

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

HW 4 Doe, Being a Victim of Child Sexual Abuse,

Plaintiff,

v.

THE DIOCESE OF BUFFALO, NEW YORK
795 Main Street
Buffalo, New York 14203, and

ST. ALOYSIUS GONZAGA CHURCH
157 Cleveland Drive
Cheektowaga, New York 14215,

Defendants.

SUMMONS

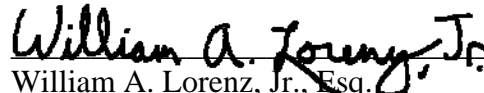
Index No.:

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 a Summons, to serve a Notice of Appearance, on Plaintiff's attorney within **twenty** (20) days after the service of this Summons, exclusive of the day of service, or within **thirty** (30) days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

This action is brought in ERIE COUNTY based upon the location of the incidents.

DATED: February 26, 2020
Amherst, New York


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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

HW 4 Doe, Being a Victim of Child Sexual Abuse,

Plaintiff,

v.

THE DIOCESE OF BUFFALO, NEW YORK, and
ST. ALOYSIUS GONZAGA CHURCH,

Defendants.

COMPLAINT

Index No.:

Plaintiff HW 4 Doe, Being a Victim of Child Sexual Abuse, by and through their attorneys, HOGANWILLIG, PLLC, as and for their Verified Complaint against Defendants THE DIOCESE OF BUFFALO, NEW YORK (“DIOCESE”) and ST. ALOYSIUS GONZAGA CHURCH (“ST. ALOYSIUS”) herein, alleges as follows:

1. At all relevant times hereinafter mentioned, Plaintiff was and still is a resident of the County of Erie, and State of New York.

2. Upon information and belief, and at all times hereinafter mentioned, Defendant DIOCESE was and is a Roman Catholic diocese headquartered in Buffalo, New York, with its principal place of business located at 795 Main Street, Buffalo, County of Erie, and State of New York.

3. Upon information and belief, and at all times hereinafter mentioned, Defendant ST. ALOYSIUS was and is a Catholic Church headquartered in Cheektowaga, New York with its principal place of business located at 157 Cleveland Drive, Cheektowaga, County of Erie, State of New York.

4. Upon information and belief, and at all relevant times hereinafter mentioned, Defendant DIOCESE operated churches and schools including, during the relevant times herein, Defendant ST. ALOYSIUS.

FACTS COMMON TO ALL CLAIMS

5. Upon information and belief, and at all relevant times hereinafter mentioned, Father Robert J. Biesinger (“Fr. Biesinger”) was a Catholic priest and member, agent, servant, and/or employee of Defendants DIOCESE and ST. ALOYSIUS.

6. Upon information and belief, Fr. Biesinger was assigned to Defendant ST. ALOYSIUS by Defendant DIOCESE from approximately 1988-1994.

7. Upon information and belief, during the times relevant to the allegations set forth herein, Fr. Biesinger was under the direct supervision, employ, and/or control of Defendants DIOCESE and ST. ALOYSIUS.

8. Upon information and belief, Fr. Biesinger’s assignments included: Saints Peter and Paul in Williamsville (1958-1967); St. Mary in Lockport (1968); Father Baker High School in Lackawanna (1969-1975); Holy Family in Machias (1976-1986); Immaculate Heart of Mary in Buffalo (1997); Defendant ST. ALOYSIUS (1988-1994); and “Absent on leave” and Sheehan Residence for Priests in Buffalo (1995-2001).

9. Upon information and belief, Fr. Biesinger resigned from Defendant ST. ALOYSIUS after a lawsuit was filed against him alleging sexual abuse against a minor.

10. Upon information and belief, Fr. Biesinger died in 2012 as a retired priest.

11. On March 20, 2018, Defendant DIOCESE included Fr. Biesinger on its list of priests who “were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.”

12. Through Fr. Biesinger's positions at, within, or for Defendants DIOCESE and ST. ALOYSIUS, he was put in direct contact with Plaintiff, beginning in the late 1980s.

13. In approximately 1989, Plaintiff was the victim of sexual harassment, sexual abuse, and violence by or at the direction of Fr. Biesinger, and with the acquiescence, approval, participation, and implied permission of Defendants DIOSCESE and ST. ALOYSIUS.

14. Upon information and belief, Fr. Biesinger's sexual abuse began when Plaintiff was approximately 8 years old.

15. The incidents experienced by then-Plaintiff included, but are not limited to, the following:

- a. On multiple occasions, Fr. Biesinger began "grooming" Plaintiff by asking Plaintiff to join him in the basement of Defendant ST. ALOYSIUS for "special time".
- b. On multiple occasions, Fr. Biesinger would expose himself to Plaintiff, and masturbate in front of Plaintiff.
- c. On multiple occasions, Fr. Biesinger would force Plaintiff to grab Fr. Biesinger's genitals until Fr. Biesinger ejaculated.
- d. On multiple occasions, Fr. Biesinger would threaten Plaintiff not to tell anyone about their "special time".

16. Venue is proper in Erie County based on the location of the incidents.

17. This action is brought pursuant to CPLR § 214-G, as added by the New York 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 commenced.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS: NEGLIGENCE

18. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "17" as though more fully set forth herein.

19. Fr. Biesinger, as an agent, servant, and/or employee of Defendants DIOCESE and ST. ALOYSIUS, was a religious figure and educator who had physical custody of Plaintiff, and owed Plaintiff a duty of care.

20. All Defendants were in *loco parentis* and owed Plaintiff a duty of care.

21. Defendants DIOCESE and ST. ALOYSIUS breached their duty of care owed to Plaintiff when they allowed Plaintiff to be in contact with Fr. Biesinger.

22. Defendants DIOCESE and ST. ALOYSIUS knew or should have known of the sexual abuse, sexual harassment, and violence occurring by or at the direction of Fr. Biesinger, and breached their duty owed to Plaintiff when they failed to report the sexual abuse, sexual harassment, and violence occurring by or at the direction of Fr. Biesinger.

23. Defendants DIOCESE and ST. ALOYSIUS are individually responsible and are also responsible under the doctrines of vicarious responsibility and respondeat superior.

24. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for their own physical safety.

25. As a result of Defendants' breach, Plaintiff has incurred and will incur medical costs to treat their past, present, and future psychological suffering as a result of being a victim of sexual abuse, sexual harassment, and violence while in the control of Fr. Biesinger.

26. 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.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS:
FAILURE TO REPORT**

27. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs “1” through “26” as though more fully set forth herein.

28. Defendant ST. ALOYSIUS, through their agents, servants, and employees, were Mandated Reporters under New York Social Services Law.

29. Defendant ST. ALOYSIUS, through their agents, servants, and employees, had reasonable cause to suspect that Plaintiff was being abused and/or maltreated by Fr. Biesinger.

30. Defendants ST. ALOYSIUS, through their agents, servants, and employees, knowingly and willfully failed to report the suspected child abuse or maltreatment to anyone, including the police or Child Protective Services.

31. Defendant ST. ALOYSIUS did not provide their employees with written information on reporting requirements.

32. Defendant ST. ALOYSIUS failed to follow the policies of required reporting including, but not limited to, the policies listed in the Code of Conduct for Priests, Deacons, Pastoral Ministers, Administrators, Staff and Volunteers, as well as New York Consolidated Laws, Social Services Law - SOS § 413.

33. Defendant ST. ALOYSIUS is liable for the failure to report pursuant to New York Consolidated Laws, Social Services Law - SOS § 420.

34. The knowing and willful failure of Defendant ST. ALOYSIUS, through the inaction of their agents, servants, and employees, to report the child abuse and maltreatment of Plaintiff was a proximate cause of Plaintiff’s damages.

35. 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.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

36. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs “1” through “35” as though more fully set forth herein.

37. During the time period encompassing 1971, Defendants DIOCESE and ST. ALOYSIUS allowed Fr. Biesinger unrestricted access to Plaintiff and willfully and/or intentionally ignored complaints against Fr. Biesinger of sexual abuse, sexual harassment, and violence.

38. During the time period referenced above, Defendants DIOCESE and ST. ALOYSIUS willfully and/or intentionally ignored Plaintiff’s safety by requiring and allowing Plaintiff to be watched by Fr. Biesinger by himself.

39. Defendants DIOCESE and ST. ALOYSIUS were deliberately indifferent to the risk of sexual harassment and violence posed to Plaintiff by being alone with Fr. Biesinger.

40. Defendants DIOCESE and ST. ALOYSIUS willfully and/or intentionally created a hostile and unsafe religious and educational environment that no child would be able to tolerate.

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

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

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

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

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

46. 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.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

47. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "46" as though more fully set forth herein.

48. Defendants DIOCESE and ST. ALOYSIUS were negligent when they allowed Plaintiff to continue to be exposed to Fr. Biesinger despite being aware of allegations of sexual harassment, sexual abuse, and violence against Fr. Biesinger.

49. Defendants DIOCESE and ST. ALOYSIUS knew or should have known this would subject Plaintiff to sexual harassment, sexual abuse, and violence, and knew or should have known this would unreasonably endanger Plaintiff's safety, cause them to fear for their safety, and cause them severe emotional distress.

50. Defendants DIOCESE and ST. ALOYSIUS owed a duty to Plaintiff to protect him from sexual harassment, sexual abuse, and violence from Fr. Biesinger, including but not limited to when on the premises of Defendants DIOCESE and ST. ALOYSIUS.

51. Defendants DIOCESE and ST. ALOYSIUS breached the duty owed to Plaintiff to protect him from sexual abuse, sexual harassment, and violence from Fr. Biesinger, including but not limited to when on the premises of Defendants DIOCESE and ST. ALOYSIUS.

52. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions and/or inactions, as well as fear for their own physical safety.

53. 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.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS: NEGLIGENT
HIRING**

54. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "53" as though more fully set forth herein.

55. Defendants DIOCESE and ST. ALOYSIUS owed Plaintiff a duty of care to supervise and protect Plaintiff.

56. Defendants DIOCESE and ST. ALOYSIUS were obligated to Plaintiff to hire and/or assign personnel, including Fr. Biesinger, to ensure that the children assigned to said personnel would be in a safe educational and religious environment.

57. Defendants DIOCESE and ST. ALOYSIUS knew or should have known at the time of Fr. Biesinger's assignment to Defendants DIOCESE and ST. ALOYSIUS of his propensity for the conduct which caused the injury.

58. Plaintiff was a victim of sexual abuse, sexual harassment, and violence by or at the direction of Fr. Biesinger.

59. Defendants DIOCESE and ST. ALOYSIUS breached their duty of care to Plaintiff when they negligently hired Fr. Biesinger.

60. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for their own physical safety.

61. 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.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT SUPERVISION AND RETENTION**

62. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "61" as though more fully set forth herein.

63. Defendants DIOCESE and ST. ALOYSIUS owed Plaintiff a duty of care to supervise and protect Plaintiff.

64. Defendants DIOCESE and ST. ALOYSIUS were obligated to Plaintiff to supervise the personnel assigned to watch Plaintiff, including but not limited to while on the premises of Defendants DIOCESE and ST. ALOYSIUS, to ensure that Plaintiff was in a reasonably safe environment.

65. Plaintiff was the victim of sexual abuse, sexual harassment, and violence by or at the direction of Fr. Biesinger.

66. Defendants DIOCESE and ST. ALOYSIUS had knowledge or should have had knowledge of the sexual abuse, sexual harassment, and violence by or at the direction of Fr. Biesinger and negligently ignored the sexual abuse, sexual harassment, and violence that was done by or at the direction of Fr. Biesinger.

67. Defendants DIOCESE and ST. ALOYSIUS did not terminate the employment or suspend the duties of Fr. Biesinger despite reports concerning the sexual abuse, sexual harassment and violence committed by Fr. Biesinger.

68. Defendants DIOCESE and ST. ALOYSIUS breached their duty of care to Plaintiff when they negligently supervised and retained Fr. Biesinger.

69. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for his own physical safety.

70. 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.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS:
PUNITIVE DAMAGES**

71. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs “1” through “70” as though more fully set forth herein.

72. Defendants DIOCESE and ST. ALOYSIUS’s knowledge of the violence, sexual harassment, and/or misconduct against Plaintiff by or at the direction of Fr. Biesinger is tantamount to a wanton and conscious disregard for the safety of Plaintiff and others, and warrants the imposition of punitive damages.

73. By reason of the malicious, intentional, willful, and/or negligent conduct of Defendants herein, and by such other acts that were morally reprehensible, Defendants’ conduct evidenced a callous disregard for the safety of Plaintiff, and said acts constituted a wanton, reckless and/or malicious disregard for the rights of others and, as a result thereof, Plaintiff demands punitive damages.

74. 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.

**AS AND FOR AN EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS:
VIOLATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972**

75. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs “1” through “74” as though more fully set forth herein.

76. Title IX of the Education Amendment of 1972 forbids a “funding recipient” from discriminating on the basis of sex in educational programs and activities.

77. Upon information and belief, Defendant ST. ALOYSIUS is a “funding recipient” under Title IX.

78. Plaintiff suffered sexual abuse, sexual harassment, and violence by or at the direction of Fr. Biesinger, in violation of Title IX.

79. Fr. Biesinger’S verbal and physical conduct of a sexual nature was severe or pervasive enough to alter the conditions of Plaintiff’s educational environment and created an abusive educational environment.

80. Defendants DIOCESE and ST. ALOYSIUS had the authority and duty to institute corrective measures.

81. Defendants DIOCESE and ST. ALOYSIUS acted with deliberate indifference in failing to respond to the reports of sexual harassment and sexual abuse being perpetrated by Fr. Biesinger.

82. The deliberate indifference of Defendants DIOCESE and ST. ALOYSIUS, and the sexual harassment and sexual abuse committed by Fr. Biesinger, effectively barred Plaintiff access to various educational opportunities and benefits at Defendant ST. ALOYSIUS and subjected Plaintiff to discrimination on the basis of sex in violation of Title IX.

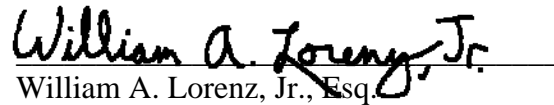
83. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants’ actions, as well as fear for their own physical safety.

84. 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.

85. Plaintiff also seeks attorneys’ fees under Title IX.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction, and for such other and further relief to Plaintiff as this Court deems just and proper.

DATED: February 26, 2020
Amherst, New York



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