IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

JANE DOE, *et al.*	:	
Plaintiffs	:	
	:	
vs.	:	**Civil No. 361586-V**
	:	**Track 4**
SOVEREIGN GRACE MINISTRIES, *et al.*	:	**Judge Sharon Burrell**
Defendants	:	

MEMORANDUM OF GROUNDS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS DEFENDANTS COVENANT LIFE CHURCH, INC., CHARLES JOSEPH MAHANEY, GARY RICUCCI, JOHN LOFTNESS, AND GRANT LAYMAN

I. *Introduction*

This case, styled as a "Class Action Complaint", was brought by eight individuals, identified by pseudonyms, whose parents are current or former members of the Covenant Life Church, Inc. ("CLC") or Sovereign Grace Church of Fairfax, and who claim to have suffered physical and/or sexual abuse by certain church members. None of the individual Defendants filing this Motion to Dismiss are alleged to have committed any physical or sexual abuse. Rather, the Plaintiffs' allegations are that these individual Defendants learned of or should have learned of the abuse that each is alleged to have suffered and did not respond appropriately.

In this second Class Action Complaint ("the Complaint") Plaintiffs have brought four claims against each of these Defendants: Negligence (Count I); Intentional Infliction of Emotional Distress (Count II); Conspiracy to Obstruct Justice (Count III); and Misrepresentation (Count V). A fifth count was brought against Defendant Covenant Life Church, Inc. and the other corporate Defendants for Negligent Hiring and Supervision (Count IV). As shown herein, Plaintiffs have failed to state a claim upon

which relief can by granted and Plaintiff's Complaint against these Defendants must be DISMISSED.

II. *Standard for Dismissal for Failing to State A Claim*

The grant of a motion to dismiss is proper if the complaint does not disclose, on its face, a legally sufficient cause of action. *Rossaki v. NUS Corp.*, 116 Md. App. 11, 695 A.2d 203 (1997). "'In considering a motion to dismiss for failure to state a claim under Maryland Rule 2-322(b)(2), a court must assume the truth of all well-pleaded material facts and all inferences that can be drawn from them.' The material facts setting forth the cause of action 'must be pleaded with sufficient specificity. ***Bald assertions and conclusory statements by the pleader will not suffice.***'" *Tavakoli-Nouri v. State*, 139 Md. App. 716, 725, 779 A.2d 992, 997 (2001), *citing Rossaki, supra.* Moreover, any ambiguity or want of certainty in the allegations must be construed ***against*** the pleader. *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 345, 758 A.2d 95, 101 (2000).

If the pleadings do not allege sufficient facts to entitle a party to the relief sought on the claim, the Court may grant a motion to dismiss for failure to state a claim. *Noble v. Bruce*, 349 Md. 730 (1998). Thus, a decision on a motion to dismiss for failure to state a claim does not pass on the merits of the claim, but determines the plaintiff's right to bring the action. *Lloyd v. General Motors Corp.*, 397 Md. 108, 916 A.2d 257 (2007).

III. *Factual Allegations*

The eight Doe Plaintiffs generally allege that Defendant CLC and the other business entities, as well as the individual Defendants: "cared more about protecting its financial and institutional standing than about protecting children"; that they "failed to stop repeated and ongoing sexual predation occurring at SGM churches and

organization[s], including Covenant Life Church and Covenant Life School"; that they "failed to report known incidences of sexual predation to law enforcement, encouraged parents to refrain from reporting the assaults to law enforcement in order to mislead law enforcement into believing the parents had 'forgiven' those who preyed on their children"; and "created a culture in which sexual predators were protected from accountability, and victims were silenced". (Complaint ¶ 1)

Most of Plaintiffs' allegations fail to specify which Defendant is alleged to have performed specific acts. For example, although Charles Joseph Mahaney is named as an *individual Defendant,* the sole allegation against him in the Complaint is that he founded Sovereign Grace Ministries ("SGM") and is currently its President. (Complaint ¶13) He is not specifically identified or alleged to have performed any other act or omission throughout the 143-paragraph Complaint.

Similarly, Grant Layman is named as an *individual Defendant.* He is identified by the Plaintiffs as being "employed by SGM" and "personally involved in the events that led to this lawsuit." (Complaint ¶ 15) Beyond that identification, Defendant Layman is identified in two other paragraphs in the Complaint. In paragraph 51 of the Complaint, Plaintiffs allege that Defendant Layman and another Defendant met with "Grace Goe and her sibling" and were informed that they had been severely abused by their father. (Complaint ¶ 51) Plaintiffs do not allege when this meeting occurred, but the referenced abuse is alleged to have occurred "when she was a minor". (Complaint ¶ 48) The other event in which Defendant Layman is mentioned in the Complaint is an allegation that he and another individual "assisted" "in disseminating false and misleading information to

the police and to other church members." (Complaint ¶ 79) There are no other allegations against Defendant Layman.

John Loftness, has also been named as an *individual Defendant.* Plaintiffs identify him as presently serving as "Chairman of the Board of SGM" and being personally involved in the events that led to this lawsuit." (Complaint ¶ 16) In addition to that, Plaintiffs allege that the parents of Norma Noe contacted him "after calling the police" when they learned that their daughter had been sexually molested. (Complaint ¶ 75) Plaintiffs complain that Defendant Loftness was "displeased" that they had called the police and told them that "such matters were handled internally by the church leadership" but, as alleged by the Plaintiffs, the police were already involved. (Complaint ¶75) Plaintiffs complain that Defendant Loftness "interfered" with the "impartial administration of justice" and "required the parents of Norma Noe to bring Norman Noe to a meeting to be 'reconciled' with her predator." (Complaint ¶s 77-78) Further, Plaintiffs allege that he involved others to "assist him in disseminating false and misleading information to the police and church members." (Complaint ¶79)

The other event in which Defendant Loftness is mentioned is in Plaintiff Robin Roe's claim that *her older sister* was abused by her step-father, and that other church members "reported the abuse to Defendant Loftness". (Complaint ¶ 88) Robin Roe complains that Defendant Loftness did not report her sister's alleged abuse to the police or other law enforcement officials. (Complaint ¶ 89) It is clear from Plaintiffs' allegations that, at some point, the police were informed of the abuse, as "[t]he secular authorities prosecuted and incarcerated" Robin Roe's adoptive father. (Complaint ¶ 95)

Finally, Gary Ricucci is also named as an *individual Defendant.* Plaintiffs allege that he "is employed by SGM and was personally involved in the events that led to this lawsuit." (Complaint ¶ 17) Like Defendant Layman, Plaintiffs allege that Defendant Ricucci met with "Grace Goe and her sibling" and were informed that they had been severely abused by their father. (Complaint ¶ 51) Plaintiffs do not allege when this meeting occurred, but the referenced abuse is alleged to have occurred "when she was a minor". (Complaint ¶ 48) Defendant Ricucci is specifically alleged to have "assisted" "in disseminating false and misleading information to the police and to other church members" with respect to the alleged abuse of Norma Noe. (Complaint ¶ 79)

Lastly, Defendant Ricucci is alleged to have been informed by "Church leader Dave Mays" that Plaintiff Robin Roe's *older sibling* had been sexually abused by her adoptive father. (Complaint ¶ 88) It is further alleged that Defendant Ricucci, in turn, informed Defendant Loftness of the allegations but did not report the matter to the police and, instead, "directed Robin Roe's mother to let them 'take care of everything'" and told her that "they did not want her to go to a counselor because counselors had a duty to report abuse." (Complaint ¶ 89) It is clear from Plaintiffs' allegations that, at some point, the police were informed of the abuse, as "[t]he secular authorities prosecuted and incarcerated" Robin Roe's adoptive father. (Complaint ¶ 95)

As to Defendant CLC, the Plaintiffs allege that it is a "nonprofit organized under Maryland law" and that, at all times relevant to the Complaint, it "was part of SGM." (Complaint ¶ 11) The Complaint vaguely alleges that Defendant Covenant Life School ("the School") "is controlled by the Church." (Complaint ¶ 13) The Plaintiffs have referred to SGM as "the Church", although it is unclear which entity Plaintiffs are

alleging "controlled" the School. (*See* Complaint ¶ 10) It is clear, however, that the Plaintiffs refer to Defendant CLC as "CLC" and not "the Church" throughout the Complaint. (Complaint ¶ 11) None of the individual Defendants are alleged to be agents, servants, or employees of Defendant CLC; they are alleged to be employees of Defendant SGM. (Complaint ¶s 13-23)

There are only a few allegations that refer to Defendant CLC. These include the allegation that Plaintiff Paula Poe attended services at CLC and was assaulted there. (Complaint ¶s 3; 37) Plaintiffs also generally allege that Defendant CLC "operated a school, directed the establishment of home schooling groups, arranged for and provided day care to permit members to attend services, and arranged for babysitting during multiple weekly Home/Care meetings." (Complaint ¶ 24)

The Plaintiffs generally allege that "Defendants" failed "to ensure the safety of children under its care". (Complaint ¶ 25) However, there are no specific allegations against CLC in this regard. Plaintiffs allege that "Defendants SGM and CLC operated the school and youth ministries" as well as a "Home Group" structure and "required members to attend" Home Group meetings. (Complaint ¶ 26) They allege that "individual Defendants," acting on behalf of SGM or CLC "implemented Defendants' policies and practices" through religious teachings and church doctrine required members to "obey" and to follow "spiritual leaders" in all aspects of life.

IV. ***Plaintiffs Fail to State a Claim as a Matter of Law.***

A. ***Plaintiff's Complaint Fails to Follow Basic Pleading Requirements***

(1) ***Failure to Comply With Maryland Rule 2-305***

Maryland Rule 2-305 requires that a claim for relief "shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for

judgment for the relief sought." Plaintiffs' Complaint fails in both respects: it does not include facts necessary to constitute a cause of action against these Defendants, nor does it include a demand for judgment. *See infra.* Not once throughout the entire twenty-eight page Complaint do the Plaintiffs make a demand for monetary or other specific relief. The pleading is deficient on its face and it must be dismissed.

(2) *Failure to Comply with Maryland Rule 2-304*

Maryland Rule 2-304 requires that Plaintiffs specifically aver the "time and place" where the underlying events allegedly occurred "when material to the cause of action or ground of defense." Plaintiffs utterly fail to identify when the underlying events occurred. For example, the allegations asserted by Plaintiff "Grace Goe", which attempt to assert liability against Defendants Ricucci, and Layman, are entirely devoid of any time or place reference, other than the assertion that Grace Goe had been "sexually abused by her father when she was a minor and living in Maryland." (Complaint ¶ 48) If nothing else, this assertion indicates that Grace Goe is no longer a minor and is no longer living in Maryland. Plainly, the time and place of these alleged events is material to Defendants' potential defenses in this case, primarily the statute of limitations[1] defense.

Rather than allege the time and place, Plaintiffs assert that these events happened "during childhood", "when she was three", or at other vaguely described times. There is no reason that Plaintiffs could not aver the years that these events allegedly occurred. Defendants, being faced with "Jane Doe" Plaintiffs, have no way of identifying whether than can avail themselves of certain preliminary defenses. Three of the Doe Plaintiffs do identify when they were allegedly abused, but only two of those Plaintiffs identify the

[1] *See infra.*

time when the "Defendants'" alleged wrongful conduct occurred, which was sometime *after* the alleged abuse. However, one of these Plaintiffs, Jane Doe, makes no allegation against the Defendants filing this Motion to Dismiss. (Complaint ¶s 62-73) The only other Plaintiff who identifies when her alleged abuse occurred, Norma Noe, alleges that "the day after" she was assaulted on March 17, 1993, her parents called the police and then called Defendant Loftness. (Complaint ¶s 74-75) Thus, with the exception of Norma Noe, the Plaintiffs alleging claims against these Defendants utterly fail to identify the time and place that their alleged wrongful conduct occurred.

(3) *Failure to Comply With Maryland Rule 2-201*

Further, by bringing this Complaint as "Doe" Plaintiffs, the Plaintiffs have failed to bring this action in the name of the "real party in interest" as required by Maryland Rule 2-201. Although this action cannot be immediately dismissed for Plaintiff's failure to do so, Defendants demand that the "real Plaintiffs" be joined as required by Maryland Rule 2-211. The action may be dismissed for failure to bring it in the name of the real parties in interest once the Plaintiffs have been afforded a reasonable time to do so. *See South Down Liquors, Inc. v. Hayes*, 323 Md. 4, 590 A.2d 161 (1991).

Plaintiffs make no assertion as to their right to bring a Complaint as Doe Plaintiffs, other than vaguely claiming that, "due to the nature of the lawsuit," each Plaintiff "wishes to use [a] pseudonym" to keep their "identity confidential." (Complaint ¶s 3-9) Plaintiffs' claims are not based on a privacy right. Thus, the Plaintiffs have no right to bring these claims as Doe Plaintiffs. *See Doe v. Shady Grove Adventist Hospital*, 89 Md. App. 351, 598 A.2d 507 (1991). It is fundamentally unfair to bring claims of this nature against this many Defendants without identifying oneself.

Moreover, just like the Plaintiffs, "[d]ue to the nature of the lawsuit," surely each Defendant would prefer to "use a pseudonym" to keep their "identity confidential." It appears from the Complaint that the Doe Plaintiffs are all are grown adults who have chosen to bring a multitude of vague assertions against ten different individual Defendants and four separate institutions. It is fundamentally unfair to allow Plaintiffs to remain anonymous, and yet require public identification of these separate Defendants.

(4) *Plaintiffs Lack Standing*

Standing is a threshold issue; a party may proceed only if he demonstrates that he has a real and justiciable interest that is capable of being resolved through litigation. *Norman v. Borison*, 192 Md. App. 405, 420, 994 A.2d 1019, 1027 (2010). In order to have standing, a party must demonstrate an "'actual legal stake in the matter being adjudicated'". *Id.* "'The necessity of standing is not obviated by seeking relief in the form of a class action.'" *Master Financial, Inc. v. Crowder,* 409 Md. 51, 76, 972 A.2d 864, 879 (2009), *quoting Bd. Of Public Welfare v. Myers*, 224 Md. 246, 167 A.2d 765 (1961), *abrogated in part by Master Financial*, 409 Md. at 75-76.

At least some of the named Plaintiffs lack standing to bring this Complaint. For example, as alleged, Paula Poe "attended the School and Services at CLC beginning in kindergarten until her family moved away from Gaithersburg, Maryland." (Complaint ¶ 37) The Complaint alleges that she was repeatedly sexually assaulted by two men and that the primary perpetrator was an unnamed pastor and teacher. *Id.* She does not allege that the primary perpetrator was a pastor and teacher of CLC or any other institutional Defendant. Her claims should be dismissed in their entirety for lack of standing.

Further, Carla Coe's allegations are against Defendant Tomczak and unspecified "individual Defendants." (Complaint ¶s 43-47) She does not make any allegation against Defendant CLC and, therefore, she does not have standing to bring a claim against Defendant CLC and her claim against it should be dismissed. Similarly, Grace Goe does not assert any allegation against Defendants John Loftness or Charles Joseph Mahaney. (Complaint ¶s 48-52) Her claims against those Defendants must be dismissed for lack of standing. Plaintiffs Karl Koe, Karen Koe, and Jane Doe, do not assert any allegation against any Defendant filing this Motion to Dismiss (CLC, Mahaney, Loftness, Ricucci and Layman). (Complaint ¶s 53-73) Their claims against these Defendants must be dismissed. Plaintiff Norma Noe does not make any allegation against Defendants CLC or Charles Joseph Mahaney. (Complaint ¶s 74-86) Her claims against those Defendants must be dismissed for lack of standing.

Finally, Plaintiff Robin Roe does not make any allegation against Defendants CLC, Charles Joseph Mahaney, or Grant Layman. (Complaint ¶s 87-95) Moreover, the Complaint fails to state how Defendants Loftness or Ricucci harmed Robin Roe or violated a protected interest. The Complaint does state that "the Church acted to prevent Robin Roe from remaining within the church community." (Complaint ¶ 56) This allegation, if true, does not establish standing, because the Church had no duty[2] to allow Robin Roe to remain part of the church community. The Complaint even makes the outlandish allegation that the Church had the power and authority to rip Robin Roe out of a loving home and place her in a juvenile half-way house. (Complaint ¶ 57). It is general knowledge that only state and county government systems have the power to remove

[2] *See infra.*

children from their parents and put them in the care and custody of the state, either temporarily or permanently. Clearly Robin Roe has not and cannot plead a claim upon which relief can be granted based on her allegations.

B. ***Certain Claims Barred by Statute of Limitations***

The claims asserted by two Plaintiffs[3], Robin Roe and Carla Coe, must be dismissed because they are barred by the statute of limitations. An action for damages arising out of an alleged incident of sexual abuse that occurred when a victim was a minor must be filed within seven years of the date that victim attains the age of majority. Md. Code Ann., Cts. & Jud. Proc., § 5-117 (2012). A plain reading of the Complaint shows that both Robin Roe and Carla Code are more than twenty-four years old. Thus, any claim that they might have for alleged sexual abuse is barred by the statute of limitations and their claims must be dismissed.

C. ***Maryland Does Not Recognize Claim of Clergy Malpractice***

Not every set of facts constitutes a cause of action. The mere fact that a plaintiff believes that he was wronged does not mean that there must be a remedy to redress that wrong. *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604, 805 A.2d 1061 (2002). For example, the Court of Special Appeals has explained that there is no independent cause of action in Maryland for "spoliation". *Goin v. Shoppers Food Warehouse Corp.*, 166 Md. App. 611, 890 A.2d 894 (2006). Nor does Maryland recognize a claim for "educational negligence", i.e. a failure to provide appropriate instruction. *Hunter v. Bd. Of Educ. of Montgomery County,* 292 Md. 481, 439 A.2d 582 (1982).

[3] The age and events of other Plaintiffs are not pled, such that the Defendants are unable to discern if the statute of limitations applies.

Plaintiffs' claims are an attempt to allege "ministerial negligence" or "clergy malpractice". These claims are not recognized in Maryland. The Court of Appeals has recognized that the First Amendment[4] provides, through its free Exercise and Freedom of Religion clauses, that civil courts cannot "entangle [themselves] in questions of religious doctrine, policy, and practice." *From the Heart Church Ministries, Inc. v. African Methodist Episcopal Zion Church, Mid-Atl. II Episcopal Dist.*, 370 Md. 152, 179, 803 A.2d 548 (2002). It is well established that "Maryland does not recognize the tort of clergy malpractice". *Latty v. St. Joseph's Society of the Sacred Heart, Inc.*, 198 Md. App. 254, 263, 17 A.3d 155, 160 (2011). As the Court of Appeals has explained:

> "[R]ecogniz[ing] the tort of clergy malpractice ... requires ... embroil[ing] courts in establishing the training, skill, and standards applicable for members of the clergy in a variety of religions with widely varying beliefs ... [and] would require courts to identify the beliefs and practices of the relevant religion and then to determine whether the clergyman had acted in accordance with them. These requirements, quite obviously, have a large potential to restrain the free exercise of religion[.]"

Borchers v. Hrychuk, 126 Md. App. 10, 23-24, 727 A.2d 388 (1999).

Plaintiffs claim that these individual Defendants failed to stop abuse from occurring, failed to report the abuse when they learned of it, and counseled parents and victims to forgive their abusers. Essentially, their claim is that, acting "under the guise" of a religious organization, these Defendants' failures to act harmed the Plaintiffs. Plainly, the Complaint must be dismissed because it is barred by the First Amendment.

D. *Plaintiffs Fail to State A Claim Upon Which Relief May be Granted*

[4] These Defendants adopt, as if fully set forth herein, the First Amendment arguments filed by Defendant Covenant Life School, Inc. in support of its Motion to Dismiss.

Maryland law provides that a complaint must contain "such statements of fact as may be necessary to show the pleader's entitlement to relief." Md. Rule 2-303(b), *quoted in Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 923 A.2d 971 (2007). Bald allegations, alone, are insufficient to maintain a claim. *Doe v. Archdiocese*, 114 Md. App. 169, 187, 689 A.2d 634 (1997). Although Maryland has abandoned the formalities of common law pleading, the Maryland Rules still require a pleading to "allege facts, if proven true, sufficient to support each and every element of the asserted claim." *Horridge v. St. Mary's County Dep't of Soc. Servs.*, 382 Md. 170, 854 A.2d 1232 (2004).

(1) *Plaintiffs do not adequately state a claim for Negligence*

In order to state a claim for negligence, a complaint must allege, "with certainty and definiteness, facts and circumstances" sufficient to set forth: (i) a duty owed to the plaintiff, (ii) a breach of that duty, and (iii) injury proximately caused by that breach. *Id.* "Merely stating that a duty existed, or that it was breached, or that the breach caused the injury does not suffice." *Id.*, 382 Md. at 182, 854 A.2d at 1238.

Analysis of whether a negligence cause of action exists begins with the question of whether a legally cognizable duty existed. *See Remsburg v. Montgomery*, 376 Md. 568, 582, 831 A.2d 18, 26 (2003). "Duty" is "'an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another.'" *Id.*, *quoting* Prosser and Keeton on Torts § 53 (W. Keeton 5th ed. 1984). As the Court of Appeals has noted, "[t]he fact that a result may be foreseeable does not itself impose a duty in negligence terms." *Remsburg, supra* at 583. Nor is a legal duty equivalent to a *moral* duty. *Jacques v. First Nat'l Bank*, 307 Md. 527, 534, 515 A.2d 756, 759 (1986). Duty not only depends upon foreseeability, but it also depends on the relationship of the

parties. *Valentine v. On Target, Inc.*, 353 Md. 544, 550, 727 A.2d 947, 950 (1999). Plainly, "[o]ne cannot be expected to owe a duty to the world at large to protect it against the actions of third parties, which is why the common law distinguishes different types of relationships when determining if a duty exists." *Id.* at 553, 727 A.2d at 951.

In this case, it is alleged that the Defendants owed the Plaintiffs a duty to protect them from "predators." However, the fact that an actor realizes or should realize that his action is necessary for another's protection does not of itself impose upon him a duty to take such action. *See* Restatement of Torts (Second) § 314 (1965), *quoted in Remsburg*, 376 Md. at 590, 831 A.2d at 31. Maryland follows Section 315 of the Restatement of Torts (Second) (1965), which provides:

> [t]here is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless
> (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
> (b) a special relation exists between the actor and the other which gives to the other a right to protection.

See Remsburg, 376 Md. at 590. A plaintiff may establish that an actor owes him a "special duty" to protect him from the acts of a third party in any of three ways: "'(1) by statute or rule; (2) by contractual or other private relationship; or (3) indirectly by virtue of the relationship between the tortfeasor and a third party.'" *Id.* at 583-84.

Plaintiffs do not allege any relationship between them and the individual Defendants, let alone a relationship that would give rise to a duty to protect them. Plaintiffs' only allegation as to Defendant Manahey is that he founded SGM and is currently its President. (Complaint ¶ 13) Plaintiffs do not allege that they had any relationship with him. The same is true for each of the other individual Defendants filing

this Motion to Dismiss, Defendants Layman, Loftness, and Ricucci. Plaintiffs do not allege any relationship with them, but simply allege that they are "employed by SGM" and "personally involved in the events that led to this lawsuit." (Complaint ¶s 15-17)

In Maryland there is no statute establishing a legal relationship "between a priest and his parishioners." *Latty, supra,* at 265. It is possible for a "special relationship", giving rise to a duty of care, to arise "by one party undertaking to protect or assist the other party", but Plaintiffs do not allege that they have such a relationship with the Defendants. While there may, under certain circumstances, be a confidential relationship between a pastor and a church member, that relationship is not automatically a confidential one and such a relationship is not presumed as a matter of law. *Id.* at 266.

Of course, Maryland does have a child abuse statute, which provides that a person "who has reason to believe that a child has been subjected to abuse or neglect shall notify the local department or the appropriate law enforcement agency." Md. Code Ann., Family Law, § 5-705(1) (2012). However, it is equally plain that:

> (3) A minister of the gospel, clergyman, or priest of an established church of any denomination is not required to provide notice under paragraph (1) of this subsection of the notice would disclose matter in relation to any communication described in § 9-111 of the Courts Article and:
>
> (i) the communication was made to the minister, clergyman, or priest in a professional character in the course of discipline enjoined by the charge to which the minister, clergyman, or priest belongs; and
>
> (ii) the minister, clergyman, or priest is bound to maintain the confidentiality of that communication under canon law, church doctrine, or practice.

Md. Code Ann., Family Law, § 5-705(3) (2012). Section 9-111 of the Courts Article provides that "a minister of the gospel, clergyman, or priest of an established church of any denomination may not be compelled to testify on any matter in relation to any

confession *or communication made to him in confidence by a person seeking his spiritual advice or consolation."* Md. Code Ann., Cts. & Jud. Proc., § 9-111 (2012) The allegations of the Complaint are so vague as to make it impossible to determine whether a duty has been pled.

Moreover, even if these Defendants are alleged to have had a duty to report what they learned to local authorities, or a duty to protect the Plaintiffs, the Plaintiffs have not sufficiently alleged that any breach of such duty *caused* them damages. As stated by the Court of Appeals in *Bentley v. Carroll,* 355 Md. 312, 734 A.2d 697 (1999), where a claim was brought against a physician for failing to report child abuse, there must be a claim that the alleged violation "contributed to the set of circumstances which allowed the perpetrators to continue their sexual abuse of the Plaintiff and therefore proximately caused whatever related injuries she endured after the Defendant's failure to comply with the law." 355 Md. at 327, 734 A.2d at 705-6. There are insufficient facts alleged in this Complaint to establish any causal connection between the alleged failures of the Defendants and any damages that flowed therefrom.

This is particularly true as to the claim of Robin Roe, which on its face fails to state a claim for relief because of what was supposedly done to her sister. The Plaintiff, Robin Roe, lacks standing to bring this lawsuit against Defendants Loftness and Layman because the Complaint has failed to allege any actual controversy, protected interest or injury that Robin Roe experienced as a result of their alleged acts. *See supra.*

(2) *Plaintiffs do not adequately state a claim for Intentional Infliction of Emotional Distress*

In order to state a claim for intentional infliction of emotional distress, Plaintiffs must allege that: "(1) the conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful conduct and the emotional distress; (4) the emotional distress must be severe. Each of these elements must be pled and proved with specificity." *Manikhi v. Mass Transit Admin.*, 360 Md. 333 (Md. 2000). Plaintiffs have utterly failed to allege the elements of this cause of action.

In Count II, the Plaintiffs *generally allege* that "Defendants' conduct was intentional and reckless and Defendants knew or should have known that injury and emotional distress would likely result from their conduct." (Complaint ¶ 125) However, this is nothing more than a conclusory allegation and will not satisfy Maryland's pleading requirement. *See supra.* Intentional conduct occurs when a person desires to inflict severe emotional distress and knows that such distress is certain, or substantially certain to result from his conduct. *Vance v. Vance*, 286 Md. 490 (1979). Reckless conduct occurs when a person acts in deliberate disregard of a high degree of probability that emotional distress will follow. *Id.*

The ***facts*** alleged in the Complaint as to these Defendants, set forth above, provide no basis for any claim that their conduct was outrageous or otherwise meets the test for properly pleading a claim for intentional infliction of emotional distress.

(3) *Plaintiffs do not adequately state a claim for Conspiracy*

Maryland law does not recognize a civil cause of action for "conspiracy to obstruct justice". Indeed, in Maryland, "obstruction of justice" is a criminal charge, which is punishable as a misdemeanor crime. *See* Md. Code Ann., Crim. Law, § 9-306

(2012). It is not a civil tort and the criminal statute does not authorize a private cause of action. Even if it did, there are no allegations that any Defendant acted "by threat, force, or corrupt means", which is the standard set forth in the criminal statute.

Maryland does recognize a claim for "civil conspiracy". However, a claim for civil conspiracy, standing alone, is not actionable. *Van Royen v. Lacey*, 262 Md. 94, 277 A.2d 13 (1971). The elements of civil conspiracy are:

> 1) A confederation of two or more persons by agreement or understanding;
> 2) Some unlawful or tortious act done in furtherance of the conspiracy or use of unlawful or tortious means to accomplish an act not in itself illegal; and
> 3) Actual legal damage resulting to the plaintiff.

Van Royen, supra. "The agreement to commit an unlawful act or use unlawful means to accomplish a lawful act is not, by itself, sufficient to establish a claim for civil conspiracy." *Yousef v. Trustbank Svgs., F.S.B.*, 81 Md. App. 527, 568 A.2d 1134 (1990).

In this case, Plaintiffs have alleged that "the Defendants" (without identifying which Defendants) agreed to "not report acts of abuse, to refrain from contacting civil authorities, to conceal the sexual abuse, and to interfere with police investigations." The Plaintiffs have not alleged that the Defendants committed or refrained from performing certain acts pursuant to any such agreement. *See supra.* Plainly, when the alleged "wrongful act" is dismissed, a conspiracy claim cannot survive alone.

(4) *Plaintiffs do not state a claim for Negligent Hiring/Supervision*

This claim is only brought against the "institutional Defendants", which includes Defendant, CLC. To survive a motion to dismiss a negligent hiring, retention, and supervision claim, Plaintiffs must adequately plead the following five elements:

(i) The existence of an employment relationship;

(ii) That the employee's act or omission proximately caused the plaintiff's injuries;
(iii) That the employer knew or should have known by the exercise of reasonable care that the employee was capable of inflicting harm of some type;
(iv) That the employer failed to use proper care in selecting, supervising or retaining that employee; and
(v) That the employer's breach of duty likewise proximately caused the plaintiff's injuries.

Williams v. Cloverleaf Farms Dairy, Inc., 78 F.Supp. 2d 479 (D. Md. 1999). This claim is based on an employer's direct liability to the plaintiff for breaching its duty to use reasonable care in selecting, retaining, or supervising its employees. *Horridge, supra.*

Plaintiffs utterly fail to satisfy these basic pleading requirements. In its entirety, the Plaintiffs' allegations supporting this claim are that CLC and the other institutional Defendants "retained sexual deviants to serve in capacities with authority over children. Defendants negligently failed to supervise those to whom Defendants entrusted the care of minors." (Complaint ¶ 137)

Paula Poe alleged that she was sexually assaulted by two men: a pastor and teacher, and a "children's ministry worker." (Complaint ¶ 37) She does not allege that CLC or any other "institutional Defendant" ever knew or should have known of the alleged abuse. Nor does she identify these alleged perpetrators such that any specific facts have been alleged or could be alleged regarding the hiring or supervision procedures surrounding these individuals.

Carla Coe alleges that she was repeatedly assaulted by Defendant Tomczak over a 25-year period spanning her childhood and young adulthood. (Complaint ¶43) She further alleges that "Defendant Tomczak verbally admitted on one or more occasions to the individual Defendants and to the Church that he abused Carla Coe." (Complaint ¶46) Plaintiff does not allege that CLC was ever made aware of these allegations or of

Defendant Tomczak's alleged admissions. Even if she did so allege, she does not allege *when* such admissions occurred, such that the Defendants even *could have* taken an action with respect to his employment. Defendant Tomczak has not been affiliated with CLC in a number of years.

None of the other Plaintiffs even allege to have been assaulted by employees of any of the "institutional Defendants." Rather, their allegations are based on "church members" alleged abuses or abuses at the hands of other children of "church members".

The fact that an employee harms a plaintiff does not automatically make the employer *liable* to the plaintiff for that harm. The plaintiff must plead and prove a viable cause of action against the employer and each element of the tort must be pleaded and proven. In this case, even taking all inferences in the light most favorable to the Plaintiffs, they have failed to adequately plead a cause of action.

(5) *Plaintiffs do not adequately state a claim for Misrepresentation*

In order to state a claim for intentional misrepresentation, Plaintiffs must allege:

> (i) The defendant asserted a false representation of a material fact to the plaintiff;
> (ii) The defendant knew that the representation was false, or the representation was made with such reckless disregard for the truth that knowledge of the falsity of the statement can be imputed to the defendant;
> (iii) The defendant made the false representation for the purpose of defrauding the plaintiff;
> (iv) The plaintiff relied with justification upon the misrepresentation; and
> (v) The plaintiff suffered damages as a direct result of the reliance upon the misrepresentation.

Hoffman v. Stamper, 385 Md. 1, 28-31, 867 A.2d 276, 292-94 (2005). Plaintiffs have failed to sufficiently allege the elements of misrepresentation.

Plaintiffs allege: "Defendants misrepresented that they would provide a safe atmosphere for Plaintiffs and the Plaintiff Class. Defendants intended and had knowledge that their statements would be relied upon by parents. Defendants knew, however, that reliance on those statements would cause injury, since Defendants allowed sexual predators access to minors." (Complaint ¶ 141) Plaintiffs also allege that: "Defendants misrepresented that they would act as advocates for the victims and their families. Defendants intended and had knowledge that their statements would be relied upon by parents. Defendants knew, however, that reliance on those statements would cause injury, since Defendants acted as advocates for the perpetrators, not the victims." (Complaint ¶ 142)

Plaintiffs do not allege that "the Defendants" made *any representation to* ***them***. Plaintiffs were minors when the Defendants even could have made a representation. The Complaint does not include a single fact indicating that *any* Defendant made any such "representation" to anyone. Moreover, Plaintiffs do not allege that the Defendants made these representations "for the purpose of defrauding the Plaintiffs". Finally, the Plaintiffs do not allege that ***they*** relied upon the alleged misrepresentations. They allege that their "parents" relied upon the alleged misrepresentations. Plainly, Plaintiffs have failed so state a claim for "misrepresentation" and this Count must be dismissed in its entirety.

D. *Plaintiffs' Allegations Do Not Satisfy the Minimum Requirements for a Class Action.*

Maryland Rule 2-231 sets forth the requirements and procedures for maintaining a class action under Maryland law. As the appellate courts have frequently explained, a "class action is not a separate cause of action, but a procedural device for managing

causes of action that are appropriate for class certification under the standards established by Maryland Rule 2-231." *Crowder v. Master Fin., Inc.*, 176 Md. App. 631, 646, 933 A.2d 905, 914 (2007) (citation omitted). The elements of a class action complaint are:

> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interests of the class.

Maryland Rule 2-231(a). In order to state a claim for a class action, a complaint must not only allege each of the foregoing requirements, but it must also demonstrate the ***existence of at least one of three*** conditions under Maryland Rule 2-231(b). Maryland does not share the liberal construction of the class action rule espoused by some other courts. Under Maryland case law, an issue is common to a class of plaintiffs "only to the extent its resolution will advance the litigation of the *entire* case." *Cutler v. Wal-Mart Stores, Inc.*, 175 Md. App. 177, 200, 927 A.2d 1 (2007).

Plaintiffs do not satisfy the class action requirements. It is plain from a review of the Complaint that, at a minimum, the commonality requirement for a class action has not been pled. The various Defendants, which are entirely separate entities and individuals, are alleged to have engaged in a wide variety of responses and acts upon allegedly becoming aware of the abuses alleged by the Plaintiffs. The adjudication of each individual claim will not be determinative of the claims alleged by other individuals. In both *Cutler, supra,* and *Creveling v. GEICO*, 376 Md. 72, 828 A.2d 229, the appellate courts affirmed a lower court's refusal to certify a class because the underlying claims lacked the commonality requirement. The Plaintiffs' claims in this case do not

adequately plead the commonality requirement for a class action. The alleged abuse and response are unique to each Plaintiff. The Defendants are four separate business entities, which are not legally affiliated with one another, and ten individual Defendants. As part of their "Class Allegations," Plaintiffs allege that the class "is defined as those who were minors attending Church and School events, and who were abused by Defendants or as a result of Defendants' acts or omissions." (Complaint ¶98) Plaintiffs allege that only one of the ten individual Defendants actually committed any abuse, and they do not sufficiently allege that the other Defendants' alleged acts or omissions resulted in abuse. These factors clearly require individualized analyses of the specific circumstances surrounding each alleged wrong. For this reason alone, the Plaintiffs have not properly alleged a class action complaint.

IV. Conclusion

Wherefore, for all of the foregoing reasons, the Defendants, Covenant Life Church, Inc., Charles Joseph Mahaney, Gary Ricucci, John Loftness, and Grant Layman, respectfully request that this Honorable Court DISMSS the claims brought against them by the Plaintiffs in this case.

Respectfully submitted,

McCARTHY WILSON LLP

By:_____

Thomas Patrick Ryan
2200 Research Boulevard, Suite 500
Rockville, MD 20850
(301) 762-7770
Attorneys for Defendants Covenant Life Church, Inc., Charles Joseph Mahaney, Gary Ricucci, John Loftness, Grant Layman

CERTIFICATE OF SERVICE

I HEREBY certify that on this 25th day of February, 2013, a copy of the foregoing was mailed first-class, postage prepaid, to:

Susan L. Burke, Esquire
BURKE PLLC
1000 Potomac Street, N.W.
Washington DC 20007
Attorneys for Plaintiffs

William T. O'Neil, Esquire
THE O'NEIL GROUP, LLC
7500 Old Georgetown Road, Suite 1375
Bethesda, MD 20814
Counsel for Plaintiffs

Paul Maloney, Esquire
Alexander M. Gormley, Esq.
Carr Maloney PC
2000 L Street, N.W., Suite 450
Washington DC 20036
Counsel for Sovereign Grace Ministries, Inc.

Daniel D. Smith, Esquire
Gammon & Grange, P.C.
8280 Greensboro Drive, Seventh Floor
McLean, VA 22102
Counsel for Covenant Life School, Inc.

Robert E. Worst, Esquire
Kalbaugh, Fund & Messersmith
4031 University Drive, Suite 300
Fairfax, VA 22030
Counsel for Defendants Sovereign Grace Church Fairfax, David Hinders, Louis Gallo, Frank Ecelbarger, Mark Mullery, and Vince Hinders

Richard D. Holzheimer, Jr., Esquire
Cochran & Owen LLC
8000 Towers Crescent Drive, Suite 160
Vienna, VA 22042
Counsel for Lawrence Tomczak

Kristine a. Crosswhite, Esquire
Crosswhite, Limbrick & Sinclair, LLP

25 Hooks Lane, Suite 310
Baltimore, MD 21208
Co-counsel for Defendants, Covenant Life Church, Inc.,
Charles Joseph Mahaney, Gary Ricucci,
John Loftness, and Grant Layman

Thomas Patrick Ryan