

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

PB-1-DOE,

Plaintiff,

vs.

SUMMONS

Index No.:

THE DIOCESE OF BUFFALO, N.Y. A/K/A
DIOCESE OF BUFFALO, ST. MARY OF
SORROWS CHURCH, ST. MARY OF
SORROWS SCHOOL, and BISHOP FALLON
HIGH SCHOOL,

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

This action is brought in the County of Erie on the basis of the Plaintiff's residence.

Dated: New York, New York
August 14, 2019

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Yours, etc



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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-1-DOE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>THE DIOCESE OF BUFFALO, N.Y. A/K/A DIOCESE OF BUFFALO, ST. MARY OF SORROWS CHURCH, ST. MARY OF SORROWS SCHOOL, and BISHOP FALLON HIGH SCHOOL,</p> <p style="text-align: center;">Defendants.</p>

COMPLAINT

Index No.:

PB-1-Doe, a victim of childhood sexual abuse, by and through his undersigned attorneys, as and for his Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Plaintiff "PB-1-Doe" was repeatedly sexually abused and assaulted while a student at Defendant St. Mary of Sorrows School and Defendant Bishop Fallon High School. Both of these Defendants are Roman Catholic schools that were under the authority of the Defendant Diocese of Buffalo ("Diocese"). Plaintiff's abusers included teachers and priests who were hired, retained, supervised, placed, directed and otherwise authorized to act by the Diocese.
3. The abuse of Plaintiff took place of over many years, beginning when Plaintiff was about 10 or 11 years old.
4. The Roman Catholic Church, and the Defendants specifically, have long known that substantial numbers of priests throughout history, and up to and including the present day,

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violate their vows or promises of celibacy and otherwise misbehave by soliciting sexual contact with parishioners and others, in particular with children like Plaintiff, who are entrusted to their spiritual care and guidance. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to Defendants.

5. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendants negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse, permitted the abuse to occur, failed to supervise, failed to timely investigate misconduct, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for the repeated sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

JURISDICTION AND VENUE

6. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 in that the Defendants reside in New York.

7. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

8. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that Defendant Diocese resides in this County.

PARTIES

9. Plaintiff is an individual residing in Erie County, New York.

10. Plaintiff's date of birth is [REDACTED] 1957.

11. Defendant The Diocese of Buffalo ("Diocese") is a not for profit corporation with a principal place of business located at 795 Main Street, Buffalo, NY.

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12. At all relevant times the Diocese oversaw, managed, controlled, directed and operated parishes, churches and schools for minor children within the Diocese.

13. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and operated Defendant St. Mary of Sorrows Church and Defendant St. Mary of Sorrows School, a Roman Catholic elementary school then located at 30 Rich Street, Buffalo, NY.

14. At all relevant times, Defendant Diocese owned the premises where Defendant St. Mary of Sorrows Church and Defendant St. Mary of Sorrows School were located.

15. At all relevant times, Defendant Diocese oversaw, managed controlled, directed and operated Defendant Bishop Fallon High School, a Roman Catholic high school located in Buffalo, NY.

16. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and assigned priests and lay teachers to work in parishes, churches and schools that were under the authority of the Diocese, including Defendants St. Mary of Sorrows Church, St. Mary of Sorrows School and Bishop Fallon High School.

FACTUAL ALLEGATIONS

17. Plaintiff repeats and each and every allegation set forth above as if fully set forth herein.

18. From approximately 1963 through 1973, Plaintiff attended Defendant St. Mary of Sorrows School.

19. At all relevant times, Fr. Joseph Franklin Tuchols ("Fr. Tuchols") was a Roman Catholic priest employed by Defendant Diocese and assigned to Defendants St. Mary of Sorrows Church and St. Mary of Sorrows School.

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20. At all relevant times, Fr. Tuchols was under the direct supervision and control of the Defendant Diocese and Defendants St. Mary of Sorrows Church and St. Mary of Sorrows School. His assigned duties included, *inter alia*, serving as assistant priest under the then pastor, Fr. Welker. His duties also included interacting with, mentoring and counseling children.

21. At all relevant times, Fr. Paul Nogaro (“Fr. Nogaro”) was a Roman Catholic priest employed by Defendant Diocese and assigned to Defendants St. Mary of Sorrows Church and/or St Mary of Sorrows School.

22. At all relevant times, Fr. Nogaro was under the direct supervision and control of Defendant Diocese and Defendants St. Mary of Sorrows Church and St. Mary of Sorrows School. His assigned duties included, *inter alia*, preparing boys in the parish for the Sacrament of Confirmation, and assisting the then pastor, Fr. Paul Durkin. His duties also included interacting with, mentoring and counseling children.

23. At all relevant times, a Roman Catholic priest known to Plaintiff as “Fr. Mike” was employed by Defendant Diocese and assigned to Defendant St. Mary of Sorrows Church and/or St Mary of Sorrows School.

24. At all relevant times, Fr. Mike was under the direct supervision and control of Defendant Diocese and Defendants St. Mary of Sorrows Church and School. He was assigned, *inter alia*, to coach wrestling, and otherwise interacted with, mentored and counseled children.

25. At all relevant times, Fr. Peter Popadick (“Fr. Popadick”) was a Roman Catholic priest employed by Defendant Diocese and assigned to Defendant Bishop Fallon High School.

26. At all relevant times, Fr. Popadick was under the direct supervision and control of Defendant Diocese and Defendant Bishop Fallon High School. His assigned duties included,

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inter alia, teaching Afro-American studies and coaching tennis, and otherwise interacting with, mentoring and counseling minor boys.

27. At all relevant times, Defendants authorized Fr. Tuchols, Fr. Nogaro, Fr. Mike and Fr. Popadick, to be alone with children, including Plaintiff, and to have unfettered and unsupervised access to them.

28. Defendants authorized Fr. Tucholz, Fr. Nogaro, Fr. Mike and Fr. Popadick to have physical contact with minors, in a manner consistent with providing discipline, counseling, educational and spiritual guidance, and leadership.

29. Defendants required students, like Plaintiff, to accept discipline and instruction from clergy and teachers, including Fr. Tuchols, Fr. Nogaro, Fr. Mike and Fr. Popadick, and to obey their orders.

30. Plaintiff was raised as a Catholic, and at all relevant times had developed a reverence, respect and/or fear of the Catholic Church and its clergy.

31. In or about 1972-1973, when Plaintiff was the captain of his wrestling team, Fr. Mike engaged in unpermitted, forcible and harmful sexual contact with Plaintiff. This sexual abuse, which was repeated, took place in the basement of Defendant St. Mary of Sorrows School.

32. In or about 1972-1973, when plaintiff was in the eighth grade, and preparing for Confirmation, Fr. Nogaro engaged in unpermitted, forcible and harmful sexual contact with Plaintiff.

33. In or about 1973-1974, Fr. Tuchols plied him with pills and alcohol, and engaged in unpermitted, forcible and harmful sexual contact with Plaintiff. This sexual abuse took place

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in the rectory of Defendant St. Mary of Sorrows Church and in other churches and locations operated by the Diocese, and continued until after Plaintiff turned 18.

34. In or about 1973-1974, Fr. Popadick engaged in unpermitted, forcible and harmful sexual contact with Plaintiff. This abuse, which was repeated, took place on the premises of Bishop Fallon High School, in the gym showers after tennis practice.

35. In addition to the foregoing sexual abuse by several priests, Plaintiff was subjected to sexual molestation by lay teachers under the direction, supervision and control of Defendant Diocese and Defendants St. Mary of Sorrows Church and St. Mary of Sorrows School. These offending lay teachers included Thomas Krachowiak, who molested Plaintiff when he was about 10-11 years old, and Mr. Anderson, Plaintiff's seventh and eighth grade teacher, who repeatedly took Plaintiff to his home near St. Mary of Sorrows School, and molested him.

36. Plaintiff's relationship to Defendants as a vulnerable child and student, and the culture of the Catholic Church, which Defendants endorsed, put pressure on Plaintiff not to report the sexual molestation and abuse he endured at the hands of clergy and lay teachers in Defendants' employ.

37. Defendants knew or should have known that the aforementioned priests and lay teachers were dangers to minor boys like Plaintiff, before the sexual abuse of Plaintiff occurred.

38. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to the abuse of Plaintiff, and communicated as much with all levels of Church hierarchy including bishops and other Diocesan leaders. As such, at all relevant times, Defendants were well aware that errant sexual behavior by some priests was not only widespread but predictable.

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39. Upon information and belief, not only was Defendant Diocese aware of sexual abuse of children, but it participated in covering up such heinous acts by moving errant priests and clergy members from assignment to assignment, thereby putting children in harm's way.

40. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risks their facilities posed to minor children, the risk of abuse in general, and the risks that Fr. Tuchols, Fr. Mike, Father Nogaro and Fr. Popadick posed to Plaintiff.

41. Prior to the time of Plaintiff's abuse Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Archdiocese and elsewhere in the Roman Catholic Church, and knew that there was a specific danger of child sex abuse for children in their institutions and programs.

42. The sexual abuse of Plaintiff described above was foreseeable.

43. Prior to the time of Plaintiff's abuse by each of the above-described priests and lay teachers, Defendants knew or should have known of acts of child sexual abuse by these individuals.

44. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to St. Mary of Sorrows and Bishop Fallon High School; they undertook custody of minor children, including Plaintiff; they promoted their facilities and programs as being safe for children, they held out their agents, including the priests and lay teachers described herein, as safe to work with and around minors, they encouraged parents and children to spend time with their agents; and/or authorized their agents, including the priests and lay teachers described herein, to spend time with, interact with, and recruit children.

45. Defendants owed Plaintiff a heightened, fiduciary duty of care because they held themselves out as being able to provide a safe and secure environment for children, including

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Plaintiff; Plaintiff's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect himself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

46. Defendants owed Plaintiff a duty to protect him from harm because Defendant's acts and omissions created a foreseeable risk of harm to Plaintiff.

47. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, psychological injuries, fear and anxiety; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and continues to suffer loss of spirituality; has suffered and will continue to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses for medical and psychological treatment, and was otherwise damaged.

COUNT I

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

48. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

49. At all relevant times Defendants had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of its priests and lay teachers, including Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and Mr. Anderson, so as to protect minor children, including Plaintiff, who were likely to come into contact with, and/or under the influence or supervision of these individuals, and to ensure that

these individuals did not use their assigned positions to injure minors by sexual assault, contact or abuse.

50. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and Mr. Anderson, failed to properly investigate their backgrounds and employment history, and/or hired, appointed and/or assigned them to St. Mary of Sorrows Church and School and Bishop Fallon High School, when Defendants knew or should have known of facts that would make them a danger to children; and Defendants were otherwise negligent.

51. Defendants were negligent and did not use reasonable care in their supervision and direction of Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and Mr. Anderson, failed to monitor their activities, failed to oversee the manner in which they carried out the duties to which Defendants assigned them, even though they knew or should have known that these individuals posed a threat of sexual abuse to minors; allowed the misconduct described above to occur and continue; failed to investigate these priests' and lay teachers' dangerous activities and remove them from their premises; and Defendants were otherwise negligent.

52. Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and Mr. Anderson would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of these employees.

53. At all relevant times, the aforementioned priests and lay teachers acted in the course and scope of their employment with Defendants.

54. Defendants' aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

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55. Plaintiff suffered grave injury as a result of the foregoing sexual abuse and misconduct, including physical, psychological and emotional injury as described above.

56. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

COUNT II

NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT

57. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

58. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that clergy and lay teachers working in the Diocese, including Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and Mr. Anderson, did not pose a risk and/or that they did not have a history of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

59. Defendants knew or should have known this representation was false and that employing Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and Mr. Anderson and giving them unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

60. Defendant Diocese maintained a policy and practice of covering up criminal activity committed by clergy members within the Diocese.

61. Over the decades, this “cover-up” policy and practice of the Diocese resulted in the sexual assault of untold numbers of children, and put numerous other children at risk of sexual assault.

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62. Defendants failed to report multiple allegations of sexual abuse by their employees, agents and representatives, to the proper authorities, thereby putting children at risk of sexual assault.

63. Upon information and belief, Defendants covered up acts of abuse by Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and/or Mr. Anderson and concealed facts concerning their sexual misconduct from Plaintiff and his family.

64. By failing to disclose the identities, histories and information about sexually abusive clergy in their employ, Defendants unreasonably deprived the families of children entrusted to their care, including Plaintiff, of the ability to protect their children.

65. Defendants failed to warn Plaintiff and his parents that Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and Mr. Anderson posed a risk of child sexual assault.

66. The conduct of Defendants as described herein was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children, and to the fact that Defendants were knowingly subjecting children in their charge, including Plaintiff, to sexual crimes.

67. Defendants' aforesaid actions were negligent, reckless, willful and wonton in their disregard for the rights and safety of children, including Plaintiff.

68. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

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69. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

COUNT III

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

70. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

71. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

72. Defendants' aforesaid negligent, grossly negligent and reckless misconduct endangered Plaintiff's safety and caused him to fear for his own safety.

73. Defendants knew or disregarded the substantial probability that Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and/or Mr. Anderson would cause severe emotional distress to Plaintiff.

74. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

75. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT IV

PREMISES LIABILITY

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76. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

77. At all relevant times, Defendants owned, operated, and /or controlled the premises known as St. Mary of Sorrows Church, St. Mary of Sorrows School, and Bishop Fallon High School, including the areas where the sexual abuse of Plaintiff occurred.

78. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

79. Defendants had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by students, like Plaintiff, whose presence was reasonably anticipated.

80. Defendants willfully, recklessly, and negligently failed to provide a reasonably safe premises that were free from the presence of sexual predators and/or the assault by the occupants of the premises, including Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and Mr. Anderson. Defendants thereby breached their duty of care of Plaintiff.

81. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

82. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT V

BREACH OF FIDUCIARY DUTY

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83. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

84. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendants. The entrustment of Plaintiff to the care and supervision of the Defendants while Plaintiff was a vulnerable child, imposed upon Defendants a fiduciary duty to act in the best interests of Plaintiff.

85. Defendants were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

86. By reason of the foregoing, Defendants breached their fiduciary duties to Plaintiff.

87. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

88. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT VI

BREACH OF DUTY IN LOCO PARENTIS

89. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

90. At all relevant times, Plaintiff was a vulnerable child entrusted to Defendants' care, and was under the supervision and control of Defendants, such that Defendants owed him a duty to act *in loco parentis* and to prevent foreseeable injuries.

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91. By reason of the foregoing, Defendants breached their duties to act *in loco parentis*.

92. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

93. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT VII

BREACH OF STATUTORY DUTIES TO REPORT

94. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

95. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

96. Defendants breached their statutory duty by failing to report reasonable suspicion of abuse by Fr. Tuchols, Fr. Mike, Fr. Nogaro, Fr., Popadick, Thomas Krachowiak and/or Mr. Anderson of children in their care.

97. As a direct and proximate result of Defendants' foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

98. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

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WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for his injuries, in an amount to be determined at trial;
- b. Awarding Plaintiff punitive damages for his injuries, in an amount to be determined at trial;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;
- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

99. Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: New York, New York
August 14, 2019

Yours, etc.,



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