

NEW YORK STATE SUPREME COURT
ERIE COUNTY

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ELLIS WARNER,

Plaintiff,

-against-

DIOCESE OF BUFFALO and SAINT PETER AND
PAUL CHURCH (NOW KNOWN AS HOLY
APOSTLES PARISH),

Defendants.

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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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NEW YORK STATE SUPREME COURT
ERIE COUNTY

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ELLIS WARNER,

Index No.: _____/___

COMPLAINT

Plaintiff,

-against-

DIOCESE OF BUFFALO and SAINT PETER AND
PAUL CHURCH (NOW KNOWN AS HOLY
APOSTLES PARISH),

Child Victims Act Proceeding
22 NYCRR 202.72

Defendants.

Plaintiff Ellis Warner, by and through his attorneys, the Marsh Law Firm PLLC and Pfau Cochran Vertetis Amala PLLC, respectfully alleges for his 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 he 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 Ellis Warner is an adult male who currently resides in Jamestown, NY.

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" 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 Ellis Warner and his family.

8. Upon information and belief, Father John Lewandowski ("Father Lewandowski") was a priest employed by the Diocese to serve Catholic families, including plaintiff Ellis Warner and his family. During the time Father Lewandowski was employed by the Diocese, he used his position as a priest to groom and to sexually abuse plaintiff Ellis Warner.

9. To the extent that the Diocese was a different entity, corporation, or organization during the period of time during which Father Lewandowski used his position as a priest to sexually abuse plaintiff Ellis Warner, 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 Lewandowski used his position as a priest to sexually abuse plaintiff Ellis Warner, 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 Saint Peter and Paul Church (now known as Holy Apostles Parish) (“Saint Peter and Paul”) 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, Saint Peter and Paul is currently a not-for-profit religious corporation organized under New York law with its principal office in Jamestown, New York.

14. Upon information and belief, at all relevant times Saint Peter and Paul conducted business as “Saint Peter and Paul Church (now known as Holy Apostles Parish),” “Saint Peter and Paul Parish,” “Saints Peter and Paul,” “Holy Apostles Parish,” and/or “Holy Apostles.”

15. Saint Peter and Paul is a parish located in Jamestown, New York.

16. Upon information and belief, Father John Lewandowski was a priest employed by Saint Peter and Paul to serve Catholic families in its geographic jurisdiction, including plaintiff

Ellis Warner and his family. During the time Father John Lewandowski was employed by Saint Peter and Paul, he used his position as a priest to groom and to sexually abuse plaintiff Ellis Warner.

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

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

19. All such Saint Peter and Paul-related entities, corporations, or organizations are collectively referred to herein as “Saint Peter and Paul.”

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.

V. STATEMENT OF FACTS AS TO PLAINTIFF ELLIS WARNER

21. Upon information and belief, at all relevant times the Diocese was the owner of Saint Peter and Paul and held itself out to the public as the owner of Saint Peter and Paul.

22. Upon information and belief, at all relevant times the Diocese, its agents, servants, and employees managed, maintained, operated, and controlled Saint Peter and Paul.

23. 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 Saint Peter and Paul, including plaintiff Ellis Warner and his family.

24. Upon information and belief, at all relevant times the Diocese, its agents, servants, and employees managed, maintained, operated, and controlled Saint Peter and Paul, and held out to the public its agents, servants, and employees as those who managed, maintained, operated, and controlled Saint Peter and Paul.

25. Upon information and belief, at all relevant times the Diocese was responsible for the hiring and staffing, and did the hiring and staffing, at Saint Peter and Paul.

26. Upon information and belief, at all relevant times the Diocese was responsible for and did the recruitment and staffing of volunteers at Saint Peter and Paul.

27. Upon information and belief, at all relevant times the Diocese materially benefited from the operation of Saint Peter and Paul, including the services of Father Lewandowski and the services of those who managed and supervised Father Lewandowski.

28. Upon information and belief, at all relevant times Saint Peter and Paul owned a parish.

29. Upon information and belief, at all relevant times Saint Peter and Paul held itself out to the public as the owner of Saint Peter and Paul.

30. Upon information and belief, at all relevant times Saint Peter and Paul employed priests, school administrators, teachers, religious sisters, and/or others who served Catholic families, including plaintiff Ellis Warner and his family.

31. Upon information and belief, at all relevant times Saint Peter and Paul, its agents, servants, and employees managed, maintained, operated, and controlled Saint Peter and Paul, and held out to the public its agents, servants and employees as those who managed, maintained, operated, and controlled Saint Peter and Paul.

32. Upon information and belief, at all relevant times Saint Peter and Paul was responsible for and did the staffing and hiring at Saint Peter and Paul.

33. Upon information and belief, at all relevant times Saint Peter and Paul was responsible for and did the recruitment and staffing of volunteers at Saint Peter and Paul.

34. Upon information and belief, at all relevant times Saint Peter and Paul materially benefitted from the operation of Saint Peter and Paul, including the services of Father Lewandowski and the services of those who managed and supervised Father Lewandowski.

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

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

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

38. Upon information and belief, at all relevant times Father Lewandowski was employed by the Diocese and assigned to Saint Peter and Paul.

39. Upon information and belief, at all relevant times Father Lewandowski was a priest of Saint Peter and Paul.

40. Upon information and belief, at all relevant times Father Lewandowski was on the staff of, was an agent of, and served as an employee of Saint Peter and Paul.

41. Upon information and belief, at all relevant times Father Lewandowski was acting in the course and scope of his employment with Saint Peter and Paul.

42. Upon information and belief, at all relevant times Father Lewandowski had an office on the premises of Saint Peter and Paul.

43. When plaintiff Ellis Warner was a minor, he and his parents were members of the Diocese and Saint Peter and Paul, where Ellis and his parents were parishioners.

44. At all relevant times, the Diocese and Saint Peter and Paul, their agents, servants, and employees, held Father Lewandowski out to the public, to Ellis, and to his parents, as their agent and employee.

45. At all relevant times, the Diocese and Saint Peter and Paul, their agents, servants, and employees, held Father Lewandowski out to the public, to Ellis, and to his parents, as having been vetted, screened, and approved by those defendants.

46. At all relevant times, Ellis and his parents reasonably relied upon the acts and representations of the Diocese and Saint Peter and Paul, their agents, servants, and employees, and reasonably believed that Father Lewandowski was an agent or employee of those defendants who was vetted, screened, and approved by those defendants.

47. At all relevant times, Ellis and his parents trusted Father Lewandowski because the Diocese and Saint Peter and Paul held him out as someone who was safe and could be trusted with the supervision, care, custody, and control of Ellis.

48. At all relevant times, Ellis and his parents believed that the Diocese and Saint Peter and Paul would exercise such care as would a parent of ordinary prudence in comparable circumstances when those defendants assumed supervision, care, custody, and control of Ellis.

49. When Ellis was a minor, Father Lewandowski sexually abused him.

50. Ellis was sexually abused by Father Lewandowski from approximately age 13 to 14 years old.

51. Based on the representations of the Diocese and Saint Peter and Paul that Father Lewandowski was safe and trustworthy, Ellis and his parents allowed Ellis to be under the

supervision of, and in the care, custody, and control of, the Diocese and Saint Peter and Paul, including during the times when Ellis was sexually abused by Father Lewandowski.

52. Based on the representations of the Diocese and Saint Peter and Paul that Father Lewandowski was safe and trustworthy, Ellis and his parents allowed Ellis to be under the supervision of, and in the care, custody, and control of, Father Lewandowski, including during the times when Ellis was sexually abused by Father Lewandowski.

53. Neither Ellis nor his parents would have allowed him to be under the supervision of, or in the care, custody, or control of, the Diocese, Saint Peter and Paul, or Father Lewandowski if the Diocese or Saint Peter and Paul had disclosed to Ellis or his parents that Father Lewandowski was not safe and was not trustworthy, and that he in fact posed a danger to Ellis in that Father Lewandowski was likely to sexually abuse Ellis.

54. No parent of ordinary prudence in comparable circumstances would have allowed Ellis to be under the supervision of, or in the care, custody, or control of, the Diocese, Saint Peter and Paul, or Father Lewandowski if the Diocese or Saint Peter and Paul had disclosed to Ellis or his parents that Father Lewandowski was not safe and was not trustworthy, and that he in fact posed a danger to Ellis in that Father Lewandowski was likely to sexually abuse him.

55. From on or about 1962 through on or about 1963, Father Lewandowski exploited the trust and authority vested in him by defendants by grooming Ellis to gain his trust and to obtain control over him as part of Father Lewandowski's plan to sexually molest and abuse Ellis and other children.

56. Father Lewandowski used his position of trust and authority as a priest of the Diocese and of Saint Peter and Paul to groom Ellis and to sexually abuse him multiple times,

including when Ellis was under the supervision of, and in the care, custody, or control of, the Diocese, Saint Peter and Paul, and Father Lewandowski.

57. At certain times, the sexual abuse of Ellis by Father Lewandowski occurred at Saint Peter and Paul, including in the basement of the church.

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

59. At all relevant times, defendants, their agents, servants, and employees, knew or should have known that Father Lewandowski was a known sexual abuser of children.

60. At all relevant times, it was reasonably foreseeable to defendants, their agents, servants, and employees that Father Lewandowski's sexual abuse of children would likely result in injury to others, including the sexual abuse of Ellis and other children by Father Lewandowski.

61. Upon information and belief, at certain times between 1962 and 1963, defendants, their agents, servants, and employees knew or should have known that Father Lewandowski was sexually abusing Ellis and other children at Saint Peter and Paul and elsewhere.

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

63. Upon information and belief, the Diocese and Saint Peter and Paul, their agents, servants, and employees, knew or should have known before and during Father Lewandowski's sexual abuse of Ellis that priests, school administrators, teachers, religious sisters, and/or other persons serving the Diocese and Saint Peter and Paul had used their positions with those defendants to groom and to sexually abuse children.

64. Upon information and belief, the Diocese and Saint Peter and Paul, their agents, servants, and employees, knew or should have known before and during Father Lewandowski's

sexual abuse of Ellis that such priests, school administrators, teachers, religious sisters, and/or other persons could not be “cured” through treatment or counseling.

65. Upon information and belief, the Diocese and Saint Peter and Paul, their agents, servants, and employees, concealed the sexual abuse of children by Father Lewandowski 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 Lewandowski would continue to molest children.

66. Upon information and belief, the Diocese and Saint Peter and Paul, their agents, servants, and employees, consciously and recklessly disregarded their knowledge that Father Lewandowski would use his position with the defendants to sexually abuse children, including Ellis.

67. Upon information and belief, the Diocese and Saint Peter and Paul, their agents, servants, and employees, disregarded their knowledge that Father Lewandowski would use his position with them to sexually abuse children, including Ellis.

68. Upon information and belief, the Diocese and Saint Peter and Paul, their agents, servants, and employees, acted in concert with each other or with Father Lewandowski to conceal the danger that Father Lewandowski posed to children, including Ellis, so that Father Lewandowski could continue serving them despite their knowledge of that danger.

69. Upon information and belief, the Diocese and Saint Peter and Paul, 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 Ellis, and he did in fact suffer severe emotional and psychological distress and personal physical injury as a result of their wrongful conduct.

70. Upon information and belief, the Diocese and Saint Peter and Paul, 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, school administrators, teachers, religious sisters, and/or other persons would continue to molest children.

71. By reason of the wrongful acts of the Diocese and Saint Peter and Paul as detailed herein, Ellis 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 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 Ellis has and/or will become obligated to expend sums of money for treatment.

VI. CAUSES OF ACTION AS TO PLAINTIFF ELLIS WARNER

A. FIRST CAUSE OF ACTION – NEGLIGENCE

72. Plaintiff Ellis Warner repeats and re-alleges all of his allegations above and below.

73. The Diocese and Saint Peter and Paul had a duty to take reasonable steps to protect plaintiff Ellis Warner, a child, from foreseeable harm when he was under their supervision and in their care, custody, and control.

74. The Diocese and Saint Peter and Paul also had a duty to take reasonable steps to prevent Father Lewandowski from using the tasks, premises, and instrumentalities of his position with the defendants to target, groom, and sexually abuse children, including Ellis.

75. The Diocese and Saint Peter and Paul were supervising Ellis, and had care, custody, and control of Ellis, when he was a parishioner and at other times, during which time those defendants had a duty to take reasonable steps to protect him.

76. These circumstances created a special relationship between the Diocese and Ellis, and between Saint Peter and Paul and Ellis, which imposed on each of those defendants a duty to exercise the degree of care of a parent of ordinary prudence in comparable circumstances.

77. The Diocese and Saint Peter and Paul breached each of the foregoing duties by failing to exercise reasonable care to prevent Father Lewandowski from harming Ellis, including sexually abusing him.

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

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

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

81. As a direct and proximate result of the acts and omissions of the Diocese and Saint Peter and Paul, Father Lewandowski groomed and sexually abused Ellis, which has caused Ellis to suffer general and special damages as more fully described herein.

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

82. Plaintiff Ellis Warner repeats and re-alleges all of his allegations above and below.

83. The Diocese and Saint Peter and Paul engaged in reckless, extreme, and outrageous conduct by providing Father Lewandowski with access to children, including plaintiff Ellis Warner, despite knowing that he would likely use his position to groom and to sexually abuse them, including Ellis. 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.

84. As a result of this reckless, extreme, and outrageous conduct, Father Lewandowski gained access to Ellis and sexually abused him.

85. The Diocese and Saint Peter and Paul knew that this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury, on others, and Ellis 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

86. 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

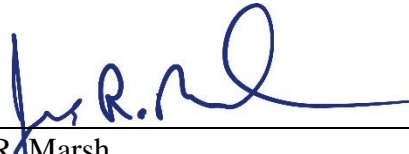
87. Plaintiff Ellis Warner demands judgment against the defendants named in his causes of action, together with compensatory and punitive damages to be determined at trial, and the interest, cost and disbursements pursuant to his causes of action, and such other and further relief as the Court deems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

88. Plaintiff Ellis Warner 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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