

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

E.P., an infant, by her mother and natural guardian, JAMIE PROSPERO,

Plaintiff,

-against-

THE URSULINE SCHOOL OF NEW ROCHELLE,

Defendant.

Index No.: 63745/2021

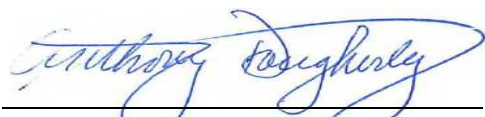
NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendant, The Ursuline School of New Rochelle, hereby appeals to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from each and every part of the Decision and Order of the Honorable Damaris E. Torrent, A.J.S.C. dated August 23, 2022 and entered by the Clerk of the Court, Westchester County on August 24, 2022.

A copy of the Decision and Order with Notice of Entry is annexed hereto.

Dated: New York, New York
August 24, 2022

ARCHER & GREINER P.C.
Attorneys for Defendant,
The Ursuline School of New Rochelle

By 
Anthony D. Dougherty, Esq.
Linda S. Roth, Esq.
Trevor Prince, Jr., Esq.

1211 Avenue of the Americas, Suite 2750
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(212) 682-4940
File No. URS003.00801

TO:

George W. Galgano, Esq.
Galagano Sharp LLP
Attorneys for Plaintiff
399 Knollwood Road, Suite 318
White Plains, New York 10603
(914) 428-2323

(Via NYSCEF)
225492208v1

Supreme Court of the State of New York

Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance
E.P., an infant, by her mother and natural guardian, JAMIE PROSPERO <p style="text-align: center;">- against -</p> THE URSULINE SCHOOL OF NEW ROCHELLE		Date Notice of Appeal Filed
		For Appellate Division
Case Type	<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> Action Commenced under CPLR 214-g <input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	Filing Type
	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.		
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation
		<input checked="" type="checkbox"/> Contracts
		<input type="checkbox"/> Estate Matters
		<input type="checkbox"/> Prisoner Discipline & Parole
		<input type="checkbox"/> Torts

Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment <input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment <input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court	County: Westchester
Dated: 08/23/2022	Entered: 8/24/2022
Judge (name in full): Damaris E. Torrent	Index No.: 63745/2021
Stage: <input checked="" type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury
Prior Unperfected Appeal and Related Case Information	
Are any appeals arising in the same action or proceeding currently pending in the court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.	
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case: Defendant/Appellant filed a Notice of Appeal dated May 27, 2022 of each and every part of the Decision and Orders of Hon. James W. Hubert, J.S.C. dated April 22, 2022 in New York State Supreme Court, County of Westchester, Index No. 63745/2021. Appellate Division Case Number is unknown.	
Original Proceeding	
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	
Proceeding Transferred Pursuant to CPLR 7804(g)	
Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:
CPLR 5704 Review of Ex Parte Order:	
Court: Choose Court	County: Choose County
Judge (name in full):	Dated:
Description of Appeal, Proceeding or Application and Statement of Issues	
<p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p> <p>Defendant/Appellant THE URSULINE SCHOOL OF NEW ROCHELLE appeals from the Decision and Order dated August 23, 2022 of Hon. Damaris E. Torrent, A.J.S.C. and entered in the Clerk's Office of the Supreme Court, Westchester County on August 24, 2022 granting Plaintiff's application for a preliminary injunction permitting, inter alia, Plaintiff E.P. to return to The Ursuline School and register for the 2022-2023 year and enjoining Defendant/Appellant from, inter alia, conducting any further disciplinary proceedings against Plaintiff E.P. and entering or maintaining a record of expulsion with respect to Plaintiff E.P. or otherwise attempting to enforce the expulsion of E.P.</p>	

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

(1) The Supreme Court erred by entering an order granting Plaintiff a preliminary injunction that, inter alia, directed Defendant/Appellant to register E.P. for the 2022 - 2023 school year and enjoined the School from enforcing its decision to expel E.P. There is no evidentiary basis for the preliminary injunction as there is no contract between the parties for the 2022 - 2023 school year. Moreover, as a private parochial school, Defendant/Appellant is entitled to deference with respect to school operations including discipline over students. The Trial Court improperly substituted its judgment for the judgment of Defendant/Appellant as to what discipline was appropriate in response to E.P.'s racist and otherwise offensive conduct which violated the Defendant/Appellant's handbook as well as its mission and values. The Trial Court's finding that it was "irrational" for Defendant/Appellant to expel E.P. for conduct which the Trial Court stated is regularly carried out by others without repercussions is not supported by the record as there is no evidence that any other student engaged in the collective bad conduct which resulted in E.P.'s expulsion. Accordingly, E.P. cannot establish a likelihood of success on the merits nor can E.P. establish irreparable harm or a balance of equities in her favor. E.P. can go to public school and E.P.'s preference to return to Defendant/Appellant should not take priority over the safety of Defendant/Appellant's diverse school community in general and/or the School's right to govern its institution in a manner consistent with its mission and values. Defendant/Appellant seeks reversal of the preliminary injunction.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	E.P., an infant, by her mother and natural guardian, JAMIE PROSPERO	Plaintiff	Respondent
2	THE URSULINE SCHOOL OF NEW ROCHELLE	Defendant	Appellant
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Informational Statement - Civil

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Archer & Greiner, P.C.

Address: 1211 Avenue of the Americas, Suite 2750

City: New York State: NY Zip: 10036 Telephone No: 212-682-4940

E-mail Address: adougherty@archerlaw.com, lroth@archerlaw.com, tprince@archerlaw.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): Defendant

Attorney/Firm Name: Galgano Sharp LLP

Address: 399 Knollwood Road

City: White Plains State: NY Zip: 10603 Telephone No: 914-428-2323

E-mail Address: ggalgano@galganosharp.com, essharp@galganosharp.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): Plaintiff

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
E.P., an infant, by her mother and natural guardian,
JAMIE PROSPERO,

Index No.: 63745/2021

Plaintiffs,

-against-

**DECISION AND ORDER
WITH NOTICE OF ENTRY**

THE URSULINE SCHOOL OF NEW ROCHELLE,

Defendant.

-----X

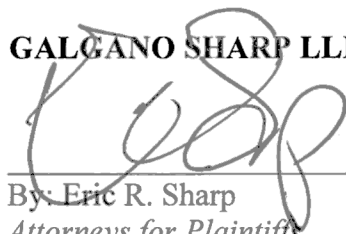
S I R S:

PLEASE TAKE NOTICE, that the annexed is a true copy of the Decision and Order of Hon. Damaris E. Torrent, A.J.S.C. dated August 23, 2022, duly entered in the office of the clerk of the within named Court on August 24, 2022.

Dated: White Plains, New York
August 24, 2022

Yours, etc.,

GALGANO SHARP LLP



By: Eric R. Sharp
Attorneys for Plaintiffs
399 Knollwood Road, Suite 318
White Plains, New York 10603
(914) 428-2323

TO: Anthony D. Dougherty, Esq.
Archer & Greiner P.C.
Attorneys for Defendant
1211 Avenue of the Americas, Suite 2750
New York, New York 10036

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
E.P., an Infant, by her mother and natural guardian,
JAMIE PROSPERO,

Plaintiff,

-against-

THE URSULINE SCHOOL OF NEW ROCHELLE,

Defendant.

-----X
DAMARIS E. TORRENT, A.J.S.C.

DECISION AND ORDER

Index No.: 63745/2021

Motion Date: 07/26/2022

Seq. No. 4

The following papers numbered 1 to 16 were read on plaintiff's application by Order to Show Cause (Seq. No. 4) for a Temporary Restraining Order (TRO) and related preliminary injunctive relief; and an order granting plaintiff leave to amend the complaint:

<u>PAPERS</u>	<u>NUMBERED</u>
Proposed Order to Show Cause / Affidavit (E.P.) / Affidavit (Prospero) / Affirmation (Galgano) / Exhibits A – G / Memorandum of Law	1 – 12
Defense Counsel's Letter dated July 27, 2022 / Exhibit A / Affidavit in Opposition (Melnik)	13 – 15
Plaintiff Counsel's Letter dated July 29, 2022	16

Upon the foregoing papers, and upon the arguments of the parties heard on August 22, 2022, the motion is determined as follows:

Plaintiff E.P., a rising high school senior at the defendant private school, brings this application seeking an order enjoining the school from conducting any further disciplinary proceedings against her and ordering defendant to immediately permit her to return to school and register for the 2022-23 academic year and to permit her immediate access to her school e-mail

account and college applications, and otherwise resume all regular activities in good standing. Plaintiff additionally seeks to enjoin defendant from entering or maintaining a record of expulsion without further order of the Court or otherwise enforcing its expulsion of plaintiff. Plaintiff further seeks leave to amend the complaint.

Plaintiff brought a similar application for injunctive relief on or about September 28, 2021, after defendant notified plaintiff that she was expelled from school for certain conduct which defendant contends violates the school's mission and values and provisions of the applicable Student/Parent Handbook. The matter was assigned to Hon. James W. Hubert, J.S.C. By Order to Show Cause dated September 30, 2021, plaintiff's application for a TRO was granted. After submission of papers and an evidentiary hearing, by Decision and Order dated April 22, 2022, the TRO was replaced by a preliminary injunction, pursuant to which plaintiff remained enrolled at the school through the 2021-2022 school year.

Shortly after the end of the school year, defense counsel notified plaintiff counsel by letter that the preliminary injunction had expired, and that plaintiff thus was no longer a student at the school. Plaintiff now brings the instant application for a further TRO and preliminary injunction and seeks leave to amend the complaint. Defendant submitted limited opposition to the application for a TRO. A conference to address the application for a TRO was held on August 22, 2022, at which time both parties appeared by counsel and presented their arguments to this Court.

A party seeking a preliminary injunction pursuant to CPLR 6301 "must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and balance of equities in its favor" (*X & Y Dev. Group, LLC v Epic Tower, LLC*, 196 Ad3d 733, 733 [2d Dept 2021], quoting *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]).

The plaintiff has established a likelihood of success on the merits. The facts are sharply disputed and highly contested. Nevertheless, the existence of issues of fact alone will not justify

denial of a motion for a preliminary injunction, so long as plaintiff establishes a clear right to relief (*Cooper v Board of White Sands Condominium*, 89 AD3d 669 [2d Dept 2011], quoting *Matter of Advanced Digital Sec. Solutions, Inc. v. Samsung Techwin Co., Ltd.*, 53 AD3d 612, 613 [2d Dept 2008]). The plaintiff has made a sufficient showing, at least at this juncture, that (1) certain conduct involving posting of inappropriate content occurred before she became a student at the school,¹ (2) the other students engaged in creating an inappropriate video which plaintiff posted received a suspension, not expulsion, and (3) other students posted the same or similar videos without receiving any disciplinary sanctions.

Admittedly, the applicable standard governing private schools is whether the disciplinary sanction was arbitrary and capricious, which is an extremely deferential standard. As noted by the Appellate Division in *Matter of VanHouten v Mount St. Mary Coll.*, 137 A.D.3d 1293 [2d Dept 2016]:

”[P]rivate schools are afforded broad discretion in conducting their programs, including decisions involving the discipline, suspension and expulsion of . . . students’ (*Hutcheson v Grace Lutheran School*, 132 AD2d 599, 599, 517 NYS2d 760 [1987]; see *Cavanagh v Cathedral Preparatory Seminary*, 284 AD2d 360, 361, 725 NYS2d 889 [2001]). Judicial review of the actions of a private school in disciplinary matters is limited to a determination as to whether the school acted arbitrarily and capriciously, or whether it substantially complied with its own rules and regulations (see *Tedeschi v Wagner Coll.*, 49 NY2d 652, 660, 404 NE2d 1302, 427 NYS2d 760 [1980]; *Matter of Khaykin v Adelphi Academy of Brooklyn*, 124 AD3d 781, 782, 1 NYS3d 356 [2015]).”

Nevertheless, despite this deferential standard, plaintiff has sufficiently shown a likelihood of success on the merits. In this regard, it is certainly irrational to punish a student with expulsion for conduct which is carried on regularly by other students without similar repercussions.

It is further the plaintiff’s burden to establish irreparable injury absent the grant of a preliminary injunction (see *Family-Friendly Media, Inc. v Recorder Tel. Network*, 74 AD3d 738,

¹ This conduct, which plaintiff admits, is deplorable and reprehensible. However, the conduct occurred before admission. Further, the contention that the plaintiff adhered to her racist and inappropriate remarks is sharply disputed and must be resolved by a trier of fact.

739-740 [2d Dept 2010]), and that the balance of the equities favor the plaintiff. In that regard, the Court notes that this matter was assigned to this Part on August 17, 2022, after another Judge recused himself. That former assigned Judge granted a preliminary injunction which expired by its own terms at the end of the past school year. This application was brought by proposed Order to Show Cause filed on July 26, 2022. After the recusal and reassignment, this Court was notified of the pending application for a TRO on Friday, August 19, 2022. Argument on the application for a TRO was heard on Monday, August 22, 2022.

The salient fact is that unless this Court grants relief, an expelled high school student will be forced to attempt to find a private school to accept her on the eve of the commencement of the school year.² Clearly, the absence of a resolution of these issues at an earlier date leaves the plaintiff in an untenable situation, whereas an earlier determination may have afforded the plaintiff the possibility of finding a suitable alternative school, or other arrangements. It cannot then be seriously disputed that in the absence of injunctive relief, the plaintiff will suffer grave injury and extreme prejudice, and thus that the balance of the equities favors plaintiff.

The Court has already conducted an evidentiary hearing on the prior application for a preliminary injunction, and all that has changed in the interim is that the injunction which was issued expired at the end of the prior school year. Given the time constraints presented by the reassignment of this matter to this Part on the eve of the new school year, and the already developed record, the Court finds that it would be imprudent to issue a TRO and order further briefing and hearing on the application for a preliminary injunction. Rather, the appropriate remedy at this stage is a modification of the prior preliminary injunction. The preliminary injunction issued in the Decision and Order dated April 22, 2022 thus is modified and shall remain in effect until further order of the

² It is not disputed that the plaintiff left her public school due to bullying, and that this circumstance was the impetus for her matriculation at the Ursuline School. Therefore, a return to public school is not a viable option for the petitioner.

Court. The undertaking ordered in the April 22, 2022 Decision and Order likewise shall remain in effect until further order of the Court.

As the defendant has not yet had an opportunity to be heard on plaintiff's application for an order granting leave to amend the complaint, decision on that branch of the motion is reserved pending further submission. Defendant shall file opposing papers, if any, to NYSCEF on or before September 9, 2022 and plaintiff shall file reply papers, if any, to NYSCEF on or before September 16, 2022. Finally, because the standard track for completion of discovery in this matter will expire on September 28, 2022, and no Preliminary Conference has been scheduled or held and thus no discovery schedule has been ordered by the Court, this matter is calendared for virtual Preliminary Conference as set forth below.

Accordingly, it is hereby

ORDERED that plaintiff's application for preliminary injunction is granted; and it is further

ORDERED that the preliminary injunction contained in the Decision and Order dated April 22, 2022 is hereby modified as indicated herein so as to remain in effect until further order of the Court; to wit: defendant shall immediately (1) permit plaintiff E.P. to return to The Ursuline School and register for the 2022-2023 academic year; (2) permit plaintiff E.P to access her school e-mail account, college applications, and application materials; and (3) permit plaintiff E.P to otherwise resume all activities as a student in good standing; and defendant is hereby enjoined, until further order of the Court, from (4) conducting any further disciplinary proceedings against plaintiff E.P. with respect to the alleged conduct at issue in this litigation; and (5) entering or maintaining a record of expulsion with respect to plaintiff E.P. or otherwise attempting to enforce the expulsion of E.P.; and it is further

ORDERED that the parties shall submit further papers in connection with plaintiff's application for leave to amend the complaint according to the schedule set forth hereinabove; and it is further

ORDERED that, within ten (10) days of the date hereof, plaintiff shall serve a copy of this Decision and Order, with notice of entry, upon defendant; and it is further

ORDERED that within ten (10) days of service of notice of entry, plaintiff shall file proof of said service via NYSCEF; and it is further

ORDERED that the parties shall complete and file to NYSCEF a Preliminary Conference Stipulation to be so ordered, a copy of which is available on the Court's web site at: https://www.nycourts.gov/LegacyPDFS/courts/9jd/civilCaseMgmt/12_6_PC.pdf; on or before September 2, 2022; and it is further

ORDERED that if the parties fail to file the Preliminary Conference Stipulation as directed, the parties shall appear for virtual Preliminary Conference on September 7, 2022 at 12:30 p.m.

The foregoing constitutes the Decision and Order of the Court.

Dated: August 23, 2022
White Plains, New York

ENTER:


HON. DAMARIS E. TORRENT, A.J.S.C.

FILED VIA NYSCEF

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
E.P., an infant, by her mother and natural guardian,
JAMIE PROSPERO,

Index No.: 63745/2021

Plaintiffs,

-against-

**AFFIRMATION
OF SERVICE**

THE URSULINE SCHOOL OF NEW ROCHELLE,

Defendant.

-----X

ERIC R. SHARP, an attorney at law duly admitted to practice law before all courts of the State of New York, affirms the following under penalties of perjury:

I am not a party to the action, am over 18 years of age and maintain an office for the practice of law in White Plains, New York.

On August 24, 2022, I served the within Decision and Order with Notice of Entry, by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within New York State, addressed as follows:

**Anthony D. Dougherty, Esq.
Archer & Greiner P.C.
1211 Avenue of the Americas, Suite 2750
New York, NY 10036**

Dated: White Plains, New York
August 24, 2022


ERIC R. SHARP

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

_____	X	
	:	Index No. 63745/2021
E.P. an infant, by her mother and natural guardian,	:	
JAMIE PROSPERO,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	AFFIRMATION OF SERVICE
	:	
THE URSULINE SCHOOL OF NEW ROCHELLE:	:	
	:	
Defendant.	:	
	:	
_____	X	

ANTHONY D. DOUGHERTY, being duly sworn, deposed and says that deponent is not a party to this action, is over 18 years of age and is admitted to practice law in the State of New York.

On August 24, 2022, deponent caused Notice of Appeal and Informational Statement to be served via NYSCEF upon

Eric Sharp
Galgano Sharp LLP
Attorneys for Plaintiff
esharp@galganosharp.com
sharptrue@gmail.com

I affirm that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Anthony Dougherty
ANTHONY D. DOUGHERTY