

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-14 Doe,</p> <p style="text-align: center;">Plaintiff,</p> <p>-against-</p> <p>THE DIOCESE OF BUFFALO, N.Y., INFANT OF PRAGUE CHURCH INC., INFANT OF PRAGUE SCHOOL, BISHOP DONALD W. TRAUTMAN, and THE DIOCESE OF ERIE, P.A.,</p> <p style="text-align: center;">Defendants.</p>

FIRST AMENDED COMPLAINT

Index No.:

Plaintiff PB-14 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. Plaintiff PB-14 Doe ("Plaintiff") was repeatedly sexually abused and assaulted by Fr. Gerard A. Smyczynski ("Fr. Smyczynski"), who was hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants THE DIOCESE OF BUFFALO, N.Y., INFANT OF PRAGUE CHURCH INC, and INFANT OF PRAGUE SCHOOL, BISHOP DONALD W. TRAUTMAN and THE DIOCESE OF ERIE, P.A., (hereinafter collectively referred to as "Defendants").
3. Plaintiff met Fr. Smyczynski when Plaintiff was a student and altar boy at Defendants Infant of Prague Church and Infant of Prague School.

4. Fr. Smyczynski remained Plaintiff's family's priest as he moved to at least one other parish within the Diocese of Buffalo.

5. Plaintiff was about 10 years old when the abuse began. The abuse lasted for approximately one year.

6. Despite years of refusal to publically address rampant child abuse by priests, Defendant The Diocese of Buffalo, New York recently published a long list clergy in their employ who were credibly accused of molesting children. The list includes Fr. Smyczynski, who is now deceased.

7. In fact, the Roman Catholic Church and Defendants have long known that substantial numbers of priests throughout history, and up to and including the present day, violate their vows or promises of celibacy and otherwise misbehave by soliciting sexual contact with parishioners, students, and others, in particular with children like Plaintiff, who are entrusted to their spiritual care and guidance. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to Defendants.

8. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendants negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse by Fr. Smyczynski, permitted the abuse to occur, failed to supervise Fr. Smyczynski, failed to timely investigate Fr. Smyczynski's misconduct, failed to train minor students, altar boys, and/or adult staff about the risk of sexual abuse in their schools and churches, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused, acted to protect their own self-interest to the detriment of innocent children, and

are otherwise responsible for Fr. Smyczynski's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

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

10. Plaintiff was born in 1974.

11. Defendant The Diocese of Buffalo, N.Y. (herein "Buffalo Diocese") is a New York not-for-profit corporation, organized pursuant to the laws of the State of New York, and which operated at all relevant times in Erie County, New York, with its principal place of business at 795 Main Street, Buffalo, New York 14206. At all relevant times, Defendant Buffalo Diocese oversaw, managed, controlled, directed and operated parishes, churches and schools within the Buffalo Diocese.

12. At all relevant times, Defendant Infant of Prague Church, Inc., is a Roman Catholic Church, organized pursuant to the laws of the State of New York and located at 921 Cleveland Dr. Cheektowaga, NY 14225.

13. At all relevant times, Defendant Infant of Prague School is a Roman Catholic School, organized pursuant to the laws of the State of New York and located at 921 Cleveland Dr., Cheektowaga, NY 14225.

14. At all relevant times, Defendants Infant of Prague Church, Inc. and Infant of Prague School (collectively referred to herein as "Infant of Prague") were under the direct authority, control and province of Defendant Buffalo Diocese.

15. At all relevant times, Defendant Buffalo Diocese owned the premises where Defendant Infant of Prague was located.

16. At all relevant times, Defendant Buffalo Diocese oversaw, managed controlled, directed and operated Defendant Infant of Prague.

17. At all relevant times, Defendant Buffalo Diocese oversaw, managed, controlled, directed and assigned priests and other clergy to work in parishes, churches and schools of the Buffalo Diocese, including Defendant Infant of Prague.

18. At all relevant times, Defendant Bishop Donald W. Trautman (“Bishop Trautman”) was Bishop of Defendant Buffalo Diocese.

19. Bishop Trautman currently resides at 7100 W. Ridge Rd., Fairview PA 16415.

20. Bishop Trautman currently resides at 1324 S. Shore Drive, Apt. 207, Erie Pennsylvania 16505.

21. Bishop Trautman currently maintains an office at 429 East Grandview Blvd, Erie, Pennsylvania, 16514.

22. Defendant The Diocese of Erie, P.A. (herein “Erie Diocese”) is a Pennsylvania not-for-profit corporation, organized pursuant to the laws of the State of Pennsylvania, and which operated at all relevant times in Erie County, Pennsylvania, with its principal place of business at 429 East Grandview Blvd., Erie, PA 16504. At all relevant times, Defendant Erie Diocese oversaw, managed, controlled, directed and operated parishes, churches and schools within the Erie Diocese.

FACTUAL ALLEGATIONS

23. Plaintiff repeats and re-alleges all preceding paragraphs of this Complaint.

24. At all relevant times, Plaintiff and his family were parishioners and students of Defendants Infant of Prague Church and Infant of Prague School, both within the Buffalo Diocese.

25. At all relevant times, Plaintiff was recruited to serve as an altar boy and student for Defendants Buffalo Diocese and Infant of Prague, and was made to serve in that capacity under Fr. Smyczynski for some period of time.

26. At all relevant times, Fr. Smyczynski was a Roman Catholic priest employed by Defendants.

27. At all relevant times, Fr. Smyczynski was under the direct supervision and control of the Defendants. His assigned duties included serving as a priest, interacting with, mentoring and counseling children, including altar boys and children like Plaintiff who were attending Defendant Infant of Prague, as well as other churches within the Buffalo Diocese.

28. By assigning Fr. Smyczynski to the role of priest, Defendants gave Fr. Smyczynski complete access to minors, including Plaintiff, and empowered him to discipline, punish, reprimand, chastise, expel and otherwise exercise complete authority over minors.

29. In the performance of their duties, Defendants authorized Fr. Smyczynski to be alone with minor children, including Plaintiff, and to have unfettered and unsupervised access to them on Defendants' property.

30. Defendants also authorized Fr. Smyczynski to have physical contact with minors, in a manner consistent with providing discipline, counseling, educational and spiritual guidance, and leadership.

31. Plaintiff was raised as a Catholic, and at all relevant times had developed a reverence, respect and/or fear for the Catholic Church and its clergy, including Fr. Smyczynski.

32. On multiple occasions over the course of approximately one year Fr. Smyczynski engaged in unlawful, unpermitted, harmful sexual contact with Plaintiff.

33. Plaintiff's relationship to Defendants as a vulnerable child, and the culture of the Catholic Church which Defendants endorsed, put pressure on Plaintiff not to report Fr. Smyczynski's abuse.

34. Defendants knew or should have known that Fr. Smyczynski was a danger to minor boys like Plaintiff before he sexually abused Plaintiff.

35. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to Fr. Smyczynski's abuse of Plaintiff, and communicated as much with all levels of Church hierarchy including bishops and other Diocesan leaders. As such, at all relevant times, Defendants were well aware that errant sexual behavior by some priests was not only widespread but predictable.

36. Upon information and belief, not only were Defendants Buffalo Diocese, Erie Diocese and Bishop Trautman aware of sexual abuse of children, but they participated in covering up such heinous acts by moving errant priests and clergy members from assignment to assignment, thereby putting children in harm's way.

37. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risks their facilities posed to minor children, the risk of abuse in general, and the risks that Fr. Smyczynski posed to Plaintiff.

38. Prior to the time of Plaintiff's abuse by Fr. Smyczynski, Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Buffalo Diocese, Erie Diocese and elsewhere in the Roman Catholic Church, and knew that there was a specific danger of child sex abuse for children in their institutions and programs.

39. The sexual abuse of Plaintiff by Fr. Smyczynski was foreseeable.

40. Prior to the time of Plaintiff's abuse by Fr. Smyczynski, Defendants knew or should have known of Fr. Smyczynski's acts of child sexual abuse on other minors.

41. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to Infant of Prague and other parish churches within the Buffalo Diocese; 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 Fr. Smyczynski, as safe to work with and around minor boys, they encouraged parents and children to spend time with their agents; and/or authorized their agents, including Fr. Smyczynski, to spend time with, interact with, and recruit children.

42. 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.

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

44. 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 continues to suffer loss of spirituality; 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 the lower courts in this State.

45. To the extent that any Defendants plead, or otherwise seek 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.

FIRST CAUSE OF ACTION

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

46. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

47. At all relevant times Defendants had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of Fr. Smyczynski, 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 Fr. Smyczynski did not use this assigned position to injure minors by sexual assault, contact or abuse.

48. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Fr. Smyczynski, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned him to Defendant Infant of Prague, when Defendants knew or should have known of facts that would make him a danger to children; and Defendants were otherwise negligent.

49. Defendants were negligent and did not use reasonable care in their supervision and direction of Fr. Smyczynski, 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 Fr. Smyczynski posed a threat of sexual abuse to minors; allowed the misconduct describe above to occur and continue; failed to investigate Fr. Smyczynski's dangerous activities and remove him from their premises; and Defendants were otherwise negligent.

50. Upon information and belief, Defendant Bishop Trautman had actual knowledge of prior victims of sexual assault perpetrated by Fr. Smyczynski, failed to report this abuse, and actively covered up these abuses, thereby permitting Fr. Smyczynski to continue abusing other victims, including Plaintiff.

51. Fr. Smyczynski would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Fr. Smyczynski.

52. Upon information and belief, Defendant Bishop Trautman expedited an annulment for a member of Plaintiff's family with the hope of ensuring their silence about the abuses perpetrated by Fr. Smyczynski and covering up those abuses.

53. At all relevant times, Fr. Smyczynski acted in the course and scope of his employment with Defendants.

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

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

56. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the

jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, together with interest and costs.

SECOND CAUSE OF ACTION

NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT

57. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

58. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that clergy working in the Diocese, including Fr. Smyczynski, did not pose a risk and/or that they did not have a history of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

59. Defendants were negligent and did not use reasonable care in their training, if any, of minor students, altar boys, and/or adult staff about the risk of sexual abuse in their institution and facilities.

60. Defendants were negligent and did not use reasonable care in their training, if any, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

61. Defendants knew or should have known this representation was false and that employing Fr. Smyczynski and giving him unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

62. Defendant Buffalo Diocese maintained a policy and practice of covering up criminal activity committed by clergy members within the Diocese.

63. The aforesaid cover up policy was perpetrated by Defendant Trautman as Bishop of Buffalo Diocese and further perpetrated by Defendant Trautman as Bishop of Erie Diocese.

64. Over the decades, this “cover-up” policy and practice of the Buffalo Diocese and the Erie Diocese resulted in the sexual assault of untold numbers of children, and put numerous other children at risk of sexual assault.

65. Defendant Diocese and Erie Diocese failed to report multiple allegations of sexual abuse by its employees, agents and representatives, to the proper authorities, thereby putting children at risk of sexual assault.

66. Upon information and belief, Defendants covered up acts of abuse by Fr. Smyczynski, and concealed facts concerning Fr. Smyczynski’s sexual misconduct from Plaintiff and his family.

67. It was not until April 2019 that Defendant Diocese publicly named Fr. Smyczynski as having been accused of sexual assault of a minor. Abuse by Fr. Smyczynski was determined to be eligible for compensation under the IRCP.

68. By failing to disclose the identities, histories and information about sexually abusive clergy in their employ, including Fr. Smyczynski, Defendants unreasonably deprived the families of children entrusted to their care, including Plaintiff, of the ability to protect their children.

69. Defendants failed to warn Plaintiff and his parents that Fr. Smyczynski posed a risk of child sexual assault.

70. 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 were knowingly subjecting children in their charge, including Plaintiff, to sexual crimes.

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

72. 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.

73. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, together with interest and costs.

THIRD CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

74. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

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

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

77. Defendants knew or disregarded the substantial probability that Fr. Smyczynski would cause severe emotional distress to Plaintiff.

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

79. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, together with interest and costs.

FOURTH CAUSE OF ACTION

PREMISES LIABILITY

80. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

81. At all relevant times, Defendants owned, operated, and /or controlled the premises known as Infant of Prague Parish, Infant of Prague Church and Infant of Prague School, including the areas where the grooming of Plaintiff and sexual abuse of Plaintiff occurred.

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

83. 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 students, like Plaintiff, whose presence was reasonably anticipated.

84. 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 Fr. Smyczynski. Defendants thereby breached their duty of care of Plaintiff.

85. 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.

86. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, together with interest and costs.

FIFTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

87. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

88. 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.

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

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

91. 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.

92. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, together with interest and costs.

SIXTH CAUSE OF ACTION

BREACH OF DUTY *IN LOCO PARENTIS*

93. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

94. 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.

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

96. 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.

97. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, together with interest and costs.

SEVENTH CAUSE OF ACTION

BREACH OF COMMON LAW AND STATUTORY DUTIES TO REPORT

98. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

99. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420 and New York Education Law Article 23-B, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

100. Defendants, including Bishop Trautman, the Buffalo Diocese and the Erie Diocese, breached their statutory duty by failing to report reasonable suspicion of abuse by Fr. Smyczynski of children in their care.

101. Upon information and belief, Defendant Bishop Trautman had actual knowledge of prior victims of sexual assault perpetrated by Fr. Smyczynski, failed to report this abuse, and actively covered up these abuses, thereby permitting Fr. Smyczynski to continue abusing other victims, including Plaintiff.

102. Upon information and belief, Defendant Bishop Trautman took his playbook of covering up clergy abuse from Buffalo New York to Erie Pennsylvania, where he currently resides and maintains an office, and where he continued to carry out the aforesaid cover up for decades.

103. The Buffalo Diocese and the Erie Diocese are liable for the cover up perpetrated by Bishop Trautman by reason of *respondeat superior*.

104. 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.

105. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, together with 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
- e. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

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

Dated: January 2, 2020

Yours, etc.

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