

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

JAMES BROCK,

Plaintiff,

v.

FATHER MICHAEL J. KOLODZIEJ, O.F.M.CONV.; THE DIOCESE OF BUFFALO, N.Y.; PROVINCE OF ST. ANTHONY OF PADUA OF THE CONVENTUAL FRANCISCANS, a/k/a, ST. ANTHONY OF PADUA PROVINCE OF THE CONVENTUAL FRANCISCANS; ST. ANTHONY OF PADUA PROVINCE, FRANCISCAN FATHERS MINOR CONVENTUAL, U.S.A.; FRANCISCAN FATHERS MINOR CONVENTUALS OF BUFFALO, N.Y.; FRANCISCAN FATHERS MINOR CONVENTUAL, ST. ANTHONY OF PADUA PROVINCE; ORDER OF FRIARS MINOR CONVENTUAL, ST. ANTHONY OF PADUA PROVINCE, U.S.A., INC.; OUR LADY OF ANGELS PROVINCE, U.S.A.; FRANCISCAN FRIARS-OUR LADY OF THE ANGELS PROVINCE, INC.; and CARDINAL O'HARA HIGH SCHOOL,

Defendants.

Index No.

SUMMONS

Date Index No. Purchased:
Oct. 4, 2019

To the above named Defendant(s)

[Redacted]

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 this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and 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 basis of venue is one or more Defendant resides in Erie County, which is located in Erie County, New York.

Dated: New York, New York
October 4, 2019

SIMMONS HANLY CONROY LLC



Paul J. Hanly, Jr.

Attorneys for Plaintiff
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FATHER MICHAEL J. KOLODZIEJ, O.F.M.CONV.; THE
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ST. ANTHONY OF PADUA PROVINCE OF THE
CONVENTUAL FRANCISCANS; ST. ANTHONY OF PADUA
PROVINCE, FRANCISCAN FATHERS MINOR CONVENTUAL,
U.S.A.; FRANCISCAN FATHERS MINOR CONVENTUALS OF
BUFFALO, N.Y.; FRANCISCAN FATHERS MINOR
CONVENTUAL, ST. ANTHONY OF PADUA PROVINCE;
ORDER OF FRIARS MINOR CONVENTUAL, ST. ANTHONY
OF PADUA PROVINCE, U.S.A., INC.; OUR LADY OF
ANGELS PROVINCE, U.S.A.; FRANCISCAN FRIARS-OUR
LADY OF THE ANGELS PROVINCE, INC.; and CARDINAL
O'HARA HIGH SCHOOL,

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Index No.

RIDER TO SUMMONS

Defendant/Counsel	Service Address
FATHER MICHAEL J. KOLODZIEJ, O.F.M.CONV.	6107 North Kenmore Avenue Chicago, Illinois
THE DIOCESE OF BUFFALO, N.Y.	795 Main Street Buffalo, Erie County, New York
PROVINCE OF ST. ANTHONY OF PADUA OF THE CONVENTUAL FRANCISCANS, a/k/a, ST. ANTHONY OF PADUA PROVINCE OF THE CONVENTUAL FRANCISCANS	12300 Folly Quarter Road Ellicott City, MD 21042
ST. ANTHONY OF PADUA PROVINCE, FRANCISCAN FATHERS MINOR CONVENTUAL, U.S.A	12300 Folly Quarter Road Ellicott City, MD 21042
FRANCISCAN FATHERS MINOR CONVENTUALS OF BUFFALO, N.Y.	12300 Folly Quarter Road Ellicott City, MD 21042
FRANCISCAN FATHERS MINOR CONVENTUAL, ST. ANTHONY OF PADUA PROVINCE	C/O Daniel Fink, Resident Agent, 110 Cyman Drive, Chicopee, MA 01013

	AND James McCurry, President, 12300 Folly Quarter Road, Ellicott City, MD 21042
ORDER OF FRIARS MINOR CONVENTUAL, ST. ANTHONY OF PADUA PROVINCE, U.S.A.,, INC.	12300 Folly Quarter Road Ellicott City, MD 21042
OUR LADY OF ANGELS PROVINCE, U.S.A.	12300 Folly Quarter Road Ellicott City, MD 21042
FRANCISCAN FRIARS-OUR LADY OF THE ANGELS PROVINCE, INC.	12300 Folly Quarter Road Ellicott City, MD 21042
CARDINAL O'HARA HIGH SCHOOL	39 Ohara Road Tonawanda, Erie County, New York

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CONVENTUAL FRANCISCANS; ST. ANTHONY OF PADUA
PROVINCE, FRANCISCAN FATHERS MINOR CONVENTUAL,
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COMPLAINT

JURY TRIAL DEMANDED

Plaintiff James Brock, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against Father Michael J. Kolodziej, O.F.M.Conv.; The Diocese of Buffalo, N.Y.; Province of St. Anthony of Padua of the Conventual Franciscans, also known as St. Anthony of Padua Province of the Conventual Franciscans; St. Anthony of Padua Province, Franciscan Fathers Minor Conventual, U.S.A.; Franciscan Fathers Minor Conventuals of Buffalo, N.Y.; Franciscan Fathers Minor Conventual, St. Anthony of Padua Province; Order of Friars Minor Conventual, St. Anthony of Padua Province, U.S.A., Inc.; Our Lady of Angels Province, U.S.A.; Franciscan Friars-Our Lady of the Angels Province, Inc.; and Cardinal O'Hara High School, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that each Defendant either resides in New York or conducts or, at relevant times conducted, activities in New York that give rise to the claims asserted herein.

2. 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.

3. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more of the Defendants reside in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

PARTIES

4. Plaintiff James Brock ("Plaintiff") is an individual residing in South Boston, Massachusetts.

5. Defendant Father Michael J. Kolodziej, O.F.M.Conv. ("Father Kolodziej") is an individual with a residential address at 6107 North Kenmore Avenue, Chicago, Illinois. At all relevant times, Father Kolodziej was as a Conventual Franciscan priest.

6. Defendant The Diocese of Buffalo, N.Y. ("Diocese of Buffalo") is a religious corporation organized pursuant to the New York Religious Corporations Law, with its principal office at 795 Main Street, Buffalo, Erie County, New York. The Diocese of Buffalo is a Roman Catholic diocese. At all relevant times, the Diocese of Buffalo created, oversaw, supervised, managed, controlled, directed and/or operated institutions of the Diocese of Buffalo, including during all relevant times, Cardinal O'Hara High School. At all relevant times, the Diocese of Buffalo oversaw, managed, supervised, controlled, and directed religious order priests assigned to work in institutions of the Diocese of Buffalo.

7. Defendant Province of St. Anthony of Padua of the Conventual Franciscans, also known as St. Anthony of Padua Province of the Conventual Franciscans

("St. Anthony Province") was at relevant times a province of a religious order of the Roman Catholic Church, The Franciscan Fathers, Minor Conventuals, also known as the Conventual Franciscans, Friars Minor Conventual ("Conventual Franciscans"). Defendant St. Anthony Province has its principal office in Maryland. At all relevant times, Defendant St. Anthony Province conducted activities in Erie County, New York, including operating Cardinal O'Hara High School.

8. Defendant St. Anthony of Padua Province, Franciscan Fathers Minor Conventual, U.S.A. ("St. Anthony N.Y.") is a New York not-for-profit corporation which at relevant times conducted activities in Erie County, New York, including operating Cardinal O'Hara High School.

9. Defendant Franciscan Fathers Minor Conventuals of Buffalo, N.Y. ("Conventual Franciscans Buffalo") is a New York not-for-profit corporation which at relevant times conducted activities in Erie County, New York, including operating Cardinal O'Hara High School.

10. Defendant Franciscan Fathers Minor Conventual, St. Anthony of Padua Province ("St. Anthony MA") is a Massachusetts non-profit corporation with its principal office in Massachusetts. At relevant times, St. Anthony MA conducted activities in Erie County, New York, including operating Cardinal O'Hara High School.

11. Defendant Order of Friars Minor Conventual, St. Anthony of Padua Province, U.S.A., Inc. ("St. Anthony MD") is a Maryland non-stock corporation with its principal office in Maryland. At relevant times, St. Anthony MD conducted activities in Erie County, New York, including operating Cardinal O'Hara High School.

12. Defendant Our Lady of Angels Province, U.S.A. ("Our Lady Province") is a province of the Conventual Franciscans with its principal office in Ellicott City, Maryland. Our Lady Province was formed in 2014 by the union of the Immaculate Conception Province of the Conventual Franciscans and St. Anthony Province and is the successor to St. Anthony Province.

13. Defendant Franciscan Friars-Our Lady of the Angels Province, Inc. ("Our Lady Inc.") is a Maryland non-stock corporation with its principal office in Maryland. Our Lady Inc. was incorporated in 2014, and is a successor to one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD.

14. Defendant Cardinal O'Hara High School is a Roman Catholic high school with its principal office at 39 Ohara Road, Tonawanda, Erie County, New York, within the Diocese of Buffalo. During all relevant times, Cardinal O'Hara High School was operated by Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and St. Anthony MD.

FACTS COMMON TO ALL CLAIMS

15. Plaintiff and his family were parishioners of and attended St. Andrew's Church in Kenmore, New York, a parish of the Diocese of Buffalo. Plaintiff and his family were parishioners of the Diocese of Buffalo when Plaintiff was a minor child. In approximately 1979 when Plaintiff was approximately fourteen years of age, Plaintiff began attending Cardinal O'Hara High School. Plaintiff attended Cardinal O'Hara High School from approximately 1979 to approximately 1983.

16. During the times relevant to the allegations set forth herein, Father Kolodziej was assigned by Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and St. Anthony MD to be a teacher and the Principal at Cardinal O'Hara High School, where Plaintiff attended school.

17. Through his positions at, within, or for Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School, Father Kolodziej was put in direct contact with Plaintiff, a minor student at Cardinal O'Hara High School.

18. On at least twelve occasions from approximately 1982 when Plaintiff was

approximately seventeen years of age, to approximately 1983 when Plaintiff was still approximately seventeen years of age, Father Kolodziej instructed Plaintiff to meet with Father Kolodziej in a classroom at Cardinal O'Hara High School.

19. Father Kolodziej used such encounters, gained through his position at Cardinal O'Hara High School which granted him access to Plaintiff when Plaintiff was approximately seventeen years of age, to sexually assault, sexually abuse, and have sexual contact with the Plaintiff in violation of the laws of the State of New York.

Supervisory Defendants' Responsibility for the Abuse Committed by Father Kolodziej

20. At all times material hereto, Father Kolodziej was under the management, supervision, employ, direction and/or control of Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School.

21. Through his positions at, within, or for Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School, Father Kolodziej was put in direct contact with Plaintiff.

22. Father Kolodziej used his position at, within, or for Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School and the implicit representations made by them about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and touch, Plaintiff.

23. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School had the duty to reasonably manage, supervise, control and/or direct priests who served at Cardinal O'Hara High School, and specifically, had a duty not to aid

pedophiles such as Father Kolodziej by assigning, maintaining, and/or appointing them to positions with access to minors.

24. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Kolodziej, who sexually abused Plaintiff.

25. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School had a duty to the Plaintiff to properly supervise priests to ensure that priests did not use their positions with Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School as a tool for grooming and assaulting vulnerable children. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School knew or should have known that Father Kolodziej used his positions to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

26. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Kolodziej's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

27. As a direct result of the Defendants Father Kolodziej's; Diocese of Buffalo's; St. Anthony Province's; St. Anthony N.Y.'s; Conventual Franciscans Buffalo's; St. Anthony MA's; St. Anthony MD's; and Cardinal O'Hara High School's conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred

and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Kolodziej's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Assault

28. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

29. From approximately 1982 when Plaintiff was approximately seventeen years of age, to approximately 1983 when Plaintiff was still approximately seventeen years of age, Father Kolodziej intentionally touched Plaintiff's body when Father Kolodziej engaged in the sexual behavior and lewd and lascivious conduct described above. Such conduct placed Plaintiff in imminent apprehension of harmful contact, including apprehension of further sexual contact.

30. As a direct and proximate result of Defendant Father Kolodziej's actions, which included but were not limited to placing the Plaintiff in imminent and reasonable apprehension of harmful and offensive contact, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

31. By reason of the foregoing, Defendant Father Kolodziej is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

SECOND CAUSE OF ACTION

Battery

32. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

33. From approximately 1982 when Plaintiff was approximately seventeen years of age, to approximately 1983 when Plaintiff was still approximately seventeen years of age, Father Kolodziej intentionally touched Plaintiff's body when Father Kolodziej engaged in the sexual behavior and lewd and lascivious conduct described above. Such bodily contact was offensive and was without consent.

34. As a direct and proximate result of Defendant Father Kolodziej's actions, which included but were not limited to unjustified harmful and offensive physical contact and touching, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

35. By reason of the foregoing, Defendant Father Kolodziej is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

THIRD CAUSE OF ACTION

Intentional Infliction of Emotional Distress

36. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

37. By engaging in the explicit sexual behavior and lewd and lascivious conduct described above, either Defendant Father Kolodziej intended to inflict emotional distress upon Plaintiff, or Defendant Father Kolodziej knew or should have known and recklessly disregarded the substantial likelihood that severe emotional distress would be the likely result of his conduct.

38. The conduct of Defendant Father Kolodziej in engaging in the explicit sexual behavior and lewd and lascivious conduct described above is extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized society.

39. The mental distress and emotional injuries Plaintiff suffered and will continue to suffer were and are lasting and severe.

40. As a direct and proximate result of Defendant Father Kolodziej engaging

in the explicit sexual behavior and lewd and lascivious conduct described above, Plaintiff suffered and will continue to suffer the severe injuries described herein.

41. By reason of the foregoing, Defendant Father Kolodziej is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

FOURTH CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

42. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

43. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father Kolodziej in his role as priest, principal, teacher, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Kolodziej did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

44. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School at all relevant times held the schools of the Diocese of Buffalo out to be safe places for minors to attend, and the assigned priests as individuals to whom it was safe to entrust the care of minor children. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for him.

45. Father Kolodziej sexually assaulted, sexually abused, and had sexual contact with Plaintiff in a classroom at Cardinal O'Hara High School when Plaintiff was a minor.

46. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School negligently hired, retained, directed, and supervised Father Kolodziej, though they knew or should have known that Father Kolodziej posed a threat of sexual abuse to minors.

47. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School knew or should have known of Father Kolodziej's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

48. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School were negligent in failing to properly supervise Father Kolodziej.

49. The sexual abuse of children by adults, including religious order priests and teachers, is a foreseeable result of negligence.

50. At all times material hereto, Defendants Diocese of Buffalo's; St. Anthony Province's; St. Anthony N.Y.'s; Conventual Franciscans Buffalo's; St. Anthony MA's; St. Anthony MD's; and Cardinal O'Hara High School's actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

51. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

52. Liabilities of Defendant St. Anthony Province were transferred to, or assumed by, Defendant Our Lady Province. As a result, Defendant Our Lady Province is liable to the Plaintiff for the damages caused by Defendant St. Anthony Province stated in this cause of action.

53. Liabilities of one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD were

transferred to, or assumed by, Defendant Our Lady Inc. As a result, Defendant Our Lady Inc. is liable to the Plaintiff for the damages caused by one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD, as stated in this cause of action.

54. By reason of the foregoing, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; Our Lady Province; Our Lady Inc.; and Cardinal O'Hara High School are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION
Negligence/Gross Negligence

55. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

56. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School knew, or were negligent in not knowing, that Father Kolodziej posed a threat of sexual abuse to children.

57. The acts of Father Kolodziej described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School.

58. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Father Kolodziej's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Kolodziej's misconduct.

59. Defendants Diocese of Buffalo's; St. Anthony Province's; St. Anthony N.Y.'s; Conventual Franciscans Buffalo's; St. Anthony MA's; St. Anthony MD's; and Cardinal O'Hara High School's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

60. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed adequately to supervise the activities of Father Kolodziej;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

61. At all times material hereto, with regard to the allegations contained herein, Father Kolodziej was under the supervision, employ, direction and/or control of Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School.

62. At all times material hereto, Defendants Diocese of Buffalo's; St. Anthony Province's; St. Anthony N.Y.'s; Conventual Franciscans Buffalo's; St. Anthony MA's; St. Anthony MD's; and Cardinal O'Hara High School's actions were willful, wanton,

malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

63. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

64. Liabilities of Defendant St. Anthony Province were transferred to, or assumed by, Defendant Our Lady Province. As a result, Defendant Our Lady Province is liable to the Plaintiff for the damages caused by Defendant St. Anthony Province stated in this cause of action.

65. Liabilities of one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD were transferred to, or assumed by, Defendant Our Lady Inc. As a result, Defendant Our Lady Inc. is liable to the Plaintiff for the damages caused by one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD, as stated in this cause of action.

66. By reason of the foregoing, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; Our Lady Province; Our Lady Inc.; and Cardinal O'Hara High School are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION

Breach of Non-Delegable Duty

67. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

68. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to

receive an education. There existed a non-delegable duty of trust between Plaintiff and Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School.

69. Plaintiff was a vulnerable child when placed within the care of Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School.

70. As a consequence, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School were in the best position to prevent Plaintiff's abuse, to learn of Father Kolodziej's repeated sexual abuse of Plaintiff, and to stop it.

71. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School breached their non-delegable duty to Plaintiff.

72. At all times material hereto Father Kolodziej was under the supervision, employ, direction and/or control of the Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School.

73. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

74. Liabilities of Defendant St. Anthony Province were transferred to, or assumed by, Defendant Our Lady Province. As a result, Defendant Our Lady Province is liable to the Plaintiff for the damages caused by Defendant St. Anthony Province stated in this cause of action.

75. Liabilities of one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD were transferred to, or assumed by, Defendant Our Lady Inc. As a result, Defendant Our Lady Inc. is liable to the Plaintiff for the damages caused by one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD, as stated in this cause of action.

76. By reason of the foregoing, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; Our Lady Province; Our Lady Inc.; and Cardinal O'Hara High School are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SEVENTH CAUSE OF ACTION

Breach of Fiduciary Duty

77. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

78. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the agent or servant of the Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School. This entrustment of the Plaintiff to the care and supervision of the Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School, while the Plaintiff was a minor child, required the Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and

Cardinal O'Hara High School to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect him while he was a minor and vulnerable child.

79. Pursuant to their fiduciary relationship, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School were entrusted with the well-being, care, and safety of Plaintiff.

80. Pursuant to their fiduciary relationship, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School assumed a duty to act in the best interests of Plaintiff.

81. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School breached their fiduciary duty to Plaintiff.

82. At all times material hereto, the actions and/or inactions of Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff.

83. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

84. Liabilities of Defendant St. Anthony Province were transferred to, or assumed by, Defendant Our Lady Province. As a result, Defendant Our Lady Province is liable to the Plaintiff for the damages caused by Defendant St. Anthony Province stated in this cause of action.

85. Liabilities of one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD were

transferred to, or assumed by, Defendant Our Lady Inc. As a result, Defendant Our Lady Inc. is liable to the Plaintiff for the damages caused by one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD, as stated in this cause of action.

86. By reason of the foregoing, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; Our Lady Province; Our Lady Inc.; and Cardinal O'Hara High School are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

EIGHTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

87. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

88. As described above, the actions of Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School, their agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

89. Defendants Diocese of Buffalo's; St. Anthony Province's; St. Anthony N.Y.'s; Conventual Franciscans Buffalo's; St. Anthony MA's; St. Anthony MD's; and Cardinal O'Hara High School's actions endangered Plaintiff's safety and caused him to fear for his own safety.

90. As a direct and proximate result of Defendants Diocese of Buffalo's; St. Anthony Province's; St. Anthony N.Y.'s; Conventual Franciscans Buffalo's; St. Anthony MA's; St. Anthony MD's; and Cardinal O'Hara High School's actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

91. Liabilities of Defendant St. Anthony Province were transferred to, or assumed by, Defendant Our Lady Province. As a result, Defendant Our Lady Province is liable to the Plaintiff for the damages caused by Defendant St. Anthony Province stated in this cause of action.

92. Liabilities of one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD were transferred to, or assumed by, Defendant Our Lady Inc. As a result, Defendant Our Lady Inc. is liable to the Plaintiff for the damages caused by one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD, as stated in this cause of action.

93. By reason of the foregoing, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; Our Lady Province; Our Lady Inc.; and Cardinal O'Hara High School are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

NINTH CAUSE OF ACTION

Breach of Duty in Loco Parentis

94. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

95. While he was a minor, Plaintiff was entrusted by his parents to the control of the Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School, as well as directly to Father Kolodziej, an agent or servant of Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. These

Defendants owe — and owed — a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

96. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School breached their duty to act *in loco parentis*.

97. At all times material hereto, Defendants Diocese of Buffalo's; St. Anthony Province's; St. Anthony N.Y.'s; Conventual Franciscans Buffalo's; St. Anthony MA's; St. Anthony MD's; and Cardinal O'Hara High School's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

98. As a direct result of Defendants Diocese of Buffalo's; St. Anthony Province's; St. Anthony N.Y.'s; Conventual Franciscans Buffalo's; St. Anthony MA's; St. Anthony MD's; and Cardinal O'Hara High School's conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

99. Liabilities of Defendant St. Anthony Province were transferred to, or assumed by, Defendant Our Lady Province. As a result, Defendant Our Lady Province is liable to the Plaintiff for the damages caused by Defendant St. Anthony Province stated in this cause of action.

100. Liabilities of one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD were transferred to, or assumed by, Defendant Our Lady Inc. As a result, Defendant Our Lady Inc. is liable to the Plaintiff for the damages caused by one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD, as stated in this cause of action.

101. By reason of the foregoing, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; Our Lady Province; Our Lady Inc.; and Cardinal O'Hara High School are

liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

TENTH CAUSE OF ACTION

Breach of Statutory Duty to Report Abuse under Soc. Serv. Law §§ 413, 420

102. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

103. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School had a statutorily imposed duty to report reasonable suspicion of abuse of children in their care.

104. Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and Cardinal O'Hara High School breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Father Kolodziej of children in their care.

105. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

106. Liabilities of Defendant St. Anthony Province were transferred to, or assumed by, Defendant Our Lady Province. As a result, Defendant Our Lady Province is liable to the Plaintiff for the damages caused by Defendant St. Anthony Province stated in this cause of action.

107. Liabilities of one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD were transferred to, or assumed by, Defendant Our Lady Inc. As a result, Defendant Our Lady Inc. is liable to the Plaintiff for the damages caused by one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; and/or St. Anthony MD, as stated in this cause of action.

108. By reason of the foregoing, Defendants Diocese of Buffalo; St. Anthony

Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; Our Lady Province; Our Lady Inc.; and Cardinal O'Hara High School are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: October 4, 2019
New York, New York

Respectfully Submitted,

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