

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

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CF 8 DOE,

Plaintiff,

**SUMMONS**

v.

THE DIOCESE OF BUFFALO, N.Y.,  
795 Main Street  
Buffalo, New York 14202

Index No. \_\_\_\_\_

HOLY CROSS ROMAN CATHOLIC CHURCH  
SOCIETY OF BUFFALO, NEW YORK,  
345 Seventh Street  
Buffalo, New York 14201

HOLY CROSS SCHOOL,  
345 Seventh Street  
Buffalo, New York 14201

Defendants.

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

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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 attorney(s) 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 case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Erie County is designated as the place of trial on basis of residence of the plaintiff, who resides in Erie County, New York.

Dated: January 31, 2020  
Hamburg, New York



Daniel J. Chiacchia, Esq.  
CHIACCHIA & FLEMING, LLP  
Attorneys for Plaintiff  
5113 South Park Avenue  
Hamburg, New York, 14075  
Telephone: (716) 648-3030

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

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CF 8 DOE,

Plaintiff,

**COMPLAINT**

v.

THE DIOCESE OF BUFFALO, N.Y.,

Index No. \_\_\_\_\_

HOLY CROSS ROMAN CATHOLIC CHURCH  
SOCIETY OF BUFFALO, NEW YORK,

HOLY CROSS SCHOOL,

Defendants.

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Plaintiff, CF 8 DOE, by his attorneys Chiacchia & Fleming, LLP, brings this action against THE DIOCESE OF BUFFALO, N.Y., HOLY CROSS ROMAN CATHOLIC CHURCH SOCIETY OF BUFFALO, NEW YORK, HOLY CROSS SCHOOL, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

**JURISDICTION AND VENUE**

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that each Defendant either resides in New York or conducts or, at relevant times conducted, activities in New York that give rise to the claims asserted herein.

2. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more Defendant resides in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred here.

3. This action is brought pursuant to CPLR § 214-G, as added by the New York State Child Victims Act, which has revived claims of child sexual abuse for a period of one year

beginning on August 14, 2019, six months after the effective date of the section (February 14, 2019). This action is timely.

### **PARTIES**

4. Plaintiff CF 8 DOE (“Plaintiff”), is an individual residing in Erie County, New York.

5. Defendant THE DIOCESE OF BUFFALO, N.Y. (“DIOCESE”) is a Roman Catholic diocese headquartered in Buffalo, New York, with its principal place of business located at 795 Main Street, Buffalo, NY. At all relevant times, Defendant DIOCESE operated schools for minor children, including, HOLY CROSS SCHOOL, during the period of 1968 through 1970.

6. Upon information and belief, and at all relevant times hereinafter mentioned, Defendant HOLY CROSS ROMAN CATHOLIC SOCIETY OF BUFFALO, NEW YORK (“HCRC SOCIETY OF BUFFALO, NY”) was a Roman Catholic Church located at 345 Seventh Street, Buffalo, County of Erie, State of New York.

7. Defendant HOLY CROSS SCHOOL (“HOLY CROSS”), was a Roman Catholic School in Buffalo, New York which was managed, overseen, controlled, directed, and operated by the DIOCESE & HCRC SOCIETY OF BUFFALO, NY.

### **FACTS COMMON TO ALL CLAIMS**

8. In or around 1961, when he was 5 years old, Plaintiff began matriculating at Holy Cross School, a school within and under the auspices of Defendant DIOCESE.

9. During the times relevant to the allegations set forth herein, Robert Weber (“WEBER”), was employed by Defendants DIOCESE, HCRC SOCIETY OF BUFFALO, NY and HOLY CROSS as a teacher at Defendant HOLY CROSS School. Robert Weber died in

1998.

10. Through his positions at, within, or for the Defendants DIOCESE, HCRC SOCIETY OF BUFFALO, NY and HOLY CROSS, WEBER was put in direct contact with Plaintiff, a student at Holy Cross School. WEBER was assigned to teach him. It was under these circumstances that Plaintiff came to be under the direction and control of Weber, who used his position of authority and trust over Plaintiff to sexually abuse, sexually assault and harass him.

11. On numerous occasions, during the years from approximately 1968 through 1970, while Plaintiff was a minor, WEBER, while acting as a teacher, coach, counselor, trustee, director, officer, employee, agent, servant and/or volunteer of the Defendants sexually assaulted, sexually abused and/or had sexual contact with Plaintiff in violation of the laws of the State of New York.

12. The abuse began when Plaintiff was approximately 12 years old and ended when he was approximately 14 years old. Upon information and belief, WEBER was removed from the HOLY CROSS at that time.

13. On multiple occasions, WEBER would call Plaintiff into his office and sexually assault, sexually abuse and/or have unpermitted sexual contact with Plaintiff.

14. At all times material hereto, WEBER was under the direct supervision, employ and/or control of Defendants.

15. All Defendants knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of WEBER who sexually abused Plaintiff.

16. Defendants had the responsibility to supervise and/or direct priests serving at Defendant HOLY CROSS, and specifically, had a duty not to aid a pedophile such as WEBER,

by assigning, maintaining and/or appointing him to a position with access to minors.

17. All Defendants, individually, jointly and/or severally, violated various New York statutes, including, but not limited to N.Y. Soc. Serv. Law §§ 413 and 420, which require school officials and teachers to report suspected cases of child abuse and impose liability for failure to report.

18. Plaintiff suffered personal physical and psychological injuries and damages as a result of WEBER's actions, as well as other damages related thereto, as a result of his childhood sexual abuse.

19. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, problems sleeping, concentrating, low self-confidence, low self-respect, low self-esteem, feeling of worthlessness, feeling shameful and embarrassed, feeling alone and isolated, losing faith in God, feeling estranged from the church, feeling helpless, and hopeless, problems with sexual intimacy, relationship problems, trust issues, feeling confused and angry, the feeling that the good things have been ruined, feeling sad and depressed, feeling anxiety, crying, feeling dirty, used, and damaged, feeling suicidal, having flashbacks, feeling that her innocence was stolen, and feeling that his life was ruined. Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of WEBER's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION

#### **Negligent Hiring/Retention/Supervision/Direction**

20. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

21. The sexual abuse of children by adults, including priests and teachers, is foreseeable.

22. By establishing, staffing, and/or operating Defendant HOLY CROSS, encouraging the enrollment and instruction of Plaintiff at HOLY CROSS, accepting him as a student at HOLY CROSS, and holding it out to be a safe environment for learning and engaging in youth activities, Defendants entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him.

23. Defendants negligently hired, retained, directed, and supervised WEBER when they knew or should have known that he posed a threat of sexual abuse to children.

24. Defendants knew or should have known of WEBER propensity for the conduct which caused Plaintiff's injuries prior to the injuries' occurrence.

25. WEBER sexually assaulted, sexually abused and/or had sexual contact with Plaintiff on Defendants' premises, including in WEBER's office adjacent to the gymnasium at HOLY CROSS.

26. Defendants owed a duty of care to all persons, including Plaintiff, who were likely to come within the influence of WEBER, in his role as a teacher, coach, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that WEBER did not abuse his authority as a teacher, coach, counselor, trustee, director, officer, employee, agent, servant and/or volunteer to injure minors by sexual assault, battery, and/or abuse.

27. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

28. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

29. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative, for compensatory damages, and for punitive damages, together with interest and costs.

**SECOND CAUSE OF ACTION**  
**Negligence/Gross Negligence**

30. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

31. Defendants knew, or were negligent in not knowing, that WEBER posed a threat of sexual abuse to children.

32. The acts of WEBER described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his employment, appointment, and/or agency with the Defendants.

33. Defendants owed Plaintiff, at the relevant times a minor, a duty to protect him from WEBER's sexual deviancy, both prior to and/or subsequent to WEBER's misconduct.

34. Defendants' willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

35. Defendants:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to

others;

- b. failed adequately to supervise the activities of WEBER;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

36. At all times material hereto, with regard to the allegations contained herein, WEBER was under the direct supervision, employ and/or control of Defendants.

37. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

38. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

39. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

### **THIRD CAUSE OF ACTION Breach of Fiduciary Duty**

40. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

41. Through his positions at the Defendants, WEBER was put in direct contact with Plaintiff, then a minor student at HOLY CROSS, specifically being assigned to teach him both

lay academic subjects and as a coach. It was under these circumstances that Plaintiff came to be under the direction and control of WEBER who used his position of authority and trust over Plaintiff to sexually abuse and harass him.

42. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and all the Defendants herein.

43. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

44. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

45. Defendants breached their fiduciary duties to Plaintiff.

46. At all times material hereto, Defendants' actions and/or inactions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

47. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

48. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

#### **FOURTH CAUSE OF ACTION Breach of Non-Delegable Duty**

49. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

50. Plaintiff, when he was a minor, was placed in the care of all of the Defendants for the purposes of, *inter alia*, providing plaintiff with a safe environment to receive a lay education

and spiritual instruction, training, guidance and/or counseling. There existed a non-delegable duty of trust between Plaintiff and Defendants.

51. Plaintiff was a vulnerable child when placed within the care of the Defendants.

52. As a consequence, the Defendants were in the best position to prevent Plaintiff's abuse, and to learn of WEBER's repeated sexual abuse of Plaintiff and stop it.

53. By virtue of the fact that Plaintiff was sexually abused as a parishioner/student, Defendants breached their non-delegable duty to Plaintiff.

54. At all times material hereto WEBER was under the direct supervision, employ and/or control of the Defendants.

55. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

56. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

#### **FIFTH CAUSE OF ACTION Fraudulent Concealment**

57. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

58. Defendant allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

59. Defendants knew or should have known of WEBER's propensity for the conduct which caused Plaintiff's injuries prior to the injuries' occurrence.

60. Defendants had a duty to report any reasonable suspicion of child abuse.

61. Defendants owed a duty of care to all persons, including Plaintiff, who were likely

to come within the influence of WEBER, in his role as a teacher, coach, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that WEBER did not abuse his authority as a teacher, coach, counselor, trustee, director, officer, employee, agent, servant and/or volunteer to injure minors by sexual assault, battery, and/or abuse.

62. Defendants breached their duty by knowingly and willfully failing to report reasonable suspicion of abuse by WEBER of children in their care.

63. Defendants breached their duty by knowingly and willfully failing to disclose reasonable suspicions of abuse by WEBER of children in their care to current or prospective students.

64. By knowingly and willfully failing to inform other current and prospective students of the abuse of WEBER, Defendant intended to defraud other current and prospective students.

65. When Plaintiff chose to attend HOLY CROSS, he reasonably relied upon the Defendant's representation that Defendant would look out for Plaintiff's well-being, care, and safety.

66. While attending HOLY CROSS, Plaintiff was sexually abused by WEBER and has suffered injuries and damages described herein.

67. At all times material hereto, said Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

68. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

69. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative,

are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**SIXTH CAUSE OF ACTION**  
**Negligent Infliction of Emotional Distress**

70. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

71. As described aforesaid, the actions of Defendants, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

72. Defendants' actions endangered Plaintiff's safety and caused him to fear for his own safety.

73. As a direct and proximate result of Defendants' actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

74. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**SEVENTH CAUSE OF ACTION**  
**Intentional Infliction of Emotional Distress**

75. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

76. During the time period from approximately 1968 through 1970, Defendants allowed WEBER unrestricted access to Plaintiff and willfully and/or intentionally ignored suspicious behavior and/or complaints against WEBER of sexual assault, sexual abuse and

sexual contact.

77. During the time period referenced above, Defendants willfully and/or intentionally ignored Plaintiff's safety by requiring Plaintiff to be under the supervision of WEBER by himself before, during and after school, including on school-sanctioned activities.

78. Defendants were deliberately indifferent to the risk of sexual assault, sexual abuse, and sexual contact posed to Plaintiff by being alone with WEBER.

79. Defendants willfully and/or intentionally created a hostile and unsafe school environment that no child would be able to tolerate.

80. Defendants, in order to avoid embarrassment, scandal, and negative publicity, intended to cause Plaintiff shame, humiliation and extreme emotional distress so she would stay silent, and not report the abuse.

81. Defendants behaved in a manner toward Plaintiff that was so outrageous as to exceed all reasonable bounds of decency.

82. Defendants knew with substantial certainty or should have known that their behavior would cause Plaintiff to be a victim of sexual assault, sexual abuse and sexual contact.

83. Defendants knew with substantial certainty or should have known that their behavior would cause severe emotional distress to Plaintiff.

84. The foregoing acts of Defendants caused Plaintiff physical, mental and emotional distress.

85. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**EIGHTH CAUSE OF ACTION**  
**Breach of Duty *in Loco Parentis***

86. Plaintiff repeats and realleges each and every allegation set forth in foregoing paragraphs as if fully set forth herein.

87. Plaintiff when he was a minor was entrusted by his parents to the control of Defendants for the purposes of *inter alia*, providing Plaintiff with a lay education and spiritual instruction, training, counseling and/or spiritual guidance as expounded by the Roman Catholic Church. Defendants owe – and owed -- a duty to students entrusted to them to adequately supervise them to prevent foreseeable injuries to their students. As a result, Defendants owed a duty to Plaintiff *in loco parentis*.

88. Defendants breached their duty *in loco parentis*.

89. At all times material hereto, said Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

90. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

91. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

#### **NINTH CAUSE OF ACTION**

##### **Breach of Statutory Duty to Report Abuse under Soc. Serv. Law §§ 413, 420**

92. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

93. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutorily imposed duty to report reasonable suspicion of abuse of children in their care.

94. Defendants breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by WEBER of children in their care.

95. As a direct and/or indirect result of said conduct, Plaintiff has suffered injuries and damages described herein.

96. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**TENTH CAUSE OF ACTION**  
**Nuisance (Common Law and N.Y. Penal Law 240.45)**

97. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

98. The Defendants' actions and omissions, as described above, have interrupted or interfered with the health, safety, and welfare of the general public.

99. The Defendants have created and exposed the public to these unsafe conditions continuously and on an ongoing basis since at least the time that Plaintiff was sexually abused and has continued to expose the public to that unabated threat until the present day.

100. As a direct and proximate result of the Defendants' conduct, the Plaintiff has suffered special and individualized harms separate and distinct from the harms suffered by the public at large.

101. The harm suffered by the Plaintiff is the exact type of harm that one would expect to result from the Defendants' acts and omissions.

102. Defendants continue to conspire and engage and/or has conspired and engaged in efforts to: 1) conceal from the general public the sexual assaults committed by, the identities of, and the pedophilic/ephebophilic tendencies of WEBER and the Defendants' other accused

abusers; and/or 2) conceal from proper civil authorities sexual assaults and abuse committed by WEBER and the Defendants' other agents against minor children; and/or 3) attack the credibility of victims of the Defendants' agents; and/or 4) protect the Defendants' agents from criminal prosecution for their sexual assaults and abuse against children; and/or 5) allow known child molesters to live freely in the community without informing the public.

103. The net result of the aforementioned activities is that Defendants have introduced the threat of criminal activity into the public sphere and has thereby impaired the public's health, safety, and welfare.

104. The conduct of Defendants were specially injurious to Plaintiff's health, safety and welfare as because Plaintiff was sexually assaulted by Defendants' agent, WEBER.

105. The conduct of Defendants was further especially injurious to Plaintiff's health, safety and welfare in that when Plaintiff discovered Defendants' conduct, Plaintiff experienced mental, emotional and/or physical distress that he/she had been the victim of Defendants' conduct.

106. Plaintiff has suffered and/or continues to suffer special, particular, and peculiar psychological and emotional harm and/or peculiar pecuniary harm, different in kind from the general public, after learning of Defendants conduct.

107. Plaintiff's injuries are also particular to him and different from certain members of the public who have not been harmed by the nuisance. People who have not been harmed by the nuisance include those who have not suffered any injury at all, those who are unaware of the nuisance, those who do not believe that the conduct of Defendants ever occurred, and those who think that any such conduct only occurred decades ago.

108. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative,

are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**ELEVENTH CAUSE OF ACTION**  
**Debts for Willful and Malicious Injury Nondischargeable**

109. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

110. Pursuant to Section 523(a)(6) of the Bankruptcy Code, any debt “for willful and malicious injury by the debtor to another entity or to the property of another entity” is nondischargeable.

111. Defendants allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

112. Defendants breached their duty by knowingly and willfully failing to report reasonable suspicion of abuse by WEBER of children in their care.

113. Defendants knowingly, willingly, and intentionally failed to report reasonable suspicion of abuse by WEBER of children in their care.

114. Defendants’ intentional act of nondisclosure allowed WEBER to continue abusing children in Defendants’ care, an injury that Defendants were substantially certain would occur.

115. This intentional act necessarily produced the harm that resulted.

116. Defendants’ actions endangered Plaintiff’s safety and caused him to fear for his own safety.

117. As a direct and proximate result of Defendants' actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

118. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative,

are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**WHEREFORE**, plaintiff respectfully requests judgment against Defendants herein in sums which exceed the jurisdictional limit of all lower courts which would otherwise have jurisdiction in this action, including compensatory damages, punitive damages, prejudgment interest to the extent permitted by law; costs, disbursements and fees of this action, including attorneys' fees, to the extent permitted by law; and any other relief as the Court deems just and proper.

Dated: January 31, 2020  
Hamburg, New York



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Daniel J. Chiacchia, Esq.  
**CHIACCHIA & FLEMING, LLP**  
Attorneys for Plaintiff  
5113 South Park Avenue  
Hamburg, New York 14075  
Telephone: (716) 648-3030