is replete with reliance on purported news articles purportedly reporting on the Defendants' receipt of contributions and the state of their properties. (Pl.'s Opp. at 9–11). Simply put, these articles should not have been attached to the Plaintiff's opposition as they constitute blatant inadmissible hearsay, and Defendants do not plan to address them. *See Odom v. Matteo*, 772 F. Supp. 2d 377, 404 (D. Conn. 2011) (observing that “newspaper articles offered for the truth of the matters asserted therein are inadmissible hearsay”); *see also United States v. Difeaux*, 163 F.3d 725, 729 (2d Cir. 1998). Defendants respectfully request that the Court disregard the articles, their contents and, most importantly, all of Plaintiff's arguments that improperly rely upon or refer to such articles.

B. Edgewood Elm Housing Is Required to Indemnify Greer as an Officer and/or Employee Under the Terms of its By-Laws.

Defendant Edgewood Elm Housing is required, under the plain terms of its By-Laws, to indemnify Greer for attorneys' fees and costs incurred in connection with the criminal and civil matters referenced earlier because those actions arose out of and/or related to his alleged activities as an officer and employee of Edgewood Elm Housing. Indeed, a key component of the criminal prosecution, the underlying action brought by Plaintiff, and even the instant reverse-veil piercing action is that Greer purportedly **used his position at Edgewood Elm Housing to facilitate his alleged abuse of the Plaintiff at the Defendants' properties.** As a result, Greer is entitled to indemnification from Edgewood Elm Housing.

1. The Doctrine of Judicial Estoppel Is Not Applicable and Thus Does Not Prohibit the Indemnification of Greer.

In the first of many novel arguments from Plaintiff to fend off modification of the TRO, Plaintiff asserts that the Defendants should be judicially estopped from seeking indemnification. In sum, Plaintiff argues that Defendants essentially admit that Greer's alleged sexual abuse of Plaintiff arose out of or related to his activities as an officer and employee of Edgewood Elm Housing because Defendants previously argued that the alleged sexual abuse was "beyond the scope" of Greer's authority as an officer and employee when arguing that Defendants were not vicariously liable for Greer's actions under respondeat superior. (Pl.'s Opp. at 4–5). In essence, Plaintiff claims that these two positions are inconsistent and that the Defendants should be estopped from now asserting the former position to indemnify Greer. To the contrary, the doctrine of judicial estoppel does not apply here because the two positions are not inconsistent and this Court has not previously adopted the Defendants' earlier position.

"The doctrine of judicial estoppel prevents a party from asserting a factual position in one legal proceeding that is contrary to a position that it successfully advanced in another proceeding." *Ashmore v. CGI Grp.*, 923 F.3d 260, 271 (2d Cir. 2019). In other words, "[w]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S. Ct. 1808 (2001).

In the Second Circuit, a party asserting judicial estoppel must demonstrate the following three elements: (i) a party's later position is "clearly inconsistent" with its earlier position, (ii) the party's former position has been adopted in some way by the court in the earlier proceeding, and (iii) the party asserting the two positions would derive an unfair advantage against the party

seeking estoppel. *DeRosa v. Nat'l Envelope Corp.*, 595 F.3d 99, 103 (2d Cir. 2010). Moreover, “[b]ecause the doctrine is primarily concerned with protecting the judicial process, relief is granted only when the risk of inconsistent results with its impact on judicial integrity is certain.” *Ashmore*, 923 F.3d at 272.

Turning to the first element of the judicial estoppel inquiry, Second Circuit case law is clear that “there must be a true inconsistency between the statements in the two proceedings. If the statements can be reconciled [then] there is no occasion to apply an estoppel.” *Id.* Here, no inconsistency exists—let alone a true or clear inconsistency—between Defendants’ positions. Rather, Plaintiff is conflating the higher standard applicable to claims involving the doctrine of respondeat superior—particularly where an employee allegedly committed an intentional tort—with the broad language in Edgewood Elm Housing’s By-Laws that governs the circumstances in which an officer and employee is entitled to indemnification.

It is well established that, “[u]nder the common-law principle of respondeat superior, an employer is vicariously liable for compensatory damages arising out of the tortious conduct of his employee when that conduct occurs during the course of the employee’s employment,” *Gibson v. Metropolis of CT LLC*, No. 19-cv-00544, 2020 WL 956981, at *10 (D. Conn. Feb. 27, 2020), and “[i]n order for an employer to be liable for the intentional torts of its employees under respondeat superior, the employee must have been acting in furtherance of the employer’s business,” *Doe v. Norwich Roman Catholic Diocesan Corp.*, 268 F. Supp. 2d 139, 142 (D. Conn. June 26, 2003) (internal quotation marks omitted). Indeed, as relevant to this particular context, it is noteworthy that “[c]ases of sexual abuse often represent such a strong deviation from furthering an employer’s business,” and “[i]n most cases of alleged sexual abuse by priests, the courts have held that respondeat superior is not applicable to hold a church or diocese liable,

because such acts by the priests are not in furtherance of the church's business." *Id.* As a result, the standard for successfully asserting a theory of respondent superior under facts similar to this case is fairly high.

Conversely, contractual provisions that employ the phrases "arising out of" and "relating to"—the phrases used in the indemnification provision in Edgewood Elm Housing's By-Laws—are considered unambiguous and viewed as reasonably supporting a broad interpretation. *See Nycal Corp. v. Inoco PLC*, 166 F.3d 1201, 1998 WL 870192, at *2 (2d Cir. Dec. 9, 1998) (analyzing the phrase "arising out of"); *see also Coregis Ins. Co. v. Am. Health Found., Inc.*, 241 F.3d 123, 128 (2d Cir. 2001) (construing the phrase "related to" as broader than "arising out of"). For example, in the context of an arbitration agreement, the language "arising out of or relating to" has been described as "the paradigm of a broad clause." *See, e.g., Collins & Aikman Prods. Co. v. Bldg. Sys., Inc.*, 58 F.3d 16, 20 (2d Cir. 1995). The same analysis has been employed with respect to the scope of choice of law clauses in contracts. *See, e.g., Nycal Corp.*, 166 F.3d at 1203. It follows that the broader interpretation afforded to the language in the indemnification provision in Edgewood Elm Housing's By-Laws, the more circumstances in which an officer or employee like Greer will necessarily be entitled to indemnification under such provision.

In light of the above, there is simply no inconsistency in Defendants' simultaneous claims that they should not be held vicariously liable under a theory of respondeat superior for Greer's alleged sexual abuse of Plaintiff, but that Greer is entitled to indemnification under the broad terms of Edgewood Elm Housing's By-Laws because such alleged sexual abuse "arose out of" or "related to" his activities as an officer and employee of Edgewood Elm Housing.

Even if Plaintiff could establish that the Defendants' positions are clearly inconsistent, which they are not, Plaintiff cannot satisfy the second element of the judicial estoppel test

requiring that the party's earlier position be adopted in some way by the court. *DeRosa*, 595 F.3d at 103. Indeed, this Court has never accepted Defendants' position that they are not vicariously liable to Plaintiff under a theory of respondeat superior based on Greer's alleged sexual abuse of Plaintiff. This is, therefore, a situation where judicial estoppel would not apply as a matter of law.

2. Edgewood Elm Housing's Indemnification of Greer Is Appropriate Under Applicable Connecticut Law.

Plaintiff next claims that if Edgewood Elm Housing were an independent entity it would refuse Greer's request for indemnification, and that "[t]he law does not require a corporation to indemnify its officers and directors for acts that are undertaken for their personal benefit," citing *Bensen v. American Ultramar*, No. 92 Civ. 4420, 1996 WL 435039 (S.D.N.Y. Aug. 2, 1996). (Pl.'s Opp. at 5–6). Plaintiff is wrong on both counts under the circumstances of this case.

As an initial matter, the indemnification provision in Edgewood Elm Housing's By-Laws unequivocally provides that "*[t]o the extent permitted or required under applicable law . . . the Corporation shall indemnify any such director or officer from any reasonable expenses . . . and fees and disbursements . . . incurred by such director or officer in such proceeding, and shall pay such director's or officer's expenses incurred in such proceeding.*" (Emphasis added). Additionally, the provision provides that "[t]he Corporation *shall indemnify and pay such expenses* of an employee of the Corporation to the same extent as for a director or officer." (Emphasis added). By the plain terms of the indemnification provision, Edgewood Elm Housing must indemnify Greer as an officer or employee as long as it is permitted under applicable law.

Insofar as Edgewood Elm Housing is a Connecticut nonstock corporation (like all of the Defendants), the relevant statutory framework concerning indemnification of directors, officers, and employees is found within Conn. Gen. Stat. §§ 33-1116, *et. seq.* Of particular relevance here

is section 33-1122 governing the indemnification of officers, employees, and agents, and which provides, in relevant part, that

[a] corporation may indemnify and advance expenses under sections 33-1116 to 33-1125, inclusive, to an officer, employee or agent of the corporation who is a party to a proceeding because he is an officer, employee or agent of the corporation (1) to the same extent as a director, and (2) ***if he is an officer, employee or agent but not a director, to such further extent, consistent with public policy, as may be provided by contract, the certificate of incorporation, the bylaws or a resolution of the board of directors.***”

(Emphasis added); *see also* Conn. Gen. Stat. § 33-1122(b) (“The provisions of subdivision (2) of subsection (a) shall apply to an officer, employee or agent who is also a director if the basis on which he is made a party to the proceeding is an act or omission solely as an officer, employee or agent.”). In other words, Connecticut law permits indemnification of an officer or employee as may be provided by the bylaws as it is in this case.

Plaintiff’s reliance on the *Bensen* case is also misplaced. First, the indemnification provision in *Bensen* was much more circumscribed than the provision in Edgewood Elm Housing’s By-Laws, and provided coverage only for claims arising from acts “reasonably taken in the performance of [an employee’s] duties [under the employment agreement].” *Bensen*, 1996 WL 435039, at *2. And, in applying that language, the court determined that the employee’s conduct for which he sought indemnification could not “reasonably be construed as part of his duties” under the employment agreement and thus indemnification was not warranted. *Id.* The court also rested its holding that indemnification was inappropriate on the particulars of a New York corporate indemnity statute that differs from Conn. Gen. Stat. § 33-1122. *See id.* Hence, the “reasonably taken in performance of duties” indemnification language from *Bensen* is much more narrow than the broad “arising out of or related to activities” language in the Edgewood Elm Bylaws. Accordingly” *Bensen* is inapposite.

C. Defendants Should Be Able to Pay the Yeshiva's Legal Fees and Prevent Foreclosure of its School Building Consistent with Their Shared Purpose of Financially Supporting the Yeshiva.

The crux of the basis for modifying the TRO with respect to the Yeshiva is that the non-profit Defendants were each established for the very purpose of financially supporting the Yeshiva through rental income donated by Defendants F.O.H., Edgewood Village, Edgewood Corners, and Yedidei Hagan since its inception. Without such income, the Yeshiva would have no financial means to pay counsel for defending its interests in prior and continuing proceedings, not to mention more basic expenses such as utilities, maintenance and salaries. Further, the Yeshiva is in real jeopardy of losing its historic school building through foreclosure, which would deal a fatal blow to everything that the Greers have been working toward dating back to 1977—including the reason why the non-profit Defendants even exist in the first place.

Plaintiff's primary argument against the Defendants providing any funds to the Yeshiva is that the Defendants were not actually established to support the Yeshiva at all, as Plaintiff oddly claims to have more knowledge regarding the Defendants' establishment than the Defendants themselves, Greer, and even this Court. (Pl.'s Opp. at 7–8). Plaintiff's assertions in this regard are contradicted by extensive documentary and testimonial evidence put forth by the Defendants in support of their motion for summary judgment, as well as this Court's acceptance of the accuracy of that clear background information.

For brevity, Defendants incorporate by reference the section entitled "Background Facts" set forth in their Memorandum of Law in Support of Motion for Summary Judgment (ECF No. 52, at 7–17), which includes Greer's account of how and when the Defendants came into being. Of particular relevance here are the following excerpts from that section, indicating how the

establishment of the Defendants was directly tied to developing and financially supporting the Yeshiva:

- “The Greers quickly realized that to develop the Yeshiva, the neighborhood in which the school was located—infiltrated by drugs, prostitution, and dilapidated housing—was in need of an extreme makeover. (Greer Dec. at ¶ 9). Parents would surely not allow their children to attend the Yeshiva if the Edgewood Park neighborhood in New Haven was not safe and conducive to learning. (Greer Dec. at ¶ 9). To pull off this miracle, the Greers went about establishing the Defendants.” (ECF No. 52, at 9).
- “Registered as a Connecticut non-profit corporation in May 1984, Yedidei Hagan was established for the purpose of raising funds to support the Yeshiva and hold religious services and programs. (Greer Dec. at ¶ 10). . . . Yedidei Hagan fulfilled its purpose of conducting programs and collecting, soliciting and distributing contributions for the Gan, Inc. (now known as the Yeshiva) by, among other things, working with the [CHFA] and the [CNAA] to attain tax credits for its investors, and then used the investments to purchase affordable housing in the Edgewood Park neighborhood.” (ECF No. 52, at 9).
- “. . . Edgewood Elm Housing is the overall property management company for all of the affordable homes and properties owned by Yedidei Hagan, Edgewood Village, Edgewood Corners, and F.O.H. (Greer Dec. at ¶ 14).” (ECF No. 52, at 10).
- “Like Yedidei Hagan, Edgewood Village and F.O.H. worked through the CHFA and CNAA to purchase, refurbish and well-maintain affordable

housing units, and some of the profits from these rentals were donated to financially support the Yeshiva. (Greer Dec. at ¶ 21).” (ECF No. 52, at 11).

- “When funds were donated by the Defendants to the Yeshiva, it was for one of the original and legitimate purposes of the affordable housing arrangement to support the Yeshiva. (Greer Dec. at ¶ 30).” (ECF No. 52, at 14).

Notwithstanding the above, Plaintiff claims that the only Defendant actually established to support the Yeshiva was Yedidei Hagan (Pl.’s Opp. at 7), and that the other Defendants’ purpose of owning and maintaining affordable housing in the Edgewood Park neighborhood of New Haven is a “far different purpose than simply providing financial support to the Yeshiva” (*id.* at 8). But this completely ignores the Greers’ broader purpose for attempting to develop the Edgewood Park neighborhood—to create a safe environment for children to attend the Yeshiva. The establishment of the Defendants as entities that would provide affordable housing within the Edgewood Park neighborhood went hand-in-hand with developing and supporting the Yeshiva, in addition to the direct donations from the Defendants to the Yeshiva.

Significantly, this Court has “accept[ed] as accurate” Greer’s “account of how and when the Defendants came into being [as] corroborated by contemporaneous public records.” (Mem. & Order, ECF No. 68, at 9). The Court specifically noted that “[t]he Greers . . . established the five corporate Defendants in this action, which own residential buildings in the Edgewood Park section of New Haven, engage in low and moderate rate rentals, *and generate funds for the support of the Yeshiva.*” (*Id.* (emphasis added)). Other than sheer frustration, it is unclear why

Plaintiff continues to deny the Defendants' legitimate, historical purpose and relationship with the Yeshiva.⁶

D. This Court's Modification of the TRO Would Not Be Akin to a Constructive Fraudulent Transfer.

Plaintiff's final argument is that any modification of the TRO would result in the Court effectively blessing constructive fraudulent transfers in violation of Connecticut law. (Pl.'s Opp. at 13). Once again, Plaintiff continues to confuse his right to collect on the Judgment against Greer and the Yeshiva with a perceived entitlement to collect directly against the Defendants. Indeed, the very statutes that Plaintiff relies upon define a "debtor" as "a person who is *liable* on a claim," and a "debt" as "*liability* on a claim." Conn. Gen. Stat. § 52-552b(5), (6) (emphasis added). Unless and until Plaintiff succeeds on his claim to reverse-pierce the corporate veil, Defendants still must operate in the ordinary course of business while complying with the TRO. In the event that the Court grants this limited modification of the TRO, part of that expense will be indemnifying Greer consistent with Edgewood Elm Housing's By-Laws and also financially supporting the Yeshiva in the manner discussed above consistent with the Defendants' purpose.⁷

⁶ Plaintiff's observations regarding the Defendants and the Yeshiva's participation in Connecticut's Neighborhood Assistance Tax Credit Program ("CNATCP") only underscores the Yeshiva's need for financial support from the Defendants. Specifically, Plaintiff notes that the Defendants and the Yeshiva received an aggregate of \$3.9 million over twenty years through their participation in CNATCP—with Defendants receiving almost \$3.7 million of those funds. (Pl.'s Opp. at 9 n.8). In other words, the Yeshiva received less than \$200,000 over a twenty-year period for their participation in CNATCP, or a mere \$10,000 on average per year. It is, therefore, no surprise that the Yeshiva was forced to rely upon the Defendants for financial support when the latter received the vast majority of those contributions. Without such support going forward, the Yeshiva will have no ability to pay counsel to defend its interests and will lose its historic school building.

⁷ While Plaintiff combatively maintains that in the event the TRO is modified in the manner requested, he will then seek to garnish any obligation of Edgewood Elm Housing to indemnify Greer (Pl.'s Opp. at 14 n.10), Defendants have specifically requested that Defendants pay any attorneys' fees and costs **directly to counsel** (on behalf of but not through Greer or the

E. Affidavits Regarding Legal Fees and Expenses

Consistent with this Court's order dated October 18, 2021 (ECF Doc. No. 72), Defendants have provided the Court with affidavits setting forth the basis for the legal fees Defendants seek permission to pay. Based on the sensitive financial nature of such matters and the certainty that certain members of the press will use such affidavits to prejudice Defendants' rights and positions in this matter, Defendants have moved pursuant to D. Conn. L. Civ. R. 5(e)4 to file the affidavits under seal. The affidavits are hereby designated as *Exhibits 2 -5*.

CONCLUSION

For the foregoing reasons, and for those stated in Defendants' opening memorandum, Defendants respectfully request that the Court grant their motion and modify the TRO in the manner requested.

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

By: /s/Richard P. Colbert
Richard P. Colbert
Day Pitney LLP
195 Church Street, 15th Floor
New Haven, CT 06510
T: (203) 752-5000
F: (203) 752-5001
rpolbert@daypitney.com

Yeshiva), and that a similar arrangement be construed to satisfy the judgment of strict foreclosure. These procedures will thereby ensure the funds are used as represented in this request by Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2021, the foregoing 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/ Richard P. Colbert
Richard P. Colbert