

NEW YORK STATE SUPREME COURT  
ERIE COUNTY

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SARA FENZEL,

Plaintiff,

-against-

DIOCESE OF BUFFALO and HOLY ANGELS  
ACADEMY,

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**

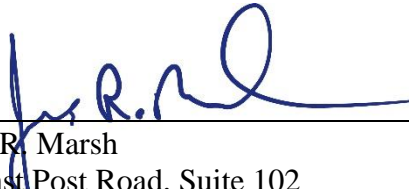
TO THE ABOVE NAMED DEFENDANTS:

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,

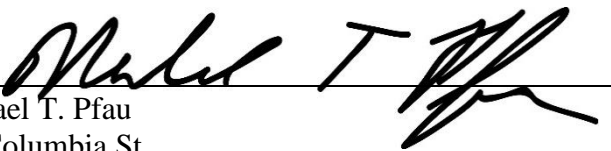
MARSH LAW FIRM PLLC

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*

NEW YORK STATE SUPREME COURT  
ERIE COUNTY

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SARA FENZEL,

Index No.: \_\_\_\_\_/\_\_\_

**COMPLAINT**

Plaintiff,

-against-

DIOCESE OF BUFFALO and HOLY ANGELS  
ACADEMY,

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

Defendants.  
-----

Plaintiff Sara Fenzel, 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 Sara Fenzel is an adult female who currently resides in Buffalo, 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 Sara Fenzel and her family.

8. Upon information and belief, Scott Mitchell ("Mr. Mitchell") was a teacher employed by the Diocese to serve Catholic families, including plaintiff Sara Fenzel and her family. During the time Mr. Mitchell was employed by the Diocese, he used his position as a teacher to groom and to sexually abuse plaintiff Sara Fenzel.

9. To the extent that the Diocese was a different entity, corporation, or organization during the period of time during which Mr. Mitchell used his position as a teacher to sexually abuse plaintiff Sara Fenzel, 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 Mr. Mitchell used his position as a teacher to sexually abuse plaintiff Sara Fenzel, 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 Holy Angels Academy (“Holy Angels”) 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, Holy Angels 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 Holy Angels conducted business as “Holy Angels Academy,” “Holy Angels,” and/or “Holy Angels School.”

15. Holy Angels was/is an all-girls Catholic school located in Buffalo, New York.

16. Upon information and belief, Scott Mitchell was a teacher employed by Holy Angels to serve Catholic families in its geographic jurisdiction, including plaintiff Sara Fenzel and her family. During the time Scott Mitchell was employed by Holy Angels, he used his position as a teacher to groom and to sexually abuse plaintiff Sara Fenzel.

17. To the extent that Holy Angels was a different entity, corporation, or organization during the period of time during which Mr. Mitchell used his position as a teacher to sexually abuse Sara Fenzel, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

18. To the extent Holy Angels is a successor to a different entity, corporation, or organization which existed during the period of time during which Mr. Mitchell used his position as a teacher to sexually abuse Sara Fenzel, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

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

#### **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 Holy Angels 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.

23. Venue is proper because plaintiff Sara Fenzel currently resides in Buffalo, New York.

#### **V. STATEMENT OF FACTS AS TO PLAINTIFF SARA FENZEL**

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

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

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 Holy Angels, including plaintiff Sara Fenzel and her family.

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

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 Holy Angels.

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

30. Upon information and belief, at all relevant times the Diocese materially benefited from the operation of Holy Angels, including the services of Mr. Mitchell and the services of those who managed and supervised Mr. Mitchell.

31. Upon information and belief, at all relevant times Holy Angels owned a school.

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

33. Upon information and belief, at all relevant times Holy Angels employed p priests, school administrators, teachers, religious sisters, and/or others who served Catholic families, including plaintiff Sara Fenzel and her family.

34. Upon information and belief, at all relevant times Holy Angels, its agents, servants, and employees managed, maintained, operated, and controlled Holy Angels, and held out to the

public its agents, servants and employees as those who managed, maintained, operated, and controlled Holy Angels.

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

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

37. Upon information and belief, at all relevant times Holy Angels materially benefitted from the operation of Holy Angels, including the services of Mr. Mitchell and the services of those who managed and supervised Mr. Mitchell.

38. Upon information and belief, at all relevant times Mr. Mitchell was a teacher of the Diocese.

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

41. Upon information and belief, at all relevant times Mr. Mitchell was employed by the Diocese and assigned to Holy Angels.

42. Upon information and belief, at all relevant times Mr. Mitchell was a teacher of Holy Angels.

43. Upon information and belief, at all relevant times Mr. Mitchell was on the staff of, was an agent of, and served as an employee of Holy Angels.

44. Upon information and belief, at all relevant times Mr. Mitchell was acting in the course and scope of his employment with Holy Angels.



45. Upon information and belief, at all relevant times Mr. Mitchell had an office on the premises of Holy Angels.

46. When plaintiff Sara Fenzel was a minor, she and her parents were members of the Diocese and Holy Angels, including when Sara was a student.

47. At all relevant times, the Diocese and Holy Angels, their agents, servants, and employees, held Mr. Mitchell out to the public, to Sara, and to her parents, as their agent and employee.

48. At all relevant times, the Diocese and Holy Angels, their agents, servants, and employees, held Mr. Mitchell out to the public, to Sara, and to her parents, as having been vetted, screened, and approved by those defendants.

49. At all relevant times, Sara and her parents reasonably relied upon the acts and representations of the Diocese and Holy Angels, their agents, servants, and employees, and reasonably believed that Mr. Mitchell was an agent or employee of those defendants who was vetted, screened, and approved by those defendants.

50. At all relevant times, Sara and her parents trusted Mr. Mitchell because the Diocese and Holy Angels held him out as someone who was safe and could be trusted with the supervision, care, custody, and control of Sara.

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

52. When Sara was a minor, Mr. Mitchell sexually abused her.

53. Sara was sexually abused by Mr. Mitchell from approximately age 16 to 17 years old.

54. Based on the representations of the Diocese and Holy Angels that Mr. Mitchell was safe and trustworthy, Sara and her parents allowed Sara to be under the supervision of, and in the care, custody, and control of, the Diocese and Holy Angels, including during the times when Sara was sexually abused by Mr. Mitchell.

55. Based on the representations of the Diocese and Holy Angels that Mr. Mitchell was safe and trustworthy, Sara and her parents allowed Sara to be under the supervision of, and in the care, custody, and control of, Mr. Mitchell, including during the times when Sara was sexually abused by Mr. Mitchell.

56. Neither Sara nor her parents would have allowed her to be under the supervision of, or in the care, custody, or control of, the Diocese, Holy Angels, or Mr. Mitchell if the Diocese or Holy Angels had disclosed to Sara or her parents that Mr. Mitchell was not safe and was not trustworthy, and that he in fact posed a danger to Sara in that Mr. Mitchell was likely to sexually abuse Sara.

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

58. From approximately 1994 through 1995, Mr. Mitchell exploited the trust and authority vested in him by defendants by grooming Sara to gain her trust and to obtain control over her as part of Mr. Mitchell's plan to sexually molest and abuse Sara and other children.

59. Mr. Mitchell used his position of trust and authority as a teacher of the Diocese and of Holy Angels to groom Sara and to sexually abuse her multiple times, including when Sara was

under the supervision of, and in the care, custody, or control of, the Diocese, Holy Angels, and Mr. Mitchell.

60. At certain times, the sexual abuse of Sara by Mr. Mitchell occurred at Holy Angels, including in a classroom at the school.

61. At certain times, Mr. Mitchell's sexual abuse of Sara occurred during activities that were sponsored by, or were a direct result of activities sponsored by, the Diocese and Holy Angels, including during class.

62. Upon information and belief, prior to the times mentioned herein, Mr. Mitchell 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 Mr. Mitchell 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 Mr. Mitchell's sexual abuse of children would likely result in injury to others, including the sexual abuse of Sara and other children by Mr. Mitchell.

65. Upon information and belief, at certain times between 1994 and 1995, defendants, their agents, servants, and employees knew or should have known that Mr. Mitchell was sexually abusing Sara and other children at Holy Angels and elsewhere.

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

67. Upon information and belief, the Diocese and Holy Angels, their agents, servants, and employees, knew or should have known that Mr. Mitchell was likely to abuse children,

including Sara, because plaintiff Sara's art teacher asked Plaintiff if there was anything going on with Mr. Mitchell due to his suspicion that he was sexually abusing her.

68. Upon information and belief, the Diocese and Holy Angels, their agents, servants, and employees, knew or should have known before and during Mr. Mitchell's sexual abuse of Sara that priests, school administrators, teachers, religious sisters, and/or other persons serving the Diocese and Holy Angels had used their positions with those defendants to groom and to sexually abuse children.

69. Upon information and belief, the Diocese and Holy Angels, their agents, servants, and employees, knew or should have known before and during Mr. Mitchell's sexual abuse of Sara that such teachers, priests, and other persons could not be "cured" through treatment or counseling.

70. Upon information and belief, the Diocese and Holy Angels, their agents, servants, and employees, concealed the sexual abuse of children by Mr. Mitchell 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 Mr. Mitchell would continue to molest children.

71. Upon information and belief, the Diocese and Holy Angels, their agents, servants, and employees, consciously and recklessly disregarded their knowledge that Mr. Mitchell would use his position with the defendants to sexually abuse children, including Sara.

72. Upon information and belief, the Diocese and Holy Angels, their agents, servants, and employees, disregarded their knowledge that Mr. Mitchell would use his position with them to sexually abuse children, including Sara.

73. Upon information and belief, the Diocese and Holy Angels, their agents, servants, and employees, acted in concert with each other or with Mr. Mitchell to conceal the danger that Mr. Mitchell posed to children, including Sara, so that Mr. Mitchell could continue serving them despite their knowledge of that danger.

74. Upon information and belief, the Diocese and Holy Angels, 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 Sara, and she did in fact suffer severe emotional and psychological distress and personal physical injury as a result of their wrongful conduct.

75. Upon information and belief, the Diocese and Holy Angels, 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.

76. By reason of the wrongful acts of the Diocese and Holy Angels as detailed herein, Sara 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 Sara has and/or will become obligated to expend sums of money for treatment.

**VI. CAUSES OF ACTION AS TO PLAINTIFF SARA FENZEL****A. FIRST CAUSE OF ACTION – NEGLIGENCE**

77. Plaintiff Sara Fenzel repeats and re-alleges all of her allegations above and below.

78. The Diocese and Holy Angels had a duty to take reasonable steps to protect plaintiff Sara Fenzel, a child, from foreseeable harm when she was under their supervision and in their care, custody, and control.

79. The Diocese and Holy Angels also had a duty to take reasonable steps to prevent Mr. Mitchell from using the tasks, premises, and instrumentalities of his position with the defendants to target, groom, and sexually abuse children, including Sara.

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

81. These circumstances created a special relationship between the Diocese and Sara, and between Holy Angels and Sara, which imposed on each of those defendants a duty to exercise the degree of care of a parent of ordinary prudence in comparable circumstances.

82. The Diocese and Holy Angels breached each of the foregoing duties by failing to exercise reasonable care to prevent Mr. Mitchell from harming Sara, including sexually abusing her.

83. In breaching their duties, including hiring, retaining, and failing to supervise Mr. Mitchell, 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 Sara, her parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for Sara and other children who were under their supervision and in their care, custody, and control, the Diocese and Holy Angels

created a risk that Sara would be sexually abused by Mr. Mitchell. The Diocese and Holy Angels through their actions and inactions created an environment that placed Sara in danger of unreasonable risks of harm under the circumstances.

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

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

86. As a direct and proximate result of the acts and omissions of the Diocese and Holy Angels, Mr. Mitchell groomed and sexually abused Sara, which has caused Sara to suffer general and special damages as more fully described herein.

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

87. Plaintiff Sara Fenzel repeats and re-alleges all of her allegations above and below.

88. The Diocese and Holy Angels engaged in reckless, extreme, and outrageous conduct by providing Mr. Mitchell with access to children, including plaintiff Sara Fenzel, despite knowing that he would likely use his position to groom and to sexually abuse them, including Sara. 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.

89. As a result of this reckless, extreme, and outrageous conduct, Mr. Mitchell gained access to Sara and sexually abused her.

90. The Diocese and Holy Angels knew that this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury, on others, and Sara 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**

91. 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**

92. Plaintiff Sara Fenzel 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.


93. Plaintiff Sara Fenzel 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,

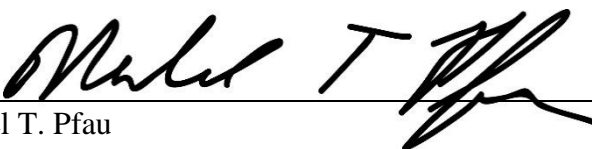
MARSH LAW FIRM PLLC

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*