

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

AB 507 DOE,

Plaintiff,

v.

THE DIOCESE OF BUFFALO, N.Y.
A/K/A DIOCESE OF BUFFALO; ST.
MARY'S HIGH SCHOOL BOARD OF
TRUSTEES; and DOES 1-5 whose
identities are unknown to Plaintiff,

Defendants.

Index No.

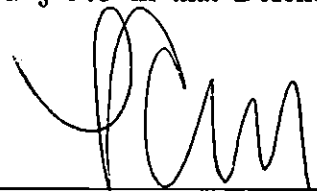
SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Venue is proper pursuant to C.P.L.R. § 503 in that Defendants are situated in Erie County.

Dated: January 31, 2020.



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COMPLAINT

DEMAND FOR JURY TRIAL¹

Plaintiff, by and through Plaintiff's attorneys, states and alleges as follows:

PSEUDONYM

1. Plaintiff is authorized to file the instant action under a pseudonym and defendants are barred from disclosing Petitioner's true identity to the general public pursuant to an Amended Order of the Honorable Deborah A. Chimes, J.S.C. dated August 13, 2019, attached as Exhibit

A.

PARTIES

- 2. At all times material to this Complaint, Plaintiff resided in the State of New York.
- 3. Plaintiff brings this action under a pseudonym with leave of Court.
- 4. Whenever reference is made to any Defendant entity, such reference includes that entity, its parent companies, subsidiaries, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents,

¹ Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.

employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

5. At all times material, Defendant The Diocese of Buffalo, N.Y. a/k/a Diocese of Buffalo ("Diocese") was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducting business in the State of New York with its principal place of business at 795 Main Street, Buffalo, NY 14203.

6. The Diocese of Buffalo was created in approximately 1847. Later, the Diocese created a corporation called the Diocese of Buffalo to conduct some of its affairs. The Diocese operates its affairs as both a corporate entity and as the organization known as Diocese of Buffalo. The Diocese functions as a business by engaging in numerous revenue-producing activities and soliciting money from its members in exchange for its services.

7. The Diocese has several programs that seek out the participation of children, including but not limited to schools and other educational programs. The Diocese, through its officials, has complete control over those activities and programs involving children. The Diocese has the power to appoint, train, supervise, monitor, remove and terminate each and every person working with children within the Diocese.

8. At all times material, Defendant St. Mary's High School Board of Trustees ("St. Mary's") was and continues to be an organization authorized to conduct business and conducting business in the State of New York with its principal place of business at 142 Laverack Avenue, Lancaster, New York 14086. Upon information and belief, the debts, liabilities, and obligations of St. Mary's are the debts, liabilities, and obligations of the Bishop of the Diocese of Buffalo. The Bishop possesses the individual responsibility for the care of each parish and school and its members located within the counties which geographically comprise the Diocese. At all times

material, Defendant St. Mary's was under the direct authority, control, and province of the Diocese of Buffalo and the Bishop of the Diocese.

9. Defendants Does 1 through 5 are unknown agents whose identities will be provided when they become known pursuant to C.P.L.R. § 1024.

JURISDICTION

10. This Court has jurisdiction pursuant to C.P.L.R. § 301 as Defendants' principle place of business is in New York and because the unlawful conduct complained of herein occurred in New York.

11. Venue is proper pursuant to C.P.L.R. § 503 in that Erie County is the principal place of business of Defendant Diocese and Defendant St. Mary's ("Defendants"). In addition, many of the events giving rise to this action occurred in Erie County.

12. This complaint is brought under the Child Victims Act and, as such, the filing of a Notice of Claim, where relevant, is not required.

FACTS

13. At all times relevant herein, Plaintiff was a student at St. Mary's.

14. On or about February 9, 2016, Plaintiff and seven students at St. Mary's (hereinafter the "Seven Students") were left unsupervised in the boy's locker room at St. Mary's.

15. On or about February 9, 2016, the Seven Students engaged in intentional, unpermitted and offensive sexual contact with Plaintiff, a minor.

16. At the time of the incident, Defendants knew Plaintiff was a minor.

17. At all times relevant herein, Defendants had custody of Plaintiff and accepted the entrustment of Plaintiff, and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

18. At or during the incident, Defendants became aware of the Seven Students'

unpermitted sexual contact with Plaintiff, a minor.

19. Upon information and belief, prior to the subject incident, Defendants knew or should have known of similar incidents occurring at St. Mary's.

20. Upon information and belief, prior to the subject incident, Defendants knew or should have known of similar incidents involving some or all of the Seven Students.

21. Defendants violated a legal duty by failing to report known and/or suspected abuse of Plaintiff, a minor, to police and law enforcement.

22. Defendants owed Plaintiff a duty of reasonable care because Defendants specifically recruited students from other schools, including the Seven Students for the purpose of participating in St. Mary's athletic programs and for the sole benefit of St. Mary's.

23. Defendants breached their duty to Plaintiff by failing to notify Plaintiff and Plaintiff's family of St. Mary's recruiting methods and the potential harm and risk.

24. As a result of the subject incident, on or about February 23, 2016, Plaintiff was expelled from St. Mary's.

AS AND FOR A FIRST CAUSE OF ACTION:
NEGLIGENCE

25. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

26. Each Defendant owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

27. Each Defendant owed Plaintiff a duty of reasonable care because each Defendant had a special relationship with the Seven Students and Plaintiff.

28. Each Defendant also had a duty arising from their special relationship with Plaintiff, Plaintiff's parents, and other parents of young, vulnerable children, to properly

supervise the Seven Students. The special relationship arose because of the high degree of vulnerability of the children entrusted to Defendants' care. As a result of the high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, Defendants had a duty to establish measures of protection not necessary for persons who are older or better able to safeguard themselves.

29. Each Defendant owed Plaintiff a duty to protect Plaintiff from harm because each Defendant had a special relationship with its students.

30. Each Defendant owed Plaintiff a duty of reasonable care because each Defendant solicited youth and parents for participation in its youth programs; encouraged youth and parents to have the youth participate in their programs; undertook custody of minor children, including Plaintiff; promoted their facilities and programs as being safe for children; held their agents out as safe to work with children; encouraged parents and children to spend time with their agents; and/or encouraged their agents to spend time with, interact with, and recruit children.

31. As a result of Plaintiff being a minor, and by Defendants undertaking the care and guidance of the then vulnerable minor Plaintiff, each Defendant held a position of empowerment over Plaintiff.

32. Further, Defendants, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. Defendants thus entered into a fiduciary relationship with Plaintiff. Defendants exploited their position of empowerment, putting Plaintiff at risk to be sexually assaulted.

33. By accepting custody of the minor Plaintiff, each Defendant established an *in loco parentis* relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury.

34. By establishing and/or operating the Diocese of Buffalo and St. Mary's, accepting the minor Plaintiff as a participant in their programs, holding their facilities and programs out to be a safe environment for Plaintiff, accepting custody of the minor Plaintiff *in loco parentis*, and by establishing a fiduciary relationship with Plaintiff, each Defendant entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children, who participated in their programs. Defendants also owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers and/or creating dangers. Defendants had the duty to exercise the same degree of care over young students under their control as a reasonably prudent person would have exercised under similar circumstances.

35. By establishing and operating the Diocese of Buffalo and St. Mary's, which offered educational programs to children, and by accepting the enrollment and participation of the minor Plaintiff as a participant in those educational programs, Defendants owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

36. Each Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendants invited Plaintiff onto their property.

37. Each Defendant breached its duties to Plaintiff by failing to use reasonable care. Each Defendant's failures include, but are not limited to, failing to properly supervise other students, failing to properly supervise Plaintiff and failing to protect Plaintiff from a known danger.

38. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

AS AND FOR A SECOND CAUSE OF ACTION:
NEGLIGENT SUPERVISION

39. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

40. Defendants had a duty to ensure that the Seven Students were supervised at all times relevant herein.

41. Further, Defendants had a duty to establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct.

42. Defendants were negligent in their supervision of the Seven Students. Defendants failed to timely and properly supervise, and/or monitor the Seven Students with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed.

43. Defendants were additionally negligent in failing to supervise, monitor, chaperone, and/or investigate, and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent sexual abuse of Plaintiff.

44. In failing to properly supervise, and in failing to establish such training procedures for employees and administrators, Defendants failed to exercise the care that a reasonably prudent person would have exercised under similar circumstances.

45. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

AS AND FOR A THIRD CAUSE OF ACTION:
NEGLIGENT RETENTION

46. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

47. Defendants became aware or should have become aware of the Seven Students' propensity for the type of behavior which resulted in Plaintiff's injuries, and failed to take any further action to remedy the problem and failed to investigate or remove the Seven Students from St. Mary's.

48. Defendants negligently and/or recklessly retained the Seven Students with knowledge of the Seven Students' propensity for the type of behavior, which resulted in Plaintiff's injuries in this action.

49. In failing to timely remove the Seven Students from St. Mary's, Defendants negligently and/or recklessly failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

50. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

AS AND FOR A THIRD CAUSE OF ACTION:
RETALIATION

51. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

52. On or about February 23, 2016, Defendants wrongfully expelled Plaintiff from St. Mary's as a result of the Seven Students engaging in intentional, unpermitted and offensive sexual contact with Plaintiff, a minor, on February 9, 2016.

53. On information and belief, Defendants failed to report the sexual abuse of Plaintiff, a minor, to police and law enforcement or to follow their own policies and procedures for investigating incidents of sexual abuse and student misconduct at St. Mary's.

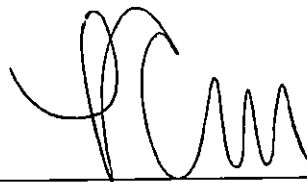
54. On information and belief, Defendants had no rational basis for its expulsion of Plaintiff. Instead, Defendants expulsion of Plaintiff was retaliatory and in violation of Plaintiff's rights.

55. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing causes of action, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate Plaintiff for Plaintiff's injuries and damages, and for any other relief the Court deems appropriate. The amount of damages sought in this Complaint exceeds the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

DATED: January 31, 2020.



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