

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DUANE KEIFMAN
116 10th Avenue
North Tonawanda, New York 14120

Plaintiff,

vs.

DIOCESE OF BUFFALO
795 Main Street
Buffalo, New York 14207

ALL SAINTS ROMAN CATHOLIC CHURCH
AND SCHOOL
127 Chaddock Avenue
Buffalo, New York 14207

Defendants.

SUMMONS

Child Victims Act Proceeding
22 NYCRR 202.72

Index No.: 2019-_____

TO THE ABOVE-NAMED DEFENDANTS:

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

The trial of this action is to be held in the County of Erie based on the residence of the defendant.

DATED: Buffalo, New York
September 20, 2019

ANDREWS, BERNSTEIN, MARANTO & NICOTRA, PLLC

By: /s/ Robert J. Maranto, Jr.
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DUANE KEIFMAN
116 10th Avenue
North Tonawanda, New York 14120

Plaintiff,

vs.

DIOCESE OF BUFFALO
795 Main Street
Buffalo, New York 14207

ALL SAINTS ROMAN CATHOLIC CHURCH
AND SCHOOL
127 Chadduck Avenue
Buffalo, New York 14207

Defendants..

COMPLAINT

Child Victims Act Proceeding
22 NYCRR 202.72

Index No.: 2019-_____

The plaintiff, DUANE KEIFMAN, by his attorneys, ANDREWS, BERNSTEIN, MARANTO & NICOTRA, PLLC, for his complaint against the defendants, alleges as follows:

I. INTRODUCTION

1. Defendant DIOCESE OF BUFFALO knew for decades that its priests, clergy, teachers, school administrators, employees, and volunteers were using their positions within the Diocese to groom and to sexually abuse children. Despite that knowledge, defendant DIOCESE OF BUFFALO failed to take reasonable steps to protect children from being sexually abused and actively concealed the abuse.

2. Since 2018, following decades of denial and cover-up, defendant DIOCESE OF BUFFALO began releasing the names of priests who were accused of sexually abusing children. While defendant DIOCESE OF BUFFALO has listed at least 80 priests with substantiated claims of sexual abuse of a minor, it has been reported that there are well over a 100 clergy in the Diocese who have faced allegations of sexually abusing a child. Based on defendant DIOCESE OF

BUFFALO's wrongful conduct, a reasonable person could and would conclude that it knowingly and recklessly disregarded the abuse of children and chose to protect its reputation and wealth over those who deserved protection. The result is not surprising: for decades hundreds, if not thousands, of children were sexually abused by Catholic clergy and others who served the Diocese. The plaintiff in this lawsuit was one of the children who was sexually abused because of defendant DIOCESE OF BUFFALO's wrongful conduct.

II. PROCEEDING IN ACCORDANCE WITH CPLR 214-G AND 22 NYCRR 202.72

3. This complaint is filed pursuant to the Child Victims Act (CVA) 2019 Sess. Law News of N.Y. Ch. 11 (S. 2240), CPLR 214-G, and 22 NYCRR 202.72. The CVA opened a historic one-year one-time window for victims and survivors of childhood sexual abuse in the State of New York to pursue lapsed claims. The enactment of the CVA allows plaintiffs, for the first time in their lives, to pursue restorative justice in New York State.

III. PARTIES

4. Plaintiff DUANE KEIFMAN is an adult male who currently resides in North Tonawanda, New York.

5. Upon information and belief, defendant DIOCESE OF BUFFALO is currently a not-for-profit religious corporation organized under New York law with its principal office in Buffalo, New York.

6. Upon information and belief, at all relevant times, defendant DIOCESE OF BUFFALO conducted business as the "Diocese of Buffalo" and/or "Buffalo Diocese."

7. Upon information and belief, at all relevant times, defendant DIOCESE OF BUFFALO employed priests, teachers, school administrators, and others who served various Catholic institutions and families, including plaintiff DUANE KEIFMAN and his family.

8. Upon information and belief, Father James P. Hayes ("Father Hayes") was a priest

employed by defendant DIOCESE OF BUFFALO to serve Catholic families, including plaintiff DUANE KEIFMAN and his family. During the time Father Hayes was employed by defendant DIOCESE OF BUFFALO, he used his position as a priest to groom and to sexually abuse plaintiff DUANE KEIFMAN.

9. Upon information and belief, Father James E. Fitzgerald (“Father Fitzgerald”) was a priest employed by defendant DIOCESE OF BUFFALO to serve Catholic families, including plaintiff DUANE KEIFMAN and his family. During the time Father Fitzgerald was employed by defendant DIOCESE OF BUFFALO, he used his position as a priest to groom and to sexually abuse plaintiff DUANE KEIFMAN.

10. To the extent that defendant DIOCESE OF BUFFALO was a different entity, corporation, or organization during the period of time during which Father Hayes used his position as a priest to sexually abuse plaintiff DUANE KEIFMAN, such entity corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

11. To the extent that defendant DIOCESE OF BUFFALO was a different entity, corporation, or organization during the period of time during which Father Fitzgerald used his position as a priest to sexually abuse plaintiff DUANE KEIFMAN, such entity corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

12. To the extent that defendant DIOCESE OF BUFFALO is a successor to a different entity, corporation, or organization which existed during the period of time during which Father Hayes used his position as a priest to sexually abuse plaintiff DUANE KEIFMAN, such predecessor entity, corporation, or organization is here by on notice that it is intended to be a defendant in this lawsuit.

13. To the extent that defendant DIOCESE OF BUFFALO is a successor to a different entity, corporation, or organization which existed during the period of time during which Father

Fitzgerald used his position as a priest to sexually abuse plaintiff DUANE KEIFMAN, such predecessor entity, corporation, or organization is here by on notice that it is intended to be a defendant in this lawsuit.

14. All such Diocese-related entities, corporations, or organizations are collectively referred to herein as the “DIOCESE OF BUFFALO.”

15. Upon information and belief, at all relevant times, defendant ALL SAINTS ROMAN CATHOLIC CHURCH AND SCHOOL (“ALL SAINTS”) was a not-for-profit religious corporation organized under New York law and wholly owned, operated, and controlled by defendant DIOCESE OF BUFFALO.

16. Upon information and belief, at all relevant times, defendant ALL SAINTS is currently a not-for-profit religious corporation organized under New York law with its principal office in Buffalo, New York.

17. Upon information and belief, at all relevant times, defendant ALL SAINTS conducted business as “All Saints Roman Catholic Church,” “All Saints Roman Catholic Church and School,” “All Saints,” “All Saints Catholic Church,” “All Saints School,” or “All Saints Parish.”

18. Upon information and belief, defendant ALL SAINTS is a parish with a church and school located in Buffalo, New York.

19. Upon information and belief, Father James P. Hayes was a priest employed by defendant ALL SAINTS to serve Catholic families in its geographic jurisdiction, including plaintiff DUANE KEIFMAN and his family. During the time Father Hayes was employed by defendant ALL SAINTS, he used his position as a priest to groom and to sexually abuse plaintiff DUANE KEIFMAN.

20. Upon information and belief, Father James E. Fitzgerald was a priest employed by defendant ALL SAINTS to serve Catholic families in its geographic jurisdiction, including plaintiff DUANE KEIFMAN and his family. During the time Father Fitzgerald was employed by defendant ALL SAINTS, he used his position as a priest to groom and to sexually abuse plaintiff DUANE KEIFMAN.

21. To the extent that defendant ALL SAINTS was a different entity, corporation, or organization during the period of time during which Father Hayes used his position as a priest to sexually abuse plaintiff DUANE KEIFMAN, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

22. To the extent that defendant ALL SAINTS was a different entity, corporation, or organization during the period of time during which Father Fitzgerald used his position as a priest to sexually abuse plaintiff DUANE KEIFMAN, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

23. To the extent that defendant ALL SAINTS is a successor to a different entity, corporation, or organization which existed during the period of time during which Father Hayes used his position as a priest to sexually abuse plaintiff DUANE KEIFMAN, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

24. To the extent that defendant ALL SAINTS is a successor to a different entity, corporation, or organization which existed during the period of time during which Father Fitzgerald used his position as a priest to sexually abuse plaintiff DUANE KEIFMAN, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

25. All such All Saints-related entities, corporations, or organizations are collectively referred to herein as “ALL SAINTS.”

IV. VENUE

26. Venue is proper because defendant DIOCESE is a domestic corporation authorized to transact business in New York State with its principal office located in Erie County.

27. Venue is proper because Erie is the county in which a substantial part of the events or omissions giving rise to plaintiff DUANE KEIFMAN’s claim occurred.

28. Venue is proper because defendant ALL SAINTS is a domestic corporation authorized to transact business in New York State with its principal office located in Buffalo, New York.

V. STATEMENT OF FACTS AS TO PLAINTIFF DUANE KEIFMAN

29. Upon information and belief, at all relevant times, defendant DIOCESE OF BUFFALO was the owner of defendant ALL SAINTS and held itself out to the public as the owner of defendant ALL SAINTS.

30. Upon information and belief, at all relevant times, defendant DIOCESE OF BUFFALO its agents, servants, and employees managed, maintained, operated, and controlled defendant ALL SAINTS.

31. Upon information and belief, at all relevant times, defendant DIOCESE OF BUFFALO employed priests, school administrators, teachers, religious sisters, and/or others who served Catholic families at defendant ALL SAINTS, including plaintiff DUANE KEIFMAN and his family.

32. Upon information and belief, at all relevant times, defendant DIOCESE OF BUFFALO its agents, servants, and employees managed, maintained, operated and controlled

defendant ALL SAINTS, and held out to the public its agents, servants, and employees as those who managed, maintained, operated, and controlled defendant ALL SAINTS.

33. Upon information and belief, at all relevant times, defendant DIOCESE OF BUFFALO was responsible for hiring and staffing, and did the hiring and staffing for defendant ALL SAINTS.

34. Upon information and belief, at all relevant times, defendant DIOCESE OF BUFFALO was responsible for and did the recruitment and staffing of volunteers at defendant ALL SAINTS.

35. Upon information and belief, at all relevant times, defendant DIOCESE OF BUFFALO materially benefited from the operation of defendant ALL SAINTS, including the services of Father Hayes and the services of those who managed and supervised Father Hayes.

36. Upon information and belief, at all relevant times, defendant DIOCESE OF BUFFALO materially benefited from the operation of defendant ALL SAINTS, including the services of Father Fitzgerald and the services of those who managed and supervised Father Fitzgerald.

37. Upon information and belief, at all relevant times, defendant ALL SAINTS owned a parish, church, and school.

38. Upon information and belief, at all relevant times, defendant ALL SAINTS held itself out to the public as the owner of defendant ALL SAINTS.

39. Upon information and belief, at all relevant times, defendant ALL SAINTS employed priests, school administrators, teachers, religious sisters, and/or who served Catholic families including plaintiff DUANE KEIFMAN and his family.

40. Upon information and belief, at all relevant times, defendant ALL SAINTS, its agents, servants, and employees managed, maintained, operated, and controlled defendant ALL

SAINTS, and held out to the public its agents, servants and employees as those who managed, maintained, operated, and controlled defendant ALL SAINTS.

41. Upon information and belief, at all relevant times, defendant ALL SAINTS was responsible for and did the staffing and hiring at defendant ALL SAINTS.

42. Upon information and belief, at all relevant times, defendant ALL SAINTS was responsible for and did the recruitment and staffing of volunteers at defendant ALL SAINTS.

43. Upon information and belief, at all relevant times, defendant ALL SAINTS materially benefited from the operation of defendant ALL SAINTS, including the services of Father Hayes and the services of those who managed and supervised Father Hayes.

44. Upon information and belief, at all relevant times, defendant ALL SAINTS materially benefited from the operation of defendant ALL SAINTS, including the services of Father Fitzgerald and the services of those who managed and supervised Father Fitzgerald.

45. Upon information and belief, at all relevant times, Father Hayes was a priest of the defendant DIOCESE OF BUFFALO.

46. Upon information and belief, at all relevant times, Father Fitzgerald was a priest of the defendant DIOCESE OF BUFFALO.

47. Upon information and belief, at all relevant times, Father Hayes was on the staff of, acted as an agent of, and served as an employee of the defendant DIOCESE OF BUFFALO.

48. Upon information and belief, at all relevant times, Father Fitzgerald was on the staff of, acted as an agent of, and served as an employee of the defendant DIOCESE OF BUFFALO.

49. Upon information and belief, at all relevant times, Father Hayes was acting in the course and scope of his employment with the defendant DIOCESE OF BUFFALO.

50. Upon information and belief, at all relevant times, Father Fitzgerald was acting in the course and scope of his employment with the defendant DIOCESE OF BUFFALO.

51. Upon information and belief, at all relevant times, Father Hayes was employed by the defendant DIOCESES OF BUFFALO and assigned to defendant ALL SAINTS.

52. Upon information and belief, at all relevant times, Father Fitzgerald was employed by the defendant DIOCESES OF BUFFALO and assigned to defendant ALL SAINTS.

53. Upon information and belief, at all relevant times, Father Hayes was a priest of defendant ALL SAINTS.

54. Upon information and belief, at all relevant times, Father Fitzgerald was a priest of defendant ALL SAINTS.

55. Upon information and belief, at all relevant times, Father Hayes was on the staff of, was an agent of, and served as an employee of defendant ALL SAINTS.

56. Upon information and belief, at all relevant times, Father Fitzgerald was on the staff of, was an agent of, and served as an employee of defendant ALL SAINTS.

57. Upon information and belief, at all relevant times Father Hayes was acting in the course and scope of his employment with defendant ALL SAINTS.

58. Upon information and belief, at all relevant times Father Fitzgerald was acting in the course and scope of his employment with defendant ALL SAINTS.

59. Upon information and belief, at all relevant times, Father Hayes had an office on the premises of defendant ALL SAINTS.

60. Upon information and belief, at all relevant times, Father Fitzgerald had an office on the premises of defendant ALL SAINTS.

61. That when plaintiff DUANE KEIFMAN was a minor, he was a member of defendant DIOCESE OF BUFFALO and defendant ALLSAINTS, including when he was a parishioner.

62. At all relevant times, defendant DIOCESE OF BUFFALO and defendant ALL SAINTS, their agents, servants, and employees, held Father Hayes out to the public to plaintiff DUANE KEIFMAN, and to his parents, as their agent and employee.

63. At all relevant times, defendant DIOCESE OF BUFFALO and defendant ALL SAINTS, their agents, servants, and employees, held Father Fitzgerald out to the public to plaintiff DUANE KEIFMAN, and to his parents, as their agent and employee.

64. At all relevant times, defendant DIOCESE OF BUFFALO and defendant ALL SAINTS, their agents, servants, and employees, held Father Hayes out to the public, to plaintiff DUANE KEIFMAN, and to his parents, as having been vetted, screened, and approved by those defendants.

65. At all relevant times, defendant DIOCESE OF BUFFALO and defendant ALL SAINTS, their agents, servants, and employees, held Father Fitzgerald out to the public, to plaintiff DUANE KEIFMAN, and to his parents, as having been vetted, screened, and approved by those defendants.

66. At all relevant times, plaintiff DUANE KEIFMAN and his parents reasonably relied upon the acts and representations of defendant DIOCESE OF BUFFALO and defendant ALL SAINTS, their agents, servants, and employees, and reasonably believed that Father Hayes was an agent or employee of those defendants who was vetted, screened, and approved by those defendants.

67. At all relevant times, plaintiff DUANE KEIFMAN and his parents reasonably relied upon the acts and representations of defendant DIOCESE OF BUFFALO and defendant ALL SAINTS, their agents, servants, and employees, and reasonably believed that Father Fitzgerald was an agent or employee of those defendants who was vetted, screened, and approved by those defendants.

68. At all relevant times, plaintiff DUANE KEIFMAN and his parents trusted Father Hayes because defendant DIOCESE OF BUFFALO and defendant ALL SAINTS held him out as someone who was safe and could be trusted with the supervision, care, custody and control of Plaintiff DUANE KEIFMAN.

69. At all relevant times, plaintiff DUANE KEIFMAN and his parents trusted Father Fitzgerald because defendant DIOCESE OF BUFFALO and defendant ALL SAINTS held him out as someone who was safe and could be trusted with the supervision, care, custody and control of Plaintiff DUANE KEIFMAN.

70. At all relevant times, plaintiff DUANE KEIFMAN and his parents believed that defendant DIOCESE OF BUFFALO and defendant ALL SAINTS would exercise such care as would a parent of ordinary prudence in comparable circumstances when those defendants assumed supervision, care, custody, and control of plaintiff DUANE KEIFMAN.

71. When plaintiff DUANE KEIFMAN was a minor, Father Hayes sexually abused him.

72. When plaintiff DUANE KEIFMAN was a minor, Father Fitzgerald sexually abused him.

73. Plaintiff DUANE KEIFMAN was sexually abused by Father Hayes when plaintiff was approximately 10 to 11 years old.

74. Plaintiff DUANE KEIFMAN was sexually abused by Father Fitzgerald when plaintiff was approximately 10 to 11 years old.

75. Based on the representations of defendant DIOCESE OF BUFFALO and defendant ALL SAINTS that Father Hayes was safe and trustworthy, plaintiff DUANE KEIFMAN and his parents allowed plaintiff DUANE KEIFMAN to be under the supervision of, and in the care, custody, and control of, defendant DIOCESE OF BUFFALO and defendant ALL SAINTS,

including during the times when plaintiff DUANE KEIFMAN was sexually abused by Father Hayes.

76. Based on the representations of defendant DIOCESE OF BUFFALO and defendant ALL SAINTS that Father Fitzgerald was safe and trustworthy, plaintiff DUANE KEIFMAN and his parents allowed plaintiff DUANE KEIFMAN to be under the supervision of, and in the care, custody, and control of, defendant DIOCESE OF BUFFALO and defendant ALL SAINTS, including during the times when plaintiff DUANE KEIFMAN was sexually abused by Father Fitzgerald.

77. Based on the representations of defendant DIOCESE OF BUFFALO and defendant ALL SAINTS that Father Hayes was safe and trustworthy, plaintiff DUANE KEIFMAN and his parents allowed plaintiff to be under the supervision of, and in the care, custody and control of, Father Hayes, including during the times when plaintiff DUANE KEIFMAN was sexually abused by Father Hayes.

78. Based on the representations of defendant DIOCESE OF BUFFALO and defendant ALL SAINTS that Father Fitzgerald was safe and trustworthy, plaintiff DUANE KEIFMAN and his parents allowed plaintiff to be under the supervision of, and in the care, custody and control of, Father Fitzgerald, including during the times when plaintiff DUANE KEIFMAN was sexually abused by Father Fitzgerald.

79. Neither plaintiff DUANE KEIFMAN nor his parents would have allowed him to be under the supervision of, or in the care, custody, or control of, defendant DIOCESE OF BUFFALO, defendant ALL SAINTS, or Father Hayes if defendant DIOCESE OF BUFFALO or defendant ALL SAINTS had disclosed to plaintiff DUANE KEIFMAN or his parents that Father Hayes was not safe and was not trustworthy, and that he in fact posed a danger to plaintiff DUANE KEIFMAN in that Father Hayes was likely to sexually abuse plaintiff DUANE KEIFMAN.

80. Neither plaintiff DUANE KEIFMAN nor his parents would have allowed him to be under the supervision of, or in the care, custody, or control of, defendant DIOCESE OF BUFFALO, defendant ALL SAINTS, or Father Fitzgerald if defendant DIOCESE OF BUFFALO or defendant ALL SAINTS had disclosed to plaintiff DUANE KEIFMAN or his parents that Father Fitzgerald was not safe and was not trustworthy, and that he in fact posed a danger to plaintiff DUANE KEIFMAN in that Father Fitzgerald was likely to sexually abuse plaintiff DUANE KEIFMAN.

81. No parent of ordinary prudence in comparable circumstances would have allowed plaintiff DUANE KEIFMAN to be under the supervision of, or in the care, custody, or control of, defendant DIOCESE OF BUFFALO, defendant ALL SAINTS, or Father Hayes if defendant DIOCESE OF BUFFALO or defendant ALL SAINTS had disclosed to plaintiff DUANE KEIFMAN or his parents that Father Hayes was not safe and trustworthy, and that he in fact posed a danger to plaintiff DUANE KEIFMAN in that Father Hayes was likely to sexually abuse him.

82. No parent of ordinary prudence in comparable circumstances would have allowed plaintiff DUANE KEIFMAN to be under the supervision of, or in the care, custody, or control of, defendant DIOCESE OF BUFFALO, defendant ALL SAINTS, or Father Fitzgerald if defendant DIOCESE OF BUFFALO or defendant ALL SAINTS had disclosed to plaintiff DUANE KEIFMAN or his parents that Father Fitzgerald was not safe and trustworthy, and that he in fact posed a danger to plaintiff DUANE KEIFMAN in that Father Fitzgerald was likely to sexually abuse him.

83. From approximately 1978 through 1980, Father Hayes exploited the trust and authority vested in him by defendants DIOCESE OF BUFFALO and ALL SAINTS by grooming plaintiff DUANE KEIFMAN to gain his trust and to obtain control over him as part of Father Hayes's plan to sexually molest and abuse plaintiff and other children.

84. From approximately 1978 through 1980, Father Fitzgerald exploited the trust and authority vested in him by defendants DIOCESE OF BUFFALO and ALL SAINTS by grooming plaintiff DUANE KEIFMAN to gain his trust and to obtain control over him as part of Father Fitzgerald's plan to sexually molest and abuse plaintiff and other children.

85. Father Hayes used his position of trust and authority as a priest of defendant DIOCESE OF BUFFALO and of defendant ALL SAINTS to groom plaintiff DUANE KEIFMAN and to sexually abuse him multiple times, including when plaintiff DUANE KEIFMAN was under the supervision of, and in the care, custody, or control of, defendant DIOCESE OF BUFFALO, defendant ALL SAINTS, and Father Hayes.

86. Father Fitzgerald used his position of trust and authority as a priest of defendant DIOCESE OF BUFFALO and of defendant ALL SAINTS to groom plaintiff DUANE KEIFMAN and to sexually abuse him multiple times, including when plaintiff DUANE KEIFMAN was under the supervision of, and in the care, custody, or control of, defendant DIOCESE OF BUFFALO, defendant ALL SAINTS, and Father Fitzgerald.

87. At certain times, the sexual abuse of plaintiff DUANE KEIFMAN by Father Hayes occurred at defendant ALL SAINTS, including in the church sacristy, church rectory and in the church confessional.

88. At certain times, the sexual abuse of plaintiff DUANE KEIFMAN by Father Fitzgerald occurred at defendant ALL SAINTS, including in the church sacristy, church rectory and in the church confessional.

89. At certain times, Father Hayes's sexual abuse of plaintiff DUANE KEIFMAN occurred during activities that were sponsored by, or were a direct result of activities sponsored by, defendant DIOCESE OF BUFFALO and defendant ALL SAINTS, including during events at the church.

90. At certain times, Father Fitzgerald's sexual abuse of plaintiff DUANE KEIFMAN occurred during activities that were sponsored by, or were a direct result of activities sponsored by, defendant DIOCESE OF BUFFALO and defendant ALL SAINTS, including during events at the church.

91. Upon information and belief, prior to the times mentioned herein, Father Hayes was a known sexual abuser of children.

92. Upon information and belief, prior to the times mentioned herein, Father Fitzgerald was a known sexual abuser of children.

93. Upon information and belief, at all relevant times, defendants DIOCESE OF BUFFALO and ALL SAINTS knew or should have known that Father Hayes was a known sexual abuser of children.

94. Upon information and belief, at all relevant times, defendants DIOCESE OF BUFFALO and ALL SAINTS knew or should have known that Father Fitzgerald was a known sexual abuser of children.

95. Upon information and belief at all relevant times it was reasonably foreseeable to defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees that Father Hayes's sexual abuse of children would likely result in injury to others, including the sexual abuse of plaintiff DUANE KEIFMAN and other children by Father Hayes.

96. Upon information and belief at all relevant times it was reasonably foreseeable to defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees that Father Fitzgerald's sexual abuse of children would likely result in injury to others, including the sexual abuse of plaintiff DUANE KEIFMAN and other children by Father Fitzgerald.

97. Upon information and belief, at certain times between 1978 and 1980, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees knew or should

have known that Father Hayes was sexually abusing plaintiff DUANE KEIFMAN and other children at defendant ALL SAINTS and elsewhere.

98. Upon information and belief, at certain times between 1978 and 1980, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees knew or should have known that Father Fitzgerald was sexually abusing plaintiff DUANE KEIFMAN and other children at defendant ALL SAINTS and elsewhere.

99. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees knew or should have known that the sexual abuse by Father Hayes of plaintiff DUANE KEIFMAN was ongoing.

100. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees knew or should have known that the sexual abuse by Father Fitzgerald of plaintiff DUANE KEIFMAN was ongoing.

101. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, knew or should have known before and during Father Hayes's sexual abuse of plaintiff DUANE KEIFMAN that priests, school administrators, teachers, religious sisters, and/or other persons serving the defendants DIOCESE OF BUFFALO and ALL SAINTS had used their positions with those defendants to groom and to sexually abuse children.

102. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, knew or should have known before and during Father Fitzgerald's sexual abuse of plaintiff DUANE KEIFMAN that priests, school administrators, teachers, religious sisters, and/or other persons serving the defendants DIOCESE OF BUFFALO and ALL SAINTS had used their positions with those defendants to groom and to sexually abuse children.

103. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, knew or should have known before and during Father Hayes's sexual abuse of plaintiff DUANE KEIFMAN that such priests, school administrators, teachers, Religious sisters, and/or other persons could not be "cured" through treatment or counseling.

104. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, knew or should have known before and during Father Fitzgerald's sexual abuse of plaintiff DUANE KEIFMAN that such priests, school administrators, teachers, Religious sisters, and/or other persons could not be "cured" through treatment or counseling.

105. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS, their agents, servants, and employees, concealed the sexual abuse of children by Father Hayes in order to conceal their own bad acts in failing to protect children from him, to protect their reputation, and to prevent victims of such sexual abuse by him from coming forward during the extremely limited statute of limitations prior to the enactment of the CVA, despite knowing that Father Hayes would continue to molest children.

106. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS, their agents, servants, and employees, concealed the sexual abuse of children by Father Fitzgerald in order to conceal their own bad acts in failing to protect children from him, to protect their reputation, and to prevent victims of such sexual abuse by him from coming forward during the extremely limited statute of limitations prior to the enactment of the CVA, despite knowing that Father Fitzgerald would continue to molest children.

107. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, consciously and recklessly disregarded their

knowledge that Father Hayes would use his position with the defendants to sexually abuse children, including plaintiff DUANE KEIFMAN.

108. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, consciously and recklessly disregarded their knowledge that Father Fitzgerald would use his position with the defendants to sexually abuse children, including plaintiff DUANE KEIFMAN.

109. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, disregarded their knowledge that Father Hayes would use his position with them to sexually abuse children, including plaintiff DUANE KEIFMAN.

110. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, disregarded their knowledge that Father Fitzgerald would use his position with them to sexually abuse children, including plaintiff DUANE KEIFMAN.

111. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, acted in concert with each other or with Father Hayes to conceal the danger that Father Hayes posed to children, including plaintiff DUANE KEIFMAN, so that Father Hayes could continue serving them despite their knowledge of that danger.

112. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, acted in concert with each other or with Father Fitzgerald to conceal the danger that Father Fitzgerald posed to children, including plaintiff DUANE KEIFMAN, so that Father Fitzgerald could continue serving them despite their knowledge of that danger.

113. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, knew that their negligent, reckless, and outrageous conduct would inflict severe emotional and psychological distress, as well as personal physical injury, on others, including plaintiff DUANE KEIFMAN, and he did in fact suffer severe emotional and psychological distress and personal physical injury as a result of their wrongful conduct.

114. Upon information and belief, defendants DIOCESE OF BUFFALO and ALL SAINTS their agents, servants, and employees, concealed the sexual abuse of children by priests, school administrators, teachers, religious sisters, and/or others in order to conceal their own bad acts in failing to protect children from being abused, to protect their reputation and to prevent victims of such sexual abuse from coming forward during the extremely limited statute of limitations prior to the enactment of the CVA despite knowing that those priest, school administrators, teachers, religious sisters, and/or other persons would continue to molest children.

115. By reason of the wrongful acts of defendants DIOCESE OF BUFFALO and ALL SAINTS as detailed herein, plaintiff DUANE KEIFMAN sustained physical and psychological injuries, including but not limited to, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression. Anxiety, family turmoil and loss of faith, a sever shock to his nervous system, physical pain and mental anguish, and emotional and psychological damage, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature, and plaintiff DUANE KEIFMAN has and/or will become obligated to expend sums of money for treatment.

VI. CAUSES OF ACTION AS TO PLAINTIFF DUANE KEIFMAN

A. FIRST CAUSE OF ACTION- NEGLIGENCE

116. Plaintiff DUANE KEIFMANN repeats and re-alleges paragraphs “1” through

“115” of the complaint with the same force and effect as if each had been fully set forth herein.

117. The defendants DIOCESE OF BUFFALO and ALL SAINTS had a duty to take reasonable steps to protect plaintiff DUANE KEIFMAN, a child, from foreseeable harm when he was under their supervision and in their care, custody, and control.

118. The defendants DIOCESE OF BUFFALO and ALL SAINTS also had a duty to take reasonable steps to prevent Father Hayes from using the tasks, premises, and instrumentalities of his position with the defendants to target, groom, and sexually abuse children, including plaintiff DUANE KEIFMAN.

119. The defendants DIOCESE OF BUFFALO and ALL SAINTS also had a duty to take reasonable steps to prevent Father Fitzgerald from using the tasks, premises, and instrumentalities of his position with the defendants to target, groom, and sexually abuse children, including plaintiff DUANE KEIFMAN.

120. The defendants DIOCESE OF BUFFALO and ALL SAINTS were supervising plaintiff DUANE KEIFMAN, and had care, custody, and control of plaintiff DUANE KEIFMAN, when he was a parishioner and at other times, during which time those defendants had a duty to take reasonable steps to protect him.

121. These circumstances created a special relationship between defendant DIOCESE OF BUFFALO and plaintiff DUANE KEIFMAN, and between defendant ALL SAINTS and plaintiff DUANE KEIFMAN, which imposed on each of those defendants a duty to exercise the degree of care of a parent of ordinary prudence in comparable circumstances.

122. The defendants DIOCESE OF BUFFALO and ALL SAINTS breached each of the foregoing duties by failing to exercise reasonable care to prevent Father Hayes from harming plaintiff DUANE KEIFMAN, including sexually abusing him.

123. The defendants DIOCESE OF BUFFALO and ALL SAINTS breached each of the

foregoing duties by failing to exercise reasonable care to prevent Father Fitzgerald from harming plaintiff DUANE KEIFMAN, including sexually abusing him.

124. In breaching their duties, including hiring, retaining, and failing to supervise Father Hayes, giving him access to children, entrusting their tasks, premises, and instrumentalities to him, failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm, failing to warn plaintiff DUANE KEIFMAN, his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for plaintiff DUANE KEIFMAN and other children who were under their supervision and in their care, custody, and control, the defendants DIOCESE OF BUFFALO and ALL SAINTS created a risk that plaintiff DUANE KEIFMAN would be sexually abused by Father Hayes. The defendants DIOCESE OF BUFFALO and ALL SAINTS through their actions and inactions created an environment that placed plaintiff DUANE KEIFMAN in danger of unreasonable risks of harm under the circumstances.

125. In breaching their duties, including hiring, retaining, and failing to supervise Father Fitzgerald, giving him access to children, entrusting their tasks, premises, and instrumentalities to him, failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm, failing to warn plaintiff DUANE KEIFMAN, his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for plaintiff DUANE KEIFMAN and other children who were under their supervision and in their care, custody, and control, the defendants DIOCESE OF BUFFALO and ALL SAINTS created a risk that plaintiff DUANE KEIFMAN would be sexually abused by Father Fitzgerald. The defendants DIOCESE OF BUFFALO and ALL SAINTS through their actions and inactions created an environment that placed plaintiff DUANE KEIFMAN in danger of unreasonable risks of harm under the circumstances.

126. In breaching their duties, including hiring, retaining, and failing to supervise Father Hayes, giving him access to children, entrusting their tasks, premises, and instrumentalities to him, failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm, failing to warn plaintiff DUANE KEIFMAN, his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for plaintiff DUANE KEIFMAN and other children who were under their supervision and in their care, custody, and control, the defendants DIOCESE OF BUFFALO and ALL SAINTS acted willfully and with conscious disregard for the need to protect plaintiff DUANE KEIFMAN. The defendants DIOCESE OF BUFFALO and ALL SAINTS THROUGH their actions and inactions created an environment that placed plaintiff DUANE KEIFMAN in danger of unreasonable risks of harm under the circumstances.

127. In breaching their duties, including hiring, retaining, and failing to supervise Father Fitzgerald, giving him access to children, entrusting their tasks, premises, and instrumentalities to him, failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm, failing to warn plaintiff DUANE KEIFMAN, his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for plaintiff DUANE KEIFMAN and other children who were under their supervision and in their care, custody, and control, the defendants DIOCESE OF BUFFALO and ALL SAINTS acted willfully and with conscious disregard for the need to protect plaintiff DUANE KEIFMAN. The defendants DIOCESE OF BUFFALO and ALL SAINTS THROUGH their actions and inactions created an environment that placed plaintiff DUANE KEIFMAN in danger of unreasonable risks of harm under the circumstances.

128. It was reasonably foreseeable that defendants' breach of these duties of care would result in the sexual abuse of plaintiff DUANE KEIFMAN.

129. As a direct and proximate result if the acts and omissions of the defendants DIOCESE OF BUFFALO and ALL SAINTS, Father Hayes groomed and sexually abused plaintiff DUANE KEIFMAN, which has caused plaintiff to suffer general and special damages as more fully described herein.

130. As a direct and proximate result if the acts and omissions of the defendants DIOCESE OF BUFFALO and ALL SAINTS, Father Fitzgerald groomed and sexually abused plaintiff DUANE KEIFMAN, which has caused plaintiff to suffer general and special damages as more fully described herein.

B. SECOND CAUSE OF ACTION- INFLICTION OF EMOTIONAL DISTRESS

131. Plaintiff DUANE KEIFMANN repeats and re-alleges paragraphs “1” through “130” of the complaint with the same force and effect as if each had been fully set forth herein.

132. The defendants DIOCESE OF BUFFALO and ALL SAINTS engaged in reckless, extreme, and outrageous conduct by providing Father Hayes with access to children, including plaintiff DUANE KEIFMAN, despite knowing that he would likely use his position to groom and sexually abuse them, including plaintiff DUANE KEIFMAN. Their misconduct was so shocking and outrageous that it exceeds the reasonable bounds of decency as measured by what the average member of the community would tolerate and demonstrates an utter disregard by them of the consequences that would follow.

133. The defendants DIOCESE OF BUFFALO and ALL SAINTS engaged in reckless, extreme, and outrageous conduct by providing Father Fitzgerald with access to children, including plaintiff DUANE KEIFMAN, despite knowing that he would likely use his position to groom and sexually abuse them, including plaintiff DUANE KEIFMAN. Their misconduct was so shocking and outrageous that it exceeds the reasonable bounds of decency as measured by what the average member of the community would tolerate and demonstrates an utter disregard by them of the

consequences that would follow.

134. As a result of this reckless, extreme, and outrageous conduct, Father Hayes gained access to plaintiff DUANE KEIFMAN and sexually abused him.

135. As a result of this reckless, extreme, and outrageous conduct, Father Fitzgerald gained access to plaintiff DUANE KEIFMAN and sexually abused him.

136. The defendants DIOCESE OF BUFFALO and ALL SAINTS knew or should have known that this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury, on others, and plaintiff DUANE KEIFMAN did in fact suffer severe and emotional and psychological distress and personal physical injury as a result, including severe mental anguish, humiliation and emotional and physical distress.

VII. CPLR 1603- NO APPORTIONMENT OF LIABILITY

137. Pursuant to CPLR 1603, the foregoing causes of action are exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(2), CPLR 1602(5), 1602(7), and 1602(11), thus precluding defendants from limiting their liability by apportioning some portion of liability to any joint tortfeasor.

VIII. PRAYER FOR RELIEF

138. The plaintiff DUANE KEIFMAN demands judgment against the defendants DIOCESE OF BUFFALO and ALL SAINTS, together with compensatory and punitive damages to be determined at trial, and the interest, cost and disbursements pursuant to their causes of action, and such other and further relief as the Court deems just and proper.

139. The plaintiff DUANE KEIFMAN specifically reserves the right to pursue additional causes of action, other than those outlined above, that are supported by the facts pleaded

or that may be supported by other facts learned in discovery.

DATED: Buffalo, New York
September 20, 2019

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