

NEW YORK STATE SUPREME COURT
ERIE COUNTY

-----X
MICHAEL KIRST,

Plaintiff,

-against-

DIOCESE OF BUFFALO and SAINTS PETER AND
PAUL CATHOLIC 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

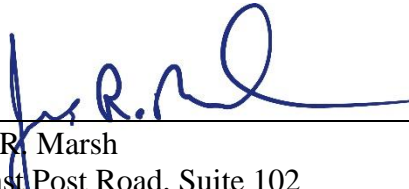
TO THE ABOVE NAMED DEFENDANTS:

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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COMPLAINT

Child Victims Act Proceeding
22 NYCRR 202.72

Plaintiff Michael Kirst, 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 Michael Kirst is an adult male 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."

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 Michael Kirst and his family.

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

9. To the extent that the Diocese was a different entity, corporation, or organization during the period of time during which Father Becker used his position as a priest to sexually abuse plaintiff Michael Kirst, 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 Becker used his position as a priest to sexually abuse plaintiff Michael Kirst, 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 Saints Peter and Paul Catholic Church and School (“Saints 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, Saints Peter and Paul is currently a not-for-profit religious corporation organized under New York law with its principal office in Hamburg, New York.

14. Upon information and belief, at all relevant times Saints Peter and Paul conducted business as “Saints Peter and Paul Catholic Church,” “Saints Peter and Paul,” “Saints Peter and Paul Parish,” “St. Peter and St. Paul Church,” “St. Peter and Paul Parish,” “Saints Peter and Paul Catholic Church and School,” “Saints Peter and Paul School,” “St. Peter and St. Paul School,” and/or “St. Peter and Paul School.”

15. Saints Peter and Paul is a parish with a church and school located in Hamburg, New York.

16. Upon information and belief, Father Donald Becker was a priest employed by Saints Peter and Paul to serve Catholic families in its geographic jurisdiction, including plaintiff Michael Kirst and his family. During the time Father Donald Becker was employed by Saints Peter and Paul, he used his position as a priest to groom and to sexually abuse plaintiff Michael Kirst.

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

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

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

21. Venue is proper because Saints Peter and Paul is a domestic corporation authorized to transact business in New York with its principal office located in Hamburg, 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 Michael Kirst currently resides in Hamburg, New York.

V. STATEMENT OF FACTS AS TO PLAINTIFF MICHAEL KIRST

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

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

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 Saints Peter and Paul, including plaintiff Michael Kirst and his family.

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

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 Saints Peter and Paul.

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

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

31. Upon information and belief, at all relevant times Saints Peter and Paul owned a parish, church, and school.

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

33. Upon information and belief, at all relevant times Saints Peter and Paul employed priests, school administrators, teachers, religious sisters, and/or others who served Catholic families, including plaintiff Michael Kirst and his family.

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

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

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

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

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

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

41. Upon information and belief, at all relevant times Father Becker was employed by the Diocese and assigned to Saints Peter and Paul.

42. Upon information and belief, at all relevant times Father Becker was a priest of Saints Peter and Paul.

43. Upon information and belief, at all relevant times Father Becker was on the staff of, was an agent of, and served as an employee of Saints Peter and Paul.

44. Upon information and belief, at all relevant times Father Becker was acting in the course and scope of his employment with Saints Peter and Paul.

45. Upon information and belief, at all relevant times Father Becker had an office on the premises of Saints Peter and Paul.

46. When plaintiff Michael Kirst was a minor, he and his parents were members of the Diocese and Saints Peter and Paul, including when they were parishioners at Saints Peter and Paul.

47. At all relevant times, the Diocese and Saints Peter and Paul, their agents, servants, and employees, held Father Becker out to the public, to Michael, and to his parents, as their agent and employee.

48. At all relevant times, the Diocese and Saints Peter and Paul, their agents, servants, and employees, held Father Becker out to the public, to Michael, and to his parents, as having been vetted, screened, and approved by those defendants.

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

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

51. At all relevant times, Michael and his parents believed that the Diocese and Saints 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 Michael.

52. When Michael was a minor, Father Becker sexually abused him.

53. Michael was sexually abused by Father Becker when he was approximately 11 years old.

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

55. Based on the representations of the Diocese and Saints Peter and Paul that Father Becker was safe and trustworthy, Michael and his parents allowed Michael to be under the supervision of, and in the care, custody, and control of, Father Becker, including when Michael was sexually abused by Father Becker.

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

57. No parent of ordinary prudence in comparable circumstances would have allowed Michael to be under the supervision of, or in the care, custody, or control of, the Diocese, Saints Peter and Paul, or Father Becker if the Diocese or Saints Peter and Paul had disclosed to Michael

or his parents that Father Becker was not safe and was not trustworthy, and that he in fact posed a danger to Michael in that Father Becker was likely to sexually abuse him.

58. From on or about 1974 through on or about 1975, Father Becker exploited the trust and authority vested in him by defendants by grooming Michael to gain his trust and to obtain control over him as part of Father Becker's plan to sexually molest and abuse Michael and other children.

59. Father Becker used his position of trust and authority as a priest of the Diocese and of Saints Peter and Paul to groom Michael and to sexually abuse him, including when Michael was under the supervision of, and in the care, custody, or control of, the Diocese, Saints Peter and Paul, and Father Becker.

60. The sexual abuse of Michael by Father Becker occurred at the Diocese's/Father Becker's cabin, where Father Becker lived at times while he was providing services to the Diocese and Saints Peter and Paul.

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

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

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

64. Upon information and belief, the defendants, their agents, servants, and employees, knew or should have known that Father Becker was sexually abusing Michael and other children at Saints Peter and Paul and elsewhere.

65. Upon information and belief, the Diocese and Saints Peter and Paul, their agents, servants, and employees, knew or should have known that Father Becker was likely to abuse children, including Michael, because Michael's parents reported Father Becker and Father Becker was transferred out of the parish.

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

67. Upon information and belief, the Diocese and Saints Peter and Paul, their agents, servants, and employees, knew or should have known before and during Father Becker's sexual abuse of Michael 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 Saints Peter and Paul, their agents, servants, and employees, concealed the sexual abuse of children by Father Becker 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 Becker would continue to molest children.

69. Upon information and belief, the Diocese and Saints Peter and Paul, their agents, servants, and employees, consciously and recklessly disregarded their knowledge that Father Becker would use his position with the defendants to sexually abuse children, including Michael.

70. Upon information and belief, the Diocese and Saints Peter and Paul, their agents, servants, and employees, disregarded their knowledge that Father Becker would use his position with them to sexually abuse children, including Michael.

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

72. Upon information and belief, the Diocese and Saints 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 Michael, and he 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 Saints 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.

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

VI. CAUSES OF ACTION AS TO PLAINTIFF MICHAEL KIRST

A. FIRST CAUSE OF ACTION – NEGLIGENCE

75. Plaintiff Michael Kirst repeats and re-alleges all of his allegations above and below.

76. The Diocese and Saints Peter and Paul had a duty to take reasonable steps to protect plaintiff Michael Kirst, a child, from foreseeable harm when he was under their supervision and in their care, custody, and control.

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

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

79. These circumstances created a special relationship between the Diocese and Michael, and between Saints Peter and Paul and Michael, 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 Saints Peter and Paul breached each of the foregoing duties by failing to exercise reasonable care to prevent Father Becker from harming Michael, including sexually abusing him.

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

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

84. As a direct and proximate result of the acts and omissions of the Diocese and Saints Peter and Paul, Father Becker groomed and sexually abused Michael, which has caused Michael 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 Michael Kirst repeats and re-alleges all of his allegations above and below.

86. The Diocese and Saints Peter and Paul engaged in reckless, extreme, and outrageous conduct by providing Father Becker with access to children, including plaintiff Michael Kirst, despite knowing that he would likely use his position to groom and to sexually abuse them, including Michael. 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 Becker gained access to Michael and sexually abused him.

88. The Diocese and Saints 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 Michael 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

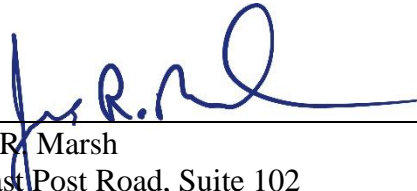
90. Plaintiff Michael Kirst demands judgment against the defendants named in his causes of action, together with compensatory and punitive damages to be determined at trial, and the interest, cost and disbursements pursuant to his causes of action, and such other and further relief as the Court deems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

91. Plaintiff Michael Kirst 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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