UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,	:	CIVIL ACTION NO.
	:	3:16-CV-00678-MPS
Plaintiff,	:	
V.	:	
	:	
RABBI DANIEL GREER AND YESHIVA OF NEW HAVEN, INC.,	:	
	:	
	:	
Defendants.	:	JULY 31, 2017

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR NEW TRIAL OR, IN THE ALTERNATIVE, FOR REMITTITUR

INTRODUCTION

The defendants fail to satisfy a single one of the requirements under Rule 59 and applicable Connecticut common law for the extraordinary relief they seek. Rather, they mischaracterize the evidence, ignore controlling law, and invite the Court to make factual findings at odds with the record and plainly rejected by the jury. Their motion must be denied in its entirety.

RULE 59 STANDARD OF REVIEW

> A motion for a new trial pursuant to Rule 59 of the Federal Rules of Civil Procedure "should not be granted unless the court is convinced that the jury has reached a seriously erroneous result or that the verdict is a miscarriage of justice." *Kosmynka v. Polaris Indus.,* 462 F.3d 74, 82 (2d Cir. 2006). On a Rule 59(a) motion for a new trial the court may consider the credibility of the witnesses and the weight of the evidence, however, "Rule 59 is not a vehicle for the relitigation of old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple.'" *Lawyers Title Insurance Corp. v. Singer, 792 F. Supp. 2d 306, 2011 U.S. Dist. LEXIS 51863, 2011 WL 1870277 (D. Conn. 2011)* (quoting *Svege v. Mercedes-Benz Credit Corp., No. 3:01cv1771, 2004 U.S. Dist. LEXIS 21099, 2004 WL 2377485 (D.*

> *Conn. Sept. 28, 2004))*. Rather, the primary grounds for granting a *Rule 59* motion turn on "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992)* (citations and internal quotation marks omitted); *see also* 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* Civil 2d ß 2810.1 at 121-28 (1995). "A district court has broad discretion in determining whether to grant a motion to alter or amend the judgment." *Baker v. Dorfman, 239 F.3d 415, 427 (2d Cir. 2000)* (citing *McCarthy v. Manson, 714 F.2d 234, 237 (2d Cir. 1983)* (per curiam)).

Izzarelli v. R.J. Reynolds Tobacco Co., 806 F. Supp. 2d 516, 524-25 (D. Conn. 2011).

See also MacDermid Printing Solutions LLC v. Cortron Corp., 2017 U.S. Dist. LEXIS 23520 (D. Conn. 2017).

REMITTITUR STANDARD OF REVIEW

"[A] federal court in a case governed by state law must apply the state law standard for appropriateness of remittitur." *Payne v. Jones*, 711 F.3d 85, 97 n. 8 (2012). *See also Munn v. Hotchkiss*, 795 F.3d 324, 335 (2d Cir. 2015).

> In determining whether to order remittitur, the trial court is required to review the evidence in the light most favorable to sustaining the verdict. *Wochek v. Foley*, 193 Conn. 582, 587, 477 A.2d 1015 (1984). Upon completing that review, 'the court should not interfere with the jury's determination except when the verdict is plainly excessive or exorbitant . . . The ultimate test which must be applied to the verdict by the trial court is whether the jury's award falls somewhere within the necessarily uncertain limits of just damages or whether the size of the verdict so shocks the sense of justice as to compel the conclusion that the jury [was] influenced by partiality, prejudice, mistake or corruption . . . **The court's broad power to order a remittitur should be exercised only when it is manifest that the jury [has] included items of damage which are contrary to law, not supported by proof, or contrary to the court's explicit and unchallenged instructions**.' (Internal quotation marks omitted.) *Mahon v. B.V. Unitron Mfg., Inc., supra*, 284 Conn. at 661-62, 935 A.2d 1004.

Saleh v. Ribeiro Trucking, LLC, 303 Conn. 276, 281 (2011) (emphasis added). *See also Wood v. Bridgeport*, 216 Conn. 604, 611 (1990) ("Evidence offered at trial relevant to damages must be reviewed in the light most favorable to sustaining the verdict.").

The defendants do not argue that "the jury [has] included items of damage which are contrary to law . . . or contrary to the court's explicit and unchallenged instructions." *Saleh,* 303 Conn. at 281.[1] They argue only the third *Saleh* prong – that the verdict is "not supported by proof…." *Id. See, e.g.*, Motion for New Trial at 1 ("the jury's award is not reasonably supported by the testimony and other evidence adduced at trial"); Defs' Mem. at 21 ("The magnitude of the verdict is unsupported by the evidence…."). In ruling on this sufficiency of the evidence argument, the Court "is to determine whether the jury's verdict is within the confines set by state law", and the "court of appeals should then review the district court's determination under an abuse-of-discretion standard." *Consorti v. Armstrong World Indus., Inc.*, 103 F.3d 2, 4 (2d Cir. 1996) (citation omitted). *See also MacDermid Printing Solutions LLC v. Cortron Corp.*, 833 F.3d 172, 190 (2d Cir. 2016) ("We review for 'abuse of discretion' a district court's denial of remittitur or a new trial on damages.")

[1] The Court instructed the jury, without objection, that it "should not speculate or guess as to damages, and under no circumstances should you let sympathy, bias, or prejudice affect your consideration of the law and the evidence. You should be guided by dispassionate common sense." Tr. 467-68. The defendants have presented no evidence – and there is none – that the jury failed to follow those instructions. "A jury is presumed to follow the court's instructions, absent indications to the contrary." *Izzarelli v. R.J. Reynolds Tobacco Co.*, 806 F. Supp. 2d at 538 (citation omitted).

The Connecticut Supreme Court explained the "shocks the sense of justice standard" as follows:

> We acknowledge that the "shocks the sense of justice" standard provides vague guidance at best—due, in part, to the uncertain limits of noneconomic damages. The language is intended to convey the extraordinary departure from reasonableness that is required before a court properly may exercise its authority to set aside the jury's award of damages. We have in the past stated what will not be sufficient to support a trial court's decision to set aside the jury's damages award and order a remittitur: "The fact that the jury returns a verdict in excess of what the trial judge would have awarded does not alone establish that the verdict was excessive." *Campbell v. Gould*, 194 Conn. 35, 41, 478 A.2d 596 (1984). Regarding what will be sufficient to support an order of remittitur, we have stated that a trial court should exercise its discretion to order remittitur only in cases "where very clear, definite and satisfactory reasons can be given for such interference." *Clark v. Pendleton, supra*, 20 Conn. at 509. For a trial court's remittitur order to be justified, and upheld by this court, we have stated that "we must have laid before us a very clear and striking case of indubitable wrong, so clear and striking as to indicate the influence of undue sympathy, prejudice or corruption on the verdict." *Waters v. Bristol, supra*, 26 Conn. at 405.

Saleh v. Ribeiro Trucking, LLC, supra, 303 Conn. 282-83. *See also Lino v. Spalter*, 2017 Conn. Super. LEXIS 3495 *(Conn. Super. Ct. June 6, 2017).

> Litigants have a constitutional right to have factual issues resolved by the jury…. This right embraces the determination of damages when there is room for a reasonable difference of opinion among fair-minded persons as to the amount that should be awarded…. The amount of a damage award is a matter peculiarly within the province of the trier of fact, in this case, the jury.

Ham v. Greene, 248 Conn. 508, 536 (1999).

> [T]he court should not act as the seventh juror with absolute veto power. Whether the court would have reached a different result is not in itself decisive…. The court's proper function is to determine whether the evidence, reviewed in a light most favorable to the prevailing party, reasonably supports the jury's verdict.

Campbell v. Gould, 194 Conn. 35, 41 (1984) (internal quotation marks and citations omitted). *See also Deas v. Diaz*, 121 Conn. App. 826, 841 (2010) ("A trial court may set aside a verdict on a finding that the verdict is manifestly unjust…. A verdict should not

be set aside, however, where it is apparent that there was some evidence on which the jury might reasonably have reached its conclusion.… This limitation on a trial court's discretion results from the constitutional right of litigants to have issues of fact determined by a jury."); *Malmberg v. Lopez*, 208 Conn. 675, 679 (1988) ("[I]f, on the evidence, the jury could reasonably have decided as they did, [the reviewing court] will not find error in the trial court's acceptance of the verdict…."). *See, e.g., Waters v. Bristol*, 26 Conn. 398, 405 (1857) (declining to set aside verdict on basis of excessive damages, despite this court's view that "[t]he damages assessed are considerable, we are rather inclined to think too large"); *Clark v. Pendleton*, 20 Conn. 495, 509 (1850) (observing that, although damages were higher than this court would have awarded, verdict should not be disturbed and court's authority to order remittitur should be exercised rarely).

Applying these well-established standards here, the defendant's motion must be denied in its entirety.

ARGUMENT

I. THE EVIDENCE OF GREER'S ABUSE AND ELI'S SEVERE AND PERMANENT INJURIES FULLY SUPPORTS THE JURY'S VERDICT; THE DEFENDANTS FAIL TO POINT TO ANYTHING IN THE RECORD COMPELLING THE CONCLUSION THAT THE JURY WAS INFLUENCED BY PARTIALITY, MISTAKE OR CORRUPTION

The defendants' argument that Eli "is leading a normal or even above-average life" and has recovered from Greer's sexual abuse "remarkably well" (Defs' Mem. at 23) is completely contradicted by the trial record. For a period of three years starting when Eli was 14 years old, Greer (then in his mid-60's) forced upon his child victim a near

constant stream of unrelenting, sickening sexual abuse. Prior to Greer, Eli had "had no sexual activity whatsoever in his life…. He was in shock." Testimony of Julian Ford, Ph.D., Tr. 243.[2] "I kissed a girl, but that was about it." Tr. 328. The first time he abused him , Greer plied Eli with alcohol, pretended to care about Eli's family and history, acknowledged Eli's parents' financial struggles, and then kissed him. Tr. 319-20. "Q. Did he put his lips on your lips? A. Yes." Tr. 320. When Eli reacted with shock and disgust, Greer responded "oh, it's nothing. I do this to my kids all the time." Tr. 320.

Greer's abuse then progressed to physical touching and a litany of forced sex acts, including "oral sex, anal sex, kissing. Anything within the realm of sexual conduct…." Tr. 321. Sometimes Greer would show Eli pornographic films. Testimony of Dr. Julian Ford, Tr. 242. The abuse continued throughout Eli's sophomore, junior and senior years. Tr. 321.

> Q. Sometimes he would have you touch him and masturbate him?
> A. Yes.
> Q. And sometimes he would do that to you?
> A. Yes.
> Q. And sometimes … he would have his mouth on your penis?
> A. Yes.
> Q. And yours on his?
> A. Yes.
> ...
> Q. [T]here was a point where it became anal sex?
> A. There was a point when it became anal sex, yes.

Tr. 322.

Greer raped and forced himself on Eli at New Haven rental properties owned by Greer, at a Branford motel, at a motel in Paoli, Pennsylvania, on land owned by the

[2] True and correct copies of all cited trial transcript pages are contained, in chronological order, in Exhibit A, filed herewith.

Yeshiva in Bethany, and in the bed Greer shared with his wife. Tr. 322. Greer abused this child approximately a dozen times at the Branford motel alone, where, in a detail almost too disgusting to relate, there was a "hot tub." Tr. 323, 338. Greer's sexual assaults usually lasted "an hour, hour and a half." Tr. 324. When Greer raped Eli each of the dozen times at the Branford motel "it was longer, three, four hours." Tr. 324. Greer kept Eli at the Paoli motel for 26 hours. Tr. 324. During Eli's sophomore, junior and senior high school years, "it was on the order of at least weekly or every other week, sometimes more often than that." Ford, Tr. 246. "[I]t was once per week definitely in 10th grade." Eli, Tr. 324.

Eli "felt this was really a serious threat that he could really have his whole educational career destroyed if he ever revealed what was happening." Ford, Tr. 242. Whenever Eli refused Greer's demands, "I'd get screamed at in classes or my grades would suffer." Tr. 325. "He believed that if he did reveal what was happening that he would not be believed…. [H]e was very fearful that he would be expelled, that his academic career would be completely ruined." Ford, Tr. 246-47. *See also* Tr. 331.

Greer's unrelenting sexual abuse caused Eli profound and permanent mental and emotional suffering. "He's very detached. Very emotionally detached." Shira, Tr. 148. Even when his wife tries to emotionally connect with Eli, "[h]e doesn't usually react. He just stays very neutral, very emotionless." Tr. 149. *See also* Tr. 149 ("Q. If you express strong feelings to him, does he express them back again?" A. No."). "[H]e doesn't let people in." Tr. 149.

> Q. Is he emotionally intimate and vulnerable with the kids at all?
> A. No.
> Q. Is he emotionally intimate and vulnerable with you at all?
> A. No, very little.

Tr. 149. Eli is unable to be emotionally present even in the act of lovemaking with his wife. Tr. 189. See also Tr. 150 (their marriage is devoid of satisfying physical intimacy and love because of Eli's inability to be emotionally present and vulnerable). *See also* Ford, Tr. 251 ("[H]e said I can only have sex if it's impersonal. I can do it with my wife, but it's never emotional and it's always more of a conflict."). Eli suffers from an "inability to trust and to open himself up to anyone." Tr. 151. "[H]is biggest fear is being vulnerable. And his fear is if he allows somebody in that he's going to get hurt." Tr. 152. "[E]motionally he's very lonely." Tr. 153. See also Shira, Tr. 187 (Q. Has Eli's "emotional disconnectedness … led to bringing you to the edge of divorce? A. Yes, it has. Q. Is that something that you still feel is a worry and a concern for you and for him? A. I do.").

Eli describes his suffering similarly:

> Q. Can you share with anybody?
> A. No.
> Q. Is there, if you think about it, everyone you know, your friends, your family, is there anybody that you feel you can really trust?
> A. I don't trust anybody. I second guess everybody and anybody.

Tr. 334.

These profound, debilitating and permanent emotional and psychological injuries, and others, were corroborated by Dr. Julian Ford, the plaintiff's clinical psychologist and PTSD expert. When children are very young, sexual abuse causes "profound adverse effects on brain development. But we also know that the second most vulnerable time set tragically is adolescence." Tr. 248-49. "[A]dolescence is a time when sexual abuse occurs that can be particularly damaging, because it's also a time when a boy or girl is figuring out who they are and establishing a sense of self and identity." Tr. 248. The

conflict "can lead a person to feel for the rest of their life a sense of shame and even self-disgust and anxiety." *Id.*

During Dr. Ford's forensic interview, Eli "seemed very reserved, very tense…. He clearly was very on edge…. [H]e was speaking about something that was deeply, deeply painful for him." Tr. 236. Eli was "very guarded. Very guarded and reserved." *Id.* Because Greer was "someone who should have been protecting him", the abuse created "a betrayal trauma." *Id.*

> [W]hen a child experiences … this kind of sexual abuse from someone that they truly believe they should be able to trust and should be protecting and looking out for them, … that creates such a conflict internally, such a psychological conflict…. [and] also a great deal of self blame.

Tr. 244. *See also id*. ("Q. Are there then lifetime effects of that kind of betrayal trauma? A. Yes."). "It creates a kind of emotional shadow over the person's life for, really, the rest of their life. It could be addressed in treatment but, unfortunately, it never goes away." Tr. 245. "[T]his had a very profound effect on him in … how he viewed himself, how he viewed relationships, and spirituality." Tr. 249. Eli is "incredibly emotionally in turmoil, because he feels so angry, so much disgust, frustration and, at the same time, feeling that he cannot break out of that. He cannot let any of that out. He has to keep a lid on all of that." Tr. 251.

> [H]e just shut off emotionally from everyone. He lost his sense that he could ever trust any other human being or God.

Id. "Eli is "just terrified of being emotionally vulnerable with anyone." Tr. 251. "He doesn't trust anyone who he feels emotionally close to because those are the people than can most harm him." Tr. 257. The emotional unavailability caused by Greer's abuse is so severe and so damaging to his marriage that Eli believes it is the cause of

his wife becoming suicidal. Tr. 250. *See* Tr. at 253 ("[A]t times his wife was suicidal and deeply depressed…. [H]e knew [Greer's sexual abuse] was driving all of these terrible problems."). All of these injuries and damages are directly related to what Greer did to Eli at the Yeshiva. "Absolutely. No question." Tr. 252.

According to Dr. Ford, Eli "definitely suffers from post-traumatic stress disorder. It is severe and chronic. [I]ts onset [is] during or after the sexual abuse." Tr. 254. The PTSD has continued "completely without any abatement in the period since the abuse occurred and subsequent to its stoppage." Tr. 254. Eli suffers the four defining PTSD symptoms – unwanted memories and flashbacks of Greer's abuse, an intense desire and constant attempts to avoid the memories, a change in his core beliefs, and hypervigilance – "pretty much on a daily basis." Tr. 254. *See also* Tr. 254-257. In fact, Eli meets the "criteria for the presence of all 20 of the symptoms of PTSD." Tr. 258. "There are no symptoms of PTSD that I found were not present." Tr. 257. Eli suffers

> deep feelings of depression, anger, self-loathing …, disgust for himself and for the activities he was involved in. And with very strong physical symptoms too. This is not just a mental disorder. This is really a disorder that affects the person's entire body … the level of tension, physical tension that this causes is just enormous.

Tr. 255.

> He was a shy, quiet, but happy and energetic … little boy, and … during and since the abuse, he has become … very angry … very, very anxious, deeply fearful and anxious, very depressed and … unhappy.

Tr. 256. "He may seem like a very successful person, but he is a deeply unhappy person, which is a very tragic outcome." Tr. 257.

The parties stipulated, and the jury was instructed, that "the plaintiff is expected to live for an additional 55.5 years for a total life expectancy of 84.5 years." Tr. 469.

Greer's sexual abuse began when Eli was 14 years old; so, the evidence showed that he would **suffer PTSD and his other mental and emotional injuries for a total of 70 years**. Moreover, a conservative view of the evidence supported a finding that Greer inflicted **90 separate sexual assaults** on Eli during his 10th, 11th, and 12th grade years.[3] Greer's sexual assaults usually lasted "an hour, hour and a half" (Tr. 324)[4], meaning (even if we ignore the 36-48 hours of abuse perpetrated at the Branford Motel), Greer inflicted on his child victim between **90 and 135 hours** of kissing, anal and oral rape, fondling, mutual masturbation and other sexually, mentally and physically abusive assaults and molestations. All of these separate categories of injuries are properly compensable.[5]

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[3] *See* Ford, Tr. 246 ("[I]t was on the order of at least weekly or every other week, sometimes more often than that."); Eli, Tr. 324. ("[I]t was once per week definitely in 10th grade."); Eli, Tr. 324 ("I think sometime in 11th grade … [there] were times where it was I'd say longer, three weeks, four weeks before I couldn't resist."). A typical school year runs from late August to late June, or approximately 40 weeks. Conservatively estimating 40 assaults in 10th and 12th grades, only 10 assaults in 11th grade, and not a single assault during the summers Eli lived and worked at the Yeshiva (Tr. 346), Greer molested Eli a total of 90 times.

[4] When Greer raped Eli approximately a dozen times at the Branford motel, each assault "was longer, three, four hours." Tr. 323-24.

[5] The Court charged the jury, without objection, that the plaintiff may recover "compensation for all non-pecuniary losses, including physical, mental, and emotional harm, a plaintiff has incurred or is reasonably likely to incur in the future. This may include reasonable compensation for any emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses you find the plaintiff suffered or is reasonably likely to suffer as a proximate result of the conduct of the defendant. Loss of enjoyment of life may include the ability to lead a normal life, have normal relationships, or carry on the normal activities of life. You should consider, as a separate category for awarding damages in this case, the length of time the plaintiff was and/or probably will be prevented from engaging in activities he enjoys. If you find that it is reasonably probable that the plaintiff has suffered permanent harm, any damages award you make should take this into account. Any damages award should reflect the nature and extent of the harm and the length of the time the plaintiff has suffered and/or is reasonably expected to suffer such harm." Tr. 468-69.

Incredibly, in the face of this overwhelming factual record, the defendants actually argue that the Court should "question whether the claimed abuse occurred at all" (Defs' Mem. at 22), and they appear to insinuate that, even if the abuse did occur, Eli enjoyed it. *See id.* at 4 (bolding Eli's statement "I liked what was going on"). Even after making this same catastrophic strategic error during closing argument, the defendants continue to claim – and to insist that this Court find – that the plaintiff is a liar and a cheat. *See, e.g.*, Attorney Ward's closing argument at Tr. 498 ("[Eli] admitted he lied. He admitted he's a cheat. And his wife told you he lied. And his wife told you he's a cheat."); Defs' Mem. at 23 (arguing that Eli lied to Dr. Ford). Even more amazingly, the defendants argue *again* that Greer's sexual abuse could not have occurred, or if it did occur could not have harmed the plaintiff, because Eli associated with Greer after high school and invited Greer to participate in important life events. Defs' Mem. at 22, 24.

The defendants even claim that "no testimony, expert or otherwise, was offered to attempt to explain plaintiff's post-high school insistence on continuing to associate with, and honor, Greer", and that this "raises a critical question: Based on his admitted behavior between 2005 and the present, how much emotional damage could plaintiff reasonably have suffered?" Defs' Mem. at 22. One must wonder whether the writer of the Defendants' Memorandum attended the trial, and, if he did, what motivates him (unless he believes the trial judge slept through the evidence and has no access to the trial transcripts) to make factual arguments so completely contrary to the record.[6] *Of*

[6] The defendants' tactics remind one of Attorney Ward's remarkable insistence at trial that Judge Shea immediately enforce an alleged state court restraining order that even a cursory examination revealed was never granted. *See* Trial Tr. at 11 ("THE COURT: Next time read it more carefully….").

course, testimony – from expert and fact witnesses – explained Eli's post-abuse need to continue to have contact with his abuser. Eli's wife, Shira, testified: "Eli really needed this second family that he felt he had. [H]e needed them." Trial Tr. at 144-45. "[W]e fought non-stop about it…. Every single time, the entire ride up." Tr. 145. "I felt that Rabbi Greer had this form of control over Eli." Tr. 147. Eli was "definitely" afraid he would be ostracized from the community. Tr. 148. Greer had "this power over him…. [Eli's] father had just died and [Greer was] an authority figure…." Tr. 186. Eli testified: "New Haven was my family or my second family and I was very comfortable there, and I felt important there when I went for the high holidays and I enjoyed it there. And so I'd go back to visit, you know, the community, Avi, Ezi, Dovi…. My dad passed away and Greer was the one … person that I looked up to for direction…." Tr. 342. And Dr. Ford confirmed that there was nothing inconsistent between Eli's intense need to avoid reminders of Greer's abuse and his decision to see Greer after he graduated. "Q. Is there anything inconsistent between those two things? A. No…. He felt that he had to have contact with the Rabbi in order to both maintain the secret" and because Greer was "an authority figure…." Tr. 311. "Q. [T]hat fact does not undermine the criteria that you established? A. No … that's very consistent with what sometimes is called traumatic bonding." Tr. 311-12.

The defendants traipsed this "post high school" claim before the jury over and over again during trial, and argued it *ad nauseam* during closing; and the jury rejected it as meaningless, nonsensical, and devoid of factual support or common sense. The defendants' feverish insistence that the Court re-weigh the evidence to make factual findings plainly rejected by the jury on a full and complete evidentiary record – and their astonishing argument (never mentioned during trial) that the Court should "dismiss Dr. Ford's testimony in its entirety" (Def's Mem. at 23-24) – betray a profound

misunderstanding of applicable law, a strategic blindspot of incomprehensible breadth, and the same arrogance and contempt that was their undoing at trial. "Rule 59 is not a vehicle for the relitigation of old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple.'" *Izzarelli v. R.J. Reynolds Tobacco Co.*, 806 F. Supp. 2d 516, 524-25 (D. Conn. 2011) (citations omitted).

Moreover, it is clear from the damages evidence the defendants chose *not* to offer that they know Greer preyed upon and serially abused and molested a child, they know Eli, Shira and Dr. Ford are telling the full and complete truth, and they know that Eli's mental and emotional injuries and disabilities are catastrophic and permanent. The defendants chose not to hire an expert psychologist or psychiatrist to interview the plaintiff. They called no damages fact witnesses, chose not to publish to the jury a single page of Eli's therapy records, and failed even to depose the plaintiff's expert before trial. These deliberate choices reflect a tactical decision to avoid discovering and submitting even *more* evidence of the severity of Eli's injuries and their impact on his life.

II. CONSIDERING THE NUMBER OF TIMES GREER RAPED AND MOLESTED HIS CHILD VICTIM, THE SEVERITY OF THE ABUSE, AND THE TOTAL YEARS OF SUFFERING INFLICTED, THE AMOUNT OF THE VERDICT IS CONSISTENT WITH OR LESS THAN VERDICTS IN OTHER SEXUAL ABUSE CASES

Having failed to point to anything in the record compelling "the conclusion that the jury [was] influenced by partiality, prejudice, mistake or corruption", or supporting the claim that "the jury [has] included items of damage which are contrary to law, not supported by proof, or contrary to the court's explicit and unchallenged instructions"

(*Saleh*, 303 Conn. at 281), the defendants are left with the argument that the verdict is high compared to all other sex abuse verdicts. *See* Defs' Mem. at 25 ("[T]he verdict in this case exceeds the greatest 'outlier' uncovered in our research by more than 100 percent."). They are mistaken.

As a preliminary matter, the Connecticut Supreme Court has questioned the usefulness of verdict comparison.

> As our Supreme Court has explained, "[c]omparison of verdicts is of little value. No one life is like any other, and the damages for the destruction of one furnish no fixed standard for others." (Internal quotation marks omitted.) *Katsetos v. Nolan*, 170 Conn. 637, 658, 368 A.2d 172 (1976).

Welsh v. Martinez, 157 Conn. App. 223, 242 (2015). This is especially true in cases concerning children, mental and emotional suffering, non-economic damages, betrayal trauma, and sexual abuse. In this context, there is simply no way to compare one child's victimization and suffering to another's. *See Wood v. Bridgeport*, 216 Conn. 604, 611 (1990) (It is "helpful to compare the verdict challenged with verdicts in similar cases *when possible*.") (emphasis added). Moreover, just the passage of time can render an otherwise relevant verdict no longer truly comparable. *See, e.g., Oram v. de Cholnoky*, 2008 Conn. Super. LEXIS 2847 * 39 (Nov. 3, 2008) ("the court is not particularly persuaded by the defendants' efforts to compare this verdict with verdicts rendered in other cases eight to ten years ago"). Indeed, the defendants acknowledge the limited value of verdict comparisons. *See* Defs' Mem. at 13, quoting *Scala v. Moore-McCormack Lines, Inc.*, 985 F.2d 680-684 (2d Cir. 1993) (internal quotation marks omitted) ("when evaluating whether an award is excessive, 'courts have reviewed awards in other cases involving similar injuries, bearing in mind that *any given judgment depends on a unique set of facts and circumstances*.'") (emphasis added).

The sad and horrific fact is that there is no other sexual abuse case with damages meaningfully comparable to this one, where a trusted religious mentor 50 years older than the victim, exercising complete control and custody of the plaintiff, inflicted 90 separate sexual assaults over a period of three years while the principal of the victim's boarding school with actual knowledge of the assaults deliberately failed to report or stop them, resulting in, among other things: the plaintiff's total emotional unavailability to his wife and children; chronic, severe and permanent PTSD; a desire on the part of the plaintiff's wife to kill herself; 70 total years of mental and emotional suffering; and the victim's complete and permanent loss of trust in any other human being and even God.

But, even if verdict amounts in other sexual abuse cases were a meaningful metric by which to judge the fairness of this one, there are no grounds for remittitur. In this case, on an evidentiary record supporting a conservative finding of 90 separate sexual assaults, the jury awarded $15 million. This equals $166,666 per assault. Even verdicts "uncovered" by the defendants are larger than this. *See Grisanti v. Cioffi*, Defs' Mem. at 12 ("On an incident-by-incident based analysis, the plaintiff in Grisanti [an adult woman] recovered over $417,000 for each assault." *Doe v. City of Waterbury*, 2009 U.S. Dist. LEXIS 95936 *2-3 (2009)); *Blair v. LaFrance*, Defs' Mem. at 14-15 (2000 case resulting in a trial court award of $500,000. "On a per-incident basis, this equates to $250,000…." *Lino v. Spalter*, 2017 Conn. Super. LEXIS 3495 (June 6, 2017)); *Srb v. Johnson*, Defs' Mem. at 15-16 (2009 case resulting in jury award of $254,000 per

assault); and *Doe v. Boy Scouts of America Corp.*, Defs' Mem. at 18-19 (jury award of $2,333,333 per assault).[7]

Other Connecticut sexual abuse cases not cited or acknowledged by the defendants also resulted in larger awards.[8] *See, e.g., Lino v. Spalter*, 2017 Conn. Super. LEXIS 3495 (June 6, 2017) ($15,000,000 verdict for over a hundred assaults);[9] and *Schneider v. National Railroad Passenger Corp.*, 987 F.2d 132, 137 (2d Cir. 1993) ($1,000,000 verdict in 1993 single-event case involving an adult victim). *Cf. Doe v. City of Waterbury*, 2009 U.S. Dist. LEXIS 95936 *2-3 (D. Conn. 2009) (On a "thin record of expected future damages", District Court awarded $16,000,000 to two plaintiffs for 128 sexual assaults).

"Sexual abuse victims are entitled to significant damages." *Doe v. City of Waterbury*, 2009 U.S. Dist. LEXIS 95936 *2-3 (D. Conn. 2009). The *Lino* Court's holding is fully applicable here:

> These cases are helpful in establishing a range of jury verdicts in cases for sexual abuse. In light of the proof of abuse in this case, its frequency, type and duration, and of the proof of the damages suffered by plaintiff, their severity, duration and continuation to present, the court cannot conclude that the verdict, although sizable, falls "outside the necessarily uncertain limits of fair and reasonable compensation." *Riley v. Travelers Home & Marine Ins. Co.*, 173

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[7] It is not possible to assess the per-assault values of all of the defendants' cited cases. *See, e.g.*, *Doe v. Hartford Roman Catholic Diocesan Corp.*, Defs' Mem. at 14 ($1 million verdict for unstated number of assaults, but apparently including only one episode of sodomy, *see* 317 Conn 357, 367 (2015)); *Powell v. Fabbozzi*, Defs' Mem. at 17-18 (2005 case resulting in $3 million verdict for "multiple occasions" of sexual assaults, 2005 WL 4652528 *2 (Conn. Super., Verdict and Settlement Summary, July 21, 2005)).

[8] Connecticut courts do not consider out-of-state verdicts when ruling on a motion for remittitur. *See, e.g., Wood v. Bridgeport*, 216 Conn. 604 (1990); *Lino v. Spalter*, 2017 Conn. Super. LEXIS 3495 (June 6, 2017). But, if they did, there are many out-of-state sexual abuse verdicts dwarfing this one. *See, e.g.*, Exh. B ("Vermont jury awards $35 million in sex abuse case").

[9] The *Lino* Court described the conduct at issue in that case as "comparable" to Greer's abuse in this case. *Lino*, 2017 Conn. Super. LEXIS 3495 * 12.

> Conn.App. 422, 446-47 (2017). Further, the court cannot find that the size of the verdict so shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake or corruption.

Lino v. Spalter, 2017 Conn. Super. LEXIS 3495 * 12.

CONCLUSION

"A district court has broad discretion in determining whether to grant a motion to alter or amend the judgment." *Baker v. Dorfman*, 239 F.3d 415, 427 (2d Cir. 2000). The Court should exercise that broad discretion to deny the defendants' motion. The verdict clearly "falls somewhere within the necessarily uncertain limits of just damages", it is not of a size that "so shocks the sense of justice as to compel the conclusion that the jury [was] influenced by partiality, prejudice, mistake or corruption", and there is no evidence that it includes improper items. *Saleh v. Ribeiro Trucking, LLC*, 303 Conn. at 280. "The court's broad power to order a remittitur should be exercised *only* when it is manifest that the jury [has] included items of damage which are contrary to law, not supported by proof, or contrary to the court's explicit and unchallenged instructions." *Id.* (emphasis added). Not one of these requirements is present here.

Respectfully submitted,

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CERTIFICATION

I hereby certify that a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/ _____
Antonio Ponvert III