

NEW YORK STATE SUPREME COURT
ERIE COUNTY

-----X
ELAINE WELCH,

Plaintiff,

-against-

DIOCESE OF BUFFALO and ST. ALOYSIUS CHURCH
AND SCHOOL,

Defendants.
-----X

Index No.: _____

Date Filed: November 6, 2019

SUMMONS

Plaintiff designates Erie County as the place of trial.

The basis of venue is one defendant's residence.

Child Victims Act Proceeding
22 NYCRR 202.72

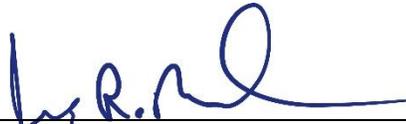
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys 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.

Dated: November 6, 2019

Respectfully Yours,

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Attorneys for Plaintiff

NEW YORK STATE SUPREME COURT
ERIE COUNTY

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ELAINE WELCH,

Index No.: _____/___

COMPLAINT

Plaintiff,

-against-

DIOCESE OF BUFFALO and ST. ALOYSIUS CHURCH
AND SCHOOL,

Child Victims Act Proceeding
22 NYCRR 202.72

Defendants.

Plaintiff Elaine Welch, by and through her attorneys, the Marsh Law Firm PLLC and Pfau Cochran Vertetis Amala PLLC, respectfully alleges for her complaint the following:

I. INTRODUCTION

1. The Diocese of Buffalo (the “Diocese”) 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, the Diocese 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, the Diocese of Buffalo began releasing the names of priests who were accused of sexually abusing children. While the 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 of Buffalo who have faced allegations of sexually abusing a child. Based on the Diocese’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 is one of many children who was sexually abused because of the Diocese'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. 2440), 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. Prior to the passage of the CVA, plaintiff's claims were time-barred the day she turned 22 years old. The enactment of the CVA allows victims and survivors of childhood sexual abuse, for the first time in their lives, to pursue restorative justice in New York State.

III. PARTIES

4. Plaintiff Elaine Welch is an adult female who currently resides in Hamburg, New York.

5. Upon information and belief, the Diocese 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 the Diocese conducted business as the "Diocese of Buffalo" and/or "Buffalo Diocese."

7. Upon information and belief, at all relevant times the Diocese employed priests, school administrators, teachers, religious sisters, and/or others who served various Catholic institutions and families, including plaintiff Elaine Welch and her family.

8. Upon information and belief, Father James Spielman ("Father Spielman") was a priest employed by the Diocese to serve Catholic families, including plaintiff Elaine Welch and her family. During the time Father Spielman was employed by the Diocese, he used his position as a priest to groom and to sexually abuse plaintiff Elaine Welch.

9. To the extent that the Diocese was a different entity, corporation, or organization during the period of time during which Father Spielman used his position as a priest to sexually abuse plaintiff Elaine Welch, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

10. To the extent the Diocese is a successor to a different entity, corporation, or organization which existed during the period of time during which Father Spielman used his position as a priest to sexually abuse plaintiff Elaine Welch, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

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

12. Upon information and belief, at all relevant times defendant St. Aloysius Church and School (“St. Aloysius”) was a not-for-profit religious corporation organized under New York law and wholly owned, operated, and controlled by the Diocese.

13. Upon information and belief, St. Aloysius is currently a not-for-profit religious corporation organized under New York law with its principal office in Springville, New York.

14. Upon information and belief, at all relevant times St. Aloysius conducted business as “St. Aloysius,” “St. Aloysius Church and School,” “St. Aloysius Church,” “St. Aloysius School,” “St. Aloysius Parish.”

15. St. Aloysius is a parish with a church and school located in Springville, New York.

16. Upon information and belief, Father James Spielman was a priest employed by St. Aloysius to serve Catholic families in its geographic jurisdiction, including plaintiff Elaine Welch and her family, and while plaintiff Elaine Welch was a student. During the time Father James

Spielman was employed by St. Aloysius, he used his position as a priest to groom and to sexually abuse plaintiff Elaine Welch.

17. To the extent that St. Aloysius was a different entity, corporation, or organization during the period of time during which Father Spielman used his position as a priest to sexually abuse Elaine, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

18. To the extent St. Aloysius is a successor to a different entity, corporation, or organization which existed during the period of time during which Father Spielman used his position as a priest to sexually abuse Elaine, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

19. All such St. Aloysius-related entities, corporations, or organizations are collectively referred to herein as “St. Aloysius.”

IV. VENUE

20. Venue is proper because the Diocese is a domestic corporation authorized to transact business in New York with its principal office located in Erie County.

21. Venue is proper because St. Aloysius is a domestic corporation authorized to transact business in New York with its principal office located in Sringville, New York.

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

23. Venue is proper because plaintiff Elaine Welch currently resides in Hamburg, New York.

V. STATEMENT OF FACTS AS TO PLAINTIFF ELAINE WELCH

24. Upon information and belief, at all relevant times the Diocese was the owner of St. Aloysius and held itself out to the public as the owner of St. Aloysius.

25. Upon information and belief, at all relevant times the Diocese, its agents, servants, and employees managed, maintained, operated, and controlled St. Aloysius.

26. Upon information and belief, at all relevant times the Diocese employed priests, school administrators, teachers, religious sisters, and/or others who served Catholic families at St. Aloysius, including plaintiff Elaine Welch and her family.

27. Upon information and belief, at all relevant times the Diocese, its agents, servants, and employees managed, maintained, operated, and controlled St. Aloysius, and held out to the public its agents, servants, and employees as those who managed, maintained, operated, and controlled St. Aloysius.

28. Upon information and belief, at all relevant times the Diocese was responsible for the hiring and staffing, and did the hiring and staffing, at St. Aloysius.

29. Upon information and belief, at all relevant times the Diocese was responsible for and did the recruitment and staffing of volunteers at St. Aloysius.

30. Upon information and belief, at all relevant times the Diocese materially benefited from the operation of St. Aloysius, including the services of Father Spielman and the services of those who managed and supervised Father Spielman.

31. Upon information and belief, at all relevant times St. Aloysius owned a parish, church, and school.

32. Upon information and belief, at all relevant times St. Aloysius held itself out to the public as the owner of St. Aloysius.

33. Upon information and belief, at all relevant times St. Aloysius employed priests, school administrators, teachers, religious sisters, and/or others who served Catholic families, including plaintiff Elaine Welch and her family.

34. Upon information and belief, at all relevant times St. Aloysius, its agents, servants, and employees managed, maintained, operated, and controlled St. Aloysius, and held out to the public its agents, servants and employees as those who managed, maintained, operated, and controlled St. Aloysius.

35. Upon information and belief, at all relevant times St. Aloysius was responsible for and did the staffing and hiring at St. Aloysius.

36. Upon information and belief, at all relevant times St. Aloysius was responsible for and did the recruitment and staffing of volunteers at St. Aloysius.

37. Upon information and belief, at all relevant times St. Aloysius materially benefitted from the operation of St. Aloysius, including the services of Father Spielman and the services of those who managed and supervised Father Spielman.

38. Upon information and belief, at all relevant times Father Spielman was a priest of the Diocese.

39. Upon information and belief, at all relevant times Father Spielman was on the staff of, acted as an agent of, and served as an employee of the Diocese.

40. Upon information and belief, at all relevant times Father Spielman was acting in the course and scope of his employment with the Diocese.

41. Upon information and belief, at all relevant times Father Spielman was employed by the Diocese and assigned to St. Aloysius.

42. Upon information and belief, at all relevant times Father Spielman was a priest of St. Aloysius.

43. Upon information and belief, at all relevant times Father Spielman was on the staff of, was an agent of, and served as an employee of St. Aloysius.

44. Upon information and belief, at all relevant times Father Spielman was acting in the course and scope of his employment with St. Aloysius.

45. Upon information and belief, at all relevant times Father Spielman had an office on the premises of St. Aloysius.

46. When plaintiff Elaine Welch was a minor, she and her parents were members of the Diocese and St. Aloysius, including when Elaine was a student.

47. At all relevant times, the Diocese and St. Aloysius, their agents, servants, and employees, held Father Spielman out to the public, to Elaine, and to her parents, as their agent and employee.

48. At all relevant times, the Diocese and St. Aloysius, their agents, servants, and employees, held Father Spielman out to the public, to Elaine, and to her parents, as having been vetted, screened, and approved by those defendants.

49. At all relevant times, Elaine and her parents reasonably relied upon the acts and representations of the Diocese and St. Aloysius, their agents, servants, and employees, and reasonably believed that Father Spielman was an agent or employee of those defendants who was vetted, screened, and approved by those defendants.

50. At all relevant times, Elaine and her parents trusted Father Spielman because the Diocese and St. Aloysius held him out as someone who was safe and could be trusted with the supervision, care, custody, and control of Elaine.

51. At all relevant times, Elaine and her parents believed that the Diocese and St. Aloysius would exercise such care as would a parent of ordinary prudence in comparable circumstances when those defendants assumed supervision, care, custody, and control of Elaine.

52. When Elaine was a minor, Father Spielman sexually abused her.

53. Elaine was sexually abused by Father Spielman from approximately age 12 to 13 years old.

54. Based on the representations of the Diocese and St. Aloysius that Father Spielman was safe and trustworthy, Elaine and her parents allowed Elaine to be under the supervision of, and in the care, custody, and control of, the Diocese and St. Aloysius, including during the times when Elaine was sexually abused by Father Spielman.

55. Based on the representations of the Diocese and St. Aloysius that Father Spielman was safe and trustworthy, Elaine and her parents allowed Elaine to be under the supervision of, and in the care, custody, and control of, Father Spielman, including during the times when Elaine was sexually abused by Father Spielman.

56. Neither Elaine nor her parents would have allowed her to be under the supervision of, or in the care, custody, or control of, the Diocese, St. Aloysius, or Father Spielman if the Diocese or St. Aloysius had disclosed to Elaine or her parents that Father Spielman was not safe and was not trustworthy, and that he in fact posed a danger to Elaine in that Father Spielman was likely to sexually abuse Elaine.

57. No parent of ordinary prudence in comparable circumstances would have allowed Elaine to be under the supervision of, or in the care, custody, or control of, the Diocese, St. Aloysius, or Father Spielman if the Diocese or St. Aloysius had disclosed to Elaine or her parents that Father Spielman was not safe and was not trustworthy, and that he in fact posed a danger to Elaine in that Father Spielman was likely to sexually abuse her.

58. From approximately 1971 through 1972, Father Spielman exploited the trust and authority vested in him by defendants by grooming Elaine to gain her trust and to obtain control over her as part of Father Spielman's plan to sexually molest and abuse Elaine and other children.

59. Father Spielman used his position of trust and authority as a priest of the Diocese and of St. Aloysius to groom Elaine and to sexually abuse her multiple times, including when Elaine was under the supervision of, and in the care, custody, or control of, the Diocese, St. Aloysius, and Father Spielman.

60. At certain times, the sexual abuse of Elaine by Father Spielman occurred at St. Aloysius, including outside of the school and in the school gymnasium.

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

62. Upon information and belief, at all relevant times, defendants, their agents, servants, and employees, knew or should have known that Father Spielman was a known sexual abuser of children.

63. Upon information and belief, at all relevant times, it was reasonably foreseeable to defendants, their agents, servants, and employees that Father Spielman's sexual abuse of children would likely result in injury to others, including the sexual abuse of Elaine and other children by Father Spielman.

64. Upon information and belief, at certain times between 1971 and 1972, defendants, their agents, servants, and employees knew or should have known that Father Spielman was sexually abusing Elaine and other children at St. Aloysius and elsewhere.

65. Upon information and belief, defendants, their agents, servants, and employees knew or should have known that the sexual abuse by Father Spielman of Elaine was ongoing.

66. Upon information and belief, the Diocese and St. Aloysius, their agents, servants, and employees, knew or should have known before and during Father Spielman's sexual abuse of Elaine that priests, school administrators, teachers, religious sisters, and/or other persons serving

the Diocese and St. Aloysius had used their positions with those defendants to groom and to sexually abuse children.

67. Upon information and belief, the Diocese and St. Aloysius, their agents, servants, and employees, knew or should have known before and during Father Spielman's sexual abuse of Elaine that such priests, school administrators, teachers, religious sisters, and/or other persons could not be "cured" through treatment or counseling.

68. Upon information and belief, the Diocese and St. Aloysius, their agents, servants, and employees, concealed the sexual abuse of children by Father Spielman 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 Spielman would continue to molest children.

69. Upon information and belief, the Diocese and St. Aloysius, their agents, servants, and employees, consciously and recklessly disregarded their knowledge that Father Spielman would use his position with the defendants to sexually abuse children, including Elaine.

70. Upon information and belief, the Diocese and St. Aloysius, their agents, servants, and employees, disregarded their knowledge that Father Spielman would use his position with them to sexually abuse children, including Elaine.

71. Upon information and belief, the Diocese and St. Aloysius, their agents, servants, and employees, acted in concert with each other or with Father Spielman to conceal the danger that Father Spielman posed to children, including Elaine, so that Father Spielman could continue serving them despite their knowledge of that danger.

72. Upon information and belief, the Diocese and St. Aloysius, 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 Elaine, and she did in fact suffer severe emotional and psychological distress and personal physical injury as a result of their wrongful conduct.

73. Upon information and belief, the Diocese and St. Aloysius, 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 priests and other persons would continue to molest children.

74. By reason of the wrongful acts of the Diocese and St. Aloysius as detailed herein, Elaine 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 severe shock to her 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 Elaine has and/or will become obligated to expend sums of money for treatment.

VI. CAUSES OF ACTION AS TO PLAINTIFF ELAINE WELCH

A. FIRST CAUSE OF ACTION – NEGLIGENCE

75. Plaintiff Elaine Welch repeats and re-alleges all of her allegations above and below.

76. The Diocese and St. Aloysius had a duty to take reasonable steps to protect plaintiff Elaine Welch, a child, from foreseeable harm when she was under their supervision and in their care, custody, and control.

77. The Diocese and St. Aloysius also had a duty to take reasonable steps to prevent Father Spielman from using the tasks, premises, and instrumentalities of his position with the defendants to target, groom, and sexually abuse children, including Elaine.

78. The Diocese and St. Aloysius were supervising Elaine, and had care, custody, and control of Elaine, when she was a student and at other times, during which time those defendants had a duty to take reasonable steps to protect her.

79. These circumstances created a special relationship between the Diocese and Elaine, and between St. Aloysius and Elaine, which imposed on each of those defendants a duty to exercise the degree of care of a parent of ordinary prudence in comparable circumstances.

80. The Diocese and St. Aloysius breached each of the foregoing duties by failing to exercise reasonable care to prevent Father Spielman from harming Elaine, including sexually abusing her.

81. In breaching their duties, including hiring, retaining, and failing to supervise Father Spielman, 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 Elaine, her parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for Elaine and other children who were under their supervision and in their care, custody, and control, the Diocese and St. Aloysius created a risk that Elaine would be sexually abused by Father Spielman. The Diocese and St. Aloysius through their actions and inactions created an environment that placed Elaine in danger of unreasonable risks of harm under the circumstances.

82. In breaching their duties, including hiring, retaining, and failing to supervise Father Spielman, 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 Elaine, her parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for Elaine and other children who were under their supervision and in their care, custody, and control, the Diocese and St. Aloysius acted willfully and with conscious disregard for the need to protect Elaine. The Diocese and St. Aloysius through their actions and inactions created an environment that placed Elaine in danger of unreasonable risks of harm under the circumstances.

83. It was reasonably foreseeable that defendants' breach of these duties of care would result in the sexual abuse of Elaine.

84. As a direct and proximate result of the acts and omissions of the Diocese and St. Aloysius, Father Spielman groomed and sexually abused Elaine, which has caused Elaine to suffer general and special damages as more fully described herein.

B. SECOND CAUSE OF ACTION – OUTRAGE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

85. Plaintiff Elaine Welch repeats and re-alleges all of her allegations above and below.

86. The Diocese and St. Aloysius engaged in reckless, extreme, and outrageous conduct by providing Father Spielman with access to children, including plaintiff Elaine, despite knowing that he would likely use his position to groom and to sexually abuse them, including Elaine. 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.

87. As a result of this reckless, extreme, and outrageous conduct, Father Spielman gained access to Elaine and sexually abused her.

88. The Diocese and St. Aloysius knew that this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury, on others, and Elaine did in fact suffer severe 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

89. 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

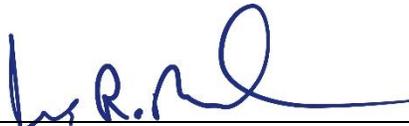
90. Plaintiff Elaine Welch demands judgment against the defendants named in her causes of action, together with compensatory and punitive damages to be determined at trial, and the interest, cost and disbursements pursuant to her causes of action, and such other and further relief as the Court deems just and proper.

91. Plaintiff Elaine Welch 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: November 6, 2019

Respectfully Yours,

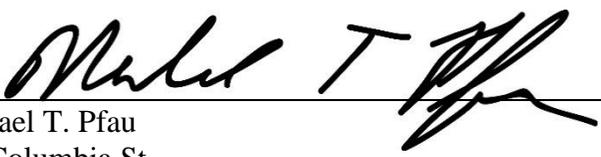
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