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BLAKE A. FRANK

Plaintiff

v.

MIDDLETOWN TOWNSHIP BOARD OF
EDUCATION (d/b/a MIDDLETOWN TOWNSHIP
SCHOOL DISTRICT AND d/b/a THOMPSON
MIDDLE SCHOOL);
SHERRY LYNN DIODATO (maiden name: SHERRY
LYNN FARWELL);
DEFENDANT DOE 1-10;
DEFENDANT DOE INSTITUTION 1-10
Defendants

NEW JERSEY SUPERIOR COURT
LAW DIVISION
MONMOUTH COUNTY

DOCKET NO.: MON-L- -21

CIVIL ACTION

**COMPLAINT; DEMAND FOR JURY TRIAL;
DESIGNATION OF TRIAL COUNSEL;
CERTIFICATION PURSUANT TO R. 4:5-1**

Plaintiff, Blake A. Frank (hereinafter also referred to as “Blake” and/or “Plaintiff”), residing at 19 Sweet Briar Ln., Holmdel, NJ 07733, by way of Complaint against the Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School) (hereinafter also referred to as “Thompson Middle School”), Sherry Lynn Diodato (maiden name: Sherry Lynn Farwell) (hereinafter also referred to as “Sherry Diodato” and/or “Sherry” and/or “Ms. Farwell”), Defendant Doe 1-10, and Defendant Doe Institution 1-10, say as follows:

PARTIES AND VENUE

1. Plaintiff, Blake Frank, is currently a citizen and resident of New Jersey, residing at 19 Sweet Briar Ln., Holmdel, NJ 07733.

2. At the time of his abuse, plaintiff was a minor and a resident of or near Lincroft, New Jersey, and the sexual abuse took place in and/or near Atlantic Highlands, New Jersey and Monmouth County.

3. At all times material hereto, Defendant, Middletown Township Board of Education, was/is a comprehensive community public school district in Monmouth County, New Jersey, that serves students from pre-kindergarten through twelfth (12th) grade in Middletown Township.

4. Middletown Township Board of Education is a public school district organized and existing under the laws of the State of New Jersey, with a principal place of business/administrative address located at 834 Leonardville Rd 2nd Fl., Leonardo, NJ 07737. Middletown Township Board of Education operates under the supervision of the State Board and/or the Commissioner of Education of the State of New Jersey, and are deemed a place/places of public accommodation as defined by N.J.S.A. 10:5-5(1).

5. At all times material hereto, Thompson Middle School, was/is a middle school located at 1001 Middletown-Lincroft Road. The school is part of the Middletown Township Board of Education. Thompson Middle School is a public school organized and existing under the laws of the State of New Jersey.

6. At all times material hereto, Sherry Diodato, is a former Language Arts teacher at Defendant, Middletown Township Board of Education, and in particular, at Thompson Middle School.

7. Upon information and belief, defendant, Sherry Diodato, was a Language Arts teacher at Thompson Middle School in or around the 1990s.

8. Upon information and belief, defendant, Sherry Diodato, retired from Middletown Township Board of Education in 2018.

9. Defendant, Sherry Diodato, is currently a citizen of New Jersey, residing at 56 7th Ave, Atlantic Highlands, NJ 07716 (Monmouth County).

10. Individual Defendants in the above caption case identified as Defendant Doe 1-10 (said names being fictitious, and hereinafter referred to as "Defendant Doe"), were, at all relevant times, employees and/or agents of the Defendants, Middletown Township Board of Education and/or Thompson Middle School, involved in the operation of the schools and/or the Middletown Township Board of Education and/or Thompson Middle School and the hiring, admitting, assigning, retaining, and

supervising of teachers and/or individuals, including Sherry Diodato. The identification of these individuals is not known by the plaintiff at this time in the absence of discovery. Plaintiff reserves the right to substitute the name(s) for those agents designated as Defendant Doe when and if such information becomes available.

11. Institutional/corporate Defendants in the above caption case identified as Defendant Doe Institution 1-10 (said names being fictitious, and hereinafter referred to as “Defendant Doe Institution”) were, at all relevant times, incorporated and/or established associations, corporations, institutions, entities, schools, facilities, or other establishments that employed, hired, certified, assigned, retained, supervised, managed, oversaw, directed, administrated, and/or otherwise controlled one or more of the Defendants at or during all relevant times. These Defendant Doe Institutions were/are vicariously and derivatively liable for the negligent conduct of the aforementioned Defendants under the theories of respondeat superior, master-servant, agency, and/or right of control.

12. Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, were empowered by the business to supervise and control all employees and/or agents within Middletown Township Board of Education, including Defendant, Sherry Diodato.

13. Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, had/has access to and knowledge of information regarding the sexual misconduct of employees and/or agents, including knowledge of pedophilia and/or sexually abusive conduct of individuals within the Middletown Township Board of Education and/or Thompson Middle School’s business, including Defendant, Sherry Diodato.

14. At all relevant times, Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10 in this action were acting by and through themselves in their individual capacities, and/or additionally by and through their actual and/or ostensible/aided agents, servants, employees, which include entities and/or individuals over whom they had control or right of control.

15. At all times material hereto, Defendants, Sherry Diodato was acting as a teacher, employee, agent, servant, representative and/or ostensible/aided agent hired, certified, assigned, retained, supervised, managed, overseen, directed, administrated, and/or otherwise controlled by and for one or more of the Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, and was engaged to perform services for the Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, and was subject to the Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10's oversight, supervision, management, direction, control, ostensible/aided control, and/or right to control the physical conduct required to perform such services.

16. The Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, were the principals of Sherry Diodato, and the Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, acted only through the natural persons who were its employees, agents, servants, representatives, and/or ostensible/aided agents hired, certified, assigned, retained, supervised, managed, overseen, directed, administrated, and/or otherwise controlled by and for said Defendants.

17. Sherry Diodato acted as the teacher, employee, agent, servant, representative, and/or ostensible/aided agent of the Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, acted negligently while in the scope of her duties or authority, such that the negligence as a matter of law charged to the principal, here the Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10.

18. At all times material hereto, the Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, are deemed negligent for the wrongdoing to the same extent as the employer, employee, agent, servant, representative, and/or ostensible/aided agent, Sherry Diodato.

19. Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, through its employees, teachers, agents, and servants, had authority and responsibility to address discrimination and harassment (sexual or otherwise) and to institute corrective measures, and who had actual or constructive knowledge of harassment and discrimination in the school, and who despite such knowledge, failed to adequately respond to stop harassment and discrimination against the plaintiff and took affirmative steps which resulted directly in severe sexual harassment and assaults of the plaintiff.

20. Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, were responsible for promulgation and enforcement of all policies, customs and practices for the schools and school district.

21. As recognized by the United States Department of Education in a July 1, 1998 press release, "Schools owe students a safe environment that is conducive to learning and that affords children equal educational opportunity regardless of sex."

22. Plaintiff, Blake Frank, was a student at Defendant, Thompson Middle School from approximately 1992-1995 and was a student within the Middletown Township School District until approximately 2000.

23. Plaintiff, Blake Frank, suffered extraordinary and severe harm due to the sexual assaults committed during 1995-1997 by Defendant Sherry Diodato and the sexually hostile environment at Middletown Township Board of Education and/or Thompson Middle School that was created by Defendant, Middletown Township Board of Education and/or Thompson Middle School, which the Defendants failed to correct and to properly address despite their actual and/or constructive knowledge thereof and due to the negligence outlined below.

24. Before and/or during 1995-1997, Defendants, Middletown Township Board of Education and/or Thompson Middle School, actually knew and/or had reason to know that Defendant, Sherry Diodato, engaged in a sexual offense(s) of flagrantly lewd and inappropriate conduct and/or sexual abuse/assault which would violate the laws of New Jersey.

25. Defendants, Middletown Township Board of Education and/or Thompson Middle School, failed to take appropriate actions to protect plaintiff against sexual harassment/abuse at Middletown Township Board of Education and/or Thompson Middle School despite having actual notice of the past lewd and/or inappropriate conduct and/or sexual abuse/assault by Defendant, Sherry Diodato, all in violation of the rights guaranteed to plaintiff by the laws of New Jersey.

26. Defendant, Middletown Township Board of Education and/or Thompson Middle School, acted individually and through its employees and agents whose names and identities are not currently known, all of which acted with actual or apparent authority and all of whom aided in carrying out and/or permitting the sexual harassment/abuse and assaults of the plaintiff by the actions and inactions of Defendants.

27. Defendants, Middletown Township Board of Education and/or Thompson Middle School, acting through its administrators, and other employees and agents, knew and/or should have known about the specific misconduct and sexual harassing conduct committed by Defendant, Sherry Diodato, and was deliberately or recklessly indifferent to this conduct, as demonstrated by the specific failures described below, thereby exposing and continuing to expose students in general, and plaintiff in particular, to a sexually hostile educational environment.

28. Defendants, Middletown Township Board of Education and/or Thompson Middle School, should have been aware of the misconduct and sexual harassment committed by Defendant Sherry Diodato, for which plaintiff asserts claims pursuant to the New Jersey Law Against Discrimination (“LAD”) violations.

29. Defendants, through their actions and inactions described herein, and through a pattern of deliberate and/or reckless indifference, created and permitted a severe, pervasive, and persistently sexually hostile environment, in violation of New Jersey’s Law Against Discrimination (“LAD”).

30. During and/or before 1995-1997, Defendants, Middletown Township Board of Education and/or Thompson Middle School, knew and/or had reason to know that Defendant, Sherry Diodato, posed a risk to students and other male students and yet permitted her to serve as public school teacher in their school system.

31. The indifference of Defendants, Middletown Township Board of Education and/or Thompson Middle School, to the risks posed by Defendant, Sherry Diodato, and its affirmative acts created and/or permitted the opportunity for Sherry Diodato to commit sexual abuses/assaults of plaintiff in 1995-1997, which resulted in a sexually hostile educational environment.

32. Venue is properly laid in the Superior Court of Monmouth County, New Jersey pursuant to R.4:3-2(a) and/or (b).

FACTUAL SUMMARY

33. At all times material hereto, Plaintiff, Blake Frank (DOB: 07/17/1981) was a minor, and was approximately age thirteen (13) to sixteen (16) years old in 1995-1997.

34. At all times material hereto, Defendant, Sherry Diodato was a teacher, and/or employee and/or an agent and/or an apparent/ostensible/aided agent at Defendant, Middletown Township Board of Education and Thompson Middle School.

35. The sexual abuse of Blake Frank first began in the winter of 1995 when he was thirteen (13) years old and a middle school student at Thompson Middle School in Atlantic Highlands, NJ.

36. At all times material hereto, Ms. Farwell was Blake's Language Arts teacher in eighth (8th) grade for the 1994 to 1995 academic school year.

37. Customarily, while in Language Arts class, Ms. Farwell approached Blake and touched different areas of his body, such as his knees. Ms. Farwell made gestures and/or comments to Blake expressing the sentiment that she viewed Blake as "*special*." It was apparent and obvious to other students and teachers that Ms. Farwell favored Blake.

38. When Blake was in eighth (8th) grade, Ms. Farwell suggested to Blake that he visit her after school to go over class material. When these after school interactions initially began, Ms. Farwell invited Blake to her classroom under the guise of academic “*tutoring*.” This explanation for Blake staying after school was not only accepted by Blake’s parents, but was also encouraged by his parents who viewed Ms. Farwell’s interest in Blake as a positive academic mentoring relationship. For a while, Blake stayed after school with Ms. Farwell and the two talked in her classroom. Sometimes, Blake missed his after-school bus, and Ms. Farwell drove him home, dropping him off a block away from his house.

39. During this time frame, Blake perceived Ms. Farwell as a kind, young and well-regarded teacher at Thompson Middle School. Blake was very comfortable around Ms. Farwell and did not have had any concern when Ms. Farwell eventually invited Blake to do the “*tutoring*” at her house located on 7th Avenue in Atlantic Highlands, NJ.

40. For the at home “*tutoring*” sessions, Blake left Thompson Middle School with Ms. Farwell. Other teachers observed as Ms. Farwell walked Blake to her car. At Ms. Farwell’s house, the pair sat side-by-side on her couch in the upstairs multi-purpose room, talking, smoking cigarettes that Ms. Farwell provided, and listening to music. Under the guise of teaching, Ms. Farwell conducted herself as if she was Blake’s peer and friend.

41. After approximately one (1) month of hanging out on Ms. Farwell’s couch under the guise of academic tutoring, which in hindsight was extensive grooming, Blake developed romantic feelings for Ms. Farwell. As the pair sat on Ms. Farwell’s couch, Ms. Farwell inched closer to Blake, seducing Blake. Blake told Ms. Farwell he felt as if he wanted to kiss her. Ms. Farwell was silent. Blake and Ms. Farwell then leaned in and kissed each other. Not only did Ms. Farwell not stop Blake, but she also encouraged him to continue by holding him close and groping his body as they kissed.

42. For approximately one (1) month, Ms. Farwell sexually abused Blake in the type and manner described above. Ms. Farwell kissed and groped Blake at her house on 7th Avenue or at parks in or around the area, depending on whether her then-fiancé, Dr. Diodato, was home.

43. Ms. Farwell's sexual abuse of Blake quickly escalated. Near the end of Blake's eighth (8th) grade years, Ms. Farwell brought Blake into her bedroom to have sex with Blake. Ms. Farwell did not request that Blake wear a condom, assuring him that she was not able to bear children. On this first incident of vaginal intercourse, Blake ejaculated into Ms. Farwell's vagina. Ms. Farwell was the first person with whom Blake had sexual intercourse.

44. Thereafter, Ms. Farwell had vaginal intercourse with Blake approximately twice a week. Customarily, Ms. Farwell drove Blake after school to either her house on 7th Avenue or to a park in the area to have sex in her car.

45. At the end of eighth (8th) grade as Ms. Farwell engaged in intercourse with Blake, Ms. Farwell insisted that Blake call her Sherry. Sherry articulated to Blake her profound feelings toward him and confirmed in Blake's mind what Blake had been feeling all along – namely that Ms. Farwell viewed Blake differently and special. Sherry expressed these feelings in a letter she wrote to Blake in the beginning of the summer following eighth (8th) grade: *"Life is always moving ahead and changing, but one thing will never change. There will never be another Blake. And no matter how things in your life may change, I will always care about you, worry about you, think about you, think about you [sic], and pray for you."* (Emphasis in original).

46. Sherry Farwell also voiced a desire not only to continue her romantic and sexual relationship with Blake, but to further integrate Blake into her soon to be constructed family and marriage with Dr. Diodato. Ms. Farwell wrote to Blake more than one full page in Blake's yearbook, with extra paragraphs spilling over to the next page and wrapping around Blake's eighth (8th) grade peers' messages: *"I feel as though I'm trying to say everything I would want to say to a son that I was never going to see again...Instead of being just another student, you are someone that I have come to know and love. Teachers aren't supposed to have favorites (it says so in the teacher books!) and I have never had a favorite before. But as we both know (along with everyone else at Thompson) you are my favorite student of all time....I want to watch you grow up and always see you happy and healthy and able to make me laugh. And I am always here for you when you need me and worse, when you don't. I hope that never*

happens.... I love you like a son Blake and I hope if I ever get lucky enough to have a son, he will be just like you." (Emphasis in original). After that, Sherry left Blake with her phone number, telling him he can call or come over to her house whenever he wished. She asked, however, that Blake not hang up when Dr. Diodato picked up the phone. Sherry assured Blake, saying: *"You're really going to like him [i.e., Dr. Diodato] a lot, and he'll really like you too! I still like my idea of switching kids,"* referencing how Sherry wanted to exchange Dr. Diodato's biological daughter for Blake. This conflated and bizarre concept of Blake being romantically and sexually involved with Sherry Farwell, while at the same time joining her family as an adopted or surrogate child, was a continuing romantic and sexual fantasy expressed by Ms. Farwell. Although Blake now realizes how ridiculous and impractical this fantasy seems, Blake at the time was persuaded by Ms. Farwell's passion and conviction, and he misguidedly believed that this scenario could somehow materialize.

47. The summer after eighth grade, Sherry customarily picked Blake up at his house to take him to Dr. Diodato's softball games or dinner with Dr. Diodato and his daughter. When not attending events with Dr. Diodato, Sherry picked Blake up to have sex with him at her house or in her car.

48. On one incident after eighth (8th) grade, while Sherry was having sex with Blake in her bedroom, Sherry initiated oral sex on Blake. After performing oral sex on Blake, Sherry guided Blake to perform oral sex on her.

49. On almost every occasion where Sherry had sex with Blake, Blake inserted his fingers in and around Sherry's vagina.

50. During the course of Sherry's sexual abuse of Blake, in particular in the beginning, Sherry frequently told Blake that she would get in trouble if he ever told anyone that she was having sex with him.

51. When Blake became a high school student, he walked over to Thompson Middle School after classes to meet with Sherry. Sherry drove Blake to her house or a park to have sex, before dropping him off down the block from his house to conceal the fact that he was still meeting with his former eighth (8th) grade teacher.

52. In high school, Blake met girls his age and eventually started dating them. Blake stopped calling Sherry after that and the sexual abuse stopped.

53. For years, Blake never told anyone about the sexual abuse because he felt complicit and responsible for the sexual abuse, and because he feared Sherry would get in trouble. When Blake ultimately told his parents when he was in high school, Blake threatened to harm himself if his parents reported her. At the time, Blake felt that he loved Sherry Farwell and believed he would rather harm himself than have Ms. Farwell (by then Ms. Diodato) get in trouble.

54. During fall 1995-1997, Blake, while still a minor, was sexually abused by Sherry Diodato on hundreds of occasions in the type and manner of sexual abuse outlined above. The sexual abuse occurred multiple times from 1995-1997.

55. These interactions with Sherry Diodato were the first sexual experiences of Blake's life – namely, Ms. Farwell having vaginal intercourse with and performing oral sex on Blake, and guiding Blake to perform oral sex on Ms. Farwell, at the age of thirteen (13) to sixteen (16) years old.

56. It is further believed that plaintiff was abused in additional ways and/or on additional occasions, but has emotionally suppressed partially and/or in whole these additional details and/or episodes of abuse.

57. Sherry Diodato engaged in a calculated series of manipulation and grooming of Plaintiff as described and outlined above.

58. Sherry Diodato abused and molested plaintiff, Blake Frank, while he was a minor during the period described above.

59. During her tenure as a teacher, employee, agent, servant, representative and/or ostensible/aided agent hired, certified, assigned, retained, supervised, managed, overseen, directed, administrated, and/or otherwise controlled by and for one or more of the Defendants, Middletown Township Board of Education, Defendant Doe 1-10, and Defendant Doe Institution 1-10, Sherry Diodato, was a serial molester and sexual abuser of children, including plaintiff, Blake Frank.

60. Defendant, Sherry Diodato, committed her acts of abuse and molestation against plaintiff, Blake Frank, in and around Atlantic Highlands, New Jersey.

61. Sherry Diodato's sexual abuse of plaintiff gradually increased in frequency and intensity over time and included, but was not limited to, Ms. Farwell having vaginal intercourse with and performing oral sex on Blake, and guiding Blake to perform oral sex on Ms. Farwell, at the age of thirteen (13) to sixteen (16) years old.

62. At all material times hereto, Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, knew or should have known that Sherry Diodato sexually abused children and/or was not fit to serve as a teacher, employer, employee, agent, servant, representative and/or ostensible/aided agent.

63. At all material times hereto, Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, knew or should have known that Sherry Diodato had been and/or was abusing plaintiff and/or other children at Middletown Township Board of Education and/or Thompson Middle School, and other locations visited by and/or related to the Middletown Township Board of Education and/or Thompson Middle School's school/education activities, events, and/or duties.

64. At all material times hereto, Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, took no action and/or or failed to timely and adequately take action to warn or otherwise protect children of the Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, including plaintiff, from Defendant, Sherry Diodato.

65. At all times material hereto, as a result of the sexual abuse perpetrated by Sherry Diodato, Blake developed depression, anxiety, feelings of worthlessness, shame, and anger issues.

66. At all times material hereto, as a result of the sexual abuse perpetrated by Sherry Diodato, Blake has felt enormous shame, humiliation, embarrassment, and self-loathing, and was extremely confused and conflicted about his sexuality and the role of sex, love, and intimacy in his life.

67. At all times material hereto, as a result of the sexual abuse perpetrated by Sherry Diodato, Blake suffered from extreme difficulty navigating intimate relationships, and he has experienced and continues to experience bouts of anger, difficulties when involved in relationships with women and attempting to be intimate in the context of these relationships with women.

68. At all times material hereto, as a result of the sexual abuse perpetrated by Sherry Diodato, throughout the years in an effort to quell these negative emotions generated by the sexual abuse, Blake misguidedly engaged in destructive and dysfunctional behaviors, including behavior that resulted in the inability to maintain consistent employment.

69. At all times material hereto, as a result of the sexual abuse perpetrated by Sherry Diodato, Blake suffered great permanent harm, including, but not limited to, the following: severe emotional distress, extreme trauma, depression, anxiety, mental health issues, post-traumatic stress disorder, humiliation, embarrassment, suicidal ideations, fear, shame, emotional dissociation, and/or loss of self-esteem and self-worth, all of which has and/or will continue to require counseling, therapy, and/or other treatment.

70. Also, as a result of the sexual abuse set forth above and its consequential trauma and harm, Plaintiff has suffered a severe impairment and disruption of his enjoyment of life, identity, intimacy with loved ones, sexuality, and/or belief structure, including, but not limited to, the impairment and disruption of his relationship with members of his family, friends, acquaintances, and/or others.

71. Also, as a result of the sexual abuse set forth above and its consequential trauma and harm, the Plaintiff suffered from destructive and dysfunctional behaviors, including, but not limited to, mental health issues, all of which have required and/or will require counseling, therapy, and/or other treatment.

72. Also, as a result of the sexual abuse set forth above and its consequential trauma and harm, the Plaintiff has incurred significant past loss of wages and future loss of earning capacity to his permanent detriment.

73. Plaintiff's youth, together with the power imbalance and authoritative inequity between the plaintiff and Defendants, created a culture and social dynamic that weakened plaintiff's ability to resist Sherry Diodato and/or other Defendants, Middletown Township Board of Education, Defendant Doe 1-10, and Defendant Doe Institution 1-10.

74. The sexual abuse set forth above and its consequential trauma and harm, in turn, caused plaintiff to suppress and/or emotionally dissociate his feelings about his traumatic experience(s), thereby exacerbating its devastating psychological, physical, and social consequences.

75. Plaintiff was not fully aware of the causal relationship between the sexual abuse set forth above, and its consequential trauma and harm, until recently, and continues to endure and/or discover trauma and harm relative to the sexual abuse at the present time, which inflictions of trauma and harm shall and will continue in the future.

76. Other victims' declarations and/or revelations of their experiences with sexual abuse and corresponding damages caused by such abuse prompted Plaintiff to realize he is not alone, and to acknowledge, address, and/or discover the connection between his abuse and his corresponding emotional distress, social dysfunction and/or other damages and to speak out concerning same.

77. Now, in conformity with N.J. Stat. Section 2A:14-2a, Statute of Limitations for Action at Law resulting from Certain Sexual Crimes [*Effective December 1, 2019*], plaintiff brings the within action for damages.

78. As alleged in greater detail herein above and/or below, all of plaintiff's harm and damages were caused by the culpable acts and/or omissions of Defendants.

79. As set forth more fully herein, the negligence, gross negligence, recklessness, and/or punitive behavior of the Defendants, jointly and severally, was a direct and proximate cause of harm and damages to plaintiff.

80. Plaintiff's injuries and/or damages were caused solely by the negligence, gross negligence, recklessness, and/or punitive behavior of the Defendants, as set forth more fully herein, and were not caused or contributed thereto by any negligence, gross negligence, recklessness and/or punitive behavior on the part of the Plaintiff.

COUNT I – NEGLIGENCE

Plaintiff, Blake Frank

v.

**Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School),
Sherry Diodato,
Defendant Doe 1-10, and Defendant Doe Institution 1-10**

81. The previous paragraphs set forth above are incorporated herein by reference.

82. The recklessness, negligence and/or carelessness of Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, by and through their actual or apparent teachers, employees, agents, servants, representatives, and/or ostensible/aided agents hired, certified, assigned, retained, supervised, managed, overseen, directed, administrated, and/or otherwise controlled by and for said Defendants, consisted of, among other things, the following:

- a. Failing to properly screen teachers, employees, agents, servants, representatives, and ostensible/aided agents adequately before placing them in close contact with children;
- b. Failure to properly investigate complaints of sexual abuse, inappropriate behavior and/or other abusive behavior;
- c. Providing “cover” and/or rationalizations for inappropriate/abusive misconduct by applying euphemistic and false designations to and/or contrived and imagined explanations for their conduct and/or the reasons for same;
- d. Minimizing, ignoring or excusing inappropriate or questionable behavior and/or misconduct by teachers, employees, agents, servants, representatives, and ostensible/aided agents over a period of months, years and/or decades;

- e. Failure to properly and/or adequately warn parents, children, and/or the public at large, including, but not limited to, plaintiff and similarly situated children, and their parents and/or family members, regarding the inappropriate behavior and/or misconduct of Sherry Diodato, other Defendants, and/or other abusive teachers, employees, agents, servants, representatives, and/or ostensible/aided agents, despite knowledge of the dangers they presented and the harmful and complicit culture and environment created by such failures to warn;
- f. Assigning employees, agents, servants, representatives, and/or ostensible/aided agents known to have engaged in questionable and/or inappropriate behavior or misconduct and/or known to be pedophiles and/or sexual predators, including but not limited to, Sherry Diodato, and/or other Defendants, to a position in the business where said individual(s) had/have regular contact with children;
- g. Failure to report criminal activity, including child abuse, to appropriate law enforcement agencies;
- h. Negligent failure to provide a safe environment and protective culture to children within the schools, and/or other external locations operated, visited, and/or owned and/or operated by Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10;
- i. Failure to implement and maintain proper and effective policies and procedures to prevent sexual abuse of and/or other abusive behavior toward children;
- j. Negligently maintaining custody, supervision and protection of children placed in their care by virtue of their authority and solicitation of minors to participate in their business and/or activities;
- k. Failure to properly train teachers, employees, agents, servants, representatives, and/or ostensible/aided agents to identify signs of child molestation or inappropriate sexually related behavior to children by fellow teachers, employees, associates, and/or individuals within its control, oversight, supervision, and/or ostensible/aided control;
- l. Negligent reliance on persons who claimed they could treat child molesters and/or sexually abusive individuals;
- m. Negligent retention of and/or failure to terminate Sherry Diodato, other Defendants, and/or other sexually inappropriate and/or abusive individuals from or associated with the Middletown Township Board of Education' schools, promoting a culture and environment of complicity, denial and deception regarding child abuse within the business;
- n. Failure to exercise due care under the relevant circumstances;
- o. Recklessly, negligently and/or carelessly failing to observe, manage, direct, oversee, and supervise the relationship between Plaintiff, Blake Frank, and Sherry Diodato;

- p. Recklessly, negligently and/or carelessly failing to have proper and effective policies and procedures to require adequate observation, management, oversight, and supervision of the relationship between Blake Frank and Sherry Diodato, and/or other Defendants;
- q. Recklessly, negligently and/or carelessly failing to recognize Sherry Diodato's conduct and behavior prior to the events in question and/or as described herein as creating a risk of sexual abuse toward children, including, but not limited to, Blake Frank;
- r. Recklessly, negligently and/or carelessly failing to have proper policies and procedures to require adequate observation, management, oversight, and supervision of Blake Frank and Sherry Diodato, and/or other Defendants;
- s. Failing to investigate complaints that Sherry Diodato and was/were behaving inappropriately and/or touching children inappropriately, including, but not limited to, Blake Frank;
- t. Recklessly, negligently and/or carelessly failing to identify Sherry Diodato as a sexual abuser;
- u. Recklessly, negligently and/or carelessly failing to investigate behavior of Sherry Diodato that put the Defendants on notice and/or should have placed Defendants on notice that Sherry Diodato was and/or might have been a potential pedophile and/or sexual predator;
- v. Recklessly, negligently and/or carelessly failing to identify Sherry Diodato was a potential pedophile and/or sexual predator;
- w. Failure to use due care under the circumstances; and/or
- x. Negligence as may be proven from facts now exclusively in the possession of Defendants, which may be ascertained after the filing of this Complaint.

83. Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, were negligent under the facts as detailed within this Complaint in that these Defendants failed to use that degree of care, precaution and vigilance which a reasonably prudent person or entity would use under the same or similar circumstances, including, but not limited to, the negligent affirmative acts detailed in this Complaint which a reasonably prudent person or entity would not have done, and also the negligent omission or failure to act and/or take precautions as detailed in this Complaint which a reasonably prudent person or entity would have done or taken under these circumstances.

84. Sherry Diodato's actions as described herein are evidence of negligence per se in that these actions violated a provision of New Jersey Statute, known as the Child Sexual Abuse Act ("CSAA"), N.J.S.A. 2a:61b-1, et al., which statute sets up a standard of conduct that Sherry Diodato violated per se.

85. Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, are vicariously liable for both the negligent and intentional acts of Sherry Diodato, their employee(s), under the CSAA, which recognizes the vulnerability of children and demonstrates a legislative intent to protect said children from victimization, and imposes responsibility upon those individuals and institutions in the best position to know of and stop the abuse to said children, such as the Defendants herein.

WHEREFORE, Plaintiff, Blake Frank, demands judgment against Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT II – NEGLIGENT SUPERVISION

Plaintiff, Blake Frank

v.

Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School),

Sherry Diodato,

Defendant Doe 1-10, and Defendant Doe Institution 1-10

86. The previous paragraphs set forth above are incorporated herein by reference.

87. Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, knew or should have known of the need to properly and effectively observe, manage, direct, oversee, and/or supervise employees, agents, servants, representatives, and/or ostensible/aided agents in their relationships with young children.

88. Defendants, Middletown Township Board of Education and/or Thompson Middle School, knew or should have known of the particular risk posed by Sherry Diodato based on, among other things, her/their inappropriate and/or questionable conduct, her history of sexually abusing children, and/or her behavior indicative of an intent to isolate, groom, and/or facilitate sexually contacting and/or abusing a young minor child, including Sherry Diodato's abuse of plaintiff with Ms. Farwell having vaginal intercourse with and performing oral sex on Blake, and guiding Blake to perform oral sex on Ms. Farwell, at the age of thirteen (13) to sixteen (16) years old.

89. Sherry Diodato's sexual abuse of plaintiff gradually increased in frequency and intensity over time and included, but was not limited to, Ms. Farwell having vaginal intercourse with and performing oral sex on Blake, and guiding Blake to perform oral sex on Ms. Farwell, at the age of thirteen (13) to sixteen (16) years old.

90. The negligence, carelessness, and/or recklessness of Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, for the conduct of their actual or apparent employees, agents, servants, representatives, and/or ostensible/aided agents, in the hiring,

certifying, assigning, observation, retaining, supervision, management, oversight, direction, administration, and/or otherwise control of Sherry Diodato consists of one or more of the following:

- a. Negligent hiring, certifying, assigning, observation, retaining, supervision, management, oversight, direction, administration, and/or otherwise control of individuals in the employ of Middletown Township Board of Education and/or Thompson Middle School;
- b. Failing to use due care in hiring, certifying, assigning, observation, retaining, supervision, management, oversight, direction, administration, and/or otherwise control of Sherry Diodato and/or Sherry Diodato's relationship with plaintiff, Blake Frank; and
- c. Failing to investigate and supervise Sherry Diodato and her relationship with Blake Frank.

WHEREFORE, Plaintiff, Blake Frank, demands judgment against Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT III – NEGLIGENCE HIRING AND RETENTION

Plaintiff, Blake Frank

v.

**Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School),
Sherry Diodato,
Defendant Doe 1-10, and Defendant Doe Institution 1-10**

91. The previous paragraphs set forth above are incorporated herein by reference.

92. Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, knew and/or should have known prior to and/or contemporaneous with the relevant time frame during which Blake Frank was sexually abused by Sherry Diodato that plaintiff and other young children affiliated and/or associated with its business were vulnerable to and potential victims of sexual abuse.

93. Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe

Institution 1-10, also knew and/or should have known prior to and/or contemporaneous with the relevant time frame during which Blake Frank was sexually abused by Sherry Diodato that the access to vulnerable youths, together with the trust and authority placed in her position, makes the position an enticing vocation to pedophiles, sexual predators, and/or others seeking to abuse and exploit children.

94. Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, owed a duty to exercise reasonable care in the hiring, certifying, assignment, control, selection and/or retention of employees, agents, servants, representatives, and/or ostensible/aided agents, situated in and/or located at the Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, and specifically a duty to be on high look out for possible pedophiles, sexual predators, and others seeking to abuse and exploit children.

95. Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, failed to exercise reasonable care in the hiring, certifying, assignment, control, selection and/or retention of Sherry Diodato as a teacher, employee, agent, servant, representative, and/or ostensible/aided agent, among other things, the following:

- a. Failing to conduct a thorough and proper background check of Sherry Diodato;
- b. Failing to thoroughly and reasonably investigate Sherry Diodato's sexual history;
- c. Failing to learn of or investigate Sherry Diodato's history of sexual impropriety with young boys and her proclivity to sexual assault young boys;
- d. Failing to conduct a thorough and proper interview with Sherry Diodato;
- e. Failing to investigate whether Sherry Diodato had any inappropriate sexual interest in young boys;
- f. Failing to use due care in the selection of Sherry Diodato as an businessman rendering services, and interacting with children;
- g. Failing to use due care in the retention of Sherry Diodato as an businessman and/or providing service near young vulnerable children;
- h. Recklessly, negligently and/or carelessly failing to adequately check Sherry Diodato's background, before employment and/or entrustment with teaching children;

- i. Recklessly, negligently and/or carelessly failing to have policies and procedures in place to screen individuals for the possibility of being sexual predators.

WHEREFORE, Plaintiff, Blake Frank, demands judgment against Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT IV – GROSS NEGLIGENCE

Plaintiff, Blake Frank

v.

Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School),

Sherry Diodato,

Defendant Doe 1-10, and Defendant Doe Institution 1-10

96. The previous paragraphs set forth above are incorporated herein by reference.

97. Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe Institution 1-10, were grossly negligent under the facts as detailed within this Complaint in that these Defendants acted or failed to act: with complete disregard of the rights, safety, and well-being of others; in a palpably unreasonable manner; in an outlandish fashion; and/or failed to exercise slight care or diligence under these circumstances.

WHEREFORE, Plaintiff, Blake Frank, demands judgment against Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT V – RECKLESS DISREGARD INFLICTION OF EMOTIONAL DISTRESS

Plaintiff, Blake Frank

v.

Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School),

Sherry Diodato,

Defendant Doe 1-10, and Defendant Doe Institution 1-10

98. The previous paragraphs set forth above are incorporated herein by reference.

99. The actions and/or inactions of Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly, severally, and/or through the conduct of Sherry Diodato, inflicted emotional distress upon plaintiff in that defendants acted with reckless disregard, in that their actions were done with reckless disregard to a high degree of probability that such behavior would cause emotional distress.

100. The actions and/or inactions of Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly, severally, and/or through the conduct of Sherry Diodato, against plaintiff were extreme and outrageous; so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and are regarded as atrocious and utterly intolerable in our civilized community.

101. The actions and/or inactions of Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly, severally, and/or through the conduct of Sherry Diodato, was the direct and/or proximate cause of emotional distress to the plaintiff, which was so severe that no reasonable person could be expected to endure such distress.

102. The conduct of Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly, severally, and/or through the conduct of Sherry Diodato was sufficiently severe to cause genuine and substantial emotional distress and/or mental harm to the average person, including the plaintiff.

103. Defendants, Middletown Township Board of Education, Thompson Middle School, Defendant Doe Institution 1-10, are vicariously liable for the damages caused by Sherry Diodato's reckless disregard infliction of emotional distress upon the plaintiff.

WHEREFORE, Plaintiff, Blake Frank, demands judgment against Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT VI – BREACH OF FIDUCIARY DUTY

Plaintiff, Blake Frank

v.

**Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School),
Sherry Diodato,
Defendant Doe 1-10, and Defendant Doe Institution 1-10**

104. The previous paragraphs set forth above are incorporated herein by reference.

105. By virtue of their status as education and/or adult authorities, Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, bore a fiduciary relationship to plaintiff and other children and persons within and/or affiliated, employed, and/or near the business.

106. Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, had fiduciary duties to avoid harming children and to protect them from harm at the hands of employees, agents, servants, representatives, and/or ostensible/aided agents hired, certified, assigned, retained, supervised, managed, overseen, directed, administrated, and/or otherwise controlled by and for said Defendants.

107. Defendants breached their fiduciary duties by acting or failing to act in accordance with their fiduciary duties and/or as alleged in this Complaint.

108. Plaintiff suffered the above-averred harms and damages as a result of Defendants, Middletown Township Board of Education, Defendant Doe 1-10, Defendant Doe Institution 1-10, in breach of their fiduciary duty.

WHEREFORE, Plaintiff, Blake Frank, demands judgment against Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School), Sherry Diodato, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT VII – LAW AGAINST DISCRIMINATION, VIOLATION OF N.J.S.A. SECTION 10:5-1 et seq. SEXUALLY HOSTILE ENVIRONMENT AND DISCRIMINATION

Plaintiff, Blake Frank

v.

Defendants, Middletown Township Board of Education (d/b/a Middletown Township School District, d/b/a Thompson Middle School),

Sherry Diodato,

Defendant Doe 1-10, and Defendant Doe Institution 1-10

109. The previous paragraphs set forth above are incorporated herein by reference.

110. Despite Defendants, Middletown Township Board of Education, Defendant Doe 1-10, and/or Defendant Doe Institution 1-10, actual and/or constructive knowledge of Sherry Diodato's sexually inappropriate and harassing conduct, Defendants, Middletown Township Board of Education, Defendant Doe 1-10, and/or Defendant Doe Institution 1-10, failed to reasonably protect plaintiff, Blake Frank, against harassing conduct on the basis of his sex, male, and permitted a hostile education environment.

111. These Defendants violated New Jersey's Law Against Discrimination ("LAD"), contained within N.J.S.A. Section 10:5-1 et seq., and such failures created an intimidating, offensive or hostile educational environment for Plaintiff, Blake Frank, and discriminated against plaintiff based upon his sex, male, and his age, minor.

112. Defendants, Middletown Township Board of Education, Defendant Doe 1-10, and/or Defendant Doe Institution 1-10, are vicariously liable for the actions and/or inactions of its supervisory employees.

113. Defendants, Middletown Township Board of Education, Defendant Doe 1-10, and/or Defendant Doe Institution 1-10, knew, or should have known, of the past lewd conduct and/or sexual abuse committed by Sherry Diodato and failed to take effective remedial measures to end her offensive conduct.

114. The harassing conduct would not have occurred, but for the plaintiff's gender, male, and/or age, minor, which is/are a protected category under New Jersey's Law Against Discrimination.