

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

VICTORIA HAYHURST
4296 Creek Road
Lewiston, New York 14092,

Plaintiff,

v.

BRYAN ROSTEN
5771 Powers Road
Orchard Park, New York 14127,

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 NIAGARA COUNTY based upon Plaintiff's residence.

DATED: July 31, 2020
Amherst, New York

William A. Lorenz, Jr.
William A. Lorenz, Jr., Esq.
HoganWillig, PLLC
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HOGANWILLIG

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

VICTORIA HAYHURST,

Plaintiff,

VERIFIED COMPLAINT

Index No.:

v.

BRYAN ROSTEN,

Defendant.

Plaintiff VICTORIA HAYHURST, by and through her attorneys, HOGANWILLIG, PLLC, as and for her Verified Complaint against Defendant BRYAN ROSTEN herein, alleges as follows:

1. At all times hereinafter mentioned, Plaintiff was and still is a resident of the County of Niagara and State of New York.
2. Upon information and belief, and at all times hereinafter mentioned, Defendant was and still is a resident of the Town of Orchard Park, County of Erie, and State of New York.
3. Defendant is the paternal step-grandfather of Plaintiff.

FACTS COMMON TO ALL CLAIMS

4. Beginning in or about 2006, Plaintiff would regularly go to Defendant's home in Orchard Park to visit Defendant and Defendant's wife.
5. Beginning in or about 2006 and lasting for approximately one (1) year, Plaintiff was the victim of sexual harassment, sexual abuse, and violence by or at the direction of Defendant.
6. Upon information and belief, Defendant sexual abuse began when Plaintiff was approximately 5 years old.

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

- A. On numerous occasions, Defendant would suck on and bite then-infant Plaintiff's toes and feet.
- B. On numerous occasions, Defendant would fondle then-infant Plaintiff's vaginal and breast areas.
- C. On numerous occasions, Defendant would "groom" then-infant Plaintiff by suggesting a game of "hide and seek", then take Plaintiff into a closet and remove his pants, before forcing Plaintiff to touch his genitals.

8. Upon information and belief, Plaintiff moved to Iowa to live with her mother in or about 2008.

9. Upon information and belief, Defendant was investigated for child sexual abuse by the Iowa Department of Human Services as well as the Orchard Park, NY Police Department in or about 2008.

10. A Family Offense Petition was filed by Plaintiff's mother on or about January 22, 2009, Docket #0-01229-09, seeking an Order of Protection against Defendant.

11. A second Family Offense Petition seeking an Order of Protection was filed by Plaintiff's mother on or about August 25, 2016.

12. As a result of the abuse sustained at the hands of Defendant, Plaintiff has required psychiatric care.

13. As a result of the abuse sustained at the hands of Defendant, Plaintiff has suffered and continues to suffer severe mental and emotional trauma.

14. Venue is proper in Niagara County based on Plaintiff's residence.

15. This action is brought pursuant to CPLR § 208, as amended by the New York Child Victims Act, which has extended the statute of limitations for filing a civil action from age 23 to age 55. Plaintiff is under 55 years of age. This action is timely commenced.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT:
ASSAULT

16. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs “1” through “15” as though more fully set forth herein.

17. Defendant’s actions in sexually abusing his granddaughter, then-infant Plaintiff, from about 2006-2007, placed Plaintiff in apprehension of an imminent harmful and offensive bodily contact.

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

19. 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

20. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs “1” through “19” as though more fully set forth herein.

21. Defendant’s actions in sexually abusing his granddaughter, then-infant Plaintiff, from about 2006-2007, constitutes Defendant intentionally making offensive bodily contact with Plaintiff.

22. 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.

23. 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**

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

25. Defendant intentionally and recklessly touched Plaintiff on the aforementioned occasion, including forced groping.

26. Defendant's actions in sexually abusing his granddaughter, then-infant Plaintiff, from about 2006-2007, were extreme, outrageous, shocking, and exceeding all reasonable bounds of decency.

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

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 FOURTH CAUSE OF ACTION AGAINST DEFENDANT:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

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 owed a duty to Plaintiff, as her step-grandfather, to reasonably protect her from harm and not sexually abuse her.

31. Defendant intentionally and recklessly breached that duty by touching Plaintiff on the aforementioned occasion from about 2006-2007, including by forced groping.

32. Defendant's actions in sexually abusing his granddaughter, then-infant Plaintiff, from about 2006-2007, unreasonably endangered Plaintiff's physical safety and caused Plaintiff to fear for her own safety up to the present day.

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

34. 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**

35. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "34" as though more fully set forth herein.

36. 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.

37. 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.

38. 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

William A. Lorenz, Jr.

William A. Lorenz, Jr., Esq.
HoganWillig, PLLC
Attorneys for Plaintiff
2410 North Forest Road, Suite 301
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ATTORNEY VERIFICATION PURSUANT TO CPLR § 3020(d)(3)

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

WILLIAM A. LORENZ, JR., ESQ., being duly sworn deposes and says: that he is the attorney for Plaintiff VICTORIA HAYHURST, in the above matter; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to his knowledge except as to those matters alleged to be upon information and belief, and as to those matters, he believes them to be true; that the grounds of his belief as to all matters not stated upon his personal knowledge are correspondence and other writings furnished to him by and through interviews with Plaintiff; and that the reason this Verification is not made by Plaintiff is that Plaintiff does not reside in the county where the undersigned attorney maintains his office.

Handwritten signature of William A. Lorenz, Jr. above a horizontal line, with the typed name WILLIAM A. LORENZ, JR., ESQ. below it.

Sworn to before me this
31st day of July, 2020

Handwritten signature of Paul Samuel Pinto.

Notary Public

Paul Samuel Pinto
NOTARY PUBLIC, STATE OF NEW YORK
No. 01PI6328944
Qualified in Erie County
Commission Expires 8/10/23