

NEW YORK STATE SUPREME COURT
ERIE COUNTY

-----X
GARY WITHERELL,

Index No.: _____

Date Filed: November 6, 2019

Plaintiff,

-against-

SUMMONS

DIOCESE OF BUFFALO and ST. ANDREW'S
CHURCH AND SCHOOL,

Plaintiff designates Erie County
as the place of trial.

Defendants.

-----X

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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By  _____

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NEW YORK STATE SUPREME COURT
ERIE COUNTY

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Index No.: _____/___

GARY WITHERELL,

COMPLAINT

Plaintiff,

-against-

Child Victims Act Proceeding
22 NYCRR 202.72

DIOCESE OF BUFFALO and ST. ANDREW’S
CHURCH AND SCHOOL,

Defendants.

Plaintiff Gary Witherell, 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 Gary Witherell is an adult male who currently resides in Tonawanda, 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 Gary Witherell and his family.

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

9. To the extent that the Diocese was a different entity, corporation, or organization during the period of time during which Father Schieder used his position as a priest to sexually abuse plaintiff Gary Witherell, 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 Schieder used his position as a priest to sexually abuse plaintiff Gary Witherell, 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. Andrew’s Church and School (“St. Andrew’s”) 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. Andrew’s is currently a not-for-profit religious corporation organized under New York law with its principal office in Kenmore, New York.

14. Upon information and belief, at all relevant times St. Andrew’s conducted business as “St. Andrew’s,” “St. Andrew’s Church and School,” “St. Andrew’s Church,” “St. Andrew’s Parish,” and/or “St. Andrew’s School.”

15. St. Andrew’s is a parish with a church and school located in Kenmore, New York.

16. Upon information and belief, Father Joseph Schieder was a priest employed by St. Andrew’s to serve Catholic families in its geographic jurisdiction, including plaintiff Gary Witherell and his family. During the time Father Joseph Schieder was employed by St. Andrew’s, he used his position as a priest to groom and to sexually abuse plaintiff Gary Witherell.

17. To the extent that St. Andrew's was a different entity, corporation, or organization during the period of time during which Father Schieder used his position as a priest to sexually abuse Gary, 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. Andrew's is a successor to a different entity, corporation, or organization which existed during the period of time during which Father Schieder used his position as a priest to sexually abuse Gary, 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. Andrew's-related entities, corporations, or organizations are collectively referred to herein as "St. Andrew's."

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. Andrew's is a domestic corporation authorized to transact business in New York with its principal office located in Kenmore, 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 Gary Witherell currently resides in Tonawanda, New York.

V. STATEMENT OF FACTS AS TO PLAINTIFF GARY WITHERELL

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

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

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. Andrew's, including plaintiff Gary Witherell and his family.

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

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. Andrew's.

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

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

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

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

33. Upon information and belief, at all relevant times St. Andrew's employed priests, school administrators, teachers, religious sisters, and/or others who served Catholic families, including plaintiff Gary Witherell and his family.

34. Upon information and belief, at all relevant times St. Andrew's, its agents, servants, and employees managed, maintained, operated, and controlled St. Andrew's, and held out to the

public its agents, servants and employees as those who managed, maintained, operated, and controlled St. Andrew's.

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

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

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

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

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

41. Upon information and belief, at all relevant times Father Schieder was employed by the Diocese and assigned to St. Andrew's.

42. Upon information and belief, at all relevant times Father Schieder was a priest of St. Andrew's.

43. Upon information and belief, at all relevant times Father Schieder was on the staff of, was an agent of, and served as an employee of St. Andrew's.

44. Upon information and belief, at all relevant times Father Schieder was acting in the course and scope of his employment with St. Andrew's.

45. Upon information and belief, at all relevant times Father Schieder had an office on the premises of St. Andrew's.

46. When plaintiff Gary Witherell was a minor, he and his parents were members of the Diocese and St. Andrew's, including when Gary served as an altar boy.

47. At all relevant times, the Diocese and St. Andrew's, their agents, servants, and employees, held Father Schieder out to the public, to Gary, and to his parents, as their agent and employee.

48. At all relevant times, the Diocese and St. Andrew's, their agents, servants, and employees, held Father Schieder out to the public, to Gary, and to his parents, as having been vetted, screened, and approved by those defendants.

49. At all relevant times, Gary and his parents reasonably relied upon the acts and representations of the Diocese and St. Andrew's, their agents, servants, and employees, and reasonably believed that Father Schieder was an agent or employee of those defendants who was vetted, screened, and approved by those defendants.

50. At all relevant times, Gary and his parents trusted Father Schieder because the Diocese and St. Andrew's held him out as someone who was safe and could be trusted with the supervision, care, custody, and control of Gary.

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

52. When Gary was a minor, Father Schieder sexually abused him.

53. Gary was sexually abused by Father Schieder from approximately age 13 to 14 years old.

54. Based on the representations of the Diocese and St. Andrew's that Father Schieder was safe and trustworthy, Gary and his parents allowed Gary to be under the supervision of, and in the care, custody, and control of, the Diocese and St. Andrew's, including during the times when Gary was sexually abused by Father Schieder.

55. Based on the representations of the Diocese and St. Andrew's that Father Schieder was safe and trustworthy, Gary and his parents allowed Gary to be under the supervision of, and in the care, custody, and control of, Father Schieder, including during the times when Gary was sexually abused by Father Schieder.

56. Neither Gary nor his parents would have allowed him to be under the supervision of, or in the care, custody, or control of, the Diocese, St. Andrew's, or Father Schieder if the Diocese or St. Andrew's had disclosed to Gary or his parents that Father Schieder was not safe and was not trustworthy, and that he in fact posed a danger to Gary in that Father Schieder was likely to sexually abuse Gary.

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

58. From approximately 1963 through 1964, Father Schieder exploited the trust and authority vested in him by defendants by grooming Gary to gain his trust and to obtain control over him as part of Father Schieder's plan to sexually molest and abuse Gary and other children.

59. Father Schieder used his position of trust and authority as a priest of the Diocese and of St. Andrew's to groom Gary and to sexually abuse him multiple times, including when Gary

was under the supervision of, and in the care, custody, or control of, the Diocese, St. Andrew's, and Father Schieder.

60. At certain times, the sexual abuse of Gary by Father Schieder occurred at St. Andrew's.

61. At certain times, Father Schieder's sexual abuse of Gary occurred during activities that were sponsored by, or were a direct result of activities sponsored by, the Diocese and St. Andrew's, including during altar boy service.

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

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

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

65. Upon information or belief, at certain times between 1963 and 1964, defendants, their agents, servants, and employees knew or should have known that Father Schieder was sexually abusing Gary and other children at St. Andrew's and elsewhere.

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

67. Upon information and belief, the Diocese and St. Andrew's, their agents, servants, and employees, knew or should have known before and during Father Schieder's sexual abuse of

Gary that priests, school administrators, teachers, religious sisters, and/or other persons serving the Diocese and St. Andrew's had used their positions with those defendants to groom and to sexually abuse children.

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

69. Upon information and belief, the Diocese and St. Andrew's, their agents, servants, and employees, concealed the sexual abuse of children by Father Schieder 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 Schieder would continue to molest children.

70. Upon information and belief, the Diocese and St. Andrew's, their agents, servants, and employees, consciously and recklessly disregarded their knowledge that Father Schieder would use his position with the defendants to sexually abuse children, including Gary.

71. Upon information and belief, the Diocese and St. Andrew's, their agents, servants, and employees, disregarded their knowledge that Father Schieder would use his position with them to sexually abuse children, including Gary.

72. Upon information and belief, the Diocese and St. Andrew's, their agents, servants, and employees, acted in concert with each other or with Father Schieder to conceal the danger that Father Schieder posed to children, including Gary, so that Father Schieder could continue serving them despite their knowledge of that danger.

73. Upon information and belief, the Diocese and St. Andrew's, 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 Gary, and he did in fact suffer severe emotional and psychological distress and personal physical injury as a result of their wrongful conduct.

74. Upon information and belief, the Diocese and St. Andrew's, 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 others would continue to molest children.

75. By reason of the wrongful acts of the Diocese and St. Andrew's as detailed herein, Gary 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 Gary has and/or will become obligated to expend sums of money for treatment.

VI. CAUSES OF ACTION AS TO PLAINTIFF GARY WITHERELL

A. FIRST CAUSE OF ACTION – NEGLIGENCE

76. Plaintiff Gary Witherell repeats and re-alleges all of his allegations above and below.

77. The Diocese and St. Andrew's had a duty to take reasonable steps to protect plaintiff Gary Witherell, a child, from foreseeable harm when he was under their supervision and in their care, custody, and control.

78. The Diocese and St. Andrew's also had a duty to take reasonable steps to prevent Father Schieder from using the tasks, premises, and instrumentalities of his position with the defendants to target, groom, and sexually abuse children, including Gary.

79. The Diocese and St. Andrew's were supervising Gary, and had care, custody, and control of Gary, when he was a student and altar boy, and at other times, during which time those defendants had a duty to take reasonable steps to protect him.

80. These circumstances created a special relationship between the Diocese and Gary, and between St. Andrew's and Gary, which imposed on each of those defendants a duty to exercise the degree of care of a parent of ordinary prudence in comparable circumstances.

81. The Diocese and St. Andrew's breached each of the foregoing duties by failing to exercise reasonable care to prevent Father Schieder from harming Gary, including sexually abusing him.

82. In breaching their duties, including hiring, retaining, and failing to supervise Father Schieder, 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 Gary, his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for Gary and other children who were under their supervision and in their care, custody, and control, the Diocese and St. Andrew's created a risk that Gary would be sexually abused by Father Schieder. The Diocese and St.

Andrew's through their actions and inactions created an environment that placed Gary in danger of unreasonable risks of harm under the circumstances.

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

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

85. As a direct and proximate result of the acts and omissions of the Diocese and St. Andrew's, Father Schieder groomed and sexually abused Gary, which has caused Gary to suffer general and special damages as more fully described herein.

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

86. Plaintiff Gary Witherell repeats and re-alleges all of his allegations above and below.

87. The Diocese and St. Andrew's engaged in reckless, extreme, and outrageous conduct by providing Father Schieder with access to children, including plaintiff Gary Witherell, despite knowing that he would likely use his position to groom and to sexually abuse them, including Gary. 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.

88. As a result of this reckless, extreme, and outrageous conduct, Father Schieder gained access to Gary and sexually abused him.

89. The Diocese and St. Andrew's knew that this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury, on others, and Gary 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

90. 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

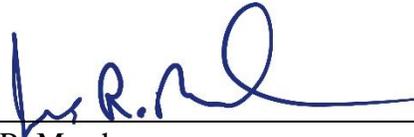
91. Plaintiff Gary Witherell demands judgment against the defendants named in his causes of action, together with compensatory and punitive damages to be determined at trial, and the interest, cost and disbursements pursuant to his causes of action, and such other and further relief as the Court deems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

92. Plaintiff Gary Witherell 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,

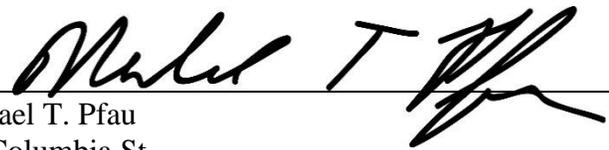
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