

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

DALE KNICKERBOCKER  
5164 Transit Road  
Depew, New York 14043

Plaintiff,

**SUMMONS**

-vs-

Index No.:

DIOCESS OF BUFFALO, N.Y.  
795 Main Street  
Buffalo, New York 14203

OUR LADY OF VICTORY INFANT HOME, "FATHER BAKER'S",  
AFFILIATE OF OUR LADY OF VICTORY HOMES OF CHARITY  
780-790 Ridge Road, Lackawanna, New York 14218

OUR LADY OF VICTORY SCHOOL  
780-790 Ridge Road  
Lackawanna, New York 14218

BAKER VICTORY SERVICES  
780 Ridge Road  
Lackawanna, New York 14218

OUR LADY OF VICTORY NATIONAL SHRINE and BASILICA  
ST. JOSEPH'S ORPHAN ASYLUM  
780-790 Ridge Road  
Lackawanna, New York 14218

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon the plaintiff's attorney, at the address stated below, a Written Answer to the attached Compliant.

If this Summons is served upon you within the State of New York by personal service, you must respond within TWENTY (20) days after service, not counting the date of service. If this Summons is not personally delivered to you within the State of New York, you must respond within THIRTY (30) days after service is completed, as provided by law.

If you do not respond to the attached Complaint within the applicable time limitations stated above, a Judgment will be entered against you, by default, for the relief demanded in the Complaint, without further notice to you.

This action is brought in the County of ERIE because of:

- Plaintiff's residence or place of business;
- Defendant's residence; or
- Designation made by plaintiff.

Dated: January 17, 2020

Yours etc.  
  
JOHN J. FLAHERTY, ESQ.,  
Attorney for Plaintiff  
5500 Main Street, Suite 343  
Williamsville, New York 14221  
716.983.2630

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

DALE KNICKERBOCKER  
5164 Transit Road  
Depew, New York 14043

-vs- Plaintiff, COMPLAINT  
Index No.:

DIOCESS OF BUFFALO, N.Y.  
795 Main Street  
Buffalo, New York 14203

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Defendants.

The plaintiff, Dale Knickerbocker, by and through his attorney, John J. Flaherty, Esq.,  
complaining of the defendant(s), herein alleges as follows:

1. That at all times herein mentioned the Plaintiff, Dale Knickerbocker, was a resident of the County of Erie and State of New York, USA.
2. Any reference to a Defendant entity includes the entity, parent companies or religious institutions, subsidiaries, affiliates, predecessors and successors.

3. Any allegation which makes reference to any act, deed or transaction shall mean that the entity engaged in the act, deed or transaction by and through their members, agents, servants, representatives, officers, directors or employees while they were actively engaged in the management, operation, direction, control of the entity or the transaction of the entity's business or operations or programs.

4. At all times herein mentioned, the Defendant, Diocese of Buffalo, N.Y. aka Catholic Diocese of Buffalo, aka Roman Catholic Diocese of Buffalo ("The Diocese") was and continues to be a religious organization authorized to operate and conduct business in the State of New York with its principal place of business located at 795 Main Street in the City of Buffalo, County of Erie and State of New York 14203.

5. At all times herein mentioned all of the allegations herein occurred in the County of Erie and State of New York giving the Court Jurisdiction pursuant to CPLR § 301 and accordingly venue is appropriate in Erie County pursuant to CPLR § 503.

6. This action is timely filed in accordance with CPLR § 214-g.

7. At all times herein mentioned "The Diocese" operated and controlled a variety of educational programs, schools and orphanages by and through their members, agents, servants, representatives, officers, directors or employees while they were actively engaged in the management, operation, direction, supervision or control of the entity or the transaction of the entity's business or operations or programs.

8. At all times herein mentioned "The Diocese" had a duty to properly recruit, engage, evaluate, manage, supervise all of their members, agents, servants, representatives, officers, directors or employees while they were actively engaged in the custody, care, supervision and control of children under their trust and control.

9. At all times herein mentioned “The Diocese” operated as a corporate entity and a religious organization engaging in programs to generate revenue and to provide religious services to its community for which it conducted charitable collections.

10. At all times herein mentioned, Our Lady of Victory Infant Home, “Father Baker’s”, Affiliate of Our Lady of Victory Homes of Charity (780 Ridge Road, Lackawanna, New York 14218) was an organization authorized to conduct business in the State of New York, with its principal place of business located at 790 Ridge Road, Lackawanna, New York 14128; Baker Victory Services was an organization authorized to conduct business in the State of New York, with its principal place of business located at 780 Ridge Road, Lackawanna, New York 14218 and St. Joseph’s Male Orphan Asylum was an organization authorized to conduct business in the State of New York, with its principal place of business located at 780-790 Ridge Road, Lackawanna, New York 14218.

11. At all times herein mentioned, Our Lady of Victory Infant Home, “Father Baker’s,” Affiliate of Our Lady of Victory Homes of Charity and Baker Victory Services were organization(s) authorized to conduct business in the State of New York, and were under the ownership, supervision, management and control supervision and control of, Defendant Diocese of Buffalo under control of the Bishop of the Diocese of Buffalo.

12. At all times herein mentioned, Our Lady of Victory School was an educational institution authorized under the New York education Lay and was an institution conduct business in the State of New York, and was under the ownership, supervision, management and control supervision and control of, Defendant Diocese of Buffalo under control of the Bishop of the Diocese of Buffalo.

13. At all times mentioned herein, Father McPhearson was a Roman Catholic Priest employed by the Diocese of Buffalo and under the supervision and control of the Defendants.

14. The Defendants placed father McPhearson in positions to where he had supervision and control of infant children.

15. The Defendants established a relationship of trust with the members of their community fostering the notion of obedience and ultimate respect for clergy, their leadership and teachings maintained orphanages and established youth programs designed to attract children of the community.

16. The Plaintiff was raised as a Roman Catholic and, in exchange for valuable consideration at the age of eight (8) years old (DOB 7.10.1943), was placed in St. Josephs' Male Orphan Asylum on the 11<sup>th</sup> day of July, 1951 where he was in the custody of, and under the complete authority and control of the orphanage and was a ward of and under the authority, supervision and control of Father McPhearson.

17. Plaintiff was reared and taught respect, reverence trust and admiration for adults and clergy of the Roman Catholic Church.

18. As a result, while in the orphanage at age eight (8) years of age, Plaintiff was a defenseless and vulnerable child and was dependent on the orphanage and Father McPhearson.

19. From approximately 1951 to while the Plaintiff was eight (8) years old father Joseph McPhearson engaged in reprehensible, forceful and unpermitted sexual conduct with the Plaintiff.

20. The Plaintiff was afraid and intimidated by the authority and control over him, he was young alone and defenseless and felt pressure not to report the abuse he suffered.

21. Defendants knew or should have known that there numerous members, agents,

servants, representatives or employees of the Diocese that had sexually molested children and that such predatory conduct carried with it a high rate of recidivism.

22. Defendants knew or should have known that many of their members, agents, servants, representatives or employees working in programs and institutions within the Diocese created a specific danger of sexual abuse to children within these institutions and programs.

23. The Defendants knew or should have known that Father Joseph McPhearson posed a danger to children before Plaintiff entered St. Joseph's Orphan Asylum.

24. Prior to the sexual abuse of the Plaintiff, Defendants', by and through their members, agents, servants, representatives or employees were aware or should have been aware that Father McPhearson had a propensity to sexually abuse young boys which posed a risk to the Plaintiff.

25. Defendants were aware of sexual abuse occurring within the Catholic Church and knew or should have known that it was necessary to obtain information to determine that their members, agents, servants, representative's or employees were fit to work with or have any authority, influence or control over minor children.

26. Defendant's knew that the children in St. Joes Orphan Asylum were under the strict authority and control of Father Joseph McPhearson and they knew or should have learned information to insure the safety of these children.

27. Nevertheless, Defendants negligently qualified Father McPhearson to work with and control children or that any prior sexual indiscretions of Father McPhearson were cured and that Father McPhearson would not sexually abuse children.

28. Defendants knew or should have known that there was a risk of sexual abuse of children participating in the programs and activities within the Diocese. Defendants knew or

should have known that they lacked sufficient information as to the risk of sexual abuse of children participating in the programs and activities within the Diocese.

29. Defendants owed a duty of reasonable care because of their knowledge that Father McPhearson posed to children in general and to this institutionalized minor Plaintiff was and that their programs and activities posed risks to minor children.

30. Defendants owed a duty to protect the plaintiff from harm because, by their own actions and inactions, they created a risk of foreseeable harm to the young, defenseless and helpless Plaintiff who was admitted into their institutions and participated in their programs offered specifically for minors which were directed and controlled by Father McPhearson.

31. Defendants breached their duty to the Plaintiff by engaging Father McPhearson to oversee programs and activities involving young boys including the Plaintiff.

32. Defendants were negligent in their failure to: use ordinary care in managing the safety of their institutions, programs and facilities; use ordinary care in protecting the safety of minor children such as the Plaintiff; protect the Plaintiff; protect the Plaintiff from dangers that they knew or should have known of; failure to properly supervise their members, agents, servants, representatives or employees to insure the safety of the children; failure to maintain and implement policies and procedures to prevent sexual transgressions against minor children; failure to protect the Plaintiff from a known danger; failure to remove the threat of sex abuse from their institutions and programs; failure to warn family members of the risks of sexual transgressions within the Diocese; failure to investigate sexual transgressions against minor children; failure to screen and train members, agents, servants, representatives or employees who would be placed in positions within the Diocese of authority and control over minor children; failure to warn Plaintiff and Plaintiff's family of the risk of sexual abuse presented to the



Plaintiff by Father McPhearson; failure to warn Plaintiff or his family of their knowledge of sexual transgressions of minors within their institutions failure to engage any outside agencies to audit the institutions and programs for the safety of the minor children; failure to report sexual abuse or suspected sexual abuse of by Father McPhearson to governmental prosecutorial agencies or law enforcement agencies; failure to use ordinary care in reliance upon unqualified people claiming that they could treat predators of minor children; failure to take any measures in reaction to signs of sexual abuse of children by their members, agents, servants, representatives or employees; failing to address the pleas of the aggrieved or acknowledge facts and information of sexual abuse; failure to protect the children; failure to protect the Plaintiff.

33. As the result of the negligence of the Defendants the Plaintiff has suffered a lifetime of grief and horror, great permanent emotional pain and distress of mind and body, physical manifestations of emotional distress, horrible psychological effects, embarrassment, humiliation, low self-esteem, inability to maintain personal relationships, inability to experience any enjoyment of life; has undergone therapy and treatment and will continue to require therapy, counselling and treatment for his psychological and emotional injuries and has experienced loss of rest, relaxation and a has endured a lifetime of crying which negatively affected his ability to earn a living and realize the appropriate level of his earning capacity.

**AS AND FOR A FIRST CAUSE OF ACTION FOR NEGLIGENCE:**

34. Plaintiff repeats and re-alleges paragraphs numbered “1” through and including “33” with the same force and effect as if more fully set forth herein.

35. Defendants owed a legal duty of reasonable care to protect the Plaintiff from sexual abuse and injury.

36. Defendants owed a legal duty of reasonable care because each Defendant had a

special relationship with the Plaintiff.

37. Each Defendant's legal duty was the result of their special relationship with the Plaintiff, Plaintiff's mother, and other parents of young vulnerable children, who entrusted the Plaintiff to their authority, care and control, to train and supervise their priests.

38. Given the risks of sexual abuse inherent in such special relationships Defendants had a duty to establish a system of monitoring the relationships for the protection and safety of the defenseless children.

39. Each Defendant had a duty to protect the Plaintiff from harm because each Defendant had a special relationship with Father McPhearson.

40. Each Defendant owed Plaintiff a duty of reasonable care because they set up programs to attract youth participation; they set up institutions designed to give them custody of minor children including the Plaintiff, accepted valuable consideration for Plaintiffs placement, promoted the qualifications and safety of the programs and institutions; held themselves out as having programs and facilities that were productive and safe environments for children; promoted father McPhearson as qualified and appropriate to work with and control children; encouraged parents to work with and trust Father McPhearson as part of the recruiting process.

41. By engaging and promoting Father McPhearson and their institutions as safe for children and by taking custody and authority and power over the Plaintiff, the Defendants entered into a fiduciary relationship and established an in loco parentis relationship with the Plaintiff.

42. As a result of placing Plaintiff in the described circumstance under the authority and control of Father McPhearson they placed the Plaintiff in a position of certain risk to be sexually assaulted and breached their duty to protect the Plaintiff.

43. As the result of their establishment, operation and control of programs and institutions for activities, housing and education designed to attract and accept minor children, and by representing that the programs and institutions were productive and safe environments for children and by accepting the Plaintiff in loco parentis the Defendants had an express and implied duty to protect and properly supervise the Plaintiff and provide him with a safe and productive environment as a reasonable and prudent parent would have done under the circumstances.

44. The Defendants breached their legal duty of care to the Plaintiff by failing to provide a safe environment for the Plaintiff, by permitting Father McPhearson unsupervised and unfettered authority and control over the Plaintiff and in failing to protect the Plaintiff from a known danger or a danger which would have become apparent through proper management and supervision.

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

**AS AND FOR A SECOND CAUSE OF ACTION FOR NEGLIGENT  
TRAINING AND SUOERVISION**

46. Plaintiff repeats and re-alleges paragraphs numbered "1" through and including "45" with the same force and effect as if more fully set forth herein.

47. Upon information and belief, and at all times herein mentioned Father McPhearson was a member, agent, servant, representative or employee of the Defendants acting within the scope of his employment and was under their supervision and control when he committed the wrongful acts against the Plaintiff .

48. By virtue of the authority and control given by the Defendants, to their member, agent, servant, representative or employee, Father McPhearson over children such as the Plaintiff the Defendants owed a legal duty understand and investigate the

circumstances involving this delegated authority to ensure that Father McPhearson did not sexually molest children such as the Plaintiff.

49. By virtue of the authority and control given by the Defendants, to their member, agent, servant, representative or employee, Father McPhearson over children such as the Plaintiff, the Defendants had a duty to understand the qualifications of Father McPhearson to have such power and control over children such as the Plaintiff.

50. By virtue of the authority and control given by the Defendants, to their member, agent, servant, representative or employee, Father McPhearson over children such as the Plaintiff, the Defendants had a legal duty to educate and train all of their members, agents, servants, representatives and employees including Father McPhearson in the proper and safe management of children such as the Plaintiff.

51. By virtue of the authority and control given by the Defendants, to their member, agent, servant, representative or employee, Father McPhearson over children such as the Plaintiff the Defendants had a legal duty to establish policies and procedures to oversee Father McPhearson and to address inappropriate behavior by Father McPhearson towards the children such as the Plaintiff.

52. The Defendants breached these duties of care to the Plaintiff because they were inattentive and failed in their duty to train, supervise, monitor and instruct their members, servants, agents, representatives and employee regarding policies and procedures to be followed when sexual abuses of children such as the Plaintiff were suspected or observed.

53. By breaching their duties as stated the Defendants failed to exercise that care which a reasonably prudent person, parent or fiduciary would have exercised under the same or similar circumstances.

54. As a result of the foregoing the Plaintiff sustained a lifetime of physical, psychological and emotional injuries and pain and suffering.

#### **AS AND FOR A THIRD CAUSE OF ACTION FOR NEGLIGENT RETENTION**

55. Plaintiff repeats and re-alleges paragraphs numbered "1" through and including "54" with the same force and effect as if more fully set forth herein.

56. Defendants knew or should have known of multitude of sexual indiscretions against children under their supervision and control throughout the Diocese.

57. Defendants knew or should have known that Father McPhearson had a propensity for the sexual abuse of children and took no action to monitor, investigate or intervene to protect the children and failed to remove or prevent Father McPhearson from interacting with children such as the Plaintiff.

58. Defendants, nevertheless, negligently and recklessly retained Father McPhearson with this knowledge of his propensity to sexually abuse children which permitted Father McPhearson to continue in his position of authority over minor children where it would result in foreseeable harm to the Plaintiff .

59. Had the defendants acted reasonably and removed Father McPhearson from his position over children, the Plaintiff would not have been subjected the damages and injuries described herein.

60. By retaining and failing to remove Father McPhearson from interacting with children and by failing to remove Father McPhearson form his position over the children, Defendants negligently and recklessly failed to exercise that degree of care which a reasonably prudent person, parent or fiduciary would have exercised under the same or similar circumstances.

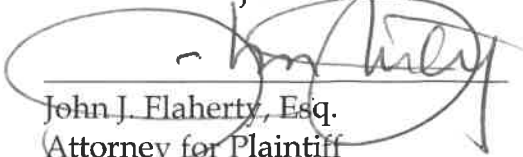
61. As a result of the foregoing the Plaintiff sustained a lifetime of physical, psychological and emotional injuries and pain and suffering.

### **RELIEF DEMANDED**

**WHEREFORE**, as a result of the foregoing, Plaintiff demands judgment against the Defendants for being sexually abused and a lifetime of physical, psychological and emotional injuries and pain and suffering in an amount which exceeds the jurisdictional

limits of all lower courts which otherwise would have jurisdiction.

Dated: January 17, 2020



John J. Flaherty, Esq.

Attorney for Plaintiff

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