

STATE OF MAINE  
PENOBSCOT, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.: CV-2024-

WAYNE L. QUIMBY,

Plaintiff

v.

BANGOR YOUNG MEN'S CHRISTIAN  
ASSOCIATION, D/B/A BANGOR REGION  
YMCA,

Defendant

**COMPLAINT**

NOW COMES Plaintiff Wayne L. Quimby, by and through counsel, and alleges as follows:

1. Plaintiff Wayne L. Quimby is an adult male. His date of birth is September 9, 1966.
2. Plaintiff is a resident of the City of Bangor, County of Penobscot, and State of Maine.
3. Defendant Bangor Young Men's Christian Association (d/b/a "Bangor Region YMCA") is a registered nonprofit corporation pursuant to 13-B M.R.S. §§ 102-1406 (2021), with an initial filing date of March 13, 1909.
4. Defendant's registered agent is Diane Dickerson of Penobscot County, State of Maine. Ms. Dickerson also serves as Chief Executive Officer of the Bangor Region YMCA.
5. Defendant's charter number, as assigned by the Maine Bureau of Corporations, Elections & Commissions is 19090021ND.
6. Defendant's status is presently in "good standing" with the Maine Bureau of Corporations, Elections & Commissions.
7. At all times relevant to this Complaint, Defendant was, and is, a nonprofit corporation doing business in Maine.

8. At all times relevant to this Complaint, Defendant has owned and operated the Bangor Regional YMCA in Bangor, Maine.

9. Today, Defendant operates at its business premises located at 17 2<sup>nd</sup> Street, City of Bangor, County of Penobscot, State of Maine.

### **BACKGROUND FACTS RELEVANT TO ALL COUNTS**

10. At all times relevant to this Complaint, Defendant has operated the Bangor Regional YMCA on its premises in Bangor, Maine.

11. At all times relevant to this Complaint, and on information and belief, Defendant has operated youth athletics and extracurricular programming for minor children in/around the Bangor and greater-Bangor area.

12. At all times relevant to this Complaint, and on information and belief, Defendant's programming has included recreational team-based athletics leagues for a variety of sports, including indoor boys' and girls' basketball.

13. In/around 1979, Defendant offered programming for indoor youth girls' basketball ("Lassie League") and indoor youth boys' basketball.

14. In/around 1979, Defendant's indoor youth boys' basketball program was divided into at least three age groups: the "Atomic League" (ages 6-8), "Pee Wee League" (ages 11-12), and the "Middler League" (ages 13-15).

15. On/around Saturday, November 24, 1979, Defendant hosted a "tryout day" on its Bangor premises where at approximately 12:30 p.m. that day, 13-year-old Plaintiff and many of his peers auditioned to be placed on one of eight teams.

It's tryout day at the Bangor YMCA for prospective basketball players with Atomic League hopefuls slated for a 9:30 a.m. session Saturday morning for boys ages 6-8. At 11 a.m. boys age 11-12 will try out with those players performing in the Pee Wee League. Boys from 13 to 15 will stage drills for Middler League play at 12:30 p.m. while other groups in the popular YMCA program will hold workouts Tuesday night. Some 500 youths participated in last year's program and those interested this year should contact the YMCA at 942-6313 for complete information on each program.

*Excerpt from the Bangor Daily News announcing tryouts for the Bangor YMCA indoor basketball program.*

*Source: Bangor Daily News (Nov. 24, 1979, p. 20).*

16. On/around Wednesday, December 5, 1979, Defendant announced and/or caused to be published a list of the “Middlers League” teams to which tryout participants were assigned.

17. On/around Wednesday, December 5, 1979, Defendant announced and/or caused to be published notice that Plaintiff had been assigned to the “Nuggets” team of the “Middlers League.”

**MIDDLERS LEAGUE**

The following boys have been assigned to teams in the Bangor YMCA Middlers League. Any questions regarding practices or games may be directed to the YMCA.

Bullets: Mark Parker, Glen Stover, Chris Cassum, Jeff Reynolds, Pat Kelley, Mark Sullivan.

Warriors: Jeff Boisvert, Chris Boisvert, John Carter, Michael Grant, Gordon McLaughlin, Michael Guernsey, Danny Intolubbe.

Lakers: Bruce Goodin, David Clark, Robbie McKay, Steve Babin, Jock Dandaneau, Clint Perrin, Shane Coston.

Celtics: Bart Donovan, Arnie Nadeau, Sam Leberman, Jim French, Mark Hershey.

Wildcats: Warren Caruso, Scott Thomas, Kevin Chase, Ralph Cammack, Richie Russell, Scott Scripture, Brian Murray, Mark Theriault.

76ers: Mark Crafton, Bill Butler, Mark Stillings, Robert Jenkins, Mark Fye, Morgan Bingwanger, Chris Heistand, Mark Pollen.

Pacers: Thane Gilman, Lance Gilman, David Smith, Mike Smith, Buddy Martin, Tom Sensenig, Scott Ycker, Bill West.

Nuggets: Peter Huston, Stu Benton, John Clifford, Dan Dumas, Sean MacKay, Mark Randall, Wayne Quimby.

Nuggets: Peter Huston, Stu Benton, John Clifford, Dan Dumas, Sean MacKay, Mark Randall, Wayne Quimby.

*Plaintiff's name appears on the Nuggets roster, at bottom.*

*Source: Bangor Daily News (Nov. 24, 1979, p. 20).*

18. In/around/by 1979, Defendant employed and/or enjoyed an agency relationship with one William F. Kearns (*hereinafter* “Kearns”).

19. On information and belief, in/around 1979 Kearns was an approximately 24-year-old adult male. Kearns’s date of birth is November 2, 1955.

20. On information and belief, in/around the winter of 1979, Defendant employed and/or enjoyed an agency relationship with Kearns in Kearns’s capacity as a youth basketball coach for the Bangor Regional YMCA.

21. Specifically, on information and belief, Defendant assigned Kearns to coach the “Nuggets” boys’ youth basketball team in the “Middlers League.”



*Kearns circa 1974-1975.*

*Photo attribution: Bangor High School Yearbook, Bangor, Maine (1975).*

22. On information and belief, Defendant hired, retained, selected, and/or entered into an employment and/or agency relationship with Kearns despite Kearns having a criminal record.

23. On information and belief, Kearns was arrested for a sex-related crime on/around May 13, 1974.

24. On information and belief, Kearns plead guilty to what appears to be a reduced charge of “Simple Assault and Battery,” nevertheless carrying with it a sentence of 30-days incarceration (suspended) and two years’ probation.

25. On information and belief, Kearns’s public 1974 conviction for simple assault and battery carried with it a disproportionately harsh sentence for a “first offense” because it was a sex-related crime.

26. On information and belief, Defendant Bangor Regional YMCA failed to conduct a criminal background check of Kearns.

27. Had Defendant conducted a criminal background check of Kearns at any point prior to December 1979, it would have had actual and/or constructive notice of his criminal history of assault.

28. In/around the winter of 1979, Plaintiff was approximately 13 years old.

29. At that same time, Plaintiff’s parents signed Plaintiff up to participate in Defendant’s “Middlers League” boys’ youth indoor basketball program.

30. At that same time, Defendant assigned Plaintiff to play on the “Nuggets” team coached by Kearns.



*Wayne Quimby, age 12 (1978).  
Photo attribution: Quimby Family Archives.*

31. At all pertinent times, Kearns was an authority figure for Defendant Bangor Regional YMCA and was at least 11 years Plaintiff's senior.

32. In/around December 1979, Plaintiff was present on Defendant's premises at the Bangor Regional YMCA for basketball practice with the "Nuggets."

33. In/around December 1979, Kearns was coaching that practice.

34. During that practice, Kearns approached Plaintiff and learned that Plaintiff was a fan of the University of Maine Black Bears ice hockey team but had never been to a game.

35. Kearns invited the Plaintiff to accompany Kearns to a Black Bears home game in Orono, Maine, sometime after practice.

36. Plaintiff had never seen a Black Bears ice hockey game and eagerly accepted the invitation.

37. Plaintiff informed Kearns that Plaintiff needed to go home and shower after practice.

38. Kearns assured Plaintiff that Plaintiff—who was sweaty from practice—could take a shower at Kearns's home en route to the game.

39. Kearns then transported Plaintiff from Defendant's premises in Bangor to Kearns's private residence in Bangor.

40. Upon arriving at Kearns's home, Kearns led Plaintiff into the bathroom and Plaintiff showered.

41. When Plaintiff finished showering, Plaintiff opened the shower curtain and observed Kearns was standing in front of the shower with a towel.

42. Before Plaintiff could react, Kearns had begun to dry Plaintiff's body with the towel.

43. Kearns then fondled Plaintiff's genitals with Kearns's hands and fingers whilst moving the towel across Plaintiff's nude body.

44. Leveraging his authority and position of trust as Plaintiff's coach, Kearns induced, cajoled, groomed, and otherwise directed Plaintiff to have sexual contact, as defined in 17-A M.R.S. § 251(1)(D), with Kearns.

45. Specifically, Kearns used his bare hands and fingers to fondle the Plaintiff's genitals.

46. Leveraging his authority and position of trust as Plaintiff's coach, Kearns induced, cajoled, groomed, and otherwise directed Plaintiff to engage in a sexual act, as defined in 17-A M.R.S. § 251(1)(C).

47. Specifically, Kearns inserted Plaintiff's penis into Kearns's mouth and forced Plaintiff to have oral sexual contact.

48. Following the assault, Kearns directed Plaintiff to "clean up" and then took Plaintiff to the University of Maine Black Bears ice hockey game in Orono.

49. Days later, Plaintiff was present at Defendant's Bangor premises for basketball practice when he was confronted by Kearns.

50. Kearns asked Plaintiff if he wanted to go to another ice hockey game and inquired whether Plaintiff might bring a friend with Plaintiff to Kearns's home this time.

51. Plaintiff understood that Kearns meant to sexually abuse Plaintiff once again.

52. Plaintiff understood that Kearns also meant to sexually abuse one of Plaintiff's friends.

53. Plaintiff became angry and slammed a basketball he was holding onto the floor and ran off to report Kearns.

54. Plaintiff reported Kearns's prior sexual assault of Plaintiff to Gordon Bowden—a managing supervisor for Defendant.

55. On information and belief, Bowden took no action following Plaintiff's report of the sexual assault by Kearns.

56. That same day, and shortly after informing Bowden of the sexual assault by Kearns, Plaintiff went home and told his mother about Kearns's sexual assault of Plaintiff.

57. That same day, Plaintiff's mother reported Kearns's sexual assault of Plaintiff to law enforcement.

58. Following an investigation, Kearns was arrested by Bangor Police on/around December 20, 1979, and charged with Class C Unlawful Sexual Contact.

59. On/around February 26, 1980, Kearns was found guilty of Class C Unlawful Sexual Contact in Bangor Superior Court (BANSC-80-12), and sentenced to one year incarceration (all but 30 days suspended) and two years probation.

60. An excerpt of the Grand Jury Charging Sheet entered against Kearns in relation to the sexual assault case involving Plaintiff is provided on the following page.



STATE OF MAINE  <u>Penobscot</u> , ss   STATE OF MAINE  VS.  <u>WILLIAM KEARNS</u>  AND THE GRAND JURY CHARGES:  That on or about the 15th day of December, 1979, in the County of Penobscot, State of Maine, WILLIAM KEARNS did intentionally subject Wayne Quimby, not his spouse, to sexual contact, and said Wayne Quimby had not in fact attained his 14th birthday, to wit, being thirteen years old, and said WILLIAM KEARNS was at least 3 years older, to wit, being twenty-four years old.	FILED & ENTERED Date: <u>1/8/80</u> Attest: <u>Kelly A. Wallace</u> Clerk SUPERIOR COURT CR- <u>80-12</u>  INDICTMENT FOR VIOLATION OF 17-A M. R. S. A. SECTION 255 Unlawful Sexual Contact (Class C)  A True Bill Date: <u>1/8/80</u> <u>[Signature]</u> FOREMAN
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*Excerpt of the Grand Jury Charging Document in the criminal matter against Kearns for his sexual assault of Plaintiff in/around December 1979.*

61. On information and belief, at no time prior to or after the assault did Defendant make contact with Plaintiff's parents to inform them of the risks posed by Kearns or the fact that Kearns had sexually assaulted Plaintiff.

62. Following the assault by Kearns, Plaintiff began a lifelong spiral into substance use disorder as a means of coping with his severe emotional injuries that were caused by a direct and foreseeable result of the assault.

**COUNT I**  
**BREACH OF FIDUCIARY DUTY**

63. Plaintiff realleges and incorporates by reference all allegations set forth in the paragraphs above.

64. A special relationship existed between Defendant and Plaintiff incident to which Defendant owed a fiduciary duty to Plaintiff to protect Plaintiff from known and/or reasonably foreseeable harm and/or to warn Plaintiff of the danger of child grooming and sex abuse and remediation policies and procedures related thereto.

65. All children attending recreational youth programming have a special relationship with the employees, officers, and leaders of the youth program because of the disparity of power, control, and authority; reliance upon the guidance of adult coaches, counselors, and/or staff to furnish necessary food, shelter, medical aid, rules, and supervision while visiting an unknown environment; and complete reliance upon the trust relationship with said adult coaches, counselors, and/or staff to protect and care for the wellbeing of the children *in loco parentis*.

66. Defendant's and Plaintiff's special relationship arose out of the actual placing of trust and confidence in fact by Plaintiff in Defendant and Defendant's agents.

67. Plaintiff's placement of trust and confidence in Defendant and Defendant's agents was reasonable in that Plaintiff was a minor child at the time he entrusted himself to Defendant.

68. Characteristic of Defendant's and Plaintiff's special relationship was a great disparity of position and influence between Defendant and Defendant's agents and Plaintiff.

69. Defendant's and Plaintiff's special relationship was, incident to Plaintiff's status as a minor child and registered indoor boys' youth basketball participant, distinct from Defendant's general relationships with members of the surrounding community.

70. Facts sufficiently particular to demonstrate the existence of a special relationship between Plaintiff and Defendant and/or its agents include: that Plaintiff sought experiential and moral guidance with Defendant and Defendant's agents in their role as coaches, counselors, and role models and, incident thereto, placed trust and confidence in Defendant and Defendant's agents for guidance, coaching, and experiential education; that, incident his authority as an agent of Defendant, Kearns induced Plaintiff follow Kearns to Kearns's residence—where he engaged in sexual contact and sexual acts—under the guise of his authority as a coach for Defendant; and that, incident his authority as an agent of Defendant, Kearns as Plaintiff's coach was in a position of authority and control over Plaintiff—both in terms of the hierarchy of Defendant's programming and as an adult exercising authority over a minor child.

71. Given the presence of this special relationship between Plaintiff and Defendant and/or its agents, Defendant breached its fiduciary duty to Plaintiff when it failed to protect Plaintiff from known and/or reasonably foreseeable harm and/or to warn Plaintiff of the danger of child grooming and sex abuse and remediation policies and procedures related thereto.

72. Given Defendant's actual and/or constructive knowledge of Kearns's documented criminal history of prior assault, Defendant breached its fiduciary duty to Plaintiff when it failed to protect Plaintiff from known and/or reasonably foreseeable harm and/or to warn Plaintiff of the danger of child grooming and sex abuse and remediation policies and procedures related thereto.

73. As a result of Defendant's breach of its fiduciary duty, as described above, Plaintiff suffered severe and debilitating emotional injury, pain and suffering, physical and emotional trauma, and permanent psychological damage.

74. Defendant's breach of its fiduciary duty was a direct and foreseeable cause of Plaintiff's damages, including the future costs for counseling, psychological, and psychiatric medical treatment.

**COUNT II**  
**NEGLIGENT FAILURE TO WARN, TRAIN, OR EDUCATE**

75. Plaintiff realleges and incorporates by reference all allegations set forth in the paragraphs above.

76. Defendant knew or reasonably should have known of the risk of childhood sex abuse to minor athletes perpetrated by coaches, counselors, and/or staff based on actual notice of the rampant childhood sex abuse problem plaguing youth organizations—like the Boy Scouts of America—which were publicly known since at least 1933.

77. Over the decades, Defendant's actual notice of the risk of childhood sex abuse to minors in its care would have been enhanced by widely publicized events such as the 1949 "How Safe is Your Daughter" study by then-Director of the Federal Bureau of Investigation, J. Edgar Hoover, and implementation of the Boy Scouts of America's publicly-known procedures for identifying and disqualifying perpetrators of childhood sex abuse from serving in its ranks.

78. On information and belief, Defendant and/or its agents had actual and/or constructive knowledge of prior incidents of sexual abuse perpetrated by Kearns as against other minors.

79. Despite this, Kearns was still permitted to have contact and interaction with hundreds of children on Defendant's premises—and to escort children away from Defendant's custody and care away and off Defendant's premises, unsupervised.

80. Since at least 1933, Defendant knew or reasonably should have known of the risk of childhood sex abuse perpetrated by coaches, counselors, and/or staff based on, at a minimum, constructive notice of the problem of rampant childhood sex abuse in youth organizations.

81. Based on the foregoing, Defendant had both actual and constructive knowledge of an unmitigated childhood sex abuse crisis in youth organizations like the Bangor Regional YMCA and knew or reasonably should have known of the specific risk posed by Kearns based on his past bad acts and public criminal history.

82. Despite its knowledge, Defendant failed to take any reasonable action to warn minor athletes and/or their families of the known incidences, risks, and concerns of a growing number of sex abuse allegations against coaches, counselors, and/or youth program staffers and/or, more directly, Kearns.

83. Despite its knowledge, Defendant unreasonably concealed information about the hazards of childhood sexual abuse perpetrated by coaches, counselors, officers, employees and agents by keeping information secret from minor athletes, their families, and the public, while at the same time promising to minor athletes and their families the benefits of attending Bangor Regional YMCA programming.

84. Beginning in 1933, if Defendant had warned minor athletes and/or their families about the known incidences, risks, and concerns of childhood sex abuse by coaches, counselors, and/or youth organization staffers—and later the same of Kearns—it most likely would have prevented incidences of abuse perpetrated by its coaches, counselors, and/or staff, including Kearns.

85. Beginning in 1933, if Defendant had developed, implemented, and enforced reasonable sexual abuse prevention policies to respond to known incidences, risks, and concerns

of a growing number of sex abuse cases by coaches, counselors, and youth organization staffers, it most likely would have prevented incidences of abuse perpetrated by its coaches, counselors, and/or staff, including Kearns.

86. As such, Defendant breached its duty to take reasonable protective measures to protect minor athletes in its care from the known risk of childhood sex abuse.

87. Plaintiff experienced injury as a direct and foreseeable result of Defendant's negligent failure to warn, train, and educate minor athletes and their families about how to identify and avoid such a risk, as described above.

88. Defendant's negligent failure to warn, train, and educate was a direct and foreseeable cause of Plaintiff's damages, as alleged above.

### **COUNT III** **NEGLIGENT SUPERVISION**

89. Plaintiff realleges and incorporates by reference all allegations set forth in the paragraphs above.

90. A special relationship existed between Plaintiff and Defendant.

91. This special relationship arose because of, among other things, the disparity of position and influence between the parties and because of Defendant's custodial relationship over Plaintiff, as part of which Defendant exercised *in loco parentis* supervision, control, and authority over Plaintiff by and through its agents, including Kearns.

92. That special relationship created a duty on the part of Defendant to ensure that the children taking part in Bangor Regional YMCA programs, including Plaintiff, were safe from unreasonable risks of harm posed by third persons.

93. Prior to Kearns's sexual abuse of Plaintiff, Defendant knew or should have known that Kearns had pursued inappropriate relationships with minor athletes at the Bangor Regional YMCA.

94. Despite this knowledge, Defendant exposed Plaintiff to an unreasonable risk of harm when it failed to properly monitor Kearns's relationships and allowed Kearns's pursuit of inappropriate relationships to continue.

95. Defendant breached its duty to Plaintiff and was negligent. Its negligence included, but was not limited to, allowing Plaintiff to be exposed to the unreasonable risk of harm posed by Kearns's relationship with Plaintiff, failing to warn Plaintiff and his parents of the dangers posed by Kearns's relationship with minor athletes—including Plaintiff, and by failing to implement reasonable child abuse and grooming prevention policies.

96. This special relationship arose because of, *inter alia*, the disparity of position and influence between the parties and because of Defendant's custodial relationship over Plaintiff, as part of which Defendant exercised *in loco parentis* supervision, control, and authority over Plaintiff by and through its agents, including Kearns.

97. That special relationship created a duty on the part of Defendant to supervise its agent, Kearns, in the manner that an ordinary, careful employer would supervise an employee to avoid harm occurring to third persons.

98. Defendant had actual or constructive knowledge of the inappropriate and abusive relationships between Kearns and minor athletes.

99. Defendant nonetheless retained Kearns and failed to take reasonable measures warranted by its actual or constructive knowledge of these inappropriate relationships.

100. Defendant knew or should have known that it could control Kearns as one of its agents, and knew or should have known of the necessity and opportunity for exercising such control.

101. Kearns engaged in predatory sexual grooming on Defendant's premises at the Bangor Regional YMCA, directly precipitating sexual contact with Plaintiff.

102. Kearns used his position of authority in Defendant's organization to engage in predatory sexual grooming and sexual contact with minor children, including Plaintiff.

103. If Defendant had properly supervised its coaches, counselors, staff, and agents, including Kearns, Plaintiff would not have been harmed, as described above.

104. Defendant's negligent supervision was a direct and foreseeable cause of Plaintiff's damages, as alleged above.

**COUNT IV**  
**SEXUAL ASSAULT/RESPONDEAT SUPERIOR**

105. Plaintiff realleges and incorporates by reference all allegations set forth in the paragraphs above.

106. Kearns engaged in unlawful sexual contact and acts with Plaintiff while Plaintiff was a minor athlete under custody of Defendant. These actions constituted tortious sexual assault, sexual abuse, and/or assault and battery.

107. The tortious conduct alleged above occurred while Kearns was acting with the actual or apparent authority of Defendant in his role as an indoor boys' youth basketball coach.

108. This sexual abuse resulted from Kearns's performance of his authorized agency duties on behalf of Defendant—including interacting with minor athletes—which he was selected or accepted to perform.



109. Kearns's performance of his authorized agency duties, which included cultivating a trust relationship with Plaintiff, was motivated by a desire to further the interests of Defendant.

110. The sexual abuse occurred substantially in the course of Kearns's authorized interactions with Plaintiff as a Bangor Regional YMCA officer and coach, including grooming and solicitation of Plaintiff while present on Defendant's premises.

111. Kearns was aided in having sexual contact with Plaintiff by the existence of his agency relation with Defendant.

112. Kearns had contact and communication with Plaintiff on and/or purportedly on behalf of his employer, Defendant, as Defendant's agent.

113. Kearns's contact, communication, and subsequent bad acts against Plaintiff were all undertaken with apparent authority incident to Kearns's principal-agent relationship with Defendant in which Kearns was cloaked in apparent authority to act on behalf of Defendant in having contact and communication with Plaintiff.

114. Kearns's apparent authority enabled Kearns the opportunity, access, and ability to commit his bad acts, as well as his ability to conceal their commission to the extent Defendant was unaware of specific bad acts at the time they were perpetrated.

115. Kearns's bad acts were committed while Kearns was performing work assigned by Defendant and engaging in a course of conduct subject to Defendant's control.

116. Kearns's use of his title and presence as a known coach of Defendant, access to Plaintiff, and presence on Defendant's premises on the day Kearns groomed and lured Plaintiff to Kearns's home were incident to and intended by Kearns to serve a purpose of Defendant—namely, the promotion and reinforcement of Bangor Regional YMCA programming, regular business in the supervision of minor athletes, and/or guidance by a coach to a minor athlete(s).

117. Kearns's abuse of his title and presence as a known coach of Defendant, access to Plaintiff, and presence on Defendant's premises on the day Kearns groomed and lured Plaintiff to Kearns's home were carried out under the apparent authority of Defendant.

118. It was or should reasonably have been foreseeable to Defendant that Kearns's apparent authority to use of his title and presence as a known coach of Defendant, access to Plaintiff, and presence on Defendant's premises on the day Kearns groomed and lured Plaintiff to Kearns's home, under the apparent authority of Defendant, could be misused and/or abused by Kearns.

119. Facts which demonstrate with specific particularity that Kearns was acting, as Defendant's agent, under the apparent authority thereof, and in the course of duties and/or privileges of his office intended to serve Defendant include: Defendant's control over the content, scheduling, manner, and means by which Kearns conducted his work as a coach and officer of the Bangor Regional YMCA; Kearns's engagement in the distinct occupation of serving Defendant as an officer and coach of the Bangor Regional YMCA; that Kearns's work duties were done customarily under Defendant's direction, with supervision by Defendant, on Defendant's premises; that Defendant supplied all of the tools, instrumentalities, materials, funding, means, and premises required for Kearns's work; Kearns's tenure as an agent and employee of Defendant; that Kearns's work was part of Defendant's regular business; that, on information and belief, both Kearns and Defendant believed that they were in an employment relationship with one another, and so held their relationship out to the public; Defendant's control over the general message and content of Kearns's experiential, educational, and authoritative message, coaching, and guidance; and that Defendant operates as a business.

120. As a result of Kearns's sexual abuse; molestation; and breach of authority and trust in his position as a coach and authority figure to Plaintiff, Plaintiff has suffered severe and debilitating emotional injury, pain and suffering, physical and emotional trauma, and permanent psychological damage.

121. As an additional result and consequence of Kearns's sexual abuse; molestation; and breach of authority and trust in his position as counselor and authority figure to Plaintiff, Plaintiff has incurred and/or will incur in the future costs for counseling, psychological, and psychiatric medical treatment.

122. In sexually abusing and molesting Plaintiff, Kearns acted with actual or implied malice toward Plaintiff.

123. Defendant is liable for the bad acts of its agent which were a direct and foreseeable cause of Plaintiff's damages, as alleged above.

**COUNT V**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

124. Plaintiff realleges and incorporates by reference all allegations set forth in the paragraphs above.

125. Defendant intentionally or recklessly inflicted severe emotional distress upon Plaintiff through the conduct alleged above.

126. Defendant's conduct as alleged above was certain or substantially certain to result in severe emotional distress upon Plaintiff.

127. The conduct of Defendant as alleged above was intentionally or recklessly done, was outrageous and extreme in that it exceeded all possible bounds of decency and is conduct that a reasonable person would regard as atrocious and utterly intolerable in both the context of a youth organization and, generally, in a civilized community.

128. As a result of Defendant's conduct as described above, Plaintiff suffered emotional distress so severe that no reasonable person could be expected to endure it.

129. Defendant's intentional infliction of emotional distress was a direct and foreseeable cause of Plaintiff's damages, as alleged above.

**COUNT VI**  
**BREACH OF CONTRACT**

130. Plaintiff realleges and incorporates by reference all paragraphs above.

131. Plaintiff participated in Defendant's youth programming in, at least, 1979. Plaintiff was a registered athlete with Defendant's youth programming.

132. As part of its business model, Defendant solicited and accepted financial donations to sustain, fund, and promote its youth programming, like that attended by Plaintiff.

133. As part of its business model, Defendant solicited and accepted financial donations to sustain, fund, and promote its organization and to remain "in business" as a youth programming facility.

134. Prior to Plaintiff's attending Defendant's indoor boys' youth basketball program, Defendant entered into a contract with the parents of Plaintiff, in which Plaintiff was either a named or intended third-party beneficiary.

135. Pursuant to said contractual agreement with Plaintiff's parents, Defendants agreed to furnish a safe environment for minor athletes, including supervising minor athletes to mitigate risk of harm.

136. Plaintiff's parents offered their consent to Plaintiff's participation as an athlete in Defendant's youth programming as valuable consideration in exchange for Plaintiff's attendance and participation in Defendant's administered programming.

137. In exchange, Defendant made promises to enrich and protect Plaintiff through, *inter alia*, maintaining safe facilities and premises for minor athletes and facilitating the development of healthy interactions with other athletes, faculty, coaches, and staff.

138. Defendant agreed to keep Plaintiff's parents informed of all relevant information concerning Plaintiff, a minor child, while Plaintiff attended Defendant's programming.

139. Defendant breached its contractual agreement with Plaintiff's parents—in which Plaintiff was either a named or intended third-party beneficiary—by failing to furnish a safe environment for minors and failing to properly supervise minors, including Plaintiff, attending the Bangor Regional YMCA.

140. Defendant further breached its contractual agreement with Plaintiff's parents—in which Plaintiff was either a named or intended third-party beneficiary—by not informing Plaintiff's parents of the sexual assault visited upon Plaintiff, a minor child, in the hours, days, and weeks after it occurred, despite having actual and/or constructive knowledge of the incident.

141. Plaintiff and his parents relied on the good faith of Defendant and the contractual agreements and promises made by Defendant when making a decision about which program Plaintiff would attend.

142. As a direct and legal result of Defendant's breach of its contractual agreement(s), Plaintiff and his parents suffered harm and damages in an amount to be determined by a jury at trial.

## **COUNT VII** **PROMISSORY ESTOPPEL**

143. Plaintiff realleges and incorporates by reference all paragraphs above.

144. Plaintiff participated in Defendant's youth programming in, at least, 1979. Plaintiff was a registered athlete with Defendant's youth programming.

145. As part of its business model, Defendant solicited and accepted financial donations to sustain, fund, and promote its youth programming, like that attended by Plaintiff.

146. As part of its business model, Defendant solicited and accepted financial donations to sustain, fund, and promote its organization and to remain “in business” as a youth programming facility.

147. Prior to Plaintiff’s attending Defendant’s indoor boys’ youth basketball program, Defendant entered into a contract with the parents of Plaintiff, in which Plaintiff was either a named or intended third-party beneficiary.

148. Pursuant to said contractual agreement with Plaintiff’s parents, Defendants agreed to furnish a safe environment for minor athletes, including supervising minor athletes to mitigate risk of harm.

149. Plaintiff’s parents offered their consent to Plaintiff’s participation as an athlete in Defendant’s youth programming as valuable consideration in exchange for Plaintiff’s attendance and participation in Defendant’s administered programming.

150. In exchange, Defendant made promises to enrich and protect Plaintiff through, *inter alia*, maintaining safe facilities and premises for minor athletes and facilitating the development of healthy interactions with other athletes, faculty, coaches, and staff.

151. Defendant agreed to keep Plaintiff’s parents informed of all relevant information concerning Plaintiff, a minor child, while Plaintiff attended Defendant’s programming.

152. Defendant breached its contractual agreement with Plaintiff’s parents—in which Plaintiff was either a named or intended third-party beneficiary—by failing to furnish a safe environment for minors and failing to properly supervise minors, including Plaintiff, attending the Bangor Regional YMCA.

153. Defendant further breached its contractual agreement with Plaintiff's parents—in which Plaintiff was either a named or intended third-party beneficiary—by not informing Plaintiff's parents of the sexual assault visited upon Plaintiff, a minor child, in the hours, days, and weeks after it occurred, despite having actual and/or constructive knowledge of the incident.

154. Plaintiff and his parents relied on the good faith of Defendant and the contractual agreements and promises made by Defendant when making a decision about which program Plaintiff would attend.

155. Defendant broke its promises to Plaintiff and his parents.

156. Defendant should be estopped from denying that such a promise was made and is enforceable.

157. As a direct and legal result of Defendant's breach of its contractual agreement(s), Plaintiff and his parents suffered harm and damages in an amount to be determined by a jury at trial.

#### **COUNT VIII** **PUNITIVE DAMAGES**

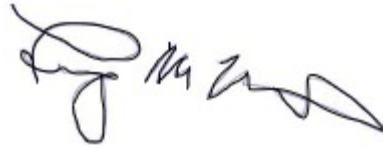
158. Plaintiff realleges and incorporates by reference all paragraphs above.

159. In the actions and omissions as set forth above, Defendant acted with actual or implied malice.

WHEREFORE, as a result of the above-described contact, Plaintiff has suffered, and continues to suffer substance use disorder, difficulty with interpersonal relationships, emotional distress, physical manifestations thereof, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; and has incurred and will continue to incur expenses for medical psychological treatment, therapy, and counseling. Plaintiff demands judgment against

Defendant for compensatory damages, punitive damages, interest, costs, and such other and further relief as the Court deems just and equitable.

Dated: February 20, 2024



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