

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-5 Doe, a victim of childhood sexual abuse</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>THE DIOCESE OF BUFFALO, HOLY TRINITY ROMAN CATHOLIC CHURCH AND HOLY TRINITY SCHOOL,</p> <p style="text-align: center;">Defendants.</p>
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SUMMONS

Index No.:

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.

Dated: New York, New York
September 9, 2019

Yours, etc.



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COMPLAINT

Index No.:

PB-5 Doe, by and through her undersigned attorneys, as and for her 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-5 Doe was sexually abused by Monsignor Valerio Bernardo (Msgr. Bernardo), then a pastor of Defendant Holy Trinity Roman Catholic Church (“Holy Trinity Church”). Defendants Holy Trinity Church and Holy Trinity School were at all relevant times under the authority of the Defendant Diocese of Buffalo (“Diocese”).
3. Plaintiff was about five years old, and a student at Holy Trinity School when Msgr. Bernardo began sexually abusing her, and he continued to abuse her for several years.
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, 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

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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 sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

6. Plaintiff is an individual residing in Springfield, New York.

7. Plaintiff was born in 1959.

8. Defendant Diocese of Buffalo is a not for profit corporation, organized pursuant to the laws of the State of New York, with its principal place of business located at 795 Main Street, Buffalo, NY.

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

10. At all relevant times, Defendant Holy Trinity Church was and is a religious corporation organized pursuant to the laws of the State of New York, with its principal place of business located at 1032 Central Avenue, Dunkirk, NY.

11. At all relevant times, Defendant Holy Trinity School was Roman Catholic elementary school in Dunkirk, NY.

12. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and operated Defendant Holy Trinity Church and Defendant Holy Trinity School.

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13. At all relevant times, Defendant Diocese owned the premises where Defendant Holy Trinity Church and Defendant Holy Trinity School were located.

14. 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 Defendant Holy Trinity Church and Defendant Holy Trinity School.

FACTUAL ALLEGATIONS

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

16. In or about 1964-1968, Plaintiff was a student at Defendant Holy Trinity School.

17. At all relevant times, Plaintiff and her family were parishioners of Defendant Holy Trinity Church.

18. At all relevant times, Msgr. Bernardo was a Roman Catholic priest employed by Defendant Diocese and assigned to Defendant Holy Trinity Church. Upon information and belief, he served as pastor of the church.

19. At all relevant times, Msgr. Bernardo was under the direct supervision and control of the Defendant Diocese and Defendants Holy Trinity Church and Holy Trinity School. His assigned duties included, *inter alia*, serving as priest and, upon information and belief, as pastor. His duties included interacting with, mentoring, disciplining and counseling children.

20. At all relevant times Defendants authorized Msgr. Bernardo to be alone with children, including Plaintiff, and to have unfettered and unsupervised access to them.

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21. Defendants authorized Msgr. Bernardo to have physical contact with minors, in a manner consistent with providing discipline, counseling, educational and spiritual guidance, and leadership.

22. Defendants required students, like Plaintiff, to accept discipline and instruction from clergy, including Msgr. Bernardo, and to obey their orders.

23. Plaintiff was raised as a Catholic, and at all relevant times was encouraged to have reverence, fear and respect for the Catholic Church and its clergy.

24. Beginning in or about 1964, when Plaintiff about five (5) years old, Msgr. Bernardo routinely took Plaintiff out of her classroom at Defendant Holy Trinity School and brought her into a bathroom or to another area on school or church premises where he could be alone with her.

25. At the aforementioned time and place, Msgr. Bernardo engaged in unpermitted, forcible and harmful sexual contact with Plaintiff. This sexual abuse, which was a regular and repeat occurrence until approximately 1968-69, occurred on the premises of Defendants Holy Trinity Church and Holy Trinity School.

26. 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.

27. Defendants knew or should have known that Msgr. Bernardo was a danger to children like Plaintiff, before the sexual abuse of Plaintiff occurred.

28. 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

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times, Defendants were well aware that errant sexual behavior by some priests was not only widespread but predictable.

29. 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.

30. 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 Msgr. Bernardo posed to Plaintiff.

31. 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 Diocese 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.

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

33. Prior to the time of Plaintiff's abuse, Defendants knew or should have known of acts of child sexual abuse by Msgr. Bernardo of other children.

34. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited parishioners and parents to send their children to Defendants Holy Trinity Church and Holy Trinity 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 priests, 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, to spend time with, interact with, and recruit children.

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35. 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 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 herself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

36. Defendants owed Plaintiff a duty to protect her from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

37. 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 her 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 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

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

39. At all relevant times Defendants had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of its clergy, including Msgr. Bernardo, so as to protect minor children, including Plaintiff, who were likely to come into

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contact with, and/or under the influence or supervision of them, and to ensure that Msgr. Bernardo did not use his assigned position to injure minors by sexual assault, contact or abuse.

40. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Msgr. Bernardo, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned Msgr. Bernardo to Defendants Holy Trinity Church and Holy Trinity School, when Defendants knew or should have known of facts that would make him a danger to children; and Defendants were otherwise negligent.

41. Defendants were negligent and did not use reasonable care in their supervision and direction of Msgr. Bernardo, failed to monitor his activities, failed to oversee the manner in which he carried out the duties to which Defendants assigned him, even though they knew or should have known that Msgr. Bernardo posed a threat of sexual abuse to minors; allowed the misconduct described above to occur; failed to investigate Msgr. Bernardo's dangerous activities and remove him from their premises; and Defendants were otherwise negligent.

42. Msgr. Bernardo would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Msgr. Bernardo.

43. Defendants were also negligent in failing to properly train, supervise, instruct, and/or direct Plaintiff's teacher(s) who failed to protect Plaintiff from Msgr. Bernardo's repeated assaults, and allowed him to remove Plaintiff from the classroom and be alone with her; in failing to properly train, supervise, instruct and direct any other clergy or lay teachers who failed to protect Plaintiff from abuse by Msgr. Bernardo; and Defendants were otherwise negligent.

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44. At all relevant times, Msgr. Bernardo, and any teacher(s) who failed to protect Plaintiff from Msgr. Bernardo, acted in the course and scope of their employment with Defendants.

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

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

47. 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

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 affirmatively and/or impliedly represented to minor children, their families and the general public that clergy working in the Diocese, including Msgr. Bernardo, did not pose a risk and/or that he did not have a history of sexually abusing children, and that children, including Plaintiff, would be safe in his care.

50. Defendants knew or should have known this representation was false and that employing Msgr. Bernardo and giving him unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

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

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52. 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.

53. 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.

54. Upon information and belief, Defendants covered up acts of abuse by Msgr. Bernardo and concealed facts concerning his sexual misconduct from Plaintiff and her family.

55. 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.

56. Defendants failed to warn Plaintiff and her parents that Msgr. Bernardo posed a risk of child sexual assault.

57. 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.

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

59. 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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60. 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

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

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

63. Defendants' aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff's safety and caused her to fear for her own safety.

64. Defendants knew or disregarded the substantial probability that Msgr. Bernardo would cause severe emotional distress to Plaintiff.

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

66. 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

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

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68. At all relevant times, Defendants owned, operated, and /or controlled the premises of Defendants Holy Trinity Church and Holy Trinity School, including the areas where the sexual abuse of Plaintiff occurred.

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

70. 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.

71. 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 Msgr. Bernardo. Defendants thereby breached their duty of care to Plaintiff.

72. 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.

73. 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

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

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75. 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.

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

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

78. 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.

79. 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*

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

81. 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 her a duty to act *in loco parentis* and to prevent foreseeable injuries.

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

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83. 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.

84. 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

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

86. 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.

87. Defendants breached their statutory duty by failing to report reasonable suspicion of abuse by Msgr. Bernardo of children in their care.

88. 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.

89. 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.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for her injuries, in an amount to be determined at trial;

- b. Awarding Plaintiff punitive damages for her 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

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

Dated: New York, New York
September 9, 2019

Yours, etc.



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