

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

HW 6 ROE, Being a Victim of Child Sexual Abuse,

Plaintiff,

v.

RICHARD D. POCZKALSKI
3677 Breckenridge Road
Hamburg, New York 14075,

Defendant.

SUMMONS

Index No.:

TO THE ABOVE-NAMED DEFENDANT:

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: March 19, 2020
Amherst, New York



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STATE OF NEW YORK
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RICHARD D. POCZKALSKI,

Defendant.

COMPLAINT

Index No.:

Plaintiff HW 6 ROE, Being a Victim of Child Sexual Abuse, by and through her attorneys, HOGANWILLIG, PLLC, as and for her Complaint against Defendant RICHARD D. POCZKALSKI herein, alleges as follows:

1. At all relevant times hereinafter mentioned, Plaintiff is a resident of the County of Gilmer, State of West Virginia who, during the time period of the incidents alleged herein, was a resident of the County of Erie, State of New York.

2. Upon information and belief, and at all times hereinafter mentioned, Defendant was and still is a resident of the County of Erie, State of New York.

FACTS COMMON TO ALL CLAIMS

3. In or about 1989, Plaintiff, then an infant, was living with her family in Tonawanda, County of Erie, State of New York.

4. Upon information and belief, Defendant visited Plaintiff's home in or about 1989.

5. In or about 1989, when Plaintiff was approximately eleven (11) years old, Plaintiff was the victim of sexual harassment, sexual abuse, and violence by or at the direction of Defendant.

6. Some of the incidents experienced by then-infant Plaintiff over a period of one (1) year included, but are not limited to, the following:

- A. On multiple occasions, then-infant Plaintiff’s breasts were groped by Defendant.
- B. On multiple occasions, then-infant Plaintiff’s behind was groped by Defendant.
- C. On at least one occasion, Defendant entered then-infant Plaintiff’s bedroom and forcibly grabbed then-infant Plaintiff, before reaching under then-infant Plaintiff’s robe and touching her vagina.

7. Upon information and belief, then-infant Plaintiff revealed the abuse to her parents in or about 1989.

8. Venue is proper in Erie County based upon the location of the incidents.

9. 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 DEFENDANT:
ASSAULT

10. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs “1” through “9” as though more fully set forth herein.

11. Defendant’s actions in sexually abusing then-infant Plaintiff over a period of approximately one (1) year placed Plaintiff in apprehension of an imminent harmful and offensive bodily contact.

12. That the aforesaid assaults were unwarranted, unjustified, and unprovoked by Plaintiff and without her consent, as Plaintiff did not and could not give consent.

13. That by reason of the foregoing actions of Defendant, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, was subject to humiliation and embarrassment, all to her damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT:
BATTERY

14. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "13" as though more fully set forth herein.

15. Defendant's actions in sexually abusing then-infant Plaintiff over a period of approximately one (1) year constitutes Defendant intentionally making offensive bodily contact with Plaintiff.

16. That the aforesaid offensive bodily contact was unwarranted, unjustified, and unprovoked by Plaintiff and without her consent, as Plaintiff did not and could not give consent as an infant.

17. By reason of the foregoing, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was subject to humiliation and embarrassment, all to her damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

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

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

19. Defendant intentionally and recklessly touched Plaintiff on the aforementioned occasions over a period of one (1) year, including on her vagina.

20. Defendant's conduct in repeatedly sexually abusing then-infant Plaintiff was extreme, outrageous, shocking, and exceeding all reasonable bounds of decency.

21. That the aforesaid conduct was done with the intention of causing Plaintiff severe emotional distress.

22. By reason of the foregoing, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was subject to humiliation and embarrassment, all to her damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

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

23. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "22" as though more fully set forth herein.

24. Defendant owed a duty to then-infant Plaintiff to reasonably protect her from harm and not sexually abuse her.

25. Defendant intentionally and recklessly breached that duty by touching Plaintiff on the aforementioned occasions over a period of one (1) year, including her vagina.

26. Defendant's conduct in repeatedly sexually abusing then-infant Plaintiff unreasonably endangered Plaintiff's physical safety and caused Plaintiff to fear for her own safety over the period of abuse lasting approximately one (1) year.

27. Plaintiff suffered several emotional and mental suffering and distress due to Defendant's actions, as well as fear for her own physical safety.

28. By reason of the foregoing, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was subject to humiliation and embarrassment, all to her damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANT:
PUNITIVE DAMAGES**

29. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "28" as though more fully set forth herein.

30. Defendant's actions in being violent, sexually harassing, and/or committing other misconduct against Plaintiff is tantamount to a wanton and conscious disregard for the safety of Plaintiff, and warrants the imposition of punitive damages.

31. By reason of the malicious, intentional, willful, and/or negligent conduct of Defendant herein, and by such other acts that were morally reprehensible, Defendant's 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.

32. 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.

WHEREFORE, Plaintiff demands judgment against Defendant 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: March 19, 2020
 Amherst, New York



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