

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-9 Doe,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>BOY SCOUTS OF AMERICA, IROQUOIS TRAIL COUNCIL, INC., BOY SCOUTS OF AMERICA, GREATER NIAGARA FRONTIER COUNCIL, INC., BOY SCOUTS OF AMERICA, and ALLEGHANY HIGHLANDS COUNCIL, INC.,</p> <p style="text-align: center;">Defendants.</p>

Index No.:

SUMMONS

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 plaintiffs' attorney 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: New York, New York
December 17, 2019

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Attorneys for Plaintiffs



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TO:

BOY SCOUTS OF AMERICA
1325 W. Walnut Hill Lane
Irving, TX 73038

GREATER NIAGARA FRONTIER COUNCIL, INC.
2860 Genesee St.
Buffalo, NY 14225

IROQUOIS TRAIL COUNCIL, INC.
7121 Rochester Rd.
Lockport, NY 14094

Alleghany Highlands Council, Inc.
Via New York Secretary of State

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

PB-9 Doe,

Plaintiff,

vs.

BOY SCOUTS OF AMERICA, IROQUOIS
TRAIL COUNCIL, INC., BOY SCOUTS OF
AMERICA, GREATER NIAGARA FRONTIER
COUNCIL, INC., BOY SCOUTS OF AMERICA,
and ALLEGHANY HIGHLANDS COUNCIL,
INC.,

Defendants.

COMPLAINT

Index No.:

Plaintiff PB-9 Doe, by and through his undersigned attorneys, as and for his Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Between the ages of 13 and 15 years old, in approximately 1978 to 1980, Plaintiff PB-9 Doe was a boy scout in Troop 541 of North Tonawanda, New York. During this time period, Plaintiff was groomed and/or repeatedly sexually abused at Boy Scout events and camps advertised, controlled, and supervised by Defendants Boy Scouts of America, Iroquois Trail Council, Inc., Boy Scouts of America (“ITC”), Greater Niagara Frontier Council, Inc., Boy Scouts of America (“GNFC”), and Allegany Highlands Council, Inc. (“AHC”), (collectively herein “Defendants”).
3. Plaintiff’s abuser, Edward Barnaby, was a scout leader of Boy Scout troops within the Greater Niagara Frontier Council, including Troop 541.

4. Defendants negligently and recklessly selected, accepted, and/or retained Barnaby, and permitted him to have unfettered and unsupervised access to children, including Plaintiff, at Boy Scout events and camps, including, upon information and belief, Camp Schoellkopf and Camp Scouthaven in New York and other areas.

5. Plaintiff was about 13 to 15 years old at the time he was sexually abused. Upon information and belief, Defendants failed to perform an appropriate background check of Barnaby prior to selecting, accepting, and/or retaining him, failed to supervise Barnaby and minor scouts in his presence, failed to identify and report inappropriate and/or suspicious behaviors by Barnaby, and otherwise ignored signs that Barnaby was a potential danger to minor scouts, was engaging in acts to groom minor scouts, and/or was engaging in inappropriate sexual contact with minor scouts during Boy Scout events, at Boy Scout camps, and elsewhere.

6. In fact, on information and belief, for decades prior to the abuse suffered by Plaintiff, the Defendants knew that minor scouts were being sexually abused by Boy Scout Leaders at Defendants' events and camps. Defendants kept an internal system called the "Ineligible Volunteer File" (herein "I.V. files"), referred to also as the "Perversion Files," which red flagged and identified scout leaders and other participants for misconduct: most commonly for allegations of sexual abuse of minors.

7. Specifically, Perversion Files that are publicly available demonstrate the Defendants knew that Boy Scout leaders in the Buffalo area were accused of child sex abuse, credibly identified as abusers, and/or arrested for sexually abusing minors from the 1960s to early 1970s.¹

¹ See e.g. Raymond Culbertson, 1961, <https://www.crewjanci.com/files/0942.pdf>; Richard Aycoth, 1963, <https://www.crewjanci.com/files/0901.pdf>; Donald Hodge, 1965, <https://www.crewjanci.com/files/1009.pdf>; Robert Hohl, 1966, <https://www.crewjanci.com/files/0670.pdf>; Robert Knoer, 1966, <https://www.crewjanci.com/files/0661.pdf>; Douglas White, 1972, <https://www.crewjanci.com/files/0269.pdf>.

8. Upon information and belief, Defendants did not remove abusers in their Perversion Files even after being accused of sexual abuse, protected abusers, did not report them to the authorities, did not warn parents or minor scouts of these abusers, allowed abusers to quietly resign in exchange for not reporting them, and/or, worse, allowed them to return as Boy Scout leaders.

9. Further, other CVA complaints in Erie County against the Defendants allege similar allegations of grooming and sexual abuse at Defendants' events and camps during the same time period.²

10. Defendants knew or should have known that Barnaby presented a serious risk of harm to minor scouts, including Plaintiff.

11. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parents and their children, Defendants negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse by Barnaby, permitted the abuse to occur, failed to supervise Barnaby and minor children like Plaintiff in his presence, failed to timely investigate Barnaby's misconduct, failed to report Barnaby's misconduct, failed to have in place appropriate policies and procedures to prevent sexual abuse of minors, failed to train minor scouts and/or scout leaders to identify and report inappropriate and/or suspicious behavior, failed to warn minor scouts and parents of prior sexual abuse by Scout Leaders of minor scouts, and are otherwise responsible for Barnaby's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

12. Plaintiff is an individual residing in Erie County, New York.

13. Plaintiff was born in 1965.

² See e.g. John Doe v. Boy Scouts of America, et al., Index No. 815068/2019.

14. Defendant Boy Scouts of America (herein "BSA") is, and at all relevant times was, a federally chartered corporation pursuant to 36 U.S.C. Ch. 309 authorized to do business in New York and with its principal place of business located at 1325 W. Walnut Hill Lane, Irving, Texas 75038.

15. At all relevant times, Defendant Greater Niagara Frontier Council, Inc., Boy Scouts of America (herein "GNFC"), was and is a domestic nonprofit corporation organized under the laws of the state of New York and with its principal place of business located at 2860 Genesee Street, Buffalo, NY 14225.

16. At all relevant times, Troop 541 of North Tonawanda, New York, of which Plaintiff was a member, was under the direct control and supervision of Defendant GNFC.

17. At all relevant times, Defendant Iroquois Trail Council, Inc., Boy Scouts of America (herein "ITC"), was and is a domestic nonprofit corporation organized under the laws of the state of New York and with its principal place of business located at 7121 Rochester Road, Lockport, New York 14094.

18. Upon information and belief, Camp Schoellkopf was and still is under the direct control and supervision of Defendant ITC.

19. At all relevant times, Defendant Alleghany Highlands Council, Inc. (herein "AHC"), was and is a domestic nonprofit corporation organized under the laws of the state of New York and with its principal place of business located at 50 Hough Hill Road, PO Box 261, Falconer, NY 14733.

20. Upon information and belief, Camp Scouthaven was and still is under the direct control and supervision of Defendant AHC.

21. At all relevant times, Defendant GNFC, ITC, AHC, and Boy Scout Troop 541, of which Plaintiff was a member, were agents of and subject to the charter, standards, policies, procedures, authority, control, and province of Defendant BSA.

22. Defendants BSA, GNFC, ITC, and AHC are referred to collectively herein as "Defendants."

23. At all relevant times, Defendants owned, operated, controlled, and/or supervised Boy Scout programs, including Boy Scout events, in and around the GNFC, ITC, and AHC territories.

24. At all relevant times, Defendants owned, operated, controlled, and/or supervised all Boy Scout camps in and around the GNFC, ITC, and AHC territories, including Camp Schoellkopf and Camp Scouthaven.

25. At all relevant times, Defendants collectively and individually hired, employed, accepted, approved, retained, managed, oversaw, controlled and directed personnel, such as Scout Leaders, to perform functions that required them to interact with children at Boy Scout events and/or camps in and around the Defendants GNFC, ITC, and AHC territories.

FACTUAL ALLEGATIONS

26. Plaintiff repeats and realleges all preceding paragraphs of this Complaint.

27. Upon information and belief, in 1916, Defendant BSA was granted a federal charter, pursuant to 36 U.S.C. Ch. 309, which granted BSA that exclusive rights to BSA's name, emblems, badges, descriptive words, and markings.

28. Since its inception, Defendant BSA has licensed the rights to use its name, emblems, badges, descriptive words, markings, merchandise and other BSA paraphernalia to generate millions of dollars.

29. Since its inception, during all relevant times, Defendant BSA has encouraged parents and minor children to join the Boy Scouts by marketing its Boy Scouts program as a safe and secure environment.

30. Upon information and belief, for decades prior to the abuse suffered by Plaintiff, the Defendants knew that minor scouts were being sexually abused by scout leaders at Defendants' events and camps.

31. Since at least 1947, Defendants kept an internal system called the "Ineligible Volunteer File" (herein "I.V. files"), referred to also as the "Perversion Files," which red flagged and identified scout leaders and other participants for misconduct: most commonly for allegations of sexual abuse of minors.

32. Perversion Files, which are publicly available, demonstrate the Defendants knew that Boy Scout leaders in Buffalo, NY and the surrounding areas were accused, credibly found, and/or arrested for sexually abusing minors from the 1960s to early 1970s.³

33. Upon information and belief, Defendants did not remove abusers in their Perversion Files even after being accused of sexual abuse, protected abusers, did not report them to the authorities, did not warn parents or minor scouts of these abusers, forced abusers to resign in exchange for not reporting them, and/or, worse, allowed them to return as Boy Scout leaders.

34. Upon information and belief, the Defendants individually and collectively selected leaders and volunteers of each Boy Scout Troop, including Troop 541, in New York and elsewhere.

35. Upon information and belief, at all relevant times, BSA retained and exercised the ultimate authority to decide who could or could not be leaders or volunteers of each Boy Scout Troop, including Troop 541.

³ Supra note 1.

36. At all relevant times, Defendants accepted, approved, appointed, and otherwise retained Edward Barnaby as a Scout Leader of Troop 541, and gave him unfettered access to minor scouts.

37. At all relevant times, Barnaby was under the direct supervision and control of the Defendants.

38. Upon information and belief, Defendants authorized and empowered Barnaby to supervise and provide instruction, counseling, and guidance to minor scouts, as well as enforce BSA rules.

39. Upon information and belief, Plaintiff was conditioned and taught by Defendants to trust, obey, and follow the instruction, direction, and moral and ethical guidance provided by the Defendants and Plaintiff's Scout Leaders, including Edward Barnaby.

40. While performing of his duties as Scout Leader, Defendants allowed Barnaby to be alone with minor Scouts, including Plaintiff, and to have unfettered and unsupervised access to minor scouts at BSA events and/or camps in violation of the "two deep" rule, a BSA policy which requires two adults be present at all times during scouting events and/or other activities related to scouting programs.

41. From ages 13 to 15, approximately 1978 to 1980, Plaintiff was enrolled as a Boy Scout in Troop 541 of North Tonawanda, New York.

42. Starting in approximately 1978, Edward Barnaby, acting in his role as Scout Leader, began a pattern of grooming Plaintiff for the purpose of sexually abusing him at BSA events, camps, and other activities. This grooming behavior includes, but is not limited to, Barnaby giving Plaintiff special attention and/or praise, gifts, and money; putting his hands on plaintiff's hips and buttocks to condition him to being touched; and supplying Plaintiff with

pornographic magazines, as well as alcohol and marijuana at BSA events and camps, like Camp Schoellkopf and Camp Scouthaven.

43. Upon information and belief, at all relevant times, other adult Scout Leaders at Camp Schoellkopf and Camp Scouthaven were aware of Barnaby's aforesaid misconduct and/or also provided minor scouts with alcohol, marijuana, and pornographic magazines.

44. From approximately 1978 to 1980, Barnaby engaged in inappropriate, harmful, unlawful sexual contact with Plaintiff, a minor scout, at BSA events, camps, and elsewhere.

45. On multiple occasions, Barnaby would coerce Plaintiff to submit to his misconduct, and then compensated him with money, gifts, alcohol, and/or drugs.

46. Plaintiff's relationship to Defendants as a vulnerable child and minor scout, conditioned to trust, obey, and follow the instruction of Defendants and Scout Leaders, like Barnaby, put pressure on Plaintiff not to report Barnaby's abuse.

47. Upon information and belief, Defendants knew or should have known that Barnaby presented a danger to minor students like Plaintiff, before he sexually abused Plaintiff.

48. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risk of sexual abuse posed to minor children in their programs and facilities, the risk of child sex abuse in general, and the risk of allowing Barnaby to be a Scout Leader posed to minor children, including Plaintiff.

49. The sexual abuse of Plaintiff by Barnaby was foreseeable.

50. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to join their children into BSA programs, including those in Defendants GNFC, ITC, and AHC territories; they undertook custody of minor children, including Plaintiff; they promoted their facilities and programs as being safe for children, they

held out their agents, including Barnaby, as safe to be with and around minor scouts, they encouraged parents and children to spend time with their agents; and/or authorized their agents, including Barnaby, to spend time with, and interact with children without supervision.

51. Defendants owed Plaintiff a heightened, fiduciary duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect himself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

52. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

53. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, psychological injuries, fear and anxiety; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and will continue to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses for medical and psychological treatment, and was otherwise damaged in an amount that exceeds the jurisdictional limits of lower courts in this State.

54. To the extent that any Defendant pleads, or otherwise seeks to rely upon Article 16 of the New York Civil Practice Law and Rules (CPLR) to have fault apportioned to another allegedly culpable party, Plaintiff expressly states that Defendants' conduct falls within one or more of the subdivisions of CPLR 1602.

COUNT I**NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION**

55. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

56. At all relevant times Defendants had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of Barnaby, so as to protect minor children, including Plaintiff, who were likely to come into contact with him, and/or under his influence or supervision, and to ensure that Barnaby did not use his assigned position to injure minors by sexual assault, contact or abuse.

57. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Barnaby, failed to properly investigate his background and history, and/or hired, appointed, and/or assigned him to Defendants' programs, when Defendants knew or should have known of facts that would make him a danger to minor children; and Defendants were otherwise negligent.

58. Defendants were negligent and did not use reasonable care in their supervision and direction of Barnaby and minor children in his presence, failed to monitor his activities, failed to oversee the manner in which he carried out the duties to which Defendants assigned him, even though they knew or should have known that Barnaby posed a threat of sexual abuse to minors; allowed the misconduct describe above to occur and continue; failed to investigate Barnaby's dangerous activities and remove him from their organization; and Defendants were otherwise negligent.

59. Barnaby would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the appointing, retention, supervision, and direction of Barnaby.

60. Defendants were negligent and did not use reasonable care in their training, if any, of minor scouts and adult Scout Leaders to identify and report suspicious, inappropriate, and grooming behaviors or sexual abuse by Defendants' volunteers, leaders, and other agents.

61. At all relevant times, Barnaby acted in the course and scope of his duties as Scout Leader with Defendants.

62. Defendants' aforesaid actions were willful, wanton, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

63. Plaintiff suffered grave injury as a result of Barnaby's sexual abuse and misconduct, including physical, psychological and emotional injury as described above.

64. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

COUNT II

NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT

65. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

66. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families, and the general public that agents of Defendants, including Barnaby, did not pose a risk of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

67. Defendants knew or should have known this representation was false, based on their Perversion Files, and that appointing Barnaby as Scout Leader and giving him unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

68. Upon information and belief, Defendants lacked any reasonable policy and/or practice to supervise or oversee Barnaby or minor children in his presence in order to keep their scouts safe from sexual abuse.

69. Defendants' conduct resulted in the sexual assault of children, like Plaintiff, and put numerous other children at risk of sexual assault.

70. By failing to disclose the risk of sexual assault at Defendants' programs, Defendants unreasonably deprived the families of children entrusted to their care, including Plaintiff, of the ability to protect their children.

71. Defendants failed to warn Plaintiff and his parents that Barnaby posed a risk of child sexual assault.

72. The conduct of Defendants as described herein was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children, and to the fact that Defendants subjected children in their charge, including Plaintiff, to sexual crimes.

73. Defendants' aforesaid actions were negligent, reckless, willful and wonton in their disregard for the rights and safety of children, including Plaintiff.

74. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

75. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

COUNT III

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

76. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

77. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

78. Defendants' aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff's safety and caused him to fear for his own safety.

79. Defendants knew or disregarded the substantial probability that Barnaby would cause severe emotional distress to Plaintiff.

80. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

81. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT IV

PREMISES LIABILITY

82. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

83. Defendants owned, operated, and /or controlled the premises where the sexual abuse of Plaintiff occurred, including but not limited to Camp Schoellkopf and Camp Scouthaven.

84. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

85. Defendants had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by minor scouts, like Plaintiff, whose presence was reasonably anticipated.

86. Defendants willfully, recklessly, and negligently failed to provide reasonably safe premises that were free from the presence of sexual predators and/or the assault by the occupants of the premises, including Barnaby. Defendants thereby breached their duty of care of Plaintiff.

87. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

88. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT V

BREACH OF FIDUCIARY DUTY

89. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

90. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and each Defendant. The entrustment of Plaintiff to the care and

supervision of the Defendants while Plaintiff was a vulnerable child, imposed upon Defendants fiduciary duty to act in the best interests of Plaintiff.

91. Defendants were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

92. By reason of the foregoing, Defendants breached their fiduciary duties to Plaintiff.

93. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

94. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT VI

BREACH OF DUTY *IN LOCO PARENTIS*

95. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

96. At all relevant times, Plaintiff was a vulnerable child entrusted to Defendants care, and was under the supervision and control of Defendants, such that Defendants owed him a duty to act *in loco parentis* and to prevent foreseeable injuries.

97. By reason of the foregoing, Defendants breached their duties to act *in loco parentis*.

98. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

99. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

COUNT VII

BREACH OF STATUTORY DUTIES TO REPORT

100. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

101. Pursuant to, *inter alia*, N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

102. Defendants breached their statutory duty by failing to report reasonable suspicion of abuse by Barnaby of children in their care.

103. As a direct and proximate result of Defendants' foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

104. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for his injuries, in an amount to be determined at trial;
- b. Awarding Plaintiff punitive damages for his injuries, in an amount to be determined at trial;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;
- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and

c. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

105. Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: December 17, 2019

Yours, etc.

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