

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**Civil Division**

<p><b>DISTRICT OF COLUMBIA</b>, a municipal corporation, 400 6th Street N.W., 10<sup>th</sup> Floor Washington, D.C. 20001,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p><b>WASHINGTON HEBREW CONGREGATION, INC.</b>, 3935 Macomb Street, N.W. Washington, D.C. 20016,</p> <p style="text-align:center">Defendants.</p>	<p>Civil Action No.:</p> <p>COMPLAINT FOR EQUITABLE AND INJUNCTIVE RELIEF</p> <p>JURY TRIAL DEMANDED</p>
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**COMPLAINT FOR VIOLATIONS OF  
THE CONSUMER PROTECTION PROCEDURES ACT AND NONPROFIT  
CORPORATIONS ACT**

Plaintiff District of Columbia (“District”), by and through the Office of the Attorney General, brings this action against Defendant Washington Hebrew Congregation, Inc. (“WHC” or “Defendant”) for violations of the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.*, and the District’s Nonprofit Corporation Act (“NCA”), D.C. Code § 29-401.01, *et seq.* In support of its claims, the District states as follows:

1. When parents entrust the care of their children to a daycare center, like Defendant WHC, they have every right to expect the daycare will, at the least, follow the law designed to keep their children safe. Indeed, WHC promised the parents who trusted it with their children to be a safe, nurturing space. WHC flouted the law and its promise.

2. On August 19, 2018, parents received an email disclosing the unthinkable. There had been allegations of sexual abuse at the daycare.

3. In the months that followed that email, parents learned that WHC displayed a total disregard for District law and regulations that were intended to protect and promote the health, safety, welfare and positive development of children under WHC's care. By doing so, the company created an environment ripe for abuse. WHC ignored or disregarded laws specifically designed to keep children safe and actively discouraged attempts by staff and parents to flag clear dangers. Children, aged 2-4, were left in the care of unqualified and under-supervised staff, and WHC leadership rejected reports of concerns and irregularities. In failing to follow basic safety regulations, WHC gave an alleged predator unfettered access to the children in their care. Fifteen children, to date, have made allegations of sexual abuse against an unqualified, unsupervised WHC Assistant Teacher, Jordan Silverman ("Silverman").

4. Contrary to its own explicit representations, WHC hired assistant teachers with little or no experience or training in childhood education. After hiring these unqualified assistant teachers, WHC failed to supervise them as required by District law. District regulations require that assistant teachers be under constant direct supervision by a qualified teacher or center director. WHC routinely flouted this requirement by permitting assistant teachers to be alone with children.

5. WHC also failed to adhere to a District regulation that requires at least two staff members to supervise groups of children at all times. WHC's regular disregard of this requirement left children alone with individual staff members, including Silverman. WHC routinely allowed assistant teachers to take children to isolated locations, including the bathroom, an empty classroom, and the woods, often for extended periods of time without oversight or question.

6. WHC also created an environment of secrecy that discouraged teachers and staff from reporting concerning incidents to parents and regulators. WHC daycare director and staff

failed to report incidents of suspected child physical and sexual abuse as required under mandatory reporting laws. Additionally, they chose to keep information from parents of impacted children.

7. The District brings this case to stop Defendants from engaging in these and similar unfair and deceptive trade practices that violate the CPPA and the NCA through appropriate injunctive relief, restitution and damages for harmed consumer-parents and their children, and civil penalties to deter future misconduct by Defendant and others.

### **Jurisdiction**

8. This Court has subject matter jurisdiction over this case pursuant to D.C. Code §§ 1-301.81, 11-921, 28-3909, and 29-214.20(a). This Court has personal jurisdiction over Defendants pursuant to D.C. Code §§ 13-422 and 13-423(a).

### **The Parties**

9. Plaintiff District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the District's consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909, and the NCA, pursuant to D.C. Code §29-412.20(a)(1), and the common law to ensure that District nonprofits comply with governance requirements and adhere to their public purposes.

10. Defendant WHC, which also operates under the trade name "Edlavitch-Tyser Early Childhood Center, ("E-T ECC") (for simplicity purposes of this Complaint, E-T ECC is included

in the term WHC), is a District of Columbia 501(c)(3) nonprofit corporation with a principal place of business at 3935 Macomb Street N.W., Washington, D.C. 20016, that does business in the District of Columbia. WHC owns and operates a synagogue that had more than 2,400 members annually from January 2016 to April 2019. WHC also operates a Child Development Facility (“Childcare Center”) on the second floor of the synagogue under the tradename E-T ECC. WHC was licensed to operate the Childcare Center for a limited period of time during the calendar year by the District’s Office of the State Superintendent for Education (“OSSE”). At all times material to this Complaint, Defendant advertised, marketed, promoted, offered for sale, and sold childhood care and educational program services to parent-consumers in the District qualifying it as a merchant under the CPPA.

#### **WHC’s Operation of its District Childcare Facility**

11. From at least January 1, 2016 to December 31, 2019 (“the relevant period”), WHC operated a Childcare Center in the District where approximately forty (40) staff members provided childcare services for up to 130 children annually. WHC’s Childcare Center in the District had approximately twelve classrooms, an administrative office, director’s office, library, and a media room. WHC used additional rooms for play space including rooms called the construction room and bike room.

12. The licenses issued to WHC during the relevant period required it to operate the Childcare Center:

- (1) in compliance with 5A DCMR § 100 *et seq.* (regulations setting forth minimum standards designed to protect and promote the health, safety, welfare, and positive development of children receiving services from Childcare Centers);
- (2) at the address 3935 Macomb Street N.W., Washington, D.C. 20016;
- (3) under the ownership of WHC;
- (4) Monday through Friday between 7:30 am – 6:30 pm;
- (5) for school-year months only (September through May);
- (6) for children ages 24 - 60 months; and

(7) within the total capacity not to exceed 130 children.

13. During the relevant period, Steven Jacober (“Jacoher”) served as WHC’s Executive Director, and Deborah Schneider Jensen (“Jensen”) served as WHC’s Childcare Center Director, also known as Head of Schools. They comprised the core executive team of the Childcare Center. Jensen was hired by Jacober and the WHC board of directors in July 2014 and was specifically tasked to oversee and manage the day-to-day operations of the Childcare Center and engage with leadership to further the mission of the school. Jensen had very clear ideas about how to operate Childcare Centers, including withholding perceived negative information from parents and therefore preventing reports to government agencies.

14. Jacober and Jensen communicated regularly regarding the operations of WHC’s Childcare Center, including issues of licensing, budget and finance, hiring and firing, employee benefits, costs and expenditures, and policies and procedures. Both Jacober and Jensen signed employment agreements for teachers hired during the relevant period. Jacober also reviewed and made final edits to the Childcare Center’s employee and parent handbooks. Incident reports regarding inappropriate behavior and misconduct by staff were drafted by Jensen and provided to Jacober for edits, decisions about “next steps,” and his final approval and signature. Jacober reported all the Childcare Center’s costs, revenues, and operational matters, such as registration numbers, to both the Budget and Finance Committee and Board of Directors for WHC.

**WHC Failure to Comply with the District’s Regulatory Framework Governing Childcare Centers**

15. Early childhood programs in the District of Columbia that provide “care and other services, supervision, and guidance for children, infants, and toddlers on a regular basis, regardless of its designated name” are considered Child Development Facilities (“Childcare Centers”). D.C. Code § 7-2031(3); 5-A DCMR § 199. Unless exempted, and WHC is not, all Childcare Centers in

the District of Columbia are required to be licensed to operate by OSSE. D.C. Code § 7-2034(a), 5-A DCMR § 101.1. A Childcare Center must be licensed for the entire period it is in operation, whether it be during the school year or the summer months.

16. The District has an extensive licensing regime and regulatory framework governing such facilities to “[p]rotect[] and promot[e] the health, safety, welfare and positive development of children who receive services in licensed Child Development Facilities” and to set forth the “*minimum standards applicable.*” See D.C. Code § 7-2036, 5-A DCMR § 100.2 (emphasis added). These licensing requirements are meant to ensure that the care and education provided to children by Childcare Centers are safe and provide the minimum requirements necessary to facilitate children’s healthy development, future academic achievement, and success.

17. District regulations set minimum standards of experience and educational credentials for Teachers and Assistant Teachers. DCMR 5-A §§ 165-166. Assistant Teachers are required to hold at least an associate degree or a high school diploma along with a training certification and competence in the field of early childhood education. DCMR 5-A § 166.3. WHC advertised to parents that its Assistant Teachers met or exceeded those legal requirements. For example, WHC specifically claimed on its website: “Assistant teachers also exceed basic requirements. All of our assistant teachers are degreed or have several years of early childhood education training and/or experience working in an early childhood setting.” Those statements were false. WHC repeatedly hired Assistant Teachers that did not hold these qualifications. For example, WHC hired college students, who did not meet the minimum required credit hours in early childhood education. WHC also hired Assistant Teachers who held high school degrees without any other certification or training in early childhood education or supervised experience working with children, as required by District law.

18. Childcare Centers are also required to maintain documents showing that their staff have the minimum required credentials, including resumes, copies of required degrees, credentials, and official transcripts. 5-A DCMR § 131.1(d). Additionally, Childcare Centers are required to obtain certain background checks for all Childcare Center staff. *See* 5-A DCMR §§ 130, 132-139, 165-166.33. WHC failed to maintain these required records for numerous staff members, and several Assistant Teachers were never required to provide the documents as a condition of hiring. On more than one occasion, OSSE gave warnings to WHC for not conducting the appropriate background checks on staff as required.

19. After hiring these unqualified Assistant Teachers, WHC failed to supervise them. District regulations require that Assistant Teachers be under constant direct supervision by a qualified teacher or center director. 5-A DCMR. § 166.3. WHC flouted this requirement by regularly permitting Assistant Teachers to be with groups of children alone.

20. Childcare Centers are required to have written staffing plans and policies in place to ensure that supervision practices are followed consistently by the Childcare Center's staff. *See* 5-A DCMR §§ 120.2, .3. Childcare Centers are required to follow specific adult-to-child ratios to ensure the health and safety of the children. *See* 5-A DCMR § 164.9(e). In addition to the adult-to-child ratio, District law requires that Childcare Centers, *at all times*, have at least two staff members present with the children under their care. *See* 5-A DCMR § 121.8. The regulation makes no exception or differentiation for children inside the classroom, outside the classroom, or traveling between classrooms. This two-adult requirement is commonly referred to as the "two-deep" requirement. The requirement is considered a basic industry standard of care and is critical to protect against the risk of child abuse by a teacher or staff member.

21. During the relevant period, WHC maintained a practice that directly violated the “two-deep” requirement. WHC’s Childcare Center leadership not only ignored this safety requirement, they encouraged faculty to spend one on one time with children and take groups of children to various locations alone. This practice was particularly egregious because it provided easy access to young children and left them highly vulnerable to abuse.

22. District mandatory reporting laws, designed to protect children from abuse, require that any child care worker “who knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been or is in immediate danger of being a mentally or physically abused or neglected child, as defined in § 4-1301.02(15A), shall immediately report or have a report made of such knowledge or suspicious to either the Metropolitan Police Department or the Child Protective Services Division of the Child and Family Services Agency.” D.C. Code § 4-1321.02.

23. OSSE’s licensing regulations incorporate the mandatory reporting requirements. 5-A DCMR § 128.5. OSSE further requires that Childcare Centers immediately notify OSSE of “any unusual incident that may adversely affect the health, safety, or welfare of any enrolled child or children” by submitting an Unusual Incident Report (“UIR”). 5-A DCMR § 128.1 (emphasis added). The Childcare Center is also required to provide a copy of the UIR to the parent(s) or guardian(s) of each child affected by the unusual incident. 5-A DCMR § 128.2.

24. On several occasions, WHC’s Childcare Center failed to comply with these reporting requirements. There were at least three incidents that required an UIR be submitted to OSSE. These incidents were sufficiently serious that WHC terminated the Assistant Teachers involved—yet no report was filed. The Assistant Teachers were found to have used physical force in two of the incidents and emotional abuse in a third.

25. Mandatory reporting laws and the regulatory requirement of filing UIRs with OSSE are important requirements to ensure safety of children. So important, in fact, that District law explicitly requires Childcare Centers to “[c]reate an encouraging and supportive environment where staff may report incidents involving alleged or actual child abuse or neglect or alleged or actual risk to an enrolled child’s health, safety, or welfare...” 5-A DCMR § 147.2(d). The reporting requirements are the same for both alleged or realized *risks* to an enrolled child’s health, safety, or welfare. *Id.* The environment created must allow staff to report these concerns without fear of retaliation, including termination of employment. *Id.*

26. In contravention of the letter and spirit of these laws, under the leadership of Jacober and Jensen, the Childcare Center was run under a shroud of secrecy. Jensen required faculty to withhold information from parents that she felt was negative or concerning. She also discouraged teachers from reporting concerning incidents regarding other teachers. Jensen often rebuked any challenge to her leadership style or decision making.

27. WHC’s Childcare Center violated numerous other regulations. For example, Childcare Center Directors are responsible for supervision of staff and childcare programs “consistent with the Center’s written operation policies and procedures.” 5-A DCMR § 164.9. However, WHC failed to ensure its staff were trained, even in accordance with its own sub-standard policies. For instance, WHC had a mobile device policy, as required by law, but failed to adhere to the policy prohibiting the use of cell phones—it enforced the policy selectively and allowed some teachers to use personal mobile devices to photograph children. WHC also had a policy that required the Childcare Center Director to provide written performance evaluations annually. However, WHC failed to consistently complete or maintain the evaluations for Teachers and Assistant Teachers.

28. A fundamental requirement for all Childcare Centers operating in the District is that they maintain a license to do so. WHC held themselves out as being in compliance with all licensing and regulatory requirements under District law. However, between 2016 and 2018, WHC offered and operated unlicensed summer programs which it called Camp Keetov. WHC’s OSSE license allowed WHC to operate a day care facility during the “SCHOOL YEAR ONLY” months, as shown in the following excerpt of WHC’s license:

<b>License Status:</b>	CURRENT
<b>Type of License:</b>	REINEWAL
<b>Name:</b>	WASHINGTON HEBREW CONGREGATION
<b>Address:</b>	3935 MACOMB STREET, NW 20016
<b>Parent Entity/Owner:</b>	WASHINGTON HEBREW CONGREGATION

Approved Hours of Operation	
<b>Months</b>	SCHOOL YEAR ONLY
<b>Days</b>	MONDAY - FRIDAY
<b>Hours</b>	7:30 AM - 6:30 PM

Approved Ages of Children in Care	
<b>0-24 Months</b>	0
<b>24-60 Months</b>	130
<b>6-12 Years</b>	0
<b>Total Capacity</b>	130

WHC knew that this license did not permit summer sessions. On WHC’s license application, it specifically selected “School year only,” opting not to pick “All Year (Jan-Dec) or “Summer only June-Aug).

**SECTION III FACILITY OPERATION INFORMATION**

Maximum number of children to be cared for	<u>125</u>	Ages of Children to be served	<u>2-5 years old</u>
<i>Indicate the months of the year, hours and days of the week you will be providing services to children and youth ( check only one option for each schedule) Put the hours in the box(es) below the days box( if the hours are not the same every day)</i>			
<input type="checkbox"/> All Year (Jan – Dec )		<input checked="" type="checkbox"/> School year only	<input type="checkbox"/> Summer only June - Aug
		Hours of Operation:	<u>7:30am-6:00pm</u>
<input checked="" type="checkbox"/> Monday	<input checked="" type="checkbox"/> Tuesday	<input checked="" type="checkbox"/> Wednesday	<input checked="" type="checkbox"/> Thursday
<input checked="" type="checkbox"/> Friday	<input type="checkbox"/> Saturday	<input type="checkbox"/> Sunday	

29. Jacober and Jensen oversaw between 26-28 teachers during these summer Camp Keetov sessions, which provided services and care to an estimated 250 children during the relevant period.

30. In August of 2018, OSSE initiated an investigation of WHC's compliance with Childcare Center regulations after the agency received allegations that a WHC teacher had inappropriately touched a child.

31. On June 5, 2019, OSSE issued an Cease and Desist Order finding that WHC: (1) failed to ensure the safety of children under their care; (2) failed to properly supervise children under its care; (3) failed to properly supervise staff and its operations, and, as a result, failed to properly supervise the children; (4) failed to comply with the District's mandated reporter statutory requirements and/or OSSE's unusual incident reporter requirements; and (5) unlawfully operated a Child Center during the summer without a proper license.

**WHC's Disregard for Regulations Created an Environment That Failed to Protect Children**

32. WHC's failure to abide by these basic requirements created an environment that opened the door for potential predators. WHC missed or ignored glaring warning signs that resulted in as many as fifteen children between the ages of two and four making allegations of sexual abuse against an Assistant Teacher.

33. Beginning as early as 2016, WHC hired several unqualified assistant teachers who did not meet District regulatory requirements or WHC's own advertised requirements. One of those unqualified assistant teachers was Jordan Silverman. In or around March 2016, Jensen hired Silverman to work as an Assistant Teacher despite the fact that he had no previous experience, education, or training in childcare, child development, or teaching. Jensen met Silverman at a conference where Silverman was the photographer. There is no record that Silverman filled out an application or provided a resume in 2016. Jensen was unable to verify Silverman's alleged education and claimed that she took a letter of reference from a previous employer instead. There is no record of this recommendation in Silverman's employee file.

34. Silverman began working as an Assistant Teacher in WHC's preschool classrooms and had daily access to children aged 2-4. Because WHC did not follow the two-deep requirement, Silverman was regularly permitted to remove individual children and small groups of children from the rest of their class and, for up to an hour at a time, take them to isolated locations. Silverman took the children on walks in a wooded area on WHC grounds and to the bathroom, the bike room, and a room commonly referred to as the construction room. The bike room was in the basement isolated from parents, teachers, and the rest of the Childcare Center. The construction room was at the end of a hall, removed from the other classrooms, and had no windows. It had a heavy door that Silverman closed when he was in the room alone with children.

35. Typically, the children that Silverman would take to isolated areas were specifically selected by him under the pretext that the children had behavioral problems that he was best suited to handle. Silverman was required to carry a two-way radio on him at all times, but WHC teachers were often unable to reach Silverman via that radio when he was alone with children. At times, Silverman would be alone with children and unreachable by radio for more than thirty minutes. When he would finally respond or return to class with the children, he would offer unconvincing or no explanations for his failure to respond; for example, that he was unable to hear the radio despite it being with him.

36. Several teachers made complaints to Jensen and other supervising staff about Silverman's conduct. One teacher spoke to Jensen more than twenty times about her concerns regarding Silverman not responding to his radio while alone with children. Jensen repeatedly dismissed the teachers' concerns and complaints. Jensen even made statements that any staff member who complained about Silverman would be reprimanded or fired. Jensen took no corrective action in response to Silverman's behavior and did not document it in any way.

37. Within months of Silverman being hired, parents also expressed concerns about his behavior to Jensen. One parent expressed early concerns about Silverman and asked Jensen about his education. Jensen told the parent that Silverman had a wealth of experience in education, which was not true. The parent expressed concern about Silverman taking two-year old girls into the bathroom alone and changing their diapers. Jensen dismissed these concerns and told the parent she had a “sick mind.” This parent attempted to raise concerns about Silverman on another occasion, but Jensen dismissed the parent from her office.

38. Another parent witnessed Silverman playing a “touching game” with his daughter. Silverman did not know the father was watching as Silverman asked his daughter for a high five, then touched elbows together, then touched knees together, and finally proceeded to “bumping butts.” The parent expressed serious concerns to Jensen the next day. Jensen became defensive and told the parent that Silverman had “impeccable credentials” and that there was “no chance” he would do anything inappropriate with children. Jensen knew that Silverman did not have “impeccable credentials” and that, in fact, he had no training or experience working with children. The parent asked that Jensen direct Silverman not to play games like that with his daughter in the future. Jensen refused and dismissed the parent.

39. Throughout the time Silverman worked at WHC, multiple parents expressed concerns to Jensen and other members of WHC leadership about Silverman taking their children to the bathroom alone and changing their clothes or diapers. Despite the concerns raised and expressed regarding Silverman, no action was taken to stop Silverman from being alone with the children or to ensure that he was properly supervised. At least one parent felt Jensen bullied her into keeping silent about her concerns.

40. WHC not only ignored the concerns of parents and teachers, but several of the children that Silverman regularly isolated showed regressive behaviors consistent with sexual abuse, such as wetting their pants and fearing the bathroom. Some of the children would resist going with Silverman and attempt to cling to another teacher when Silverman came for them.

41. One of the children that Silverman regularly selected to remove from class began exhibiting significant behavioral and emotional issues consistent with sexual abuse. In as early as October 2017, Jensen, the school counselor, and other supervisory staff documented and observed one child as she continually regressed and became violent and distant. From October 2017 through May 2018, the young child was observed having extreme behaviors, including violent outbursts, sucking on her hair, letting saliva fall out of her mouth and into her lap, making bizarre sounds and laughing at nothing, flailing her arms around, biting teachers, hitting and pushing children, obsessively touching all surfaces, pulling her pants and underwear down, and staring off into the distance without responding to her own name. At the direction of Jensen, no one at WHC discussed these serious behavioral changes with the parents or reported them to the District. Rather, Jensen directed teachers to address the child's serious issues with play therapy, breathing exercises, and ultimately isolation from her peers.

42. In March 2018, approximately five months after the child began exhibiting signs of abuse, Jensen requested a meeting with the child's parents. At this meeting, Jensen gave incomplete, misleading details by stating only that the child had been misbehaving. Jensen and other teachers suggested that perhaps the child had allergies or needed more protein. On April 16, 2018, *six months* after these extreme behaviors surfaced, WHC staff finally called CPS for the first time. Despite knowing that the child had been exposed to Silverman for nearly two years and despite numerous warnings and concerns raised about Silverman's behavior with the children,

Jensen reported to CPS that she suspected the child's father was abusing her. On May 8, 2018, Jensen finally disclosed the serious nature of the child's behavior to her parents. In this meeting, Jensen told the parents that because their child required one-on-one care, the parents would have to pay double tuition.

43. Despite there being reasonable cause to suspect the child was in immediate danger of being abused, neither Jensen, nor anyone else at WHC reported their suspicions of abuse until six months after the extreme behavior changes started. Consistent with the environment of secrecy that WHC had created at the Childcare Center, Jensen took steps to keep these severe behavioral issues a secret from the child's parents and District authorities.

44. Childcare Centers are explicitly required to protect the safety, health, and welfare of all children within their care. They must maintain a qualified workforce and ensure that the Childcare Center staff is supervised appropriately. WHC failed to follow these basic regulations, and, worse, ignored the several warning signs of the danger to children that these regulations were instituted to prevent. These failures had devastating, life altering consequences for at least fifteen children and their families.

### **COUNT I**

#### **Misrepresentations and Omissions in Violation of the Consumer Protection Procedures Act**

45. The District re-alleges and incorporates by reference paragraphs 1 through 44, as if fully set forth herein.

46. The CPPA is a remedial statute that is to be broadly construed. It establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased or received in the District of Columbia.

47. The childcare services that Defendant offers, markets, sells, and supplies to consumers are purchased for personal, household or family purposes, and, therefore, are consumer goods and services.

48. Defendant, in the ordinary course of business, markets, offers, sells, and supplies consumer goods and services, and is a merchant under the CPPA.

49. Merchants who violate the CPPA may be subject to restitution, damages, civil penalties, temporary or permanent injunctions, the costs of the action, and reasonable attorneys' fees. D.C. Code § 28-3909.

50. The CPPA prohibits any person from engaging in unfair and deceptive trade practices, including by:

a. "represent[ing] that goods or services . . . have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have," *id.* § 28-3904(a);

b. "represent[ing] that [a] person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have." *id.*, § 28-3904(b);

c. "misrepresent[ing] as to a material fact which has a tendency to mislead," *id.* § 28-3904(e);

d. "fail[ing] to state a material fact if such failure tends to mislead," *id.* § 28-3904(f); and

51. Defendant's representations that the childcare services it sells to consumers are provided in compliance with District of Columbia law, that its Childcare Center operates in compliance with District of Columbia law, and that it had the appropriate licenses to operate a Childcare Center, are representations that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have and are unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(a), and are

misrepresentations concerning material facts that have a tendency to mislead consumers and are unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(e).

52. Defendant's representations that it provides a safe environment for children that promotes children's positive development, health, and wellbeing, and that it would take reasonable measures to protect children under its care, and that its staff are properly trained and qualified, are representations that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have and are unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(a), and are misrepresentations concerning material facts that have a tendency to mislead consumers and are unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(e).

53. Defendant's representations that its teachers are appropriately vetted, properly trained, and meet all qualification requirements, including background checks, under District of Columbia law are representations a person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have and are unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(b).

54. Defendant's failure to disclose that the childcare services it sells to consumers are not provided in compliance with District of Columbia law, that its Childcare Center does not operate in compliance with District of Columbia law, and that it did not have the appropriate licenses to operate a Childcare Center at all appropriate times, concern material facts, the omission of which tended to mislead consumers and constitute unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(f).

55. Defendant's failure to disclose that it does not provide a safe environment for children that promotes children's positive development, health, and wellbeing, and that fails to

take reasonable measures to protect children under its care, and that its staff are not properly trained or qualified, concern material facts, the omission of which tended to mislead consumers and constitute unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(f).

**COUNT II**  
**Unlawful Trade Practices Contrary to District Law in Violation of the Consumer**  
**Protection Procedures Act**

56. The District re-alleges and incorporates by reference paragraphs 1 through 44, as if fully set forth herein.

57. The CPPA prohibits any person from engaging in unfair or deceptive trade practices, including trade practices that violate other District of Columbia laws and regulations.

58. Defendant has engaged in unfair and deceptive trade practices affecting District consumers, in violation of D.C. Code § 28-3904, by engaging in trade practices that violate District laws and regulations meant to protect and promote the health, safety, welfare, and positive development of children, including by:

- a. failing to maintain at least (2) two staff members supervising children at all times, in violation of 5-A DCMR §121.8;
- b. failing to supervise assistant teachers at all times, in violation of 5-A DCMR § 166.3;
- c. failing to report alleged or actual child abuse or neglect to appropriate authorities, as required in violation of 5-A DCMR § 128;
- d. failing to comply with mandated reporting statutory requirements or OSSE's unusual incident report ("UIR") requirements, in violation of 5-A DCMR §§128.1, 128.5, and 147.2, and D.C. Code §4-1321.02;
- e. failing to maintain documents showing that its staff have the minimum required credentials, in violation of 5-A DCMR § 131.1(d);

- f. failing to hire teachers and assistant teachers that met the minimum regulatory qualifications, in violation of 5-A DCMR §§ 165-166;
- g. failing to create an encouraging and supportive environment that allowed staff to report alleged or actual child abuse without fear of retaliation, in violation of 5-A DC.MR § 147.2; and
- h. failing to follow its own written operations policies and procedures as required by 5-A DCMR § 164.9.

### **COUNT III**

#### **Exceeding or Abusing the Authority Conferred by Law in Violation of the Common Law and D.C. Code § 29-412.20(a)(1)(B)**

59. The allegations of paragraphs 1 through 44 are re-alleged into this Count in full.

60. The District's common law and Nonprofit Corporations Act broadly empower the Attorney General to police nonprofits incorporated under or subject to District law. This includes the ability to secure broad injunctive and equitable relief whenever a District nonprofit "has exceeded or abused and is continuing to exceed or abuse the authority conferred on it by law." D.C. Code § 29-412.20(a)(1)(B).

61. Defendant's governing documents incorporate District law and state that the corporation only "has the powers inherent in a non-profit corporation under the laws of the District of Columbia."

62. District of Columbia nonprofit corporations may only act in ways that otherwise comply with District law.

63. Defendant has abused and continued to abuse the authority conferred on it by law by acting in ways that otherwise violate District laws or regulations.

## **PRAYER FOR RELIEF**

WHEREFORE, the District of Columbia respectfully requests this Court enter a judgment in its favor and grant relief against Defendant as follows:

- (a) Preliminarily or permanently enjoin Defendant, pursuant to D.C. Code § 28-3909(a), from violating the CPPA;
- (b) Enter appropriate injunctive relief to prevent Defendant from exceeding or abusing the authority conferred on it by law pursuant to D.C. Code § 29-412.20 and the common law;
- (c) Order Defendant to pay restitution and damages pursuant to D.C. Code § 28-3909(a) and (b);
- (d) Order the payment of civil penalties as permitted by statute pursuant to D.C. Code § 28-3909(b), for Defendant's violations of the CPPA;
- (e) Award the District the costs of this action and reasonable attorney's fees pursuant to D.C. Code § 28-3909(b); and
- (f) Grant such further relief as the Court deems just and proper.

### **Jury Demand**

The District of Columbia demands a trial by jury by the maximum number of jurors permitted by law on all issues triable to a jury.

Dated: October 21, 2020

Respectfully submitted,

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