

STATE OF NEW YORK

SUPREME COURT

COUNTY OF ERIE

ROBERT D. PLANTER
171 Streif Road
Elma, New York 14059

and

JANICE M. PLANTER
171 Streif Road
Elma, New York 14059

Plaintiffs

vs.

SUMMONS

PASCAL D. IPOLITO
303 Meyer Road, Apt. 704
West Seneca, New York 14224

and

DIOCESE OF BUFFALO, NEW YORK
795 Main Street
Buffalo, New York 14203

Defendants

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action, and to serve a copy of your Answer, or, if the Complaint is not served with a Summons, to serve a Notice of Appearance on Plaintiffs' attorney within 20 days after the service of this Summons, exclusive of the day of service, or within 30 days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Erie County is designated as the place of trial on the basis of the residence of the Plaintiffs.

Dated: August 14, 2019
Williamsville, New York



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STATE OF NEW YORK

SUPREME COURT COUNTY OF ERIE

ROBERT D. PLANTER and
JANICE M. PLANTER

Plaintiffs

vs.

COMPLAINT

PASCAL D. IPOLITO and
DIOCESE OF BUFFALO, NEW YORK

Defendants

The plaintiffs in the above-entitled action, by their attorneys, Law Office of Eric B. Grossman, as and for their complaint against the defendants herein state as follows:

AS AND FOR A FIRST CAUSE OF ACTION ON
BEHALF OF THE PLAINTIFF, ROBERT D. PLANTER

1. That at all the times hereinafter mentioned, the plaintiffs were and presently are residents of the Town of Elma, County of Erie and State of New York.

2. That, upon information and belief, at all the times hereinafter mentioned, the defendant, Pascal D. Ipolito (hereinafter referred to as "Ipolito") was and presently is a resident of the Town of West Seneca, County of Erie and State of New York.

3. That, upon information and belief, at all the times hereinafter mentioned, the defendant, Diocese of Buffalo, New York (hereafter referred to as "Diocese"), was and presently is a not-for-profit domestic corporation organized and existing pursuant to the Laws of the State of New York, with an office for the transaction of business situate at 795 Main Street in the City of Buffalo, County of Erie and State of New York.

4. That the within action is being commenced pursuant to the provisions of the recently-enacted Child Victims Act, in accordance with CPLR Sections 208(b) and 214(g).

5. That the said plaintiff was born in 1958 and was under eighteen (18) years of age at all times relevant herein.

6. That at all the times hereinafter mentioned, the defendant, Diocese, hired, retained, employed and assigned the defendant, Ipolito, to serve as a priest, pastor and/or member of the clergy of the defendant, Diocese, primarily serving at Annunciation Roman Catholic Church, situate in the Town of Elma, County of Erie and State of New York.

7. That in addition to the services on behalf of the Diocese hereinabove referenced, the defendant, Ipolito, was also hired, employed and/or retained for the purpose of providing guidance, mentoring, counseling and developing rapport with parishioners, students, boys and young men, including, but not limited to the plaintiff.

8. That in addition to the foregoing, the defendant, Diocese, also hired, retained and employed the defendant, Ipolito, for the purpose of establishing and developing said defendant's Catholic Youth Organization (hereinafter referred to "CYO"), requiring and/or strongly encouraging the defendant, Ipolito, to further interact with students and children within the Elma Community and the Annunciation Roman Catholic Church.

9. That the defendant, Diocese, in the employment, retention and hiring of the defendant, Ipolito, fully expected the said defendant to interact with students,

boys and children within the parish, to be alone with minor parishioners, including the plaintiff, and to have unfettered and unsupervised access and control of them, as the defendant, Ipolito, was held out, falsely so, to be a nurturing and supportive priest and pastor within the community and local parish.

10. That upon information and belief, the defendant, Ipolito, in furtherance of the duties required by the defendant, Diocese, reached out to close family member and friends within the local parish and community to encourage support and access to young boys, including but not limited to the plaintiff.

11. That prior to the events and occurrences more fully set forth herein, the defendant, Ipolito, under the direction and/or control of the defendant, Diocese, had occasion to transport the said plaintiff and other boys in a camper for a week-long outing, without any direction or control from other adults.

12. That during the aforesaid camping outing that took place in the vicinity of the Thousand Islands in New York State, the defendant, Ipolito, furnished and supplied alcohol to the said plaintiff and others in his company, with full knowledge that plaintiff and the others were all minors under the age of eighteen (18) years, and in so doing, was unlawfully dealing with minor children, contrary to the Penal Law of the State of New York and was "grooming" them to gain their confidence and trust.

13. That the defendant, Ipolito, in supplying and furnishing alcohol to the said plaintiff and others, had begun the process of gaining the trust of the plaintiff and others, in an attempt to secure their cooperation and assistance with future

events or outings, all with the actual and/or constructive knowledge and notice of the defendant, Diocese.

14. That heretofore and on or about the 30th day of August, 1975, while in the Town of Elma, New York the defendant, Ipolito, conferred with the plaintiff, then only seventeen 17 years of age, and made plans to drive the plaintiff in said defendant's vehicle to Toronto, Ontario, Canada for the weekend, with the express purpose of taking the plaintiff to see the Beach Boys perform at Toronto's CNE Grand Stand.

15. That in addition to his plans to drive to Toronto and attend the concert with the plaintiff, the said defendant also made arrangements for hotel accommodations at the Sheridan Airport Hotel, located in or near Toronto.

16. That during the course of August 30, 1975 and August 31, 1975, the said defendant, while acting under the direction and control of the defendant, Diocese, as its priest and pastor, furnished and supplied whiskey and more particularly, whiskey sours, to the said plaintiff for the purpose of getting the said plaintiff intoxicated, thereby rendering the said plaintiff sleepy, groggy, incoherent and generally unaware of his surroundings and sound judgment and in a position to frequently pass out and lose consciousness during the course of the consumption of whiskey sours provided to him by the defendant, Ipolito.

17. That, upon information and belief, at all the times hereinabove mentioned, the defendant, Ipolito, knowingly and deliberately opted to unlawfully deal with a minor with the hope and desire to cause the said plaintiff to lose consciousness and awareness of his surroundings, for the ultimate objective of

conducting premeditated and unauthorized sexual abuse against the plaintiff, which the said plaintiff neither consented to nor was legally able to do.

18. That on or about August 30, 1975 and/or August 31, 1975, the plaintiff was caused to repeatedly pass out and lose consciousness as a result of the consumption of large quantities of whiskey furnished by the defendant, Ipolito, and during the short period of time in which the plaintiff eventually became conscious and aware of his surroundings, the said plaintiff found the defendant, Ipolito, on top of him, naked and engaging in unlawful and unconsented sexually deviant behavior, lewd and lascivious conduct and sexual molestation.

19. That the aforesaid bodily conduct and contact constituted, among other things, a violation of the Penal Law of the State of New York, as such unilateral action was performed neither with the express consent of the plaintiff nor the implied consent, since the plaintiff was not in a position of consenting to the sexual abuse and lewd and lascivious conduct he endured at the hands of the said defendant.

20. That the harmful, offensive and deeply disturbing conduct performed by the said defendant, Ipolito, constituted a battery.

21. That the defendant, Diocese, knew or should have known of the defendant, Ipolito's prior history and reputation of perverted sexual inclination, sexual molestation and sexual abuse against children yet the defendant, Diocese, failed to disavow, halt, cease, control, deter and isolate the defendant, Ipolito and failed to report his crimes to police and/or authorities and accordingly, is responsible for his actions under the theory of *respondet superior*.

22. That the said plaintiff sustained physical, psychological and/or other injuries or conditions suffered as a result of conduct that would constitute a "sexual offense" as defined in the Penal Law of the State of New York and as more fully set forth in Section 214(g) of the Civil Practice Law and Rules.

23. That the defendant, Diocese, while facing an onslaught of past and likely future claims involving allegations of sexual abuse against children, opted to establish the Independent Reconciliation and Compensation Program (hereinafter referred to as "I.R.C.P.") for the purpose of attempting to ascertain the validity and credibility of such claims.

24. That the said plaintiff, having recently been invited to participate in the I.R.C.P. process, submitted proof in compliance with his claim and furnished testimony and details to administrators and investigators retained by the defendant, Diocese, and/or affiliated with I.R.C.P., resulting in a finding by the I.R.C.P, its investigators and the defendant, Diocese, that plaintiff's claim has been substantiated, and resulting in the defendant, Diocese, tendering an offer of settlement, which offer has been rejected in all respects by the said plaintiff.

25. That by reason of the foregoing, the plaintiff, Robert D. Planter, was caused to become sick, sore, lame, disabled and subjected to significant psychological and emotional trauma and was prevented from attending to his usual duties and occupation, and was compelled to secure medical care and attention and may, in the future, be compelled to secure additional medical care and attention in an effort to heal his said injuries, all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF

26. That the plaintiffs repeat, reiterate and reallege each and every allegation contained and set forth in paragraphs marked and numbered "1" through "25", all inclusive, of this complaint with the same force and effect as though the same were more fully set forth herein.

27. That prior to, during and subsequent to the sexual abuse, battery and physical contact forced upon the said plaintiff by the defendant, Ipolito, the said plaintiff has been placed in and continues to feel an imminent sensation and/or apprehension of harmful and offensive conduct, including, but not limited to, having sustained further apprehension for imminent concern of further sexual contact and abuse.

28. That the said plaintiff sustained physical, psychological, emotional and other injuries as a direct and proximate result of the sexual abuse and predatory actions of the defendant, Ipolito, so as to cause the said plaintiff to have had fear and anxiety and continue to fear further harmful and offensive sexual contact as a result of being assaulted.

29. That the defendant, Diocese, knew or should have known of the defendant, Ipolito's prior history and reputation of being a sexual predator and engaging in sexual abuse of children, yet failed to act or intervene to stop such sexual abuse and contact and further, allowed defendant Ipolito's sexual predatory actions and sexual abuse of children and the plaintiff to continue unfettered and without any ramifications whatsoever and accordingly, the defendant, Diocese, bears responsibility under the theory of *respondeat superior*.

30. That by reason of the foregoing, the plaintiff, Robert D. Planter, was caused to become sick, sore, lame, disabled and subjected to significant physical, psychological and emotional trauma and other conditions and was prevented from attending to his usual duties and occupation, and was compelled to secure medical care and attention and may, in the future, be compelled to secure additional medical care and attention in an effort to heal his said injuries all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF

31. That the plaintiffs repeat, reiterate and reallege each and every allegation contained and set forth in paragraphs marked and numbered "1" through "30", all inclusive, of this complaint with the same force and effect as though the same were more fully set forth herein.

32. That the defendant, Ipolito, intentionally, wantonly, recklessly and willfully "groomed" the said plaintiff into a position of loyalty and trust, leading the said plaintiff to become vulnerable and capable of being placed in a compromised position, leading to the despicable acts of sexual abuse committed against a child.

33. That as a consequence of the misconduct, sexual abuse, and Penal Law violations committed against the said plaintiff, he was caused to sustain severe, emotional distress, including physical, psychological, and emotional harm, all flowing from defendant, Ipolito's willful, wanton, reckless and intentional conduct.

34. That prior to the sexual abuse which took place and during the earlier "grooming" process, the defendant, Ipolito, was acting under the course and scope of

his employment with the defendant, Diocese, and the defendant, Diocese, had prior actual or constructive knowledge and notice that the defendant, Ipolito, had previously engaged in such behavior and, accordingly, the defendants are liable for the intentional infliction of emotional distress, and the defendant, Diocese, is liable under the theory of *respondeat superior*.

35. That by reason of the foregoing, the plaintiff, Robert D. Planter, was caused to become sick, sore, lame, disabled and subjected to significant physical, psychological, emotional trauma and other conditions and was prevented from attending to his usual duties and occupation, and was compelled to secure medical care and attention and may, in the future, be compelled to secure additional medical care and attention in an effort to heal his said injuries all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF

36. That the plaintiffs repeat, reiterate and reallege each and every allegation contained and set forth in paragraphs marked and numbered "1" through "35", all inclusive, of this complaint with the same force and effect as though the same were more fully set forth herein.

37. That as a consequence of the "grooming" by the defendant, Ipolito of the plaintiff and his luring the said plaintiff into a compromising position, the said plaintiff was caused to sustain severe, physical, emotional, and psychological distress.

38. That the defendant, Diocese, carelessly and negligently allowed the pattern of sexual abuse committed by the defendant, Ipolito, to go unfettered and without consequence, despite prior actual and/or constructive knowledge and notice of defendant Ipolito's pattern of similar behavior and abuse and accordingly, the defendants are liable for the negligent infliction of emotional distress, committed against the said plaintiff.

39. That by reason of the foregoing, the plaintiff, Robert D. Planter, was caused to become sick, sore, lame, disabled and subjected to significant physical, psychological and emotional trauma and other conditions and was prevented from attending to his usual duties and occupation, and was compelled to secure medical care and attention and may, in the future, be compelled to secure additional medical care and attention in an effort to heal his said injuries all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FIFTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF

40. That the plaintiffs repeat, reiterate and reallege each and every allegation contained and set forth in paragraphs marked and numbered "1" through "39", all inclusive, of this complaint with the same force and effect as though the same were more fully set forth herein.

41. That at the time, defendant Ipolito was under consideration to be hired and/or retained as a pastor or priest for the defendant, Diocese, the defendant, Diocese, knew that Ipolito would serve as a spiritual counselor, role model and mentor for students, children and boys, including the said plaintiff, and defendant,

Diocese, owed a duty to the plaintiff, and others, that their safety and security would be of paramount concern and would be protected.

42. That at the time the defendant, Ipolito, was considered for employment within the Diocese, the defendant, Diocese, was careless and negligent in its hiring, supervising, directing and/or controlling the defendant, Ipolito, and as a result, failed to protect the plaintiff from conduct of a known sexual predator or someone with significant "red flags" in his background.

43. That prior to the sexual abuse and assault committed by the defendant, Ipolito, against the plaintiff, defendant, Diocese, had a duty to exercise due and reasonable care in the hiring, retention and appointment of clergy, including Ipolito, so as to prevent the likelihood of dangerous individuals, including molesters and sexual predators from being placed within the local parish and the community.

44. That, upon information and belief, the defendant, Diocese, was careless and negligent and failed to use reasonable care in the hiring of defendant, Ipolito, failed to properly investigate his background, employment history and references, and failed to take appropriate safeguards to protect the plaintiff, and others within the parish and community from the defendant, Ipolito, knowing or having reason to know of his prior history of sexual abuse, sexual abuse, misconduct and strong inclination to be surrounded by children and young boys without other adults present.

45. That the defendant, Diocese, was negligent in the hiring of the defendant, Ipolito, and as a result, exposed the plaintiff, and other children and boys

within the parish to deviate sexual behavior, lewd and lascivious conduct and the Diocese had or should have had knowledge and notice of the facts which would cause a reasonably prudent person to refuse to retain the defendant, Ipolito, working as a pastor, priest or mentor to young boys.

46. That had the defendant, Diocese, acted appropriately and proactively by refusing to hire and employ the defendant, Ipolito, to serve as a priest, pastor, mentor to boys within the parish, the plaintiff, in all likelihood, would not have been sexually abused by the defendant, Ipolito, and the said plaintiff would not have sustained physical, psychological and emotional injuries and other conditions as a result therefrom.

47. That by reason of the foregoing, the plaintiff, Robert D. Planter, was caused to become sick, sore, lame, disabled and subjected to significant physical, psychological and emotional trauma and was prevented from attending to his usual duties and occupation, and was compelled to secure medical care and attention and may, in the future, be compelled to secure additional medical care and attention in an effort to heal his said injuries all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SIXTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF

48. That the plaintiffs repeat, reiterate and reallege each and every allegation contained and set forth in paragraphs marked and numbered "1" through "47", all inclusive, of this complaint with the same force and effect as though the same were more fully set forth herein.

49. Upon information and belief, the defendant, Diocese, with full knowledge that the defendant, Ipolito, was previously involved in sexual abuse, criminal behavior and other sexual predatory behavior against children, opted to look the other way and disregard the health and safety of its students, parishioners and boys in the community, allowing such criminal conduct to fester and continue and to allow the defendant, Ipolito, to sexually abuse the plaintiff as more fully set forth herein.

50. Defendant Ipolito's sexually deviant behavior and conduct which was condoned by the Diocese constitutes intentional, reckless, willful and malicious conduct on the part of the defendants, warranting an award of punitive damages.

51. That by reason of the foregoing, the plaintiff, Robert D. Planter, was caused to become sick, sore, lame, disabled and subjected to significant physical, psychological and emotional trauma and other conditions and was prevented from attending to his usual duties and occupation, and was compelled to secure medical care and attention and may, in the future, be compelled to secure additional medical care and attention in an effort to heal his said injuries all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SEVENTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF, JANICE M. PLANTER

52. That the plaintiffs repeat, reiterate and reallege each and every allegation contained and set forth in paragraphs marked and numbered "1" through "51", all inclusive, of this complaint with the same force and effect as though the same were more fully set forth herein.

53. That at all the times hereinafter mentioned, Janice M. Planter, was and presently is the wife of the plaintiff, Robert D. Planter, and as such, was and still is entitled to his services, society and companionship and was, and still is compelled to provide for his medical care and attention and that by reason of the injuries and damages sustained by the plaintiff, Robert D. Planter, as aforesaid, the plaintiff, Janice M. Planter, was deprived of his services, society and companionship and was and will be compelled to pay for his medical care and attention, in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, the plaintiff, Robert D. Planter, demands judgment against the defendants, Ipolito and Diocese, upon his first, second, third, fourth, fifth and sixth causes of action hereinabove alleged in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction and the plaintiff, Janice M. Planter, demands judgment against the defendants, Ipolito and Diocese, on her cause of action hereinabove alleged in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with the costs and disbursements of this action to each of them.

Dated: August 14, 2019
Williamsville, New York



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