

NEW YORK STATE SUPREME COURT  
ERIE COUNTY

-----X  
PATRICIA ANN SWAN,

Plaintiff,

-against-

DIOCESE OF BUFFALO and ALL SAINTS ROMAN  
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,

MARSH LAW FIRM PLLC

By  \_\_\_\_\_

James R. Marsh  
151 East Post Road, Suite 102  
White Plains, NY 10601-5210  
Phone: 929-232-3235  
[jamesmarsh@marsh.law](mailto:jamesmarsh@marsh.law)

Jennifer Freeman  
151 East Post Road, Suite 102  
White Plains, NY 10601-5210  
Phone: 929-232-3128  
[jenniferfreeman@marsh.law](mailto:jenniferfreeman@marsh.law)

Robert Y. Lewis  
151 East Post Road, Suite 102  
White Plains, NY 10601-5210  
Phone: 646-306-2145  
[robertlewis@marsh.law](mailto:robertlewis@marsh.law)

PFAU COCHRAN VERTETIS AMALA PLLC

By   
Michael T. Pfau  
403 Columbia St.  
Suite 500  
Seattle, WA 98104  
Phone: 206-462-4335  
[michael@pcvalaw.com](mailto:michael@pcvalaw.com)  
*Pro hac vice forthcoming*

Jason P. Amala  
403 Columbia St.  
Suite 500  
Seattle, WA 98104  
Phone: 206-462-4339  
[jason@pcvalaw.com](mailto:jason@pcvalaw.com)  
*Pro hac vice forthcoming*

Anelga Doumanian  
31 Hudson Yards  
11th Floor Suite 36  
New York, NY 10001  
Phone: 206-330-0215  
[adoumanian@pcvalaw.com](mailto:adoumanian@pcvalaw.com)

*Attorneys for Plaintiff*

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**COMPLAINT**

**Child Victims Act Proceeding**  
**22 NYCRR 202.72**

Plaintiff Patricia Ann Swan, 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 Patricia Ann Swan is an adult female who currently resides in New Castle, Pennsylvania.

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 Patricia Ann Swan and her family.

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

9. To the extent that the Diocese was a different entity, corporation, or organization during the period of time during which Father Hayes used his position as a priest to sexually abuse plaintiff Patricia Ann Swan, 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 Hayes used his position as a priest to sexually abuse plaintiff Patricia Ann Swan, 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 All Saints Roman Catholic Church and School (“All Saints”) 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, All Saints is currently a not-for-profit religious corporation organized under New York law with its principal office in Buffalo, New York.

14. Upon information and belief, at all relevant times All Saints conducted business as “All Saints Roman Catholic Church,” “All Saints Roman Catholic Church and School,” “All Saints,” “All Saints Catholic Church,” “All Saints School,” or “All Saints Parish.”

15. Upon information and belief, All Saints is a parish with a church and school located in Buffalo, New York.

16. Upon information and belief, Father James Hayes was a priest employed by All Saints to serve Catholic families in its geographic jurisdiction, including plaintiff Patricia Ann

Swan and her family. During the time Father James Hayes was employed by All Saints, he used his position as a priest to groom and to sexually abuse plaintiff Patricia Ann Swan.

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

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

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

#### **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 All Saints is a domestic corporation authorized to transact business in New York with its principal office located in Buffalo, 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.

#### **V. STATEMENT OF FACTS AS TO PLAINTIFF PATRICIA ANN SWAN**

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

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

25. 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 All Saints, including plaintiff Patricia Ann Swan and her family.

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

27. Upon information and belief, at all relevant times the Diocese was responsible for the hiring and staffing, and did the hiring and staffing, at All Saints.

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

29. Upon information and belief, at all relevant times the Diocese materially benefited from the operation of All Saints, including the services of Father Hayes and the services of those who managed and supervised Father Hayes.

30. Upon information and belief, at all relevant times All Saints owned a parish, church, and school.

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

32. Upon information and belief, at all relevant times All Saints employed priests, school administrators, teachers, religious sisters, and/or others who served Catholic families, including plaintiff Patricia Ann Swan and her family.

33. Upon information and belief, at all relevant times All Saints, its agents, servants, and employees managed, maintained, operated, and controlled All Saints, and held out to the

public its agents, servants and employees as those who managed, maintained, operated, and controlled All Saints.

34. Upon information and belief, at all relevant times All Saints was responsible for and did the staffing and hiring at All Saints.

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

36. Upon information and belief, at all relevant times All Saints materially benefitted from the operation of All Saints, including the services of Father Hayes and the services of those who managed and supervised Father Hayes.

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

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

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

40. Upon information and belief, at all relevant times Father Hayes was employed by the Diocese and assigned to All Saints.

41. Upon information and belief, at all relevant times Father Hayes was a priest of All Saints.

42. Upon information and belief, at all relevant times Father Hayes was on the staff of, was an agent of, and served as an employee of All Saints.

43. Upon information and belief, at all relevant times Father Hayes was acting in the course and scope of his employment with All Saints.



44. Upon information and belief, at all relevant times Father Hayes had an office on the premises of All Saints.

45. When plaintiff Patricia Ann Swan was a minor, she and her parents were members of the Diocese and All Saints, including when they were parishioners.

46. At all relevant times, the Diocese and All Saints, their agents, servants, and employees, held Father Hayes out to the public, to Patricia, and to her parents, as their agent and employee.

47. At all relevant times, the Diocese and All Saints, their agents, servants, and employees, held Father Hayes out to the public, to Patricia, and to her parents, as having been vetted, screened, and approved by those defendants.

48. At all relevant times, Patricia and her parents reasonably relied upon the acts and representations of the Diocese and All Saints, their agents, servants, and employees, and reasonably believed that Father Hayes was an agent or employee of those defendants who was vetted, screened, and approved by those defendants.

49. At all relevant times, Patricia and her parents trusted Father Hayes because the Diocese and All Saints held him out as someone who was safe and could be trusted with the supervision, care, custody, and control of Patricia.

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

51. When Patricia was a minor, Father Hayes sexually abused her.

52. Patricia was sexually abused by Father Hayes from approximately age 11 to 15 years old.

53. Based on the representations of the Diocese and All Saints that Father Hayes was safe and trustworthy, Patricia and her parents allowed Patricia to be under the supervision of, and in the care, custody, and control of, the Diocese and All Saints, including during the times when Patricia was sexually abused by Father Hayes.

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

55. Neither Patricia nor her parents would have allowed her to be under the supervision of, or in the care, custody, or control of, the Diocese, All Saints, or Father Hayes if the Diocese or All Saints had disclosed to Patricia or her parents that Father Hayes was not safe and was not trustworthy, and that he in fact posed a danger to Patricia in that Father Hayes was likely to sexually abuse Patricia.

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

57. From approximately 1972 through 1976, Father Hayes exploited the trust and authority vested in him by defendants by grooming Patricia to gain her trust and to obtain control over her as part of Father Hayes's plan to sexually molest and abuse Patricia and other children.

58. Father Hayes used his position of trust and authority as a priest of the Diocese and of All Saints to groom Patricia and to sexually abuse her multiple times, including when Patricia

was under the supervision of, and in the care, custody, or control of, the Diocese, All Saints, and Father Hayes.

59. At certain times, the sexual abuse of Patricia by Father Hayes occurred at All Saints, including in the church sacristy and in the church rectory.

60. At certain times, Father Hayes's sexual abuse of Patricia occurred during activities that were sponsored by, or were a direct result of activities sponsored by, the Diocese and All Saints, including during Bingo events at the church.

61. Upon information and belief, prior to the times mentioned herein, Father Hayes 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 Hayes 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 Hayes's sexual abuse of children would likely result in injury to others, including the sexual abuse of Patricia and other children by Father Hayes.

64. Upon information and belief, at certain times between 1972 and 1976, defendants, their agents, servants, and employees knew or should have known that Father Hayes was sexually abusing Patricia and other children at All Saints and elsewhere.

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

66. Upon information and belief, the Diocese and All Saints, their agents, servants, and employees, knew or should have known before and during Father Hayes's sexual abuse of Patricia

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

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

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

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

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

72. Upon information and belief, the Diocese and All Saints, 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 Patricia, 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 All Saints, 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 All Saints as detailed herein, Patricia 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 Patricia has and/or will become obligated to expend sums of money for treatment.

**VI. CAUSES OF ACTION AS TO PLAINTIFF PATRICIA ANN SWAN**

**A. FIRST CAUSE OF ACTION – NEGLIGENCE**

75. Plaintiff Patricia Ann Swan repeats and re-alleges all of her allegations above and below.

76. The Diocese and All Saints had a duty to take reasonable steps to protect plaintiff Patricia Ann Swan, a child, from foreseeable harm when she was under their supervision and in their care, custody, and control.

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

78. The Diocese and All Saints were supervising Patricia, and had care, custody, and control of Patricia, when she was a parishioner 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 Patricia, and between All Saints and Patricia, 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 All Saints breached each of the foregoing duties by failing to exercise reasonable care to prevent Father Hayes from harming Patricia, including sexually abusing her.

81. In breaching their duties, including hiring, retaining, and failing to supervise Father Hayes, 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 Patricia, her parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for Patricia and other children who were under their supervision and in their care, custody, and control, the Diocese and All Saints created a risk that Patricia would be sexually abused by Father Hayes. The Diocese and All Saints

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

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

84. As a direct and proximate result of the acts and omissions of the Diocese and All Saints, Father Hayes groomed and sexually abused Patricia, which has caused Patricia 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 Patricia Ann Swan repeats and re-alleges all of her allegations above and below.

86. The Diocese and All Saints engaged in reckless, extreme, and outrageous conduct by providing Father Hayes with access to children, including plaintiff Patricia Ann Swan, despite knowing that he would likely use his position to groom and to sexually abuse them, including Patricia. 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 Hayes gained access to Patricia and sexually abused her.

88. The Diocese and All Saints knew that this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury, on others, and Patricia 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 Patricia Ann Swan 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 Patricia Ann Swan 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,

MARSH LAW FIRM PLLC

By   
James R. Marsh  
151 East Post Road, Suite 102  
White Plains, NY 10601-5210  
Phone: 929-232-3235  
[jamesmarsh@marsh.law](mailto:jamesmarsh@marsh.law)

Jennifer Freeman  
151 East Post Road, Suite 102  
White Plains, NY 10601-5210  
Phone: 929-232-3128  
[jenniferfreeman@marsh.law](mailto:jenniferfreeman@marsh.law)

Robert Y. Lewis  
151 East Post Road, Suite 102  
White Plains, NY 10601-5210  
Phone: 646-306-2145  
[robertlewis@marsh.law](mailto:robertlewis@marsh.law)

PFAU COCHRAN VERTETIS AMALA PLLC

By   
Michael T. Pfau  
403 Columbia St.  
Suite 500  
Seattle, WA 98104  
Phone: 206-462-4335  
[michael@pcvalaw.com](mailto:michael@pcvalaw.com)  
*Pro hac vice forthcoming*

Jason P. Amala  
403 Columbia St.  
Suite 500  
Seattle, WA 98104  
Phone: 206-462-4339  
[jason@pcvalaw.com](mailto:jason@pcvalaw.com)  
*Pro hac vice forthcoming*

Anelga Doumanian  
31 Hudson Yards  
11th Floor Suite 36  
New York, NY 10001  
Phone: 206-330-0215  
[adoumanian@pcvalaw.com](mailto:adoumanian@pcvalaw.com)

*Attorneys for Plaintiff*