

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

HW 7 ROE, Being a Victim of Child Sexual Abuse,

Plaintiff,

v.

MICHAEL PELUSO
3618 Howard 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 Defendant's residence and the location of the incidents.

DATED: July 31, 2020
Amherst, New York



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HOGANWILLIG

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

HW 7 ROE, Being a Victim of Child Sexual Abuse,

Plaintiff,

v.

MICHAEL PELUSO,

Defendant.

COMPLAINT

Index No.:

Plaintiff HW 7 ROE, by and through her attorneys, HOGANWILLIG, PLLC, as and for her Verified Complaint against Defendant MICHAEL PELUSO herein, alleges as follows:

1. At all relevant times hereinafter mentioned, Plaintiff was and still is 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.
3. Defendant is the biological brother of Plaintiff.

FACTS COMMON TO ALL CLAIMS

4. In or about 1968, Plaintiff, then an infant, was living with her family, including Defendant, in Orchard Park, County of Erie, State of New York. Defendant was approximately twelve (12) years older than Plaintiff at this time, who was approximately five (5) years old.
5. In or about 1968, Plaintiff was the victim of sexual harassment, sexual abuse, and violence by or at the direction of Defendant dozens of times.
6. Some of the incidents experienced by then-infant Plaintiff over a period of five (5) years included, but are not limited to, the following:

- On numerous occasions, then-infant Plaintiff was groomed by Defendant to participate in sexual intercourse by offering then-infant Plaintiff candy, pistachios, or other gifts.
- On numerous occasions, Defendant partially penetrated then-infant Plaintiff's vagina and anus with his penis in then-infant Plaintiff's bedroom.
- On numerous occasions, Defendant partially penetrated then-infant Plaintiff's vagina and anus with his penis in Defendant's bedroom.
- On numerous occasions, Defendant partially penetrated then-infant Plaintiff's vagina and anus with his penis at Green Lake Town Park in Orchard Park, County of Erie, State of New York.
- On numerous occasions, Defendant would rub his penis against then-infant Plaintiff until he ejaculated onto then-infant Plaintiff's body in then-infant Plaintiff's bedroom.
- On numerous occasions, Defendant would rub his penis against then-infant Plaintiff until he ejaculated onto then-infant Plaintiff's body in Defendant's bedroom.
- On numerous occasions, Defendant would rub his penis against then-infant Plaintiff until he ejaculated onto then-infant Plaintiff's body at Green Lake Town Park in Orchard Park, County of Erie, State of New York.
- On numerous occasions, Defendant would wipe his semen off of then-infant Plaintiff with a towel to cover up the abuse.

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This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printing, had not been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[e]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

- On numerous occasions, Defendant forced then-infant Plaintiff's brother, also an infant, to perform oral sex on Defendant and their cousin.

7. Upon information and belief, Defendant only ceased to abuse then-infant Plaintiff when then-infant Plaintiff threatened to tell their parents.

8. Defendant admitted his abuse to Plaintiff, their mother Jean Peluso, and Defendant's wife in approximately 1998.

9. During the abuse and after the abuse stopped, Plaintiff lived in, and continues to live in, fear of Defendant and other men.

10. As a result of the abuse suffered at the hands of Defendant, Plaintiff has required mental health treatment for at least the past twenty (20) years.

11. As a result of the abuse suffered at the hands of Defendant, Plaintiff was formally diagnosed with generalized anxiety disorder, major depressive disorder, post-traumatic stress disorder, and adrenal fatigue.

12. As a result of the abuse suffered at the hands of Defendant, Plaintiff has required the help of support groups and hospitalizations to engage in daily life.

13. As a result of the abuse suffered at the hands of Defendant, Plaintiff was unable to finish school for her chosen profession of physical therapy.

14. As a result of the abuse suffered at the hands of Defendant, Plaintiff made the decision to undergo surgery so she could not have children, out of fear that they would also be abused like her.

15. As a result of the abuse suffered at the hands of Defendant, Plaintiff has been unable to maintain steady employment due to symptoms related to Plaintiff's depression and anxiety.

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Attorneys at Law

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16. Venue is proper in Erie County based upon the residences of the parties and 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 DEFENDANT:
ASSAULT

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’s actions in sexually abusing his sister, then-infant Plaintiff, over a period of approximately five (5) years placed Plaintiff in apprehension of an imminent harmful and offensive bodily contact.

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

21. 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

22. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs “1” through “21” as though more fully set forth herein.

23. Defendant’s actions in sexually abusing his sister, then-infant Plaintiff, over a period of approximately five (5) years constitutes Defendant intentionally making offensive bodily contact with Plaintiff.

24. 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.

25. 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**

26. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs “1” through “25” as though more fully set forth herein.

27. Defendant intentionally and recklessly touched Plaintiff on the aforementioned occasions over a period of five (5) years, including forcible partial penetration of her vagina and anus with his penis.

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

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

30. 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**

31. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "30" as though more fully set forth herein.

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

33. Defendant intentionally and recklessly breached that duty by touching Plaintiff on the aforementioned occasions over a period of five (5) years, including her vagina and anus.

34. Defendant's conduct in repeatedly sexually abusing his sister, 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 five (5) years.

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

36. 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**

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

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

39. 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.

40. 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: July 31, 2020
Amherst, New York

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