

Review of Institutional Response

Jewish Orthodox Feminist Alliance

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I. Introduction

In May 2022, the Jewish Orthodox Feminist Alliance (Jofa) engaged Cozen O'Connor¹ to conduct an external investigation into: i) historical allegations of sexual harassment and retaliation raised by two former executive directors (referred to herein as Executive Directors 1 and 2);² ii) any potential concerns about Jofa's current culture, climate, or institutional governance identified through the review; and iii) any new allegations of sexual harassment. The specific issues under review include allegations that a former member (and President) of Jofa's Board of Directors (referred to herein as Board President 2) sexually harassed Executive Director 1 by gifting her a vibrator in 2012 and sexually harassed Executive Director 2 by making unwelcome comments of a sexual or gender-based nature between November 2016 and January 2018. Executive Director 2 also alleges that Jofa retaliated against her during Jofa's 2018 investigation of her report of sexual and gender-based harassment. In addition, given concerns raised by community partners, Cozen O'Connor reviewed Jofa's use of non-disclosure agreements in its written separation agreements with each executive director.

Cozen O'Connor conducted this investigation with a commitment to open-ended exploration of the issues, and sought to follow the facts wherever they led. Importantly, Cozen O'Connor had no prior relationship with Jofa or any of the individuals interviewed in the review. Cozen O'Connor was not engaged by Jofa in response to any litigation, but instead, approached the review as neutral, impartial, and external fact-gatherers. During the course of the investigation, Jofa provided access to all requested documents and information, facilitated interviews with witnesses, and was fully cooperative with the review. Jofa did not seek to limit the scope, deny any investigative requests, or direct the conclusions. Jofa respected the impartiality of the external investigation process and took steps to reinforce the integrity of that process.³

Cozen O'Connor extended an invitation to participate in the review to all current and former Jofa employees and Board members for whom there was current contact information. Jofa also publicly invited

¹ Gina Maisto Smith and Leslie M. Gomez, former career sexual assault and child abuse prosecutors, co-chair Cozen O'Connor's Institutional Response Group, a practice group dedicated to helping schools, colleges and universities, corporations, faith-based organizations, and non-profit organizations prevent and better respond to incidents of sexual harassment. Smith and Gomez worked closely with Adam M. Shapiro, an attorney and experienced investigator in the Institutional Response Group who is a member of the New York State bar. Members of the Institutional Response Group do not participate in any civil litigation, either for or against institutions.

² In order to respect the privacy of all individuals involved, Cozen O'Connor refers to the parties in this matter by their role and differentiate between them by using a unique numerical identifier for each.

³ The review process integrated investigative protocols to support a neutral, impartial, and thorough investigation and to report the information gathered in the investigation to Jofa in an objective, organized, synthesized, and dispassionate manner. Notably, in structuring the investigation, Jofa recognized that many current Board members held leadership roles at the time of the events under review and were therefore potential fact witnesses. To ensure neutral oversight of the review, Jofa created a subcommittee of the Board to serve as our liaison. The members of the subcommittee were either not on the Board at the relevant times or did not play a significant role in any decision making related to the events under review.

individuals to participate in the review by contacting Cozen O'Connor directly.⁴ Between May and December 2022, Cozen O'Connor interviewed 31 witnesses, including current and former employees of Jofa, current and former members of the Jofa Board, and community members who had an affiliation with Jofa or one of the involved parties.⁵ Board President 2 and members of the Executive Committee participated voluntarily in the investigation and provided access to available documents, including those maintained in their personal files. With respect to documents, Cozen O'Connor reviewed relevant email correspondence provided by Jofa, a 2018 memorandum summarizing Jofa's investigation of Executive Director 2's report of sexual harassment (and related correspondence), materials provided by witnesses during witness interviews, and social media postings shared with Cozen O'Connor.

Cozen O'Connor directly invited Executive Directors 1 and 2 to participate in the review and engaged in significant correspondence with them between June and September 2022 to explain our role and address their questions. Executive Directors 1 and 2 ultimately declined to meet with Cozen O'Connor, citing their concerns about the impartiality and neutrality given that Cozen O'Connor had been hired by Jofa, and that individuals whose actions they believed to be the subject of the review were still active Board members.⁶ Cozen O'Connor recognizes that choosing to participate in an engagement of this nature is a personal decision, and holds no adverse inference against Executive Directors 1 or 2 for declining to participate in the review. Cozen O'Connor's understanding of Executive Directors 1 and 2's individual experiences with Board President 2 and Jofa is based on our review of contemporaneous documents and correspondence, interviews with others with whom they communicated during the relevant period, and information shared by them through social media posts and in correspondence with Cozen O'Connor.

Cozen O'Connor sought to gather all relevant information and rigorously tie the fact-finding to available contemporaneous documents and witness interviews. This report synthesizes the most salient information gathered during Cozen O'Connor's investigation. The report strives to strike the balance between candor to the community in response to public allegations and considerations of individual privacy, even for those who raised the allegations publicly.

Cozen O'Connor specifically sought to understand whether the conduct reported by Executive Directors 1 and 2 constituted isolated incidents, or if a broader culture, climate, or pattern of sexual or gender-

⁴ On May 11, 2022, Jofa publicly announced the review, writing, "Jofa has retained [Cozen O'Connor] to conduct an external review of our workplace and board culture, Jofa's response to concerns raised by former Jofa employees, as well as any additional workplace and/or board-related concerns that may come to light."

⁵ Cozen O'Connor followed a consistent protocol with each witness. At the beginning of every interview, Cozen O'Connor provided an overview of the process, the purpose of the interview, and its attorney-client privileged nature. Cozen O'Connor also informed witnesses that, where possible, the information gathered would not be shared with Jofa with personal attribution; this approach sought to encourage candor and reduce any concerns about potential retaliation or barriers to speaking freely, given the close-knit nature of the organization and community.

⁶ As noted above, Jofa took steps to reinforce the integrity of the review. The individuals identified by Executive Directors 1 and 2 as involved in the incidents, with direct responsibility or oversight of those involved, or whom Jofa or we otherwise had reason to believe had a potential conflict of interest or bias were recused from any oversight of the investigation.

based harassment existed within Jofa. Based on outreach to current and former Jofa employees and Board members and a public invitation soliciting observations or concerns, Cozen O'Connor found no culture or climate concerns related to sexual or gender-based harassment, and no one came forward to report any additional concerns or allegations of sexual or gender-based harassment against Board President 2 or any other current or former Jofa employee or Board member.

As it relates to the concerns raised by Executive Directors 1 and 2, Cozen O'Connor found that Jofa's responses to their reports were aligned with legal requirements and effective practices in place at the time, but that there was more Jofa could have done in each instance to communicate care and concern for the impacted individuals. With respect to the concerns raised by Executive Director 1, Cozen O'Connor finds that while Jofa owed no continuing legal duty to her as a former employee, it missed the opportunity both to demonstrate care and seek additional information that may have informed other actions. With respect to the concerns raised by Executive Director 2, Cozen O'Connor finds that Jofa's response was undertaken in good faith, but reflected flaws in board governance and clear fiduciary guidelines. With respect to Executive Director 2's assertion that she was retaliated against by being directed to maintain the confidentiality of Jofa's 2018 investigation of her report of sexual and gender-based harassment and retaliation, Cozen O'Connor does not find that directing an employee to maintain the confidentiality of a workplace investigation constituted retaliation, where, as here, there were articulable and reasonable factors supporting the direction.

As it relates to the use of non-disclosure agreements, Cozen O'Connor does not find their use, as part of written and negotiated separation agreements, to have been inappropriate or unlawful based on the prevailing legal standards in 2014 and 2018. Notably, in April 2022, Jofa released all former employees from non-disclosure agreements, which is in keeping with Jofa's efforts to remain aligned with both its institutional values and current law.

Cozen O'Connor also finds that some of the challenges in Jofa's response were rooted in immature policies, practices, and governance considerations that have since been addressed through formal written policy, training, and heightened attention and awareness to fiduciary responsibilities.

II. Summary of the Allegations

A summary of the allegations and Jofa's response, presented in the order in which Jofa received notice of the allegations, includes the following:

- Executive Director 1 was employed by Jofa from July 2012 to January 2014. During Executive Director 1's tenure, the Board was chaired by Board President 1. Executive Director 1 also interacted with Board President 2, then a Board member, in the context of organizing Jofa's 2013 conference, for which Board President 2 served as the conference chair. Prior to her separation, Executive Director 1 raised several complaints about the Board's management style and about Board President 2's management style specifically. Executive Director 1's separation from Jofa was memorialized in a written separation agreement, signed January 19, 2014, that included a severance payment, a mutual non-disparagement clause, and a non-disclosure agreement.
- Executive Director 2 was employed by Jofa from September 2014 to August 2018. Executive Director 2 served under two board presidents, Board President 1 (during her first years as executive director) and Board President 2 (for the remainder of her tenure).

- Between November 2016 and January 2018, Executive Director 2 shared with various members of the Jofa Board that Board President 2 had made inappropriate comments to her about her clothing and hair; inquired whether she was pregnant and discussed her physical appearance; and made two inappropriate jokes or comments of a sexual nature. Executive Director 2 shared these concerns gradually over the course of this time period, often expressing them in one-on-one conversations with individual board members with whom she had a personal relationship or friendship that extended beyond the employee-Board member construct. Until October 2017, Executive Director 2 requested that the Board members in whom she confided maintain her confidence and not elevate her concerns to the Executive Committee or full Board for official or formal action by Jofa.
- In January 2018, two of the Board members in whom Executive Director 2 confided elevated the concerns to the Executive Committee. The Executive Committee engaged external labor and employment counsel (Investigating Counsel) to conduct an investigation into the allegations of sexual and gender-based harassment. Both Executive Director 2 and Board President 2 participated in the investigation. Executive Director 2 provided a detailed written account and timeline of the comments, as well as a timeline of her disclosures to Board members. Investigating Counsel concluded that some, but not all, of the comments were inappropriate, but that these inappropriate comments – alone or together – were not sufficient to establish an unlawful hostile work environment that would constitute sexual harassment under New York City, New York State, or federal law.
- At the conclusion of the investigation, given the nature of the findings, Jofa intended to both continue the employment of Executive Director 2 and permit Board President 2 to remain on the Board after the conclusion of her presidency, with appropriate safeguards in place to ensure that future interactions between the two were professional. The Executive Committee informed the full Board of the allegations and the resolution in May 2018.
- On July 1, 2018, Executive Director 1 posted on social media (in a private Facebook group) that Board President 2 had gifted her a vibrator in 2012, shortly after she began employment with Jofa.⁷ Executive Director 1 did not disclose this conduct directly to Jofa, either in 2012 or in July 2018.⁸ Executive Director 1 also asserted in her social media post that Board President 2's

⁷ Executive Director 1 posted the following message to her private Facebook account on July 1, 2018, more than four years after her separation from Jofa:

During my first month working in a high level position in a Jewish feminist organization, when I was meeting with board members individually, one board member spent most of our meeting ask[ing] me about my sex life. And then a few weeks later she sent me a vibrator. (Just to be clear, NOT because I asked her to or made ANY suggestion at all that this was what i wanted, but just because she decided on her own to do it....)

I had not, until recently, thought about this in the context of sexual harassment. It was just women's locker-room talk, right? Even though it was not, in any way, what I wanted to be doing...

⁸ Cozen O'Connor understands that delay in reporting sexual harassment is not atypical, and does not hold any adverse inference against Executive Director 1 based on the timing of her disclosure of the incident. The timing is noted to present a complete discussion of the facts as it relates to when Jofa received notice of the conduct.

interactions with her regarding the management and operations of Jofa, unrelated to the conveyance of the vibrator, constituted emotional abuse, a concern that she had previously shared with one or more Jofa Board members in 2014 prior to her separation from Jofa.⁹

- On the evening of July 1, 2018, Board President 2 sent an email to the entire Board of Directors acknowledging Executive Director 1's allegations, and confirming that she had gifted Executive Director 1 a vibrator based on Board President 2's belief that Executive Director 1 asked for personal advice.
- In mid-July 2018, Executive Director 2 resigned from her position with Jofa, effective August 15, 2018. Jofa and Executive Director 2 formalized the separation through a written separation agreement that included a severance payment, a non-disclosure agreement, and a mutual non-disparagement agreement agreed upon by all parties and their counsel.
- Concurrently, the Board discussed whether Board President 2 should continue to remain on the Board in light of the new information regarding Executive Director 1's report. The decision was closely contested and Board President 2 subsequently resigned from the Board effective August 1, 2018.
- Jofa implemented an [Equal Employment Opportunity and Anti-Harassment Policy](#) in 2018 and provided mandatory training regarding sexual harassment to all Board members in August 2019 and again in March 2022.
- On April 11, 2022, nearly four years after leaving the Jofa Board, Board President 2 published an article entitled "A New Victorianism" on *Tablet*, an online magazine focused on Jewish news and culture.¹⁰ In the article, Board President 2 discussed the context of her work as a sex therapist and educator, the history of her working relationship with Executive Director 2 (using a pseudonym), and her experience following Executive Director 2's report of sexual harassment.
- Board President 2's article sparked a volley of social media posts¹¹ by Executive Director 1 (April 11, 2022), Board President 3¹² (April 13, 2022), Executive Director 1 (April 13, 2022), Executive

⁹ Over the course of the review, Cozen O'Connor did not learn of any additional allegations of sexual harassment raised by Executive Director 1, either during or after her time with Jofa.

¹⁰ The decision to publish this article was made independently by Board President 2 and was not endorsed by Jofa, with whom she was no longer formally associated.

¹¹ In an April 11, 2022 Facebook post, Executive Director 1 wrote, "There is a whole line of women who [Board President 2] has mistreated with her anti-feminist bullying and toxicity over the years. Including me." Executive Director 1 labeled Board President 2 as toxic, and wrote that she "is an abusive person who bullies, demeans, and demoralizes staff, especially women, and inserts herself into people's lives without consent." Executive Director 1 wrote, "But for me, the sexual abuse was not the worst part. It was the emotional abuse. The way she needed to control, demean, and demoralize."

¹² Board President 3 assumed the presidency at the end of 2018.

Director 2 (April 13, 2022), a formal statement¹³ by Jofa (April 13, 2022), and Executive Director 2 (April 21, 2022).

- In her April 2022 social media posts, contemporaneous correspondence in 2018, and subsequent email correspondence with Cozen O'Connor in 2022, Executive Director 2 asserted that Jofa's direction to maintain the confidentiality of the 2018 sexual and gender-based harassment investigation by Investigating Counsel was a form of retaliation under Title VII.¹⁴

Notably, there is no factual dispute as to the comments or acts alleged by Executive Directors 1 and 2 against Board President 2. Board President 2 acknowledges gifting a vibrator to Executive Director 1, but provided additional context as to why she believed that the gift was welcome. Board President 2 also acknowledges generally that she made the comments alleged by Executive Director 2, although she provided Cozen O'Connor with additional pertinent context about the nature and manner of her interactions with Executive Director 2. Our review, therefore, focused not on whether the conduct occurred, but rather on the implications of the conduct and on Jofa's response to notice of the conduct.

III. Summary of the Findings

A. Background and Context

Jofa was incorporated in April 1998, following a February 1997 seminal conference in New York City that explored the intersectionality of traditional Orthodox Judaism and modern feminism. The first Board president from 25 years ago, as well as some of the organization's "founders," continue to serve on the Board today. Employees and Board members with whom Cozen O'Connor spoke consistently described Jofa's humble, grassroots origins and its DNA as a disruptive force within the Orthodox community since its inception. These individuals explained that the impetus for Jofa's success in pushing against traditional boundaries has been, in part, the committed and determined women who comprise the organization's lay leadership. In our interviews with current and former employees and Board members, witnesses described an evolution in Jofa's composition and governance over the past 25 years. Uniformly, individuals

¹³ On April 13, 2022, Jofa issued a formal statement that included the following context:

While it is true that we used non-disparagement clauses within separation agreements, we have never enforced them. We now understand that is not enough. We recognize that part of healing is stating unequivocally that people have the right to speak their truths. And so, we have now confirmed to all former employees who had NDAs that they have been officially released from those provisions. They should speak their truths, and we fully intend to listen to those truths and to challenge ourselves to incorporate them in our understanding and practices going forward. And in the future, we will not ask employees to sign NDAs.

¹⁴ Executive Director 2 waived all issues and concerns in the August 2018 separation agreement. Nonetheless, as she has raised them publicly, Cozen O'Connor addresses them here. In her April 13, 2022 Facebook post, Executive Director 2 wrote, "They also imposed a gag order on me, requiring me not to speak about the subject matter of the investigation – a tactic that is a Title VII Retaliation violation." In her June 20, 2022 email to Cozen O'Connor, Executive Director 2 wrote, "You should already have access to the retaliation incidents in email threads between myself, [Investigating Counsel], [Board President 3], and [Board Member 1]. I named both incidents as explicit forms of retaliation in those email threads dated 5/8/2018 and 6/12/2018."

described members of the Board historically being “very hands-on” in formulating and executing the organization’s mission and priorities.

Over the course of its 25 years, the founding generation of Jofa has slowly given way to the next generation of leaders and has increasingly relied upon a small professional staff, led by an executive director, to execute its mission. This transition has not always been smooth. Multiple witnesses explained that Jofa, as an organization, did not fully understand the implications of “professionalizing” its operations, explaining that the process of gradually ceding more control from the lay leaders to the professional staff sometimes resulted in “blurred lines” between Board members and the Executive Director position. Even with this evolution and growth, witnesses described the Board as continuing to have a “multigenerational family feel,” with “the interpersonal still being a big piece of how things functioned.” This dynamic was partly attributed to the fact that many Board members live in the same neighborhoods, belong to the same synagogues, and maintain personal friendships outside of Jofa, which has further reinforced the personal-professional overlap within the Board.

A final piece of context is important to understand the concerns raised by Executive Directors 1 and 2. Board President 2 is a certified sex therapist and social worker who has studied human sexuality, public health, social work, and Jewish studies. She is an author who is known for her work within the Orthodox community, as well as her work leading sexual health clinics. Notably, Jofa relied upon Board President 2’s expertise to expand its programming in a number of ways, including through the “Joy of Text” podcast, which paired Board President 2 with a rabbi to hold frank conversations about sexuality in the context of Judaism. Board President 2 was also often asked to speak at Jofa events as part of discussions on sexuality.

B. Specific Findings

Cozen O’Connor specifically sought to understand whether the conduct reported by Executive Directors 1 and 2 constituted isolated incidents, or if a broader culture, climate, or pattern of sexual or gender-based harassment existed within Jofa. Based on the outreach to current and former Jofa employees and Board members, Cozen O’Connor found no culture or climate concerns related to sexual or gender-based harassment, and no one came forward to report any additional concerns or allegations of sexual or gender-based harassment against Board President 2 or any other current or former Jofa employee or Board member.

The concerns regarding sexual harassment addressed in this report originate exclusively from Executive Director 1 and Executive Director 2, with one incident in 2012 and various comments from 2016 to 2018. The following sections summarize the findings and observations with respect to the concerns raised by each executive director.

1. Executive Director 1

As it relates to Executive Director 1, the conduct alleged, namely that Board President 2 sent her a vibrator, is not disputed or contested, and the first notice Jofa Board members received regarding the incident was in July 2018, when Executive Director 1 shared the information via social media. This disclosure was not made to Jofa directly, and Jofa owed no continuing legal duty of care to her as a former employee whose separation included mutually agreed upon terms including severance. As the scope is focused on the institutional response to knowledge of that information, Cozen O’Connor does not reach a finding on whether the act of sending a vibrator, in the context of these interpersonal relationships and Board President 2’s line of work, was a form of sexual harassment. Instead, the focus is on Jofa’s

institutional response once it received indirect notice of the allegation through Executive Director 1's social media post.

As part of this review, Cozen O'Connor sought to understand from members of the Board's leadership at the time what, if any, steps they took in response to Executive Director 1's report. Board members from 2018 explained that upon learning about Executive Director 1's allegation, they expedited the removal of Board President 2 from the Board; they did so despite the fact that Investigating Counsel, an external labor and employment attorney, had already investigated Executive Director 2's subsequent claims and determined that Board President 2's conduct did not constitute sexual harassment against Executive Director 2. The Executive Committee and Board were also focused on completing the terms of Executive Director 2's separation from Jofa based on Executive Director 2's decision to leave Jofa.¹⁵

In addition, multiple Board members expressed to us their belief that an attempt to reach out to Executive Director 1 likely would have been unproductive and was just as likely to "exacerbate the situation" as to alleviate it. During this same time period, early July 2018, Board President 1 was engaged in cordial email correspondence with Executive Director 1, initiated by Executive Director 1 who contacted Board President 1 to request that Jofa respect the non-disparagement provisions of the separation agreement. This correspondence could have provided the venue to inquire further and acknowledge Executive Director 1's experience. Board members reflected to us that, in hindsight, it would have been more prudent for Jofa to have apologized to Executive Director 1 in 2018.

Despite the complex and frayed interpersonal dynamics between Jofa Board members and Executive Director 1, as well as the fraught environment within the Board in the summer of 2018 due to the impending separation from Executive Director 2 and the removal of Board President 2, Cozen O'Connor finds that not conducting outreach to Executive Director 1 after learning of her allegation of sexual harassment in July 2018 was a missed opportunity for Jofa, as an organization, to demonstrate care for its constituents and reinforce its institutional values and feminist mission. This was also a missed opportunity for Jofa to seek additional information about other potential allegations of sexual harassment by Board President 2 which may have impacted Jofa's decision-making with respect to Executive Director 2 or Board President 2, as those decisions were still unfolding in July 2018. Recognizing, based on the facts gathered in this review, that there were no additional concerns identified about Board President 2 – or any other Jofa employee or Board member – that information was not known in 2018.

Cozen O'Connor also finds that the underlying circumstances of the fraught interactions between Executive Director 1 and Board President 2 during 2012 to 2014 highlighted challenges with Jofa's corporate governance model, especially in defining the roles and responsibilities of the Executive Director in relation to the Board. Executive Director 1's tenure coincided with Jofa transitioning from an interconnected and relational nonprofit with hands-on lay leaders to a second generation organization more formally and fully staffed with experienced, professional employees. In this context, as roles were shifting, the absence of clearly articulated "lanes" for Board members versus professional staff

¹⁵ According to several of the Board's leaders at the time, the decision to remove Board President 2 from the Board was closely contested within the Board and required significant focus as the Board was in a state of upheaval.

contributed to interpersonal and professional clashes that were a difficult and unfortunate byproduct of Jofa's evolution as an organization.

2. Executive Director 2

As it relates to Executive Director 2, the conduct, as reported, is largely undisputed. Based on the interviews and the review of available contemporaneous documents, Cozen O'Connor finds that Jofa's response to the allegations brought forth by Executive Director 2 was undertaken in good faith, but reflected flaws in terms of board governance and clear fiduciary guidelines. These flaws were in part attributable to the close personal relationships within the Jofa Board, as well as complicated interpersonal dynamics that hindered the Board's ability to respond as promptly and effectively as possible had the personal-professional lines not been blurred. Nonetheless, Cozen O'Connor finds Jofa's ultimate response to the sexual harassment allegations, while imperfect, was appropriate under the law and consistent with effective practices at the time.¹⁶

As noted above, Executive Director 2 shared concerns about comments made to her by Board President 2 that Executive Director 2 subsequently characterized as sexual harassment. These comments, which occurred over a nearly three-year period, related to Executive Director 2's dress and appearance, including Board President 2 asking whether Executive Director 2 was pregnant and two additional comments that were reported to have been sexual in nature. Beginning in late 2016, Executive Director 2 confided in several Board members about her experiences with Board President 2, who at the time was serving as the Board President. According to the Board members, Executive Director 2 asked each of the Board members individually not to take any action, including an express request not to formally elevate her concerns to the Board. Instead, the Board members each gave Executive Director 2 personal advice about how to navigate her relationship with Board President 2. In or around January 2018, with Executive Director 2's consent, Board Members 2 and 3 formally brought Executive Director 2's concerns to the attention of the Board's Executive Committee. This elevation stemmed from the growing recognition that Executive Director 2's concerns were serious in nature and that they needed to be formally addressed.

Initially, Cozen O'Connor finds that Jofa's institutional response fell short with respect to Executive Director 2's concerns when multiple Board members elected not to elevate Executive Director 2's concerns to the Executive Committee after Executive Director 2 confided in several Board members individually. Cozen O'Connor finds that a number of factors contributed to this delay in elevating the concerns, including:

- 1) The nature of the concerns shared by Executive Director 2 were not readily identifiable as a form of sexual or gender-based harassment, and the manner of disclosure — spread out over more than a year, through informal conversations in informal settings, and to multiple different individuals — did not convey to these Board members the severity or cumulative impact of Board President 2's comments on Executive Director 2;

¹⁶ Cozen O'Connor notes that the 2023 lens is more finely calibrated than the 2018 lens as it relates to institutional responses to sexual harassment. In October 2017, the #MeToo movement grew to prominence and focused national attention on issues of sexual and gender-based harassment and violence. This movement had the effect of sparking changes to industry practices and responses, including in the area of non-disclosure agreements, which have continued to evolve over the past several years.

- 2) The nature of the interpersonal relationships between Executive Director 2 and members of the Board blurred the lines between personal and professional roles;
- 3) The nature of Board President 2's profession as a sex therapist and educator, which was relied upon as a professional resource by Jofa, impacted the lens through which Board members interpreted her comments;
- 4) Until October 2017, Executive Director 2 specifically requested that the Board members in whom she confided not take action or disclose the information she shared; and
- 5) Board members had insufficient training that might have more properly calibrated them to their fiduciary obligations, and there was no written sexual harassment policy that governed their actions.

Notwithstanding the initial delay, Cozen O'Connor finds that Jofa responded in an appropriate manner once the concerns raised by Executive Director 2 were formally reported to the Board's senior leadership. This response included engaging Investigating Counsel, a labor and employment lawyer, to conduct an external investigation into Executive Director 2's allegations shortly after the concerns were elevated. Investigating Counsel concluded that Executive Director 2's allegations regarding Board President 2's conduct, assuming all allegations to be true, did not rise to the level of creating an unlawful hostile work environment and therefore did not constitute sexual harassment. Based on the information presented to Investigating Counsel at the time (and the information known to Cozen O'Connor now, which is no different), Cozen O'Connor concurs with the ultimate conclusion reached by Investigating Counsel (i.e. that Board President 2's conduct did not rise to the level of sexual harassment under governing law).

At the same time, Jofa's response narrowly focused on whether the conduct constituted sexual or gender-based harassment, and did not fully grapple with whether certain aspects of Board President 2's conduct were professionally inappropriate and/or inconsistent with the ethos of a Jewish feminist organization. Such considerations may have entailed more robust efforts to address the human element of the impacts on Executive Director 2, rather than just the legal elements. This limited response reflected a missed opportunity to demonstrate care and set the tone for supporting Executive Director 2 moving forward.

With respect to Executive Director 2's assertion that she was retaliated against by being directed to maintain the confidentiality of Jofa's investigation, Cozen O'Connor does not find that directing an employee to maintain the confidentiality of a workplace investigation constituted retaliation where, as here, there were articulable and reasonable factors to do so. Title VII does not apply to Jofa given the size of the organization.

At the time of the reported conduct, Jofa did not have a written non-discrimination or sexual harassment policy, which could have clarified reporting options for Executive Director 2, reporting responsibilities for Board members, and identification and recognition of conduct that might have constituted sexual or gender-based harassment under such a policy.¹⁷

¹⁷ In April 2018, New York State passed a law requiring all employers within the state, regardless of size, to adopt a model sexual harassment prevention policy promulgated by the Department of Labor (DOL) or establish a sexual harassment prevention policy and training program that meets or exceeds the minimum standards set forth by the DOL model policy. N.Y. LAB. LAW § 201-g (2018). Notably, most of the conduct alleged here would not fit within the

3. Non-disclosure Agreements

As it relates to the use of non-disclosure agreements, which both Executive Directors 1 and 2 signed voluntarily, Cozen O'Connor does not find their use, as part of written and negotiated separation agreements, to have been inappropriate or unlawful based on the prevailing legal standards in 2014 and 2018. Notably, the use of non-disclosure agreements in settlement agreements was a standard practice in 2014 and 2018, and is still generally permitted today even though it is more expressly disfavored now.¹⁸ Cozen O'Connor did not find any evidence that either Executive Director 1 or 2 was pressured to accept her non-disclosure agreement. Further, Executive Director 1's separation agreement was wholly unrelated to any articulated concerns of sexual harassment, and Executive Director 2's separation agreement was part of a broader separation of employment, rather than a narrow resolution of a claim involving sexual harassment. Even recognizing and accepting that the use of non-disclosure agreements in the context of sexual harassment can have a chilling effect and preclude individuals from speaking freely about their experiences, as noted above, Jofa subsequently publicly released both Executive Director 1 and 2, as well as all former employees, from their non-disclosure agreements and has committed to not using them as a standard part of separation agreements (in any context) moving forward. This action is consistent with the national shift in industry standards related to non-disclosure agreements over the past five years, and Jofa's determination to release all former employees from non-disclosure agreements is in keeping with Jofa's efforts to remain aligned with both its institutional values and current law.

IV. Other Observations and Recommendations

In the fall of 2018, Jofa implemented an [Equal Employment Opportunity and Anti-Harassment Policy](#). Jofa also provided mandatory training regarding sexual harassment to all Board members. The current policy requires that, "Any individual who believes that he or she has witnessed or has been subjected to conduct that may violate Jofa's policy (by an employee or non-employee of Jofa) is required to report the conduct to the Executive Director or any officer of the Organization." However, this requirement was not explicitly captured in writing during the time Executive Director 2 confided in various Board members.

Jofa Board members received sexual harassment training in August 2019 and March 2022. Cozen O'Connor reviewed the training content, which specifically addressed how to identify discrimination, harassment, bullying and retaliation, as well as employee and Board reporting responsibilities regarding the same.

As noted above, no additional concerns about sexual or gender-based harassment came to light during our review. Current Jofa employees and Board members described respectful, collaborative, and

examples of sexual harassment under New York's subsequently promulgated model policy. <https://www.ny.gov/sites/default/files/atoms/files/SexualHarassmentPreventionModelPolicy.pdf>

¹⁸ On July 11, 2018, New York State banned the use of non-disclosure agreements in relation to sexual harassment claims, unless the complainant prefers such an agreement. N.Y. GEN. OBLIG. LAW §5-336 (2018). Under this law, while the employer cannot require a complainant to include a non-disclosure agreement in any settlement agreement, the law permits their use when the preference of the complainant is memorialized in an agreement signed by all parties (with designated time frames for review and reflection).

professional working relationships. They described an improved flow of communications between the current executive director and the Board, with appropriate guidelines delineating operational and fiduciary responsibilities.

Nonetheless, in an abundance of caution, Cozen O'Connor makes the following recommendations:

- Ensure that all Board members receive orientation and onboarding, as well as periodic refreshers, regarding principles of Board governance, operational and fiduciary responsibilities, and maintenance of professional boundaries in the context of interconnected personal relationships.
- Consider reviewing by-laws to provide for more consistent rotation of members of the Executive Committee, rather than maintaining static, long-term membership. Jofa may also consider implementing Board term limits to encourage the infusion of new voices, perspectives, and ideas.
- Consistent with New York State law, provide sexual harassment prevention training to all employees – and Board members – on an annual basis.
- In light of rapidly evolving New York State and federal law, commit to conducting an annual review of written policies and procedures.

V. Conclusion

Cozen O'Connor recognizes that the issues under review here have caused great pain to many individuals, including Executive Directors 1 and 2, Board President 2, and other current and former Jofa employees and Board members. Cozen O'Connor also recognizes Jofa's unusual step to conduct a review of this nature and to release a public report highlighting generally private personnel matters. The issues discussed in this report, however, are central to Jofa's institutional mission and commitment to feminism, and public disclosure of these issues is important step to reinforcing candor and trust.

Cozen O'Connor is neither an apologist nor an advocate for Jofa – Cozen O'Connor's role was, and remains, to serve as neutral and impartial external investigators. However, Jofa's willingness to take a clear-eyed view of the facts, to release the report publicly, and to be open to learning how to strengthen their understanding of the issues, their policies, and their practices moving forward all reflect a deep commitment to integrity, to their community, and to their core mission. Cozen O'Connor is grateful to the members of the subcommittee who patiently, and with a steady hand, permitted the time and grace to complete this investigation while upholding the integrity of both the process and the findings in this matter.