

NEW YORK STATE SUPREME COURT
ERIE COUNTY

TIMOTHY TORRISI,

Plaintiff,

-against-

GREATER NIAGARA FRONTIER COUNCIL, INC.,
BOY SCOUTS OF AMERICA; BUFFALO AREA
COUNCIL; and RESCUE VOLUNTEER HOSE
COMPANY NO. 1 OF CHEEKTOWGA, N.Y.,

Defendants.

Index No.: _____

Date Filed: _____

SUMMONS

Plaintiff designates Erie County
as the place of trial.

The basis of venue is one
defendant's residence.

**Child Victims Act Proceeding
22 NYCRR 202.72**

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 attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 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.

Dated: June 1, 2020

Respectfully Yours,

MARSH LAW FIRM PLLC

By  _____

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COMPLAINT

Child Victims Act Proceeding
22 NYCRR 202.72

Plaintiff Timothy Torrasi, by and through his attorneys, the Marsh Law Firm PLLC and Pfau Cochran Vertetis Amala PLLC, respectfully alleges for his complaint the following:

I. INTRODUCTION

1. This case arises from childhood sexual abuse and exploitation that Plaintiff Timothy Torrasi suffered at the hands of the defendants' Scout leader and volunteer, Robert Eberhardt, who the defendants knew or should have known posed a danger to him and other children. Despite their knowledge, the defendants failed to take reasonable steps to protect Plaintiff Timothy Torrasi from the danger of being sexually abused by Robert Eberhardt. As a result, Robert Eberhardt was able to use his position as a Scout leader and volunteer with the defendants to sexually abuse Plaintiff Timothy Torrasi.

II. PROCEEDING IN ACCORDANCE WITH CPLR 214-G AND 22 NYCRR 202.72

2. This complaint is filed pursuant to the Child Victims Act (CVA) 2019 Sess. Law News of N.Y. Ch. 11 (S. 2440), CPLR 214-G, and 22 NYCRR 202.72. The CVA opened a historic one-year one-time window for survivors of childhood sexual abuse in the State of New York to pursue lapsed claims. Prior to the passage of the CVA, Plaintiff's claims were time-barred the day

he turned 22 years old. The enactment of the CVA allows Plaintiff, for the first time in his life, to pursue restorative justice in New York State.

III. PARTIES

3. Plaintiff Timothy Torrisi is an adult male who currently resides in Eden Prairie, Minnesota.

4. While he was a minor, Plaintiff Timothy Torrisi was a victim of one or more criminal sex acts in the State of New York, including sexual acts that would constitute a sexual offense that revives Plaintiff's claim under the Child Victims Act.

5. At all relevant times Plaintiff Timothy Torrisi was a minor participating in the Boy Scouts of America program that was operated and controlled by defendants Buffalo Area Council; Greater Niagara Frontier Council, Inc., Boy Scouts of America; and Rescue Volunteer Hose Company No. 1 of Cheektowga, N.Y. (all defendants are collectively referred to herein as "the defendants").

6. Robert Eberhardt ("Eberhardt") was a Scout leader or volunteer that the defendants used and relied upon as a Scout leader and volunteer to serve Plaintiff and other children who participated in their Boy Scout program, including as a Scoutmaster of Plaintiff's Boy Scout Troop.

7. During the time that Eberhardt served as a Scout leader or volunteer for the defendants, he used his position as a Scout leader or volunteer to groom and to sexually abuse Plaintiff Timothy Torrisi.

8. At all relevant times defendant Buffalo Area Council ("BAC") was a New York nonprofit corporation organized under New York law with its principal place of business in Buffalo, New York, that transacted business in Erie County.

9. At all relevant times defendant BAC conducted business as “Buffalo Area Council,” “Buffalo Area Council, Boy Scouts of America,” “Buffalo Area Council, Inc., Boy Scouts of America,” and “BAC.”

10. To the extent that defendant BAC was a different entity, corporation, or organization during the period of time in which Eberhardt used his position as a Scout leader and volunteer to sexually abuse Plaintiff, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit and is named in the caption and in this complaint as Buffalo Area Council.

11. To the extent that defendant BAC is a successor to a different entity, corporation, or organization which existed during the period of time during which Eberhardt used his position as a Scout leader and volunteer to sexually abuse Plaintiff, including any entity, corporation, or organization that subsequently or eventually merged into BAC, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit and is named in the caption and in this complaint as Buffalo Area Council.

12. All such BAC-related entities, corporations, or organizations are collectively identified and referred to herein as defendant “BAC.”

13. At all relevant times defendant Greater Niagara Frontier Council, Inc., Boy Scouts of America (“GNFC”) was a New York nonprofit corporation organized under New York law with its principal place of business in Buffalo, New York, that transacted business in Erie County.

14. At all relevant times defendant GNFC conducted business as “Greater Niagara Frontier Council, Inc., Boy Scouts of America,” “Greater Niagara Frontier Council, Boy Scouts of America,” “Greater Niagara Frontier Council,” and “GNFC.”

15. To the extent that defendant GNFC was a different entity, corporation, or organization during the period of time in which Eberhardt used his position as a Scout leader and volunteer to sexually abuse Plaintiff, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit and is named in the caption and in this complaint as Greater Niagara Frontier Council, Inc., Boy Scouts of America.

16. To the extent that defendant GNFC is a successor to a different entity, corporation, or organization which existed during the period of time during which Eberhardt used his position as a Scout leader and volunteer to sexually abuse Plaintiff, including BAC and any other entity, corporation, or organization that subsequently or eventually merged into GNFC, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit and is named in the caption and in this complaint as Greater Niagara Frontier Council, Inc., Boy Scouts of America.

17. All such GNFC -related entities, corporations, or organizations are collectively identified and referred to herein as defendant “GNFC.”

18. Given their relationship, defendants BAC and GNFC are collectively referred to below as “BAC.”

19. Defendant Rescue Volunteer Hose Company No. 1 of Cheektowga, N.Y. (“RVHC”) was a not-for-profit corporation organized under New York law with its principal place of business in or around Erie County, New York.

20. To the extent that defendant RVHC was a different entity, corporation, or organization during the period of time in which Eberhardt used his position as a Scout leader and volunteer to sexually abuse Plaintiff, such entity, corporation, or organization is hereby on notice

that it is intended to be a defendant in this lawsuit and is named in the caption and in this complaint as Rescue Volunteer Hose Company No. 1 of Cheektowga, N.Y.

21. To the extent that defendant RVHC is a successor to a different entity, corporation, or organization which existed during the period of time during which Eberhardt used his position as a Scout leader and volunteer to sexually abuse Plaintiff, including any entity, corporation, or organization that subsequently or eventually merged into RVHC, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit and is named in the caption and in this complaint as Rescue Volunteer Hose Company No. 1 of Cheektowga, N.Y.

22. All such RVHC-related entities, corporations, or organizations are collectively identified and referred to herein as defendant “RVHC.”

IV. VENUE

23. Venue is proper because at all relevant times defendant Buffalo Area Council was a domestic corporation authorized to transact business in New York with its principal office located in Buffalo, New York.

24. Venue is proper because at all relevant times defendant Greater Niagara Frontier Council, Inc., Boy Scouts of America was a domestic corporation authorized to transact business in New York with its principal office located in Buffalo, New York.

25. Venue is proper because at all relevant times defendant RVHC transacted business in New York with its principal office located in Erie County, New York.

26. Venue is proper because Erie is the county in which a substantial part of the events or omissions giving rise to Plaintiff’s claim occurred.

V. STATEMENT OF FACTS

27. Plaintiff Timothy Torrisi repeats and re-alleges the above allegations.

28. At all relevant times defendant BAC, through its agents, servants, and employees, managed, maintained, operated, and controlled Boy Scout Troops, Cub Scout Troops, other Scout Troops, and Boy Scout camps in New York, including the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by its Scout leader and volunteer, Robert Eberhardt.

29. At all relevant times defendant BAC, through its agents, servants, and employees, managed, maintained, operated, and controlled the Scout leaders and volunteers of Boy Scout Troops, Cub Scout Troops, other Scout Troops, and Boy Scout camps in New York, including the Scout leaders and volunteers of the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by one of those Scout leaders, Robert Eberhardt.

30. RVHC obtained a charter agreement from the Boy Scouts of America and BAC that allowed and enabled RVHC to operate and control Plaintiff's Boy Scout Troop subject to the rules, regulations, and control of BAC.

31. At all relevant times the defendants, through their agents, servants, and employees, managed, maintained, operated, and controlled the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by the defendants' Scout leader and volunteer, Robert Eberhardt.

32. At all relevant times the defendants, through their agents, servants, and employees, held out their agents, servants, and employees to the public as those who managed, maintained, operated, and controlled the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by one of their Scout leaders and volunteers, Robert Eberhardt.

33. At all relevant times the defendants were responsible for the hiring and staffing, and did the hiring and staffing, for the Scout leaders and volunteers of the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by their Scout leader and volunteer, Robert Eberhardt.

34. At all relevant times the defendants were responsible for the recruitment and staffing of the Scout leaders and volunteers for the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by their Scout leader and volunteer, Robert Eberhardt.

35. At all relevant times the defendants were responsible for supervising the Scout leaders and volunteers for the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by their Scout leader and volunteer, Robert Eberhardt.

36. At all relevant times the defendants held themselves out to the public as the owners of the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by their Scout leader and volunteer, Robert Eberhardt.

37. At all relevant times the defendants materially benefited from the operation of the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by the defendants' Scout leader and volunteer, Robert Eberhardt, including the services of Eberhardt and the services of those who managed and supervised Eberhardt.

38. At all relevant times the defendants, through their agents, servants, and employees, managed, maintained, operated, and controlled the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by the defendants' Scout leader and volunteer, Robert Eberhardt, including its leaders and volunteers.

39. At all relevant times the defendants, through their agents, servants, and employees, managed, maintained, operated, and controlled the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by the defendants' Scout leader and volunteer, Robert Eberhardt, including its policies and procedures regarding the sexual abuse of children.

40. At all relevant times Robert Eberhardt was a Scout leader and volunteer of the defendants who Plaintiff believes held the position of Scoutmaster of the Boy Scout Troop that Plaintiff belonged to when he was sexually abused by Eberhardt.

41. At all relevant times Robert Eberhardt was on the staff of, was an agent of, or served as an employee or volunteer of the defendants.

42. At all relevant times Robert Eberhardt was acting in the course and scope of his position with the defendants.

43. When Plaintiff was a minor, he registered with the defendants as a member of their Boy Scout Troop and paid them a fee to participate as a member of their Boy Scout Troop, including its meetings, camping trips, merit badge activities, and other outings.

44. At all relevant times the defendants, through their agents, servants, and employees, held Robert Eberhardt out to the public, to Plaintiff, and to his parents, as their agent.

45. At all relevant times the defendants, through their agents, servants, and employees, held Robert Eberhardt out to the public, to Plaintiff, and to his parents, as having been vetted, screened, and approved to serve as one of their Scout leaders and volunteers.

46. At all relevant times Plaintiff and his parents reasonably relied upon the acts and representations of the defendants, through their agents, servants, and employees, and reasonably believed that Robert Eberhardt was one of their agents who was vetted, screened, and approved to serve as one of their Scout leaders and volunteers.

47. At all relevant times Plaintiff and his parents trusted Robert Eberhardt because the defendants held him out as someone who was safe and could be trusted with the supervision, care, custody, and control of Plaintiff.

48. At all relevant times Plaintiff and his parents believed that the defendants would exercise such care as would a parent of ordinary prudence in comparable circumstances when those defendants assumed supervision, care, custody, and control of Plaintiff.

49. RVHC sponsored the Troop that Plaintiff belonged to when he was sexually abused by the defendants' Scout leader and volunteer, Robert Eberhardt.

50. RVHC hosted the meetings of Plaintiff's Boy Scout Troop and organized the Troop's Scouting activities and events, including meetings, camping trips, merit badge activities, and other outings.

51. The defendants were responsible for selecting and supervising the Scout leaders and volunteers of Plaintiff's Boy Scout Troop, including the Troop's Scout leader and volunteer, Robert Eberhardt, when he used that position with the defendants to sexually abuse Plaintiff.

52. When Plaintiff was a minor, Robert Eberhardt used his position as the defendants' Scout leader and volunteer to sexually abuse him.

53. Plaintiff was sexually abused by Robert Eberhardt when Plaintiff was approximately 13 years old.

54. Based on the representations of the defendants that Robert Eberhardt was safe and trustworthy, Plaintiff and his parents allowed Plaintiff to be under the supervision of, and in the care, custody, and control of the defendants, including when Plaintiff was sexually abused by Robert Eberhardt.

55. Neither Plaintiff nor his parents would have allowed him to be under the supervision of, or in the care, custody, or control of the defendants, or Robert Eberhardt, if the defendants had disclosed to Plaintiff or his parents that Eberhardt was not safe and was not

trustworthy, and that he in fact posed a danger to Plaintiff in that Eberhardt was likely to sexually abuse Plaintiff.

56. Neither Plaintiff nor his parents would have paid the defendants to allow him to be a member of their Boy Scout Troop, or to participate in their Scouting activities, if the defendants had disclosed to Plaintiff or his parents that Robert Eberhardt was not safe and was not trustworthy, and that he in fact posed a danger to Plaintiff in that Eberhardt was likely to sexually abuse Plaintiff.

57. Neither Plaintiff nor his parents would have paid the defendants to allow him to be a member of their Boy Scout Troop, or to participate in their Scouting activities, if the defendants had disclosed to Plaintiff or his parents that they knew for years that sexual predators, like Robert Eberhardt, were using their position as a Scout leader and volunteer to groom and to sexually abuse children.

58. No parent of ordinary prudence in comparable circumstances would have allowed Plaintiff to be under the supervision of, or in the care, custody, or control of the defendants or Robert Eberhardt if the defendants had disclosed to Plaintiff or his parents that Eberhardt was not safe and was not trustworthy, and that he in fact posed a danger to Plaintiff in that Eberhardt was likely to sexually abuse him.

59. In approximately 1967, Robert Eberhardt used his position of trust and authority as a Scout leader and volunteer of the defendants to groom Plaintiff and to sexually abuse him, including during a Boy Scout sleep over at the "Scout House" when Plaintiff was under the supervision of, and in the care, custody, or control of, the defendants.

60. The sexual abuse by the defendants' Scout leader and volunteer, Robert Eberhardt, included, but was not limited to, Eberhardt fondling Plaintiff's genitals.

61. The sexual abuse by the defendants' Scout leader and volunteer, Robert Eberhardt, occurred using property that was owned, operated, and/or controlled by the defendants, including at the "Scout House," during which time Plaintiff was in the care, custody, or control of the defendants.

62. At all relevant times the defendants, through their agents, servants, and employees, knew or should have known that Robert Eberhardt was a sexual abuser of children who would use his position with them to sexually abuse Plaintiff and other children.

63. The defendants knew or should have known that Robert Eberhardt was likely to sexually abuse children, including Plaintiff.

64. At all relevant times it was reasonably foreseeable to the defendants, through their agents, servants, and employees, that Robert Eberhardt's sexual abuse of children would likely result in injury to others, including the sexual abuse of Plaintiff and other children by Eberhardt.

65. Before and during the time he sexually abused Plaintiff, the defendants, through their agents, servants, and employees, knew or should have known that Robert Eberhardt was sexually abusing Plaintiff and other children.

66. The defendants, through their agents, servants, and employees, knew or should have known before and during Robert Eberhardt's sexual abuse of Plaintiff that Scout leaders, volunteers, and other persons who worked with youth, including other Scout leaders and volunteers, had used their positions to groom and to sexually abuse children.

67. The defendants, through their agents, servants, and employees, knew or should have known before and during Robert Eberhardt's sexual abuse of Plaintiff that such Scout leaders, volunteers, and other persons who worked with youth could not be "cured" through treatment or counseling.

68. The defendants, through their agents, servants, and employees, concealed the sexual abuse of children by Robert Eberhardt in order to conceal their own bad acts in failing to protect children from him, to protect their reputation, and to prevent victims of such sexual abuse by him and other Scout leaders and volunteers from coming forward during the extremely limited statute of limitations prior to the enactment of the current law, despite knowing that Eberhardt and other abusers in their ranks would continue to molest children.

69. The defendants, through their agents, servants, and employees, consciously and recklessly disregarded their knowledge that Robert Eberhardt would use his position with the defendants to sexually abuse children, including Plaintiff.

70. The defendants, through their agents, servants, and employees, disregarded their knowledge that Robert Eberhardt would use his position with them to sexually abuse children, including Plaintiff.

71. The defendants, through their agents, servants, and employees, acted in concert with each other and/or with Robert Eberhardt to conceal the danger that Eberhardt posed to children, including Plaintiff, so that Eberhardt could continue serving them despite their knowledge of that danger.

72. The defendants, through their agents, servants, and employees, knew that their negligent, reckless, and outrageous conduct would inflict severe emotional and psychological distress, as well as personal physical injury, on others, including Plaintiff, and he did in fact suffer severe emotional and psychological distress and personal physical injury as a result of their wrongful conduct.

73. By reason of the wrongful acts of the defendants as detailed herein, Plaintiff sustained physical and psychological injuries, including but not limited to, severe emotional and

psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, family turmoil and loss of faith, a severe shock to his nervous system, physical pain and mental anguish, and emotional and psychological damage, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature, and Plaintiff has and/or will become obligated to expend sums of money for treatment.

VI. CAUSES OF ACTION

A. FIRST CAUSE OF ACTION – NEGLIGENCE

74. Plaintiff Timothy Torrisi repeats and re-alleges all of his allegations above and below.

75. The defendants had a duty to take reasonable steps to protect Plaintiff from foreseeable harm when he was in their care, custody, and control, including when he was a paying member of their Boy Scout Troop and when he was participating in their Scouting activities.

76. The defendants also had a duty to take reasonable steps to prevent Robert Eberhardt from using the tasks, premises, and instrumentalities of his position as their Scout leader and volunteer to target, groom, and sexually abuse children, including Plaintiff.

77. The defendants had a duty to warn, train, or educate their Scout leaders, volunteers, and youth members, including Plaintiff, about the danger of sexual abuse by Scout leaders and volunteers who were involved in their Scouting program and how to avoid or minimize such danger.

78. The defendants breached each of the foregoing duties by failing to exercise reasonable care to prevent their Scout leader and volunteer, Robert Eberhardt, from using his position with the defendants to sexually abuse Plaintiff when Plaintiff was in the care, custody, or control of the defendants.

79. In breaching their duties, including hiring, retaining, and failing to supervise Robert Eberhardt; giving him access to children; entrusting their tasks, premises, and instrumentalities to him; failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm; failing to warn Plaintiff, his parents, and other parents of the danger of sexual abuse; and failing to create a safe and secure environment for Plaintiff and other children who were under their supervision and in their care, custody, and control, the defendants created a foreseeable risk that Plaintiff would be sexually abused by Eberhardt.

80. As a direct and proximate result of the acts and omissions of the defendants, their Scout leader and volunteer, Robert Eberhardt, groomed and sexually abused Plaintiff, which has caused Plaintiff to suffer general and special damages as more fully described herein.

VII. CPLR 1603 – NO APPORTIONMENT OF LIABILITY

81. Pursuant to CPLR 1603, the foregoing causes of action are exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(2), CPLR 1602(5), 1602(7) and 1602(11), thus precluding defendants from limiting their liability by apportioning some portion of liability to any joint tortfeasor.

VIII. PRAYER FOR RELIEF

82. Plaintiff demands judgment against the defendants named in his causes of action, together with compensatory and punitive damages to be determined at trial, and the interest, cost and disbursements pursuant to his causes of action, and such other and further relief as the Court deems just and proper.

83. Plaintiff specifically reserves the right to pursue additional causes of action, other than those outlined above, that are supported by the facts pleaded or that may be supported by other facts learned in discovery.

Dated: June 1, 2020

MARSH LAW FIRM PLLC

By  _____

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