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Summons & Complaints and all public documents subsequently completed and filed by Phillips & Paolicelli LLP. Address: 747 3rd Ave 6th floor, New York, NY 10017. Phone: (212) 388-5100.

Summons & Complaints relying on the research of James G. Faluszczak:

NYS UCS Case Number	Alleged Perpetrator	Defendant #	Defendants	Plaintiff
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p.2 ff.:

E2020005548	Chaney CFC, Br. John B.	1	Bishop Kearney HS, A Golisano Education Partner.	PC-33 Doe
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MONROE COUNTY CLERK'S OFFICE

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DOE, PC-33

BISHOP KEARNEY HIGH SCHOOL, A GOLISANO
EDUCATION PARTNER

State Fee Index Number	\$165.00	
County Fee Index Number	\$26.00	
State Fee Cultural Education	\$14.25	
State Fee Records Management	\$4.75	Employee: MJ
Total Fees Paid:	\$210.00	

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
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MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT: COUNTY OF MONROE

<p>PC-33 DOE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>BISHOP KEARNEY HIGH SCHOOL, A GOLISANO EDUCATION PARTNER,</p> <p style="text-align: center;">Defendants.</p>
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SUMMONS

Plaintiff designates the County of Monroe as the place of trial. The basis of venue is the Defendant's county of residence pursuant to CPLR §503.

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 plaintiffs' attorney 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: New York, New York
July 31, 2020

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Attorneys for Plaintiff

TO:

BISHOP KEARNEY HIGH SCHOOL, A GOLISANO EDUCATION PARTNER
125 Kings Highway South
Rochester, NY 14617

STATE OF NEW YORK
SUPREME COURT: COUNTY OF MONROE

PC-33 DOE,

Plaintiff,

vs.

BISHOP KEARNEY HIGH SCHOOL, A
GOLISANO EDUCATION PARTNER ,

Defendant.

COMPLAINT

Index No.:

Plaintiff PC-33 Doe, by and through his undersigned attorneys, as and for his Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Plaintiff PC-33 Doe was repeatedly sexually abused and assaulted by Brother CHANEY (herein "Br. CHANEY"), who was hired, retained, supervised, placed, directed and otherwise authorized to act by Defendant KEARNEY (herein collectively "Defendants").
3. In approximately 1972, when Plaintiff was seventeen years old, he was abused by Br. CHANEY.
4. The abuse at issue took place while Plaintiff was a student at KEARNEY in Rochester, NY where the abuser, Br. CHANEY was an English teacher.

5. Despite years of refusal to publicly address rampant child abuse by Catholic educators, Br. CHANEY has been identified in numerous lists of Catholic clergy in the employ of the Catholic Church who were credibly accused of molesting children.¹

6. In fact, the Roman Catholic Church, including its schools have long known that substantial numbers of priests and Catholic educators throughout history, and up to and including the present day, violate their vows or promises of celibacy and otherwise misbehave by soliciting sexual contact with students, in particular with children like Plaintiff, who are entrusted to their care and guidance. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to KEARNEY.

7. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to students, DEFENDANT negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse by Br. CHANEY, permitted the abuse to occur, failed to supervise Br. CHANEY, failed to timely investigate Br. CHANEY's misconduct, failed to educate and train students, parents, and/or adult staff about the risk of sexual abuse in their institution and facilities, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for Br. CHANEY's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

8. Plaintiff is an individual residing in Fairport, NY.

9. Plaintiff was born in 1954.

¹ See e.g. <http://www.bishop-accountability.org/member/psearch.jsp>

10. At all relevant times, Defendant KEARNEY was and is an organization authorized to conduct business in the State of New York.

11. Defendant KEARNEY is, and at all relevant times was, a not-for-profit organization or entity, which includes but is not limited to civil corporations, decision-making entities, officials, and employees, authorized to conduct business and doing business at 125 Kings Highway South, Rochester, NY 14617.

12. Upon information and belief, at all relevant times, KEARNEY owned the premises where KEARNEY was located.

13. At all relevant times, Defendants oversaw, managed controlled, directed and operated KEARNEY, including clerics and teachers within its operation.

14. Upon information and belief Br. Chaney was a member of the Christian Brothers Order. In approximately 1965, he was a guidance counselor at Bergen Catholic High School in Oradell, NJ. He arrived at Defendant KEARNEY at some point before or during 1972.

15. At all relevant times, Br. CHANEY was a Roman Catholic cleric teacher employed by Defendant KEARNEY.

16. At all relevant times, Br. CHANEY was under the direct supervision, employ, and control of the Defendant KEARNEY.

17. During the time that Plaintiff was a student attending KEARNEY, Defendants assigned Br. CHANEY to be a teacher at KEARNEY.

18. By assigning Br. CHANEY as a teacher Defendant KEARNEY gave Br. CHANEY complete access to minors, including Plaintiff, and empowered him to discipline, punish, reprimand, chastise, expel and otherwise exercise complete authority over minors.

19. Br. CHANEY’s duties and responsibilities included teaching, supervising, interacting with, and mentoring minor boys.

20. In the performance of its duties, Defendant authorized Br. CHANEY to be alone with minor boys, including Plaintiff, and to have unfettered and unsupervised access to them on Defendant’s property.

21. Defendant also authorized Br. CHANEY to have physical contact with minor boys, in a manner consistent with providing counseling and educational guidance, and leadership.

22. Defendant required students, like Plaintiff, to accept instruction from Br. CHANEY and other clergy and teachers, and to obey their instruction.

23. Plaintiff was raised as a Catholic, and at all relevant times had developed a reverence, respect and/or fear for the Catholic Church and its clergy, including Br. CHANEY.

24. Plaintiff attended KEARNEY from approximately 1970 until 1972.

25. In 1972, when Plaintiff was 17 years old, Br. CHANEY, acting in his capacity as a teacher, and in furtherance of Defendant’s business, used his position to gain the trust of Plaintiff so he could act on his sexual attraction to minor boys.

26. On two occasions, on the premises of KEARNEY, Br. CHANEY engaged in unpermitted, forcible and harmful sexual contact with Plaintiff.

27. The sexual contact was in violation of Article 130 of New York Penal Law.

28. Plaintiff’s relationship to Defendant as a vulnerable child and student, and the culture of the Catholic church which Defendants endorsed, put pressure on Plaintiff not to report Br. CHANEY’s abuse.

29. Defendant knew or should have known that Br. CHANEY was a danger to minor boys like Plaintiff before he sexually abused Plaintiff.

30. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to Br. CHANEY's abuse of Plaintiff, and communicated as much with all levels of Catholic Church hierarchy including bishops and other Diocesan leaders. As such, at all relevant times, Defendant was well aware that errant sexual behavior by some clerics and Catholic teachers was not only widespread but predictable.

31. Upon information and belief, not only was Defendant KEARNEY aware of sexual abuse of children, but it participated in covering up such heinous acts by allowing errant clerics and teachers, such as CHANEY, to move from assignment to assignment, thereby putting Plaintiff and other children in harm's way.

32. Defendant owed Plaintiff a duty of reasonable care because it had superior knowledge about the risks its facilities posed to minor children, the risk of abuse in general, and the risks that Br. CHANEY posed to Plaintiff.

33. Prior to the time of Plaintiff's abuse by Br. CHANEY, Defendant knew or should have known of numerous acts of sexual assault committed by clergy members within the Roman Catholic Church in schools, and knew that there was a specific danger of child sex abuse for children in their institution and programs.

34. The sexual abuse of Plaintiff by Br. CHANEY was foreseeable.

35. Prior to the time of Plaintiff's abuse by Br. CHANEY, Defendant knew or should have known of Br. CHANEY's acts of child sexual abuse on other minors.

36. Defendant owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to KEARNEY; they undertook custody of

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minor children, including Plaintiff; they promoted their facilities and programs as being safe for children, they held out their agents, including Br. CHANEY, as safe to work with and around minor boys, they encouraged parents and children to spend time with their agents and/or authorized their agents, including Br. CHANEY, to spend time with, interact with, and recruit children.

37. Defendant owed Plaintiff a heightened, fiduciary and non-delegable duty of care because it held itself out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's family entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised by school personnel in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect himself; and Defendant affirmatively assumed a position of empowerment over Plaintiff.

38. Defendant owed Plaintiff a duty to protect him from harm because Defendant's acts and omissions created a foreseeable risk of harm to Plaintiff.

39. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

40. Defendant's aforesaid negligent, grossly negligent and reckless misconduct endangered Plaintiff's safety and caused him to fear for his own safety and wellbeing.

41. Defendant knew or disregarded the substantial probability that CHANEY would cause severe emotional distress to Plaintiff.

42. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendant.

43. The entrustment of Plaintiff to the care and supervision of the Defendant while Plaintiff was a vulnerable child, imposed upon these Defendants a fiduciary non-delegable duty to act in the best interests of Plaintiff.

44. Defendant was entrusted with the well-being, care, and safety of Plaintiff, which Defendant had a fiduciary duty to protect.

45. By reason of the foregoing, Defendant breached its fiduciary duties to Plaintiff.

46. At all relevant times, Plaintiff was a vulnerable child entrusted to the care of Defendant, and was under the supervision and control of Defendant, such that Defendant owed him a duty to act *in loco parentis* and to prevent foreseeable injuries.

47. By reason of the foregoing, Defendant breached its duties to act *in loco parentis*.

48. As a direct and proximate result of Defendant's foregoing breaches and misconduct, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, physical manifestations of emotional distress, psychological injuries, fear and anxiety; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and will continue to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses for medical and psychological treatment, and was otherwise damaged.

49. To the extent that Defendant pleads, or otherwise seeks to rely upon Article 16 of the New York Civil Practice Law and Rules (CPLR) to have fault apportioned to another allegedly culpable party, Plaintiff expressly states that Defendant's conduct falls within one or more of the subdivisions of CPLR 1602.

FIRST CAUSE OF ACTION

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

50. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

51. Prior to the sexual abuse of Plaintiff, Defendant learned or should have learned that Br. CHANEY was not fit to work with or around children.

52. Defendant, by and through its agents, servants and/or employees, became aware, or should have become aware of Br. CHANEY’s propensity to commit sexual abuse and of the risk to Plaintiff’s safety.

53. Defendant negligently retained Br. CHANEY with knowledge of Br. CHANEY’s propensity for the type of behavior which resulted in Plaintiff’s injuries.

54. At all relevant times Defendant had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of Br. CHANEY, so as to protect minor children, including Plaintiff, who were likely to come into contact with him, and/or under his influence or supervision, and to ensure that Br. CHANEY did not use this assigned position to injure minors by sexual assault, contact or abuse.

55. Defendant was negligent and failed to use reasonable care in hiring, appointing, assigning, and retention of Br. CHANEY, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned him to KEARNEY, when Defendant knew or should have known of facts that would make him a danger to children; and Defendant was otherwise negligent.

56. Defendant was negligent and did not use reasonable care in its supervision and direction of Br. CHANEY, failed to monitor his activities, failed to oversee the manner in which

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he carried out the duties to which Defendant assigned him, even though they knew or should have known that Br. CHANEY posed a threat of sexual abuse to minors; allowed the misconduct describe above to occur and continue; failed to investigate Br. CHANEY’s dangerous activities and remove him from their premises; failed to have policies and practices in place that would have prevented this abuse; and Defendant was otherwise negligent.

57. Br. CHANEY would not have been in a position to sexually abuse Plaintiff had Defendant not been negligent in the hiring, retention, supervision, and direction of Br. CHANEY.

58. At all relevant times, Br. CHANEY acted in the course and scope of his employment with Defendant.

59. Defendants’ aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

60. As a proximate and direct result of Br. CHANEY’s sexual abuse and Defendant’s misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury as described above.

61. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount that exceeds the monetary limits of all courts of lower jurisdiction, to be determined at trial, together with interest and costs.

SECOND CAUSE OF ACTION

NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT

62. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

63. At all relevant times, Defendant affirmatively and/or impliedly represented to minor children, their families and the general public that clergy working in the Catholic Schools, including Br. CHANEY, did not pose a risk and/or that they did not have a history of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

64. Defendant knew or should have known this representation was false and that employing Br. CHANEY and giving him unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

65. Defendant was negligent and did not use reasonable care in their training, if any, of minor students and parents about the risk of sexual abuse in their institution and facilities, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

66. Defendant was negligent and did not use reasonable care in its training, if any, of teaching staff and/or adult staff about the risk of sexual abuse in their institution and facilities, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

67. Upon information and belief, Defendant was aware that the Catholic Church maintained a policy and practice of covering up criminal activity committed by clergy members, including teachers such as CHANEY.

68. Over the decades, this “cover-up” policy and practice resulted in the sexual assault of untold numbers of children, and put numerous other children at risk of sexual assault.

69. Defendant KEARNEY failed to report multiple allegations of sexual abuse by its employees, agents and representatives, to the proper authorities, thereby putting children at risk of sexual assault.

70. Upon information and belief, Defendant covered up acts of abuse by Br. CHANEY, and concealed facts concerning Br. CHANEY’s sexual misconduct from Plaintiff and his family.

71. By failing to disclose the identities, histories and information about sexually abusive clergy in their employ, including Br. CHANEY, Defendant unreasonably deprived the families of children entrusted to their care, including Plaintiff, of the ability to protect their children.

72. Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Br. CHANEY’s propensity to commit sexual abuse and of the risk to Plaintiff’s safety.

73. Defendants failed to warn Plaintiff and his parents that Br. CHANEY posed a risk of child sexual assault.

74. The conduct of Defendant, as described herein, was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children, and to the fact that Defendant was knowingly subjecting children in its charge, including Plaintiff, to sexual crimes.

75. Defendant’s aforesaid actions were negligent, reckless, willful and wonton in their disregard for the rights and safety of children, including Plaintiff.

76. As a direct and proximate result of Br. CHANEY and Defendant’s misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

77. By the reason of the foregoing, Defendant is liable to Plaintiff for compensatory and punitive damages, in an amount that exceeds the monetary limits of all courts of lower jurisdiction, to be determined at trial, together with interest and costs.

THIRD CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

78. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

79. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

80. Defendant’s aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff’s safety and caused him to fear for his own safety.

81. Defendant knew or disregarded the substantial probability that Br. CHANEY would cause severe emotional distress to Plaintiff.

82. As a direct and proximate result of Br. CHANEY’s sexual abuse and Defendant’s misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

83. By the reason of the foregoing, Defendant is liable to Plaintiff for compensatory and punitive damages, in an amount that exceeds the monetary limits of all courts of lower jurisdiction, to be determined at trial, together with interest and costs.

FOURTH CAUSE OF ACTION

PREMISES LIABILITY

84. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

85. Upon information and belief, at all relevant times, Defendant owned, operated, and /or controlled the premises known as KEARNEY, including the areas where the sexual abuse of Plaintiff occurred.

86. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

87. Defendant had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by students, like Plaintiff, whose presence was reasonably anticipated.

88. Defendant knowingly and willfully failed to provide a reasonably safe premises that was free from the presence of sexual predators and/or the assault by the occupants of the premises, including Br. CHANEY. Defendant thereby breached their duty of care of Plaintiff.

89. As a direct and proximate result of Br. CHANEY's sexual abuse and Defendant's misconduct, Plaintiff suffered grave injury, including the physical, psychological, and emotional injury and damages as described above.

90. By the reason of the foregoing, Defendant is liable to Plaintiff for compensatory and punitive damages, in an amount that exceeds the monetary limits of all courts of lower jurisdiction, to be determined at trial, together with interest and costs.

FIFTH CAUSE OF ACTION

BREACH OF STATUTORY DUTIES TO REPORT

91. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein

92. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420 and New York Educ. Law Art. 23-b, Defendant had a statutory duty to report reasonable suspicion of abuse of children in its care.

93. Defendant breached its statutory duty by knowingly and/or willingly failing to report reasonable suspicion of abuse by Br. CHANEY of children in their care.

94. As a direct and proximate result of Br. CHANEY's sexual abuse and Defendant's misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

95. By the reason of the foregoing, Defendant is liable to Plaintiff for compensatory and punitive damages, in an amount that exceeds the monetary limits of all courts of lower jurisdiction, to be determined at trial, together with interest and costs.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for his injuries, in an amount to be determined at trial;
- b. Awarding Plaintiff punitive damages for his injuries, in an amount to be determined at trial;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;
- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

- a. Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: July 31, 2020

Yours, etc.

PHILLIPS & PAOLICELLI, LLP

/s/ Melissa L. Stewart
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