



## Fr. Michael Freeman Assignment History

1972	Ordained	
1972-75	Parochial Vicar, St. Margaret Church & School	Buffalo, NY
1975-76	Parochial Vicar, St. Lawrence Church & School	Buffalo, NY
1976-80	Parochial Vicar, Sacred Heart Church & School	Niagara Falls, NY
1980-81	Chaplain, United States Army	Ft. Benning, GA
1981-82	Chaplain, United States Army	Mailing address Diocese of Buffalo Chancery
1982-84	Parochial Vicar, St. Christopher Church & School	Tonawanda, NY
1984-89	Parochial Vicar, Assumption of the Blessed Virgin Mary Church & School	Lancaster, NY
1990	Not indexed in the Official Catholic Directory	Whereabouts unknown

© James Faluszcak. The above information was assembled using publicly-sourced information and alleges nothing but priestly assignment and general whereabouts within a given timeframe. This inclusion of information and manner of presentation is proprietary and requires citation. Additional information is welcome and can be sent [here](#).

From p. 407 of the [PA 40th Investigating Grand Jury Report](#):

“Based on the information provided to the Grand Jury by the Diocese of Erie, the Grand Jury learned that Father Robert Freeman had some contact with the Diocese of Erie but he was not incardinated into the Diocese as a Diocesan priest. In fact, Freeman was a priest in the Diocese of Buffalo, New York. Father Freeman was ordained May 27, 1972. In five of his six subsequent assignments he admitted inappropriate sexual behavior with young men on multiple occasions. These instances of sexual abuse occurred while he acted in his capacity as a priest of the Diocese of Buffalo but while he ministered in various assignments to include locations within Pennsylvania. The Diocese of Buffalo first became aware of Freeman’s criminal activity in November 1981. Freeman admitted prior sexual misconduct at both St. Margaret and St. Lawrence Parishes in New York. This included his term of service at Bishop Turner High School. The Buffalo Diocese continued to permit Freeman to serve in active ministry until March 1989 and continued to provide financial aid to Freeman until July 31, 1999, at which time he informed the Diocese that his salary and health insurance would be covered by his new employer.

The Grand Jury found no documentation in Freeman’s file that indicated that the Dioceses of Buffalo or Erie ever notified law enforcement officials, despite the fact that Freeman admitted to sexually violating children in at least five of his six ministry assignments. On two occasions he was treated at the Southdown Institute, a psychiatric facility for clergy and religious personnel in Aurora, Ontario. While one of Freeman’s assignments was as a military chaplain, locations within Pennsylvania at which Freeman may have sexually abused children include the counties of Bradford and Lancaster.”

NB: The PA Grand Jury Report notes in its assignment history of Freeman that he served at **St. Christopher, Tonawanda PA** and **St. Mary, Lancaster PA**. Both are incorrect, as Freeman was known to have served at these parishes and in these towns in New York State within the Diocese of Buffalo. The town of Towanda, PA is in Bradford County in Pennsylvania. There is a Lancaster County in Pennsylvania. There is no evidence in the directories that Freeman served in either county in Pennsylvania, neither of which is in the Diocese of Erie. There is no such

place as Tonawanda, PA. The Grand Jury notes that Freeman offended in 5 of 6 assignments. Five of six of his assignments were in the Diocese of Buffalo. The sixth was in the US military.

For research purposes only. Courtesy of New York State Unified Court System eTrack.  
Available here: <https://iapps.courts.state.ny.us/webcivil/etrackLogin>



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. Faluszczyk:

<b>NYS UCS Case Number</b>	<b>Alleged Perpetrator</b>	<b>Defendant #</b>	<b>Defendants</b>	<b>Plaintiff</b>
<a href="#">E168540/2019</a>	Freeman, Fr. Michael	3	Diocese of Buffalo, RC Church of the Sacred Heart & St. Raphael RC Parish	BARR, PAUL K
<a href="#">811249/2021</a>	Freeman, Fr. Michael	2	St. Mary of the Assumption Church & School.	Doe, FB-1
<a href="#">E175007/2021</a>	Freeman, Fr. Michael & Fr. Bernard Mach	7	St. Margaret RC Church et al.	DOE, PB-4
<a href="#">E170134/2019</a>	Freeman, Fr. Michael & Fr. Bernard Mach	3	Diocese of Buffalo, RC Church of the Sacred Heart & St. Raphael RC Parish	PB 4 DOE

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF NIAGARA

<p>PAUL K. BARR,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>THE DIOCESE OF BUFFALO, N.Y., INC; ROMAN CATHOLIC CHURCH OF THE SACRED HEART; ST. RAPHAEL ROMAN CATHOLIC PARISH</p> <p style="text-align: center;">Defendants.</p>
--

**Index No.:**

**SUMMONS**

**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  
April 30, 2019

Phillips & Paolicelli, LLP  
*Attorneys for Plaintiffs*

By: 

**PHILLIPS & PAOLICELLI, LLP**  
William H. Mack  
747 Third Avenue, 6<sup>th</sup> Floor  
New York, New York 10027  
Telephone: (212) 388-5100

{00043580}

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF NIAGARA

<p>PAUL K. BARR,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>THE DIOCESE OF BUFFALO, N.Y., INC; ROMAN CATHOLIC CHURCH OF THE SACRED HEART; ST. RAPHAEL ROMAN CATHOLIC PARISH</p> <p style="text-align: center;">Defendants.</p>
---

**VERIFIED COMPLAINT**

Index No.:

PAUL K. BARR, by his undersigned attorneys, for his Verified Complaint, alleges on personal knowledge as to himself and on information and belief as to other matters, as follows:

**NATURE OF THE ACTION**

1. This action is brought pursuant to the newly enacted Child Victims Act, codified at CPLR 208(b), and concerns sexual abuse of a minor by his priest.

2. Plaintiff Paul Barr ("Barr") was sexually abused, assaulted and molested in 1980 by Father Michael Freeman ("Freeman") a priest hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants, the Roman Catholic Church of the Sacred Heart in Niagara Falls, NY, and The Diocese of Buffalo, N.Y. Freeman was assigned by Defendants to *inter alia* organize, supervise, and oversee Barr's receipt of the sacrament of confirmation, and it was this relationship of spiritual trust and guidance that facilitated Freeman's sexual assault of Barr.

3. Despite years of refusal to publically address rampant child abuse by priests, Defendant The Diocese of Buffalo recently published a list of scores of offending clergy. That list expressly includes Freeman, who victimized many children, including Barr.

4. In fact, the Roman Catholic Church and Defendants have long known that substantial numbers of priests 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 parishioners, in particular children like Barr who are entrusted to their spiritual care and guidance for the sacraments. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to Defendants.

5. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendants negligently, recklessly, and willfully failed to protect Barr from Freeman's sexual abuse, permitted the abuse to occur, neglected to adequately supervise Freeman, failed to timely investigate Freeman's misconduct, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for Freeman's sexual assault of Barr and his consequential injuries and damages.

6. Because of Defendants' negligent, reckless and willful misconduct, Barr, then only 16 years of age, suffered grave mental, emotional and psychological pain and anguish, as well as physical harm. Freeman's abuse of Barr not only devastated Barr's development into adulthood, but severely damaged the course of his life. Barr's pain and anguish is continuing and permanent.

#### **PARTIES**

7. Plaintiff Paul K. Barr is an individual who resides in Niagara County, New York. At the time of the events complained of, he was a minor residing in the same county.

{00043633}

2

8. Barr's date of birth is May 1, 1964.

9. Defendant The Diocese of Buffalo, N.Y., Inc. ("Diocese") is a New York not-for-profit corporation with a principal place of business in Erie County, and which operated at all relevant times in Niagara County, New York, and with principal offices at 795 Main Street, Buffalo, New York 14206.

10. Defendant Roman Catholic Church of the Sacred Heart ("Sacred Heart") is/was a New York not-for-profit corporation and/or is/was otherwise organized under the laws of the State of New York, and was located in Niagara County at 1112 South Ave, Niagara Falls NY 14305.

Sacred Heart was the Catholic church attended by Plaintiff and his family as parishioners during the relevant timeframe. Sacred Heart was at all relevant times within the service area of the Diocese, and under the Diocese' jurisdiction and control.

11. Defendant St. Raphael Roman Catholic Parish ("St. Raphael") is/was a New York not-for-profit corporation and/or is/was otherwise organized under the laws of the State of New York.

12. St. Raphael is located at 3840 Macklem Avenue, Niagara Falls, New York 14305. In or about March 2008, Sacred Heart merged with another parish within the Diocese, known as St. Teresa of the Infant Jesus. The two merged parishes formed St. Raphael. Upon information and belief, St. Raphael assumed some or all of the liabilities and/or assets of Sacred Heart.

13. Throughout the relevant period, one or more of the Defendants were responsible for the hiring, retention, direction, and supervision of Michael Freeman in his roles as, *inter alia*, associate pastor, confirmation director, mentor, and counselor for young boys.

{00043633}

3

**FACTUAL ALLEGATIONS**

14. At all relevant times, the Diocese operated, supervised and controlled Sacred Heart Parish.

15. At all relevant times, the Diocese owned the premises on which Sacred Heart was located.

16. Some time prior to 1980, Freeman was hired by the Defendants and assigned to Sacred Heart to serve as priest and Associate Pastor.

17. Thereafter, Defendants directed Freeman to serve as coordinator of the Diocesan program which prepared young parishioners at Sacred Heart to receive the sacrament of confirmation.

18. As Associate Pastor, and as confirmation coordinator, Freeman's duties and responsibilities included, *inter alia*, supervising, interacting with, mentoring, and counseling minor boys, including Barr.

19. In the performance of these duties, Defendants authorized Freeman to be alone with minor parishioners, including Barr, and to have unfettered and unsupervised access to them on the property of Defendants.

20. Defendants authorized Freeman to touch Barr, and display affection in a manner consistent with providing counseling, spiritual guidance, and leadership.

21. However, acting in his official capacities on behalf of Defendants, Freeman abused and distorted his authorized touching into the sexual abuse of Barr, as described below.

22. At all relevant times, Defendants knew that the Catholic Church faced a longstanding problem of clergy violating their celibacy vows and committing a variety of sexual offenses, including sexual molestation of young children under their supervision. Over the

{00043633}



centuries, various Popes passed Church decrees and legislation condemning such offenses, including a clerical crime known as “solicitation,” engaging in sexual contact with an adult or a child during administration of the sacrament of confession.

23. The Vatican addressed the problem of clergy sex abuse on countless occasions prior to Freeman’s abuse of Barr, and up through the present time, and communicated as much with all levels of Church hierarchy, including bishops and other Diocesan leaders. As such, at all relevant times, Defendants were well aware that errant sexual behavior by some priests was not only widespread but predictable.

24. Defendants were at all times responsible for Freeman’s actions as associate pastor, confirmation coordinator, mentor and counselor to young boys, and owed parishioners and their children, including Barr, a fiduciary duty and obligation to provide sound supervision of the children, and to ensure them a safe and nurturing environment free from harm and abuse.

25. In or about 1980, Barr participated in Sacred Heart’s confirmation program. And because of Freeman’s fiduciary position of trust at the parish, Barr and his parents believed and expected that Barr would be safe with Freeman, and that he would be properly supervised in an environment free from potential harm and abuse.

26. Defendants violated that trust. Acting in furtherance of the business of Defendants, and in his official role as associate pastor and confirmation program director, Freeman befriended Barr and lulled Barr into a false sense of trust. Indeed, by the time of Barr’s confirmation, Freeman had carefully groomed Barr, causing Barr to look up to the priest as a mentor and spiritual guide.

27. In early 1980, Barr received the sacrament of confirmation. Freeman presided over the confirmation ceremony.

{00043633}

5

28. Shortly thereafter, in or about June 1980, Freeman approached Barr about starting a program for youth parishioners who also had recently received their confirmation. Barr was flattered. Freeman went on to tell Barr that he had been chosen for this role because Freeman had identified Barr as a “natural leader.” During the same conversation, Freeman complimented Barr on his physique.

29. Later in June 1980, Freeman invited Barr one evening to visit him at Sacred Heart. The stated purpose of this meeting was to discuss the youth outreach program that Freeman had proposed to Barr.

30. The meeting, thus, was within the scope of Freeman’s authority as associate pastor and in further of Defendants’ business activities, as it was reasonably necessary or incidental to his employment.

31. The meeting occurred on the property of Defendant.

32. The meeting occurred during the hours that Freeman was expected to perform and typically performed official functions as associate pastor.

33. Freeman’s conduct during Barr’s visit to the church, thus, was in furtherance of his duties as an employee of Defendants, was reasonably foreseeable by Defendants, and was within the scope of what his employment or agency contemplated.

34. When Barr (a minor) arrived at Sacred Heart, Freeman invited him into a room in which Freeman regularly conducted church business. Freeman then attempted to relax Barr by illegally giving him alcoholic beverages.

35. Freeman then took steps to dupe Barr into submission by engaging him in a conversation about athletics and weight-lifting, in which he knew Barr was interested.

36. Freeman used this pretextual conversation about athletics to transition the conversation to Freeman's purported work as a chaplain at the local Air Force Reserve Base. Freeman told Barr that, in the course of his work at the Air Reserve Base, he learned of a medical condition that Barr needed to be concerned about as an athlete.

37. Barr inquired as to the nature of this medical condition. With Barr now interested in learning more, Freeman told Barr that this supposed "condition" caused sterility. Barr was concerned and alarmed. He thanked Freeman for bringing this concern to his attention, and he told Freeman that he would ask his mother to make a doctor's appointment with his pediatrician to medically examine him for this condition.

38. Undeterred, Freeman falsely told Barr that – in his official capacity as Air Base chaplain – he had been trained to look for the medical condition. Freeman told Barr that he, therefore, would examine him for this "condition."

39. Freeman then approached Barr, and backed him over to a couch in the room in which the meeting took place.

40. Freeman then ordered Barr to pull down his pants and underwear, so that Barr's genitals were exposed. Because Freeman was a figure whose authority had been ratified by Defendants, Barr complied.

41. Freeman then massaged and manipulated Barr's penis – conduct which was unwanted and offensive to Barr.

42. Barr was scared and confused by Freeman's conduct. He felt conflicted and betrayed because these unspeakable acts were being committed by a figure cloaked with spiritual authority and benevolence: the pastor whom Barr had come to trust and admire, and who had claimed that he was simply acting in Barr's best interest. Nevertheless, Barr mustered the

{00043633}

7

courage to put an end to Freeman's sexual assault. At this point, Barr jumped up from the couch, pulled up his underwear and trousers, and ran toward the door.

43. Upon reaching the door, however, Barr found it to be locked, and he was not able to leave. He came to learn that Freeman had deadbolted the door with a key, which Freeman had in his pocket. Freeman tried to console Barr. He eventually relented to Barr's request to leave, and unlocked the deadbolted door with the key from his pocket. Barr then ran out of the Sacred Heart premises and -- extremely distraught -- went straight home.

44. Upon arriving at home, Barr told his mother, Patricia Barr, about what Freeman had done to him. Because Freeman was a church official, Patricia Barr told Paul Barr not to say anything to anyone.

45. The next year, in or about November 1981, Freeman was abruptly transferred away from Sacred Heart. No apparent reason was given for this sudden reassignment.

46. Freeman was replaced by Father Bernard Mach ("Mach") as associate pastor of Sacred Heart. With Freeman out of the picture, Barr confided in Mach, telling him about the aforementioned sexual assault.

47. Upon information and belief, Mach (a Diocesan official) did nothing to investigate the assault or report it to the authorities.

48. During approximately the same timeframe, Barr reported the abuse to Remi Gonzalez, the youth minister at Sacred Heart. Mach and Gonzalez were both later accused of sexually abusing minors themselves.

49. In approximately 1985, Gonzalez took Barr to the office of the Diocese of Buffalo, where Barr reported the sexual assault Freeman to a woman, identity unknown. The

woman at the Diocese received Barr's report. No one from the Diocese responded to Barr, or did anything to investigate Barr's complaint.

50. In approximately 1994, Barr divorced and sought an annulment through the Diocese of Buffalo. In a letter to the Diocese, Barr disclosed "a bad experience with our parish priest," referring to the sexual abuse by Freeman.

51. In approximately 2010, Barr brought some of Gonzalez' sexual abuse victims to a meeting at the Diocese of Buffalo to meet with the Diocesan attorney. At that meeting, this attorney confirmed to Barr that there was a file on him at the Diocese that included information regarding the abuse by Freeman.

52. In March 2018, Barr again brought the abuse to the attention of the Diocese, when he filed a detailed submission with the Diocese's IRCP program.

53. Later that year, in December 2018 – and after reviewing Barr's submissions – the Diocese IRCP offered Barr the sum of \$45,000 in settlement of his claims of abuse at the hands of Defendants. Barr did not accept this offer.

54. As a result of the foregoing, Barr has suffered and/or continues to suffer myriad psychological, physical and emotional injuries. These injuries include, *inter alia*, clinical anxiety, symptoms of depression, post-traumatic stress disorder, and obsessive-compulsive disorder. In addition, Barr suffers from emotional distress and experiences physical manifestations of that condition. Barr experiences guilt, shame, sadness, embarrassment and powerlessness.

55. Prior to and at the time of Freeman's abuse of Barr, Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Diocese and elsewhere in the Roman Catholic church.

{00043633}

9

56. Upon information and belief, not only was the Diocese aware of clergy sexual abuse of children, but it participated in covering up such heinous acts by moving errant priests and clergy members from assignment to assignment, thereby putting additional children in harm's way.

57. Prior to and at the time of Freeman's abuse of Barr, Defendants knew or should have known of Freeman's propensity to abuse young boys in his charge.

58. Prior to hiring Freeman, Defendants failed to properly screen and investigate Freeman so as to discover his propensity for sexual misconduct and abuse of children, his lack of qualifications to serve in the capacities in which he was appointed by Defendants, and the danger he would pose to children in the parish, including Barr

59. Prior to and at the time of Freeman's abuse of Barr, Defendants failed to take steps to protect Barr from abuse by Freeman.

60. In approximately July 1980, very shortly after his abuse of Barr, Freeman was transferred to Fort Benning, GA in a capacity as United States Army Chaplain. He later returned to the northeast in approximately September 1982, when the Diocese of Buffalo assigned him to St. Christopher's parish in Tonawanda, PA.

61. In approximately 1985, Freeman was transferred yet again by the Diocese of Buffalo, on assignment to Assumption of the Blessed Virgin Mary in Lancaster, PA, where he worked until approximately 1989, at which time his faculties were finally revoked.

62. Freeman died in 2010.

63. Having shuffled Freeman about various assignments in Pennsylvania, while fully knowing of the myriad sexual assault complaints against him, the Diocese permitted Freeman to

serve in active ministry until 1989, and continued to provide financial aid to Freeman until July 31, 1999.

64. In March 2018, the Diocese of Buffalo finally admitted that it knew about Freeman's abuse of children, when it published a list (which included Freeman) of clergy members who had been accused of sexual abuse.

65. In fact, Freeman admitted to sexually violating children in at least five of his six ministry assignments, which began in 1972.

66. Nevertheless, the Diocese never notified law enforcement officials of Freeman's illegal activities, and permitted him to remain in active ministry for many years despite knowing of his predatory and criminal behavior.

67. The conduct alleged herein would constitute a sexual offense as defined in article one hundred thirty of the penal law.

68. The conduct alleged herein was committed against Barr at a time when Barr was less than eighteen years of age.

69. To the extent that any 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 Defendants' conduct falls within one or more of the subdivisions of CPLR 1602.

## COUNT I

### NEGLIGENT HIRING

70. Plaintiff repeats and realleges all preceding paragraphs of this Complaint.

71. Freeman was hired or otherwise retained and appointed as, *inter alia*, Associate Pastor at Sacred Heart, by the Defendants.

{00043633}

11

72. The positions for which Freeman was hired required him to work closely with, mentor, and counsel young boys.

73. Defendants owed a duty to Barr because Barr was a minor entrusted to their care and because Defendants, through their hiring and/or appointment and/or retention of Freeman, represented that Freeman was a spiritual counselor and role model for minor boys and an individual to whom minor boys, including Barr, could be safely entrusted.

74. Defendants breached their duty to Barr by negligently hiring, appointing, retaining, supervising, and/or directing Freeman and in failing to protect Barr from a sexual predator.

75. At all times Defendants had a duty to exercise due care in hiring, retaining, and appointing clergy such as Freeman, so as to prevent dangerous conditions and individuals on their premises who threaten the safety, welfare and health of children involved with the church, including Barr.

76. Upon information and belief, Defendants were negligent and failed to use reasonable care in hiring Freeman, failed to properly investigate Freeman's background and employment history prior to retaining him as Associate Pastor, and/or took Freeman on as Associate Pastor despite knowing of prior misconduct that would make him a danger to children, and were otherwise negligent.

77. Defendants were negligent in hiring Freeman because they knew, or should have known of his vicious propensities and disposition (e.g., his propensity to develop inappropriate relationships with boys in his charge and to engage in sexual behavior and lewd and lascivious conduct with such boys) and/or had knowledge of facts which would have caused a reasonably

{00043633}

12



prudent person to reject Freeman as a candidate for working with young boys, given his dangerous propensities and disposition.

78. Defendants reasonably should have anticipated that Freeman's propensities and disposition would be likely to result in injury to young boys within his charge, including Barr

79. Defendants failed to use reasonable care to correct or remove Freeman from his duties in a timely manner that would have protected Barr and prevented Freeman's sexual assault.

80. Freeman would not and could not have been in a position to sexually abuse Barr had Freeman not been hired by the Defendants to mentor, teach, and counsel boys in the Sacred Heart Parish, including Barr.

81. Barr suffered injury as a result of Freeman's offensive bodily contact, including physical, psychological and emotional injury as described above.

82. By the reason of the foregoing, Defendants are liable to Barr in an amount to be determined at trial, and which exceeds the jurisdictional limits of all courts of limited jurisdiction.

**COUNT II**

**NEGLIGENT RETENTION, SUPERVISION AND/OR DIRECTION**

83. Plaintiff repeats and realleges all preceding paragraphs of this Complaint.

84. At all times while Freeman was an employee, agent, servant, and/or appointee of Defendants, he was supervised by, under the direction of, and/or answerable to, the various Defendants and/or their agents and employees.

85. At all times Defendants had a duty to provide reasonable supervision and direction of Freeman, to use reasonable care in investigating and supervising Freeman's conduct,

{00043633}

to provide adequate warning to parishioners and their children, including Barr and his family, of Freeman's dangerous propensities, and to inspect and remove from their premises dangerous individuals who threaten the safety, welfare and health of children involved with the church.

86. Defendants were negligent and did not use reasonable care in their direction and/or supervision of Freeman, in that they knew, or should have known of his vicious propensities and disposition (e.g., his propensity to develop inappropriate relationships with boys under his charge and to engage in sexual behavior and lewd and lascivious conduct with such boys) and/or had knowledge of facts which would have caused a reasonably prudent person to investigate Freeman's propensities and disposition, yet they failed to investigate and remove him.

87. Defendants negligently failed to supervise Freeman in the position of trust and authority in which they placed him, failed to monitor and investigate his activities, failed to provide adequate warning of his dangerous propensities, and failed to remove him from their premises so as to protect the children entrusted to their care, including Barr.

88. Defendants were negligent and did not use reasonable care in failing to anticipate that Freeman's dispositions would likely result in injury to young boys within his charge, including Barr.

89. Freeman would not and could not have been in a position to sexually abuse Barr had he not been negligently retained, supervised, and/or directed by the Defendants as a pastor and counselor to the boys in the Sacred Heart parish, including Barr.

90. Barr suffered injury as a result of Freeman's offensive bodily contact, including physical, psychological and emotional injury as described above.

91. By the reason of the foregoing, Defendants are liable to Barr in an amount to be determined at trial, and which exceeds the jurisdictional limits of all courts of limited jurisdiction.

**COUNT III**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

92. Plaintiff repeats and realleges all preceding paragraphs of this Complaint.

93. The sexual abuse of Barr when Barr was a minor was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized community.

94. Defendants knew or disregarded the substantial probability that Freeman's conduct would cause severe emotional distress to Barr.

95. Because of Freeman's above-described misconduct and sexual abuse, Barr suffered severe emotional distress including physical, psychological and emotional injury.

96. At the time that Freeman's misconduct and sexual abuse, he was acting at the direction of, and with the authority invested in him by, Defendants, and was otherwise acting in the course of and scope of his employment by Defendants. By reason of the foregoing, Defendants are liable for Freeman's conduct under the doctrine of *respondeat superior*.

97. By the reason of the foregoing, Defendants are liable to Barr in an amount to be determined at trial, and which exceeds the jurisdictional limits of all courts of limited jurisdiction.

**COUNT IV**

**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

98. Plaintiff repeats and realleges all preceding paragraphs of this Complaint.

{00043633}

99. Barr suffered severe emotional distress including psychological and emotional injury as described above. This distress was a direct result of the Defendants' aforesaid negligent, reckless and willful misconduct, and the breach of their duties to provide a safe environment for parishioners, including Barr, free from sexual predators enjoying positions of authority, and free from the sexual assault that took place.

100. In addition to their own direct liability for negligently inflicting emotional distress on Barr, the Defendants are also liable for Freeman's negligent infliction of emotional distress under the doctrine of *respondeat superior*.

101. By the reason of the foregoing, Defendants are liable to Barr in an amount to be determined at trial, and which exceeds the jurisdictional limits of all courts of limited jurisdiction.

#### **COUNT V**

#### **PREMISES LIABILITY**

102. Plaintiff repeats and realleges all preceding paragraphs of this Complaint.

103. At all relevant times, Defendants owned, operated, and /or controlled the premises located at or about 1112 South Ave, Niagara Falls NY 14305, and known as Roman Catholic Church of the Sacred Heart.

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

105. Defendants 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 reasonably anticipated visitors, including Plaintiff.

106. Defendants willfully, recklessly, and negligently 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. Defendants thereby breached their duty of care of Plaintiff.

107. By reason of the foregoing, Defendants are liable to Barr in an amount to be determined at trial, and which exceeds the jurisdictional limits of all courts of limited jurisdiction

**COUNT VI**

**BATTERY**

108. Plaintiff repeats and realleges all preceding paragraphs of this Complaint.

109. In June 1980, Freeman intentionally touched Barr's body when he engaged in the sexual behavior and lewd and lascivious conduct described above. Such bodily contact was offensive and was without consent, because Barr, a minor, was incapable of consenting to these acts, and did not consent.

110. At the time Freeman offensively touched Barr's body, Freeman was an employee, appointee, and/or agent of the Defendants, and was acting within the course and scope of his employment, appointment, and/or agency.

111. Defendants are liable for Freeman's offensive bodily contact under the doctrine of *respondeat superior*.

112. Barr suffered injury as a result of Freeman's offensive bodily contact, including physical, psychological and emotional injury as described above.

113. By the reason of the foregoing, Defendants are liable to Barr in an amount to be determined at trial, and which exceeds the jurisdictional limits of all courts of limited jurisdiction.

**COUNT VII**

**ASSAULT**

114. Plaintiff repeats and realleges all preceding paragraphs of this Complaint.

115. In June 1980, Freeman intentionally touched Barr's body when he engaged in the sexual behavior and lewd and lascivious conduct described above. Such conduct placed Barr in imminent apprehension of harmful contact, including apprehension of further sexual contact.

116. At the time Freeman offensively touched Barr's body, Freeman was an employee, appointee, and/or agent of the Defendants, and was acting within the course and scope of his employment, appointment, and/or agency. Defendants are liable for Freeman's conduct under the doctrine of *respondeat superior*.

117. Barr suffered injury as a result of Freeman's offensive bodily contact, including physical, psychological and emotional injury as described above.

118. By the reason of the foregoing, Defendants are liable to Barr in an amount to be determined at trial, and which exceeds the jurisdictional limits of all courts of limited jurisdiction.

**PRAYER FOR PUNITIVE DAMAGES**

119. Plaintiff repeats and realleges all preceding paragraphs of this Complaint.

120. The conduct of Defendants 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 Defendants were knowingly subjecting children in their charge, including Plaintiff, to sexual crimes.

121. All of the aforementioned conduct was wanton and reckless, malicious, and demonstrates a conscious indifference and utter disregard of its effect upon the health, safety and rights of others, including Plaintiff.

122. As a result of these activities as alleged hereinabove, Plaintiff is entitled to recover punitive damages in an amount to be determined by the finder of fact.

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 Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- d. Awarding such other and further relief as this Court may deem just and proper.

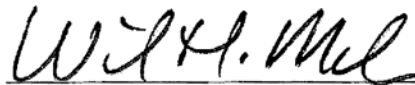
**JURY TRIAL DEMANDED**

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

Dated: New York, New York  
April 30, 2019

Yours, etc.

**PHILLIPS & PAOLICELLI, LLP**



By: William H. Mack  
*Attorneys for Plaintiff*  
747 Third Avenue, Sixth Floor  
New York, New York 10017  
212-388-5100  
wmack@p2law.com

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

<p>FB-1 DOE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>ST. MARY OF THE ASSUMPTION A/K/A ASSUMPTION OF THE BLESSED VIRGIN MARY, ST. MARY’S ELEMENTARY SCHOOL A/K/A ST. MARY’S ELEMENTARY SCHOOL ON THE HILL,</p> <p style="text-align: center;">Defendants.</p>
--

**COMPLAINT**

Index No.: 811249/2021

Plaintiff FB-1 DOE, by his undersigned attorneys, for his Complaint, alleges on personal knowledge as to himself and on information and belief as to other matters, as follows:

**NATURE OF THE ACTION**

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g. Plaintiff was sexually abused, assaulted and molested by Father Michael Freeman – a priest hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants ST. MARY OF THE ASSUMPTION A/K/A ASSUMPTION OF THE BLESSED VIRGIN MARY, ST. MARY’S ELEMENTARY SCHOOL A/K/A ST. MARY’S ELEMENTARY SCHOOL ON THE HILL, (herein “Defendants”) in conjunction with the Diocese of Buffalo, N.Y. (“Diocese or Buffalo Diocese”).

1. From about 1987 through 1988, starting when Plaintiff was approximately 10 years old, Plaintiff was sexually abused by Fr. Freeman while a parishioner at St. Mary of the Assumption and a student at St. Mary’s Elementary School.



2. To date, there is at least one other CVA complaint against St. Mary of the Assumption which alleges their priests sexually abused minor parishioners.

3. Despite years of refusal to publically address rampant child abuse by priests, the Diocese of Buffalo recently published a long list of priests with substantiated claims of sexual abuse of a minor. The list includes Fr. Freeman, who is now deceased.

4. In fact, the Roman Catholic Church and Defendant have long known that substantial numbers of priests 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 parishioners, in particular children like Plaintiff who are entrusted to their spiritual care and guidance. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to Defendant.

5. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendants negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse by Fr. Freeman, permitted the abuse to occur, neglected to adequately supervise Fr. Freeman, failed to timely investigate Fr. Freeman's misconduct, failed to educate and train minors, parents, clergy members, 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 Fr. Freeman's sexual assault of Plaintiff and his consequential injuries and damages.

#### **PARTIES**

6. Plaintiff is an individual who resides in Erie County, New York.

7. Plaintiff was born in 1976.

8. At all relevant times, St. Mary of the Assumption a/k/a Assumption of the Blessed Virgin Mary is a Roman Catholic Church, organized pursuant to the laws of the State of New York. It is operated in Erie County, New York, with its principal place of business at 1 St. Mary's Hill, Lancaster, NY 14086. At all relevant and material times, the Roman Catholic Bishop of Lancaster, New York was the President of St. Mary of the Assumption, and the Roman Catholic Vicar General of Lancaster, New York was the Vice-President of St. Mary of the Assumption.

9. At all relevant times, St. Mary's Elementary School a/k/a St. Mary's Elementary School on the Hill is a Roman Catholic School, organized pursuant to the laws of the State of New York. It is operated in Erie County, New York, with its principal place of business at 2 St. Mary's Hill, Lancaster, NY 14086. At all relevant and material times, the Roman Catholic Bishop of Lancaster, New York was the President of St. Mary's Elementary School, and the Roman Catholic Vicar General of Lancaster, New York was the Vice-President of St. Mary's Elementary School.

10. At all relevant times, St. Mary of the Assumption oversaw, managed, controlled, and directed agents, clergy members, priests, parishioners of St. Mary of the Assumption.

11. At all relevant times, Defendants and the Diocese of Buffalo operated and owned the premises where St. Mary of the Assumption and St. Mary's Elementary School is located.

12. At all relevant times, Defendants St. Mary's of the Assumption and St. Mary's Elementary School were and/or are still under the direct authority, control, and province of the Diocese of Buffalo.

### **FACTUAL ALLEGATIONS**

13. At all relevant times, Plaintiff was a parishioner and student of Defendant St. Mary of the Assumption and St. Mary's Elementary School.

14. Fr. Freeman was ordained a Roman Catholic priest in approximately 1972.

15. Prior to the sexual abuse of Plaintiff, in approximately 1972-75 Fr. Freeman served as Parochial Vicar at St. Margaret Church and School. From approximately 1975-76, Fr. Freeman served as Parochial Vicar at St. Lawrence Church and School. From approximately 1976-80, Fr. Freeman served as Parochial Vicar at Sacred Heart Church and School. From approximately 1982-84, Fr. Freeman served as Parochial Vicar at St. Christopher Church and School.

16. Prior to Fr. Freeman's sexual abuse of Plaintiff herein, Defendants and their respective executive officers knew or should have known it was not safe to allow Fr. Freeman to have unsupervised contact with minor children, in that Fr. Freeman posed a sexual danger to minor children.

17. The Roman Catholic Bishop and Vicar General of Buffalo concealed the information about the danger Fr. Freeman posed to minor children, in order that the Roman Catholic Bishop and Vicar General of Buffalo could assign Fr. Freeman to work at parishes, including Defendants', and Defendants aided and abetted the Roman Catholic Bishop and Vicar General of Buffalo in concealing the information about the danger Fr. Freeman posed to minor children.

18. Fr. Freeman was assigned to the position of priest at Defendants' institutions. His duties included interacting with children, including altar boys, students, and children attending Defendants, and participating in the sacraments.

19. At all relevant times, Fr. Freeman was a Roman Catholic priest employed by Defendants, in conjunction with the Diocese of Buffalo.

20. At all relevant times, Fr. Freeman was under the direct supervision and control of Defendants, in conjunction with the Diocese of Buffalo. His assigned duties included, *inter alia*, serving as a priest. His duties included interacting with, mentoring and counseling children, including altar boys and students, attending Defendants St. Mary of the Assumption and St. Mary's Elementary School.

21. At all relevant times Defendants authorized Fr. Freeman to be alone with children, including Plaintiff, and to have unfettered and unsupervised access to them.

22. Defendants authorized Fr. Freeman to have contact with minors, in a manner consistent with providing instruction, counseling, educational and spiritual guidance, and leadership.

23. Defendants required parishioners, like Plaintiff, to accept instruction from clergy in their employ, including Fr. Freeman, and to obey their orders.

24. 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.

25. When Plaintiff was approximately 10 to 11 years old, on or about 1981-1982, Fr. Freeman engaged in unpermitted, forcible and harmful sexual contact with Plaintiff, which included oral sex and penetration.

26. The conduct alleged herein constitutes a sexual offense as defined in article one hundred thirty of New York Penal Law.

27. The sexual abuse took place on the premises of Defendant St. Mary of the Assumption and St. Mary's Elementary School.

28. Plaintiff's relationship to Defendant as a vulnerable child and parishioner, and the culture of the Catholic Church which Defendants endorsed, put pressure on Plaintiff not to report the sexual molestation and abuse he endured at the hands of Fr. Freeman.

29. Defendants knew or should have known that Fr. Freeman was a danger to minor boys like Plaintiff, before the sexual abuse of Plaintiff began.

30. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to the abuse of Plaintiff, and communicated as much with all levels of Church hierarchy including bishops and other Diocesan leaders. Over the centuries, various Popes passed Church decrees and legislation condemning such offenses, including a clerical crime known as "solicitation," engaging in sexual contact with an adult or a child during administration of the sacrament of confession.

31. As such, at all relevant times, Defendants were well aware that errant sexual behavior by some priests was not only widespread but predictable.

32. Prior to the time of Plaintiff's abuse, Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Diocese and elsewhere in the Roman Catholic Church, and knew that there was a specific danger of child sex abuse for children in their institutions and programs.

33. The sexual abuse of Plaintiff described above was foreseeable.

34. Prior to the time of Plaintiff's abuse by Fr. Freeman, Defendants knew or should have known of other acts of child sexual abuse by Fr. Freeman.

35. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risks their facilities posed to minor children, the risk of abuse by clergy in general, and the risks that Fr. Freeman posed to Plaintiff.

36. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited parishioners and others to send their children to St. Mary of the Assumption and St. Mary's Elementary; they undertook custody of minor children, including Plaintiff; they recruited minor boys to serve as altar boys; they promoted their facilities and programs as being safe for children, they held out their agents, including Fr. Freeman, as safe to work with and around minors; they encouraged parents and children to spend time with their agents; and/or authorized their agents, including Fr. Freeman to spend time with, interact with, and recruit children.

37. Defendants owed Plaintiff a heightened, fiduciary duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised 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. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

39. At all relevant times, Plaintiff was a vulnerable child entrusted to Defendants' care, 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.

40. Defendants breached their duty to act *in loco parentis* to Plaintiff.

41. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent 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 continues to suffer loss of spirituality; has suffered and may continue to suffer loss of earnings and earning capacity; has incurred and may in the future incur expenses for medical and psychological treatment, and was otherwise damaged.

42. To the extent that any 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' conduct falls within one or more of the subdivisions of CPLR 1602.

### **FIRST CAUSE OF ACTION**

#### **NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION**

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

44. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that Fr. Freeman was not fit to work with or around children.

45. Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Fr. Freeman's propensity to commit sexual abuse and of the risk to Plaintiff's safety.

46. Defendants negligently retained Fr. Freeman with knowledge of his propensity for the type of behavior which resulted in Plaintiff's injuries.

47. At all relevant times Defendant had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of its clergy, including Fr. Freeman so as to protect minor children, including Plaintiff, who were likely to come into contact with,

and/or under the influence or supervision of him, and to ensure that Fr. Freeman did not use his assigned position to injure minors by sexual assault, contact or abuse.

48. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Fr. Freeman, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned Fr. Freeman to Defendants when Defendants knew or should have known of facts that would make him a danger to children; and Defendants were otherwise negligent.

49. Defendants were negligent and did not use reasonable care in their supervision and direction of Fr. Freeman, failed to monitor his activities, failed to oversee the manner in which he carried out the duties to which Defendants assigned him, even though they knew or should have known that Fr. Freeman posed a threat of sexual abuse to minors; allowed the misconduct described above to occur; failed to investigate Fr. Freeman's dangerous activities and remove him from their premises; and Defendants were otherwise negligent.

50. Fr. Freeman would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Fr. Freeman.

51. At all relevant times, Fr. Freeman acted in the course and scope of his employment with Defendants.

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

53. As a direct and proximate result of Fr. Freeman's and Defendants' misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury as described above.



54. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, together with interest and costs.

**SECOND CAUSE OF ACTION**

**NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT**

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

56. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that clergy working in the Diocese, including Fr. Freeman, did not pose a risk and/or that he did not have a history of sexually abusing children, and that children, including Plaintiff, would be safe in his care.

57. Defendants knew or should have known this representation was false and that employing Fr. Freeman would give him unfettered access to children, including Plaintiff, and that Fr. Freeman posed an unacceptable risk of harm to children.

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

59. Defendants were negligent and did not use reasonable care in their training, if any, of minor parishioners 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.

60. Defendants were negligent and did not use reasonable care in their training, if any, of clergy members 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.

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

62. Upon information and belief, Defendants covered up acts of abuse by Fr. Freeman, and concealed facts concerning his sexual misconduct from Plaintiff and his family.

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

64. Defendants failed to warn Plaintiff and his parents that Fr. Freeman posed a risk of child sexual assault.

65. The conduct of Defendants 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 Defendants were knowingly subjecting children in their charge, including Plaintiff, to sexual crimes.

66. Defendants' aforesaid actions were negligent, reckless, willful and wonton in their disregard for the rights and safety of children, including Plaintiff.

67. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

68. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, together with interest and costs.

### **THIRD CAUSE OF ACTION**

#### **BREACH OF STATUTORY DUTIES TO REPORT**

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

70. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

71. Defendants breached its statutory duty by failing to report reasonable suspicion of abuse by Fr. Freeman of children in their care.

72. As a direct and proximate result of Defendants' foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

73. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, together with interest and costs.

### **FOURTH CAUSE OF ACTION**

**PREMISES LIABILITY**

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

75. At all relevant times, Defendants owned, operated, and /or controlled the premises of Defendant St. Mary of the Assumption and St. Mary’s Elementary School, including the areas where the sexual abuse of Plaintiff occurred.

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

77. Defendants 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.

78. Defendants knowingly, willfully, recklessly, and negligently failed to provide reasonably safe premises that were free from the presence of sexual predators and/or the assault by the occupants of the premises, including Fr. Freeman. Defendant thereby breached its duty of care to Plaintiff.

79. As a direct and proximate result of Defendants’ misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

80. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter, 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**

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

Dated: New York, New York

November 9, 2021

Phillips & Paolicelli, LLP  
*Attorneys for Plaintiffs*

/s/ Michael DeRuve  
By: Diane Paolicelli  
Michael DeRuve  
747 Third Avenue, 6<sup>th</sup> Floor  
New York, New York 10027  
212-388-5100  
dpaolicelli@p2law.com  
mderuve@p2law.com

Paul K. Barr  
Fanizzi & Barr, P.C.  
2303 Pine Avenue  
Niagara Falls, NY 14301  
716-284-8888  
pbarr@fanizziandbarr.com

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF NIAGARA

<p>PB-4 DOE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>ST. MARGARET ROMAN CATHOLIC CHURCH; ST. LAWRENCE ROMAN CATHOLIC CHURCH; ST. MARY’S ROMAN CATHOLIC CHURCH A/K/A ST. MARY’S PARISH; HOLY CROSS ROMAN CATHOLIC CHURCH; ST. GERARD’S ROMAN CATHOLIC CHURCH; ST. JOHN VIANNEY ROMAN CATHOLIC CHURCH; ST. VINCENT DE PAUL ROMAN CATHOLIC CHURCH A/K/A SAINT JOHN PAUL II PARISH COMMUNITY,</p> <p style="text-align: center;">Defendants.</p>
--

**SUMMONS**

Plaintiff designates the County of Niagara 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  
May 19, 2021

Phillips & Paolicelli, LLP  
*Attorneys for Plaintiffs*

*/s/ Diane Paolicelli*

By: Diane Paolicelli  
Michael DeRuve  
747 Third Avenue, 6<sup>th</sup> Floor  
New York, New York 10027  
212-388-5100  
[dpaolicelli@p2law.com](mailto:dpaolicelli@p2law.com)  
[mderuve@p2law.com](mailto:mderuve@p2law.com)

-and-

Paul K. Barr  
Fanizzi & Barr, P.C.  
2303 Pine Avenue  
Niagara Falls, NY 14301  
716-284-8888  
[pbarr@fanizziandbarr.com](mailto:pbarr@fanizziandbarr.com)

*Attorneys for Plaintiff*

TO:

ST. MARGARET ROMAN CATHOLIC CHURCH  
1395 Hertel Avenue  
Buffalo, NY 14216

ST. LAWRENCE ROMAN CATHOLIC CHURCH  
1520 E Delavan Ave  
Buffalo, NY 14215

ST. MARY'S ROMAN CATHOLIC CHURCH A/K/A ST. MARY'S PARISH  
417 W. Main Street  
Arcade, NY 14009

HOLY CROSS ROMAN CATHOLIC CHURCH  
345 Seventh Street  
Buffalo, NY 14201

ST. GERARD'S ROMAN CATHOLIC CHURCH  
1190 E Delavan Avenue  
Buffalo, NY 14215

ST. JOHN VIANNEY ROMAN CATHOLIC CHURCH  
2950 Southwestern Boulevard  
Orchard Park, N.Y. 14127

ST. VINCENT DE PAUL ROMAN CATHOLIC CHURCH A/K/A SAINT JOHN PAUL II  
PARISH COMMUNITY  
2052 Lakeview Road  
Lakeview, NY 14085

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF NIAGARA

PB-4 DOE,

Plaintiff,

vs.

**COMPLAINT**

Index No.:

ST. MARGARET ROMAN CATHOLIC CHURCH; ST. LAWRENCE ROMAN CATHOLIC CHURCH; ST. MARY’S ROMAN CATHOLIC CHURCH A/K/A ST. MARY’S PARISH; HOLY CROSS ROMAN CATHOLIC CHURCH; ST. GERARD’S ROMAN CATHOLIC CHURCH; ST. JOHN VIANNEY ROMAN CATHOLIC CHURCH; ST. VINCENT DE PAUL ROMAN CATHOLIC CHURCH A/K/A SAINT JOHN PAUL II PARISH COMMUNITY,

Defendants.

Plaintiff PB-4 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 PB-4 Doe (“Doe”) was repeatedly sexually abused and assaulted by Father Michael Freeman (hereinafter “Fr. Freeman”), who was hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants, St. Margaret’s Roman Catholic Church of Buffalo, N.Y. and St. Lawrence Roman Catholic Church of Buffalo, N.Y., in conjunction with the Diocese of Buffalo, N.Y. Additionally, Plaintiff was repeatedly sexually abused and assaulted by Father Bernard Mach (hereinafter “Fr. Mach”), who was hired, retained,



supervised, placed, directed and otherwise authorized to act by Defendants, St. Mary's Roman Catholic Church a/k/a St. Mary's Parish, Holy Cross Roman Catholic Church, St. Gerard's Roman Catholic Church, St. John Vianney Roman Catholic Church and St. Vincent de Paul Roman Catholic Church a/k/a St. John Paul II Parish Community (All Defendants collectively are referred to herein as "Defendants"), in conjunction with the Diocese of Buffalo, N.Y. (herein "Diocese") and other parishes.

3. Prior to the bankruptcy of the Diocese, Plaintiff brought suit against the Diocese and other parishes.<sup>1</sup> The present complaint is a related action.

4. At all relevant times, Fr. Freeman and Fr. Mach were hired, retained, supervised, placed, directed and otherwise authorized to act by the Defendants, in conjunction with the Diocese of Buffalo.

5. Despite years of refusal to publicly address rampant child abuse by priests and nuns, The Diocese of Buffalo recently published a long list of clergy in their employ who were credibly accused of molesting children. That list includes Fr. Freeman and Fr. Mach.

6. In fact, the Roman Catholic Church, the Diocese of Buffalo, and Defendants have long known that substantial numbers of priests and nuns 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 parishioners and others, in particular with children who are entrusted to their spiritual care and guidance. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to Defendants.

7. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendants negligently, recklessly, and willfully failed

---

<sup>1</sup> PB-4 *Doe v. Diocese of Buffalo et. al*, Index No. E170134/2019.

to protect Plaintiff from sexual abuse by Fr. Freeman and Fr. Mach, permitted the abuse to occur, failed to supervise Fr. Freeman and Fr. Mach, failed to timely investigate Fr. Freeman's and Fr. Mach's misconduct, failed to train minor parishioners, parents, clergy members and/or adult staff about the risk of sexual abuse in their institution, 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 Fr. Freeman's and Fr. Mach's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

#### **PARTIES**

8. Plaintiff is an individual residing in the State of Oregon. At the time of the events complained of, plaintiff was a minor residing in Niagara County, N.Y.

9. Plaintiff was born on 1964.

10. At all relevant times, St. Margaret's Roman Catholic Church of Buffalo, N.Y. was a Roman Catholic Church, organized pursuant to the laws of the State of New York. It is operated in Erie County, New York, with its principal place of business at 1395 Hertel Avenue, Buffalo, NY 14216. At all relevant and material times, the Roman Catholic Bishop of Buffalo, New York was the President of St. Margaret's Roman Catholic Church, and the Roman Catholic Vicar General of Buffalo, New York was the Vice-President of St. Margaret's Roman Catholic Church.

11. At all relevant times, St. Lawrence Roman Catholic Church of Buffalo, N.Y. was a Roman Catholic Church, organized pursuant to the laws of the State of New York. It is operated in Erie County, New York, with its principal place of business at 1520 E Delavan Ave,

Buffalo, NY 14215. At all relevant and material times, the Roman Catholic Bishop of Buffalo, New York was the President of St. Lawrence Roman Catholic Church, and the Roman Catholic Vicar General of Buffalo, New York was the Vice-President of St. Lawrence Roman Catholic Church.

12. At all relevant times, St. Mary's Roman Catholic Church A/K/A St. Mary's Parish of Arcade, N.Y. was a Roman Catholic Church, organized pursuant to the laws of the State of New York. It is operated in Wyoming County, New York, with its principal place of business at 417 W. Main Street, Arcade, NY 14009. At all relevant and material times, the Roman Catholic Bishop of Buffalo, New York was the President of St. Mary's Roman Catholic Church a/k/a, and the Roman Catholic Vicar General of Buffalo, New York was the Vice-President of St. Mary's Roman Catholic Church A/K/A St. Mary's Parish.

13. At all relevant times, Holy Cross Roman Catholic Church of Buffalo, N.Y. was a Roman Catholic Church, organized pursuant to the laws of the State of New York. It is operated in Erie County, New York, with its principal place of business at 345 Seventh Street, Buffalo, NY 14201. At all relevant and material times, the Roman Catholic Bishop of Buffalo, New York was the President of Holy Cross Roman Catholic Church, and the Roman Catholic Vicar General of Buffalo, New York was the Vice-President of Holy Cross Roman Catholic Church.

14. At all relevant times, Defendant St. Gerard Roman Catholic Church was a Roman Catholic Church, organized pursuant to the laws of the State of New York. According to publicly available information, St. Gerard Roman Catholic Church is no longer in operation. It was last operated in Erie County, New York, with its principal place of business at 1190 E Delavan Avenue, Buffalo, NY 14215. At all relevant and material times, the Roman Catholic Bishop of Buffalo, New York was the President of St. Gerard Roman Catholic Church, and the Roman

Catholic Vicar General of Buffalo, New York was the Vice-President of St. Gerard Roman Catholic Church.

15. At all relevant times, St. John Vianney Roman Catholic Church of Orchard Park, N.Y. was a Roman Catholic Church, organized pursuant to the laws of the State of New York. It is operated in Erie County, New York, with its principal place of business at 2950 Southwestern Boulevard, Orchard Park, N.Y. 14127. At all relevant and material times, the Roman Catholic Bishop of Buffalo, New York was the President of St. John Vianney Roman Catholic Church, and the Roman Catholic Vicar General of Buffalo, New York was the Vice-President of St. John Vianney Roman Catholic Church

16. At all relevant times, St. Vincent De Paul Roman Catholic Church of Niagara Falls, N.Y. was a Roman Catholic Church, organized pursuant to the laws of the State of New York. It was operated in Niagara County, New York, with a principal place of business at 1040 Cayuga Drive, Niagara Falls, N.Y. 14304. At all relevant and material times, the Roman Catholic Bishop of Buffalo, New York was the President of St. Vincent De Paul Roman Catholic Church, and the Roman Catholic Vicar General of Buffalo, New York was the Vice-President of St. Vincent De Paul Roman Catholic Church

17. On or about 2011, St. Vincent de Paul of Niagara Falls, N.Y. merged with Our Lady of Perpetual Help Parish and formed a new parish known as Saint John Paul II Parish Community. Saint John Paul II Parish Community is a Roman Catholic Parish, organized pursuant to the laws of the State of New York. It is operated in Erie County, New York, with its principal place of business at 2052 Lakeview Road, Lake View, NY 14085. Upon information and belief, Defendant Saint John Paul II Parish assumed some or all of the liabilities and/or assets of Defendant St. Vincent de Paul Roman Catholic Church

18. At all relevant times, Defendants St. Margaret's Roman Catholic Church, St. Lawrence Roman Catholic Church, St. Mary's Roman Catholic Church a/k/a St. Mary's Parish, Holy Cross Roman Catholic Church, St. Gerard's Roman Catholic Church, St. John Vianney Roman Catholic Church and St. Vincent De Paul Roman Catholic Church a/k/a St. John Paul II Parish Community were and/or are still under the direct authority, control, and province of the Diocese of Buffalo.

### FACTUAL ALLEGATIONS

19. Plaintiff repeats and re-alleges all preceding paragraphs of this Complaint.

20. Fr. Freeman was ordained a Roman Catholic priest in approximately 1972.

21. Fr. Mach was ordained a Roman Catholic priest in approximately 1964.

22. At the times they sexually abused Plaintiff, Fr. Freeman and Fr. Mach were employed by the Diocese and the Roman Catholic Church of the Sacred Heart and under their direct supervision, employ, and control. The facts concerning his abuse are set forth in the earlier filed companion action. *See fn. 1, supra.*

23. Briefly stated, beginning in or about 1980 and continuing until approximately 1982, Fr. Freeman and Fr. Mach, acting in their capacities as priests, and in furtherance of the business of Defendants and others, used their positions as priests to gain the confidence and trust of Plaintiff to manipulate and/or coerce Plaintiff into gratifying their sexual desires.

24. On multiple occasions, Fr. Freeman and Fr. Mach engaged in unpermitted, forcible and harmful sexual contact with Plaintiff.

25. The sexual contact was in violation of Article 130 of New York's Penal Law.

26. Prior to the sexual abuse of Plaintiff, from approximately 1972 to 1975, Fr. Freeman served as a priest and parochial Vicar at Defendant St. Margaret's Roman Catholic Church. From approximately 1975 to approximately 1976, Fr. Freeman served as a priest and parochial Vicar at Defendant St. Lawrence Roman Catholic Church. These Defendants each negligently retained Fr. Freeman with knowledge of his propensity for the type of behavior which resulted in Plaintiff's injuries, and did not take steps to prevent his abuse of minors or to report him to the authorities.

27. Prior to the sexual abuse of Plaintiff, from approximately 1964-1965, Fr. Mach served as a priest and parochial Vicar at Defendant St. Mary's Roman Catholic Church A/K/A St. Mary's Parish. From approximately 1965-1966, Fr. Mach served as priest and Parochial Vicar at Defendant Holy Cross Roman Catholic Church. From approximately 1966 to 1977, Fr. Mach served as a priest and parochial Vicar at Defendant St. Gerard's Roman Catholic Church. From approximately 1977 to 1979, Fr. Mach served as a priest and parochial Vicar at Defendant St. John Vianney Roman Catholic Church. From approximately 1979 to 1980, Fr. Mach served as a priest and parochial Vicar at Defendant St. Vincent De Paul Roman Catholic Church a/k/a St. John Paul II Parish Community. These Defendants each negligently retained Fr. Mach with knowledge of his propensity for the type of behavior which resulted in Plaintiff's injuries, and did not take steps to prevent his abuse of minors or to report him to the authorities.

28. Prior to Fr. Freeman's and Fr. Mach's sexual abuse of Plaintiff herein, Defendants and their respective executive officers knew or should have known it was not safe to allow Fr. Freeman and Fr. Mach to have unsupervised contact with minor children, in that Fr. Freeman and Fr. Mach posed a sexual danger to minor children.

29. The Roman Catholic Bishop and Vicar General of Buffalo concealed the information about the danger Fr. Freeman and Fr. Mach posed to minor children, in order that the Roman Catholic Bishop and Vicar General of Buffalo could assign Fr. Freeman and Fr. Mach to work at parishes, including Defendants and Defendants aided and abetted the Roman Catholic Bishop and Vicar General of Buffalo in concealing the information about the danger Fr. Freeman and Fr. Mach posed to minor children.

30. Prior to Plaintiff's abuse at Sacred Heart Church, Fr. Freeman was assigned to the position of priest at St. Margaret's Roman Catholic Church and St. Lawrence Roman Catholic. His duties included interacting with children, including altar boys, students, and children attending Defendants St. Margaret's Roman Catholic Church and St. Lawrence Roman Catholic Church and participating in the sacraments.

31. Prior to Plaintiff's abuse at Sacred Heart Church, Fr. Mach was assigned to the position of priest at St. Mary's Roman Catholic Church a/k/a St. Mary's Parish, Holy Cross Roman Catholic Church, St. Gerard's Roman Catholic Church, St. John Vianney Roman Catholic Church and St. Vincent De Paul Roman Catholic Church a/k/a St. John Paul II Parish Community. His duties included interacting with children, including altar boys, students, and children attending Defendants St. Mary's Roman Catholic Church a/k/a St. Mary's Parish, Holy Cross Roman Catholic Church, St. Gerard's Roman Catholic Church, St. John Vianney Roman Catholic Church and St. Vincent De Paul Roman Catholic Church a/k/a St. John Paul II Parish Community and participating in the sacraments.

32. In the performance of their duties, Defendants authorized Fr. Freeman and Fr. Mach to be alone with minor boys, and to have unfettered and unsupervised access to them on Defendants' property.

33. Defendants St. Margaret's Roman Catholic Church, St. Lawrence Roman Catholic Church, St. Mary's Roman Catholic Church A/K/A St. Mary's Parish, Holy Cross Roman Catholic Church, St. Gerard's Roman Catholic Church, St. John Vianney Roman Catholic Church and St. Vincent De Paul Roman Catholic Church a/k/a St. John Paul II Parish Community required parishioners and students, to accept and obey guidance, discipline, and instruction from Fr. Freeman, Fr. Mach and other clergy members.

34. By assigning Fr. Freeman and Fr. Mach to the roles of priests and parochial Vicars, Defendants Defendants St. Margaret's Roman Catholic Church, St. Lawrence Roman Catholic Church, St. Mary's Roman Catholic Church A/K/A St. Mary's Parish, Holy Cross Roman Catholic Church, St. Gerard's Roman Catholic Church, St. John Vianney Roman Catholic Church and St. Vincent De Paul Roman Catholic Church a/k/a St. John Paul II Parish Community gave Fr. Freeman and Fr. Mach complete unfettered access to minors, and empowered them to groom, guide, discipline, and otherwise exercise complete authority over minors.

35. 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 Fr. Freeman and Fr. Mach.

36. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to Fr. Freeman's and Fr. Mach's abuse of Plaintiff, and communicated as much with all levels of Church hierarchy including bishops, Diocesan leaders, and parishes. As such, at all relevant times, Defendants were well aware that errant sexual behavior by some priests was not only widespread but predictable.



37. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risks their facilities, agents, clergymen, appointees and employees posed to minor children, the risk of abuse in general, and the specific risks that Fr. Freeman and Fr. Mach posed to Plaintiff.

38. Prior to the time of Plaintiff's abuse by Fr. Freeman and Fr. Mach Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Diocese and elsewhere in the Roman Catholic Church, and knew that there was a specific danger of child sex abuse for children in their institutions.

39. The sexual abuse of Plaintiff by Fr. Freeman and Fr. Mach was foreseeable.

40. Prior to the time of Plaintiff's abuse by Fr. Freeman and Fr. Mach, Defendants knew or should have known of Fr. Freeman's and Fr. Mach's acts of child sexual abuse on other minors.

41. Defendants had the duty to reasonably manage, supervise, control and/or direct priests who served at their respective institutions, and a duty not to aid pedophiles such as Fr. Freeman and Fr. Mach by assigning, maintaining, and/or appointing them to positions with access to minors.

42. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to their facilities,; they undertook custody of minor children; they promoted their facilities and programs as being safe for children, they held out their agents, including Fr. Freeman and Fr. Mach, 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 Fr. Freeman and Fr. Mach, to spend time with, interact with, and recruit children.

43. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

44. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent 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 continues to suffer loss of spirituality; 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 in an amount that exceeds the jurisdictional limit of the lower courts of this State.

45. To the extent that any Defendants plead, or otherwise seek 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 Defendants' conduct falls within one or more of the subdivisions of CPLR 1602.

### **FIRST CAUSE OF ACTION**

#### **NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION**

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

47. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that Fr. Freeman and/or Fr. Mach were not fit to work with or around children.

48. Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Fr. Freeman's and/or Fr. Mach's propensity to commit sexual abuse and of the risk to Plaintiff's safety.

49. Defendants negligently retained Fr. Freeman and/or Fr. Mach with knowledge of their propensity for the type of behavior which resulted in Plaintiff's injuries.

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

51. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Fr. Freeman and/or Fr. Mach, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned him to Defendants' respective institutions, when Defendants knew or should have known of facts that would make him a danger to children; and Defendants were otherwise negligent.

52. Defendants were negligent and did not use reasonable care in their supervision and direction of Fr. Freeman and/or Fr. Mach, failed to monitor their activities, failed to oversee the manner in which they carried out the duties to which Defendants assigned them, even though they knew or should have known that Fr. Freeman and/or Fr. Mach posed a threat of sexual abuse to minors; allowed the misconduct describe above to occur and continue; failed to investigate Fr. Freeman and/or Fr. Mach dangerous activities and remove him from their premises; and Defendants were otherwise negligent.

53. Fr. Freeman and Fr. Mach would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Fr. Freeman and/or Fr. Mach.

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

55. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

56. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, in an amount that exceeds the jurisdictional limit of the lower courts of this State, together with interest and costs.

### **SECOND CAUSE OF ACTION**

#### **NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT**

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

58. Defendants were negligent and did not use reasonable care in their training, if any, of minors and/or their 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.

59. Defendants were negligent and did not use reasonable care in their training, if any, of 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 their statutory duty to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

60. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that clergy, including Fr. Freeman and Fr. Mach, did not pose a risk and/or that they did not have a history of sexually abusing children, and that children, would be safe in their care.

61. Defendants knew or should have known this representation was false and that employing clergy, including Fr. Freeman and Fr. Mach and giving them unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

62. Upon information and belief, Defendants covered up acts of abuse by Fr. Freeman and/or Fr. Mach and concealed facts concerning Fr. Freeman's and Fr. Mach's sexual misconduct from Plaintiff and his family.

63. Defendants were negligent and did not use reasonable care in their training, if any, of minor parishioners 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.

64. By failing to disclose the identities, histories and information about sexually abusive clergy in their employ, including Fr. Freeman and Fr. Mach, Defendants unreasonably deprived the families of children entrusted to their care, including Plaintiff, of the ability to protect their children.

65. Defendants failed to warn Plaintiff and his parents that Fr. Freeman and/or Fr. Mach posed a risk of child sexual assault.

66. The conduct of Defendants 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 Defendants were knowingly subjecting children in their charge, including Plaintiff, to sexual crimes.

67. Defendants' aforesaid actions were negligent, reckless, willful and wanton in their disregard for the rights and safety of children, including Plaintiff.

68. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

69. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, in an amount that exceeds the jurisdictional limit of the lower courts of this State, together with interest and costs.

### **THIRD CAUSE OF ACTION**

#### **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

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

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

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

73. Defendants knew or disregarded the substantial probability that Fr. would cause severe emotional distress to Plaintiff.

74. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

75. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

**FOURTH CAUSE OF ACTION**

**BREACH OF STATUTORY DUTIES TO REPORT**

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

77. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

78. Defendants willfully and/or knowingly breached their statutory duty by failing to report reasonable suspicion of abuse by Fr. Freeman and/or Fr. Mach of children in their care.

79. As a direct and proximate result of Defendants' foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

80. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

**FIFTH CAUSE OF ACTION**

**AIDING AND ABETTING FRAUD**

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

82. The Roman Catholic Bishop and Vicar General of Buffalo fraudulently

concealed from the parishioners of Defendants information that would have shown that Fr. Freeman and Fr. Mach were a danger to minor children.

83. Defendants had information that would have shown Fr. Freeman and/or Fr. Mach were a danger to minor children. Defendants assisted the Roman Catholic Bishop and Vicar General of Buffalo in fraudulently concealing information from the parishioners about the danger Fr. Freeman and/or Fr. Mach posed to parishioners.

84. If the information about the danger Fr. Freeman and/or Fr. Mach posed to minors had not been concealed from parishioners, Fr. Freeman and/or Fr. Mach could not have been assigned to the institutions where he sexually assaulted, sexually abused, and/or had sexual contact with the Plaintiff.

85. To assist Buffalo's Roman Catholic Bishop and Vicar General in fraudulently concealing the information about Fr. Freeman and Fr. Mach, Defendants failed to disclose Fr. Freeman's and Fr. Mach's propensity to sexually abuse minors, and intentionally concealed knowledge of Fr. Freeman's and Fr. Mach's inappropriate and unlawful sexual activities, knowing that minor children, including Plaintiff, in other parishes where Fr. Freeman and Fr. Mach were assigned would rely upon this material omission.

86. As a direct and proximate result of the foregoing misconduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

87. By reason of the foregoing, Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, 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**

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

Dated: May 19, 2021

Yours, etc.

**PHILLIPS & PAOLICELLI, LLP**

*/s/ Diane Paolicelli*

By: Diane Paolicelli  
[dpaolicelli@p2law.com](mailto:dpaolicelli@p2law.com)  
Michael DeRuve  
[mderuve@p2law.com](mailto:mderuve@p2law.com)  
747 Third Avenue, Sixth Floor  
New York, New York 10017  
212-388-5100

-and-

Paul K. Barr  
Fanizzi & Barr, P.C.  
2303 Pine Avenue  
Niagara Falls, NY 14301

716-284-8888  
[pbarr@fanizziandbarr.com](mailto:pbarr@fanizziandbarr.com)

*Attorneys for Plaintiff*

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF NIAGARA

<p>PB-4 Doe, a childhood victim of sexual assault,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>THE DIOCESE OF BUFFALO, N.Y., INC, ROMAN CATHOLIC CHURCH OF THE SACRED HEART, and ST. RAPHAEL ROMAN CATHOLIC PARISH,</p> <p style="text-align: center;">Defendants.</p>
--

**SUMMONS**

Index No.:

**TO THE ABOVE NAMED DEFENDANTS:**

**PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED** to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Dated: New York, New York  
September 9, 2019

Yours, etc)




---

Paul K. Barr  
**FANIZZI & BARR, P.C.**  
*Attorneys for Plaintiff*  
 2303 Pine Avenue  
 Niagara Falls, NY 14301  
 716-284-8888  
 pbarr@fanizziandbarr.com

{00045681}

-and-

Diane Paolicelli  
**PHILLIPS & PAOLICELLI, LLP**  
*Attorneys for Plaintiff*  
747 Third Avenue, Sixth Floor  
New York, New York 10017  
212-388-5100  
[dpaolicelli@p2law.com](mailto:dpaolicelli@p2law.com)

{00045681}

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF NIAGARA

<p>PB-4 Doe, a childhood victim of sexual assault,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>THE DIOCESE OF BUFFALO, N.Y., INC, ROMAN CATHOLIC CHURCH OF THE SACRED HEART, and ST. RAPHAEL ROMAN CATHOLIC PARISH,</p> <p style="text-align: center;">Defendants.</p>
--

**COMPLAINT**

Index No.:

Plaintiff PB-4 Doe, by his undersigned attorneys, for his Complaint, alleges on personal knowledge as to himself and on information and belief as to other matters, as follows:

**NATURE OF THE ACTION**

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Plaintiff PB-4 Doe was sexually abused, assaulted and molested by Father Michael Freeman (“Fr. Freeman”) and Father Bernard Mach (“Fr. Mach”) -- priests hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants, the Diocese of Buffalo, N.Y. and the Roman Catholic Church of the Sacred Heart in Niagara Falls.
3. The sexual abuse of Plaintiff began when he was about 15 years old and continued for approximately two years.
4. Despite years of refusal to publically address rampant child abuse by priests, Defendant the Diocese of Buffalo recently published a long list of “priests with substantiated claims of sexual abuse of a minor.” That list expressly includes both Fr. Freeman and Fr. Mach, who victimized many children.

{00045681}

5. In fact, the Roman Catholic Church and Defendants have long known that substantial numbers of priests 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 parishioners, in particular children like Plaintiff who are entrusted to their spiritual care and guidance. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to Defendants.

6. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendants negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse by Fr. Freeman and Fr. Mach, permitted the abuse to occur, neglected to adequately supervise Fr. Freeman and Fr. Mach, failed to timely investigate Fr. Freeman's and Fr. Mach's misconduct, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for Fr. Freeman's and Fr. Mach's sexual assault of Plaintiff and his consequential injuries and damages.

#### **PARTIES**

7. Plaintiff is an individual who resides in the State of Oregon. At the time of the events complained of, he was a minor residing in Niagara County, N.Y.

8. Plaintiff was born in 1964.

9. Defendant The Diocese of Buffalo, N.Y., Inc. ("Diocese") is a New York not-for-profit corporation, organized pursuant to the laws of the State of New York, and which operated at all relevant times in Niagara County, New York, with its principal place of business at 795 Main Street, Buffalo, New York 14206.

10. At all relevant times the Diocese oversaw, managed, controlled, directed and operated parishes, churches and schools for minor children within the Diocese.

{00045681}

11. Defendant Roman Catholic Church of the Sacred Heart (“Sacred Heart”) was a not-for-profit corporation organized pursuant to the laws of the State of New York and at all relevant times was located in Niagara County, N.Y., at 1112 South Ave, Niagara Falls, New York 14305.

12. Defendant St. Raphael Roman Catholic Parish (“St. Raphael”) is and was a not-for-profit corporation organized pursuant to the laws of the State of New York, and at all relevant times was and is located at 3840 Macklem Avenue, Niagara Falls, New York 14305.

13. In or about March 2008, Defendant Sacred Heart merged with another parish within the Diocese, known as St. Teresa of the Infant Jesus. The two merged parishes formed St. Raphael. Upon information and belief, St. Raphael assumed some or all of the liabilities and/or assets of Sacred Heart.

14. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and operated Defendant Sacred Heart and Defendant St. Raphael.

15. At all relevant times, Defendant Diocese owned the premises where Defendant Sacred Heart and Defendant St. Raphael were located.

16. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and assigned priests and lay teachers to work in parishes, churches and schools that were under the authority of the Diocese, including Defendant Sacred Heart and Defendant St. Raphael.

#### **FACTUAL ALLEGATIONS**

17. At all relevant times, Plaintiff and his family were parishioners of Defendant Sacred Heart.

18. At all relevant times, Fr. Freeman was a Roman Catholic priest employed by Defendant Diocese and assigned to Defendant Sacred Heart.

{00045681}

3

19. At all relevant times, Fr. Freeman was under the direct supervision and control of the Defendant Diocese and Defendant Sacred Heart. His assigned duties included, *inter alia*, serving as priest and as pastor. His duties also included interacting with, mentoring and counseling children.

20. In or about November 1981, Fr. Freeman was abruptly transferred away from Sacred Heart. Freeman was replaced by Father Bernard Mach (“Mach”).

21. At all relevant times, Fr. Mach was a Roman Catholic priest employed by Defendant Diocese and assigned to Defendant Sacred Heart.

22. At all relevant times Fr. Mach was under the direct supervision and control of Defendant Diocese and Defendant Sacred Heart. Fr. Mach’s assigned duties included, *inter alia*, serving as priest and associate pastor. His duties also included interacting with, mentoring and counseling children.

23. At all relevant times Defendants authorized Fr. Freeman and Fr. Mach to be alone with children, including Plaintiff, and to have unfettered and unsupervised access to them.

24. Defendants authorized Fr. Freeman and Fr. Mach to have physical contact with minors, in a manner consistent with providing discipline, counseling, educational and spiritual guidance, and leadership.

25. Defendants required students, like Plaintiff, to accept discipline and instruction from clergy in their employ, including Fr. Freeman and Fr. Mach, and to obey their orders.

26. 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.

27. Beginning in or about 1980, and repeatedly during the approximate period that Plaintiff was in 9<sup>th</sup> and/or 10<sup>th</sup> grades, Fr. Freeman engaged in unpermitted, forcible and harmful

{00045681}



sexual contact with Plaintiff, and otherwise sexually abused him. This sexual abuse took place in the Sacred Heart rectory and/or other areas owned by Defendants.

28. Beginning in or about 1981 – 1982, during the approximate period when plaintiff was in the 11<sup>th</sup> and/or 12<sup>th</sup> grades, Fr. Mach engaged in unpermitted, forcible and harmful sexual contact with Plaintiff, and otherwise sexually abused him. This sexual abuse took place in the Sacred Heart rectory and/or other areas owned by Defendants.

29. In his efforts to groom Plaintiff into sexual submission, Fr. Mach illegally plied Plaintiff, a minor, with alcohol.

30. Fr. Mach threatened Plaintiff never to divulge his sexual misconduct, or Plaintiff would “go to hell.”

31. Plaintiff’s relationship to Defendants as a vulnerable child, and the culture of the Catholic Church which Defendants endorsed, put pressure on Plaintiff not to report the sexual molestation and abuse he endured at the hands of clergy and lay teachers in Defendants’ employ.

32. Defendants knew or should have known that Fr. Freeman and Fr. Mach were dangers to minor boys like Plaintiff, before the sexual abuse of Plaintiff occurred.

33. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to the abuse of Plaintiff, and communicated as much with all levels of Church hierarchy including bishops and other Diocesan leaders. Over the centuries, various Popes passed Church decrees and legislation condemning such offenses, including a clerical crime known as “solicitation,” engaging in sexual contact with an adult or a child during administration of the sacrament of confession.

34. As such, at all relevant times, Defendants were well aware that errant sexual behavior by some priests was not only widespread but predictable.

{00045681}

5

35. Upon information and belief, not only was Defendant Diocese aware of sexual abuse of children, but it participated in covering up such heinous acts by moving errant priests and clergy members from assignment to assignment, thereby putting children in harm's way.

36. Prior to the time of Plaintiff's abuse Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Diocese and elsewhere in the Roman Catholic Church, and knew that there was a specific danger of child sex abuse for children in their institutions and programs.

37. The sexual abuse of Plaintiff described above was foreseeable.

38. Prior to the time of Plaintiff's abuse by Fr. Freeman and Fr. Mach, Defendants knew or should have known of acts of child sexual abuse by each of these individuals.

39. In March, 2018, the Diocese admitted publically that both Fr. Freeman and Fr. Mach were among the many Diocesan priests "with substantiated claims of sexual abuse of a minor."

40. In fact, Freeman admitted to sexually violating children in at least five of his six ministry assignments, which began in 1972.

41. Nevertheless, the Diocese never notified law enforcement officials of Fr. Freeman's and/or Fr. Mach's illegal activities, and, upon information and belief, permitted each of them to remain in active ministry for years despite knowing of their predatory and criminal behavior.

42. The conduct alleged herein would constitute a sexual offense as defined in article one hundred thirty of the penal law.

43. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risks their facilities posed to minor children, the risk of abuse in general, and the risks that Fr. Freeman and Fr. Mach posed to Plaintiff.

44. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited parents and their children to join Sacred Hearth Parish and participate in services and activities at Sacred Heart Church; they undertook custody of minor children, including Plaintiff; they promoted their facilities and programs as being safe for children, they held out their agents, including Fr. Freeman and Fr. Mach as safe to work with and around minors, they encouraged parents to have their children spend time with their agents; and/or authorized their agents, including Fr. Freeman and Fr. Mach to spend time with, interact with, and recruit children.

45. Defendants owed Plaintiff a heightened, fiduciary duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect himself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

46. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

47. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent 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 continues to suffer loss of spirituality; 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.

**COUNT I**

**NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION**

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

49. At all relevant times Defendants had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of its clergy, including Fr. Freeman and Fr. Mach, so as to protect minor children, including Plaintiff, who were likely to come into contact with, and/or under the influence or supervision of them, and to ensure that Fr. Freeman and Fr. Mach did not use their assigned positions to injure minors by sexual assault, contact or abuse.

50. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Fr. Freeman and Fr. Mach, failed to properly investigate their background and employment history, and/or hired, appointed and/or assigned Fr. Freeman and Fr. Mach to Defendant Sacred Heart when Defendants knew or should have known of facts that would make them a danger to children; and Defendants were otherwise negligent.

51. Defendants were negligent and did not use reasonable care in their supervision and direction of Fr. Freeman and Fr. Mach, failed to monitor their activities, failed to oversee the manner in which they carried out the duties to which Defendants assigned them, even though they knew or should have known that Fr. Freeman and Fr. Mach each posed a threat of sexual abuse to minors; allowed the misconduct described above to occur; failed to investigate Fr.

Freeman and Fr. Mach's dangerous activities and remove them from their premises; and Defendants were otherwise negligent.

52. Fr. Freeman would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Fr. Freeman.

53. Fr. Mach would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Fr. Mach.

54. At all relevant times, Fr. Freeman and Fr. Mach acted in the course and scope of their employment with Defendants.

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

56. Plaintiff suffered grave injury as a result of the foregoing sexual abuse and misconduct, including physical, psychological and emotional injury as described above.

57. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

**COUNT II**

**NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT**

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

59. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that clergy working in the Diocese, including Fr. Freeman and Fr. Mach, 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.

60. Defendants knew or should have known this representation was false and that employing Fr. Freeman and Fr. Mach and giving them unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

61. Defendant Diocese maintained a policy and practice of covering up criminal activity committed by clergy members within the Diocese.

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

63. Defendants failed to report multiple allegations of sexual abuse by their employees, agents and representatives, to the proper authorities, thereby putting children at risk of sexual assault.

64. Upon information and belief, Defendants covered up acts of abuse by Fr. Freeman and Fr. Mach, and concealed facts concerning their sexual misconduct from Plaintiff and his family.

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

66. Defendants failed to warn Plaintiff and his parents that Fr. Freeman and Fr. Mach each posed a risk of child sexual assault.

67. The conduct of Defendants 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 Defendants were knowingly subjecting children in their charge, including Plaintiff, to sexual crimes.

{00045681}

10

68. Defendants' aforesaid actions were negligent, reckless, willful and wonton in their disregard for the rights and safety of children, including Plaintiff.

69. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

70. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

**COUNT III**

**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

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

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

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

74. Defendants knew or disregarded the substantial probability that Fr. Freeman and/or Fr. Mach would cause severe emotional distress to Plaintiff.

75. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

76. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

**COUNT IV**

**PREMISES LIABILITY**

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

78. At all relevant times, Defendants owned, operated, and /or controlled the premises of Defendant Sacred Heart, including the areas where the sexual abuse of Plaintiff occurred.

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

80. Defendants 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.

81. Defendants willfully, recklessly, and negligently failed to provide a reasonably safe premises that were free from the presence of sexual predators and/or the assault by the occupants of the premises, including Fr. Freeman and Fr. Mach. Defendants thereby breached their duty of care to Plaintiff.

82. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.



83. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

**COUNT V**

**BREACH OF FIDUCIARY DUTY**

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

85. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendants. The entrustment of Plaintiff to the care and supervision of the Defendants while Plaintiff was a vulnerable child, imposed upon Defendants a fiduciary duty to act in the best interests of Plaintiff.

86. Defendants were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

87. By reason of the foregoing, Defendants breached their fiduciary duties to Plaintiff.

88. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

89. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

**COUNT VI**

**BREACH OF DUTY IN LOCO PARENTIS**

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

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

92. By reason of the foregoing, Defendants breached their duties to act *in loco parentis*.

93. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

94. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

**COUNT VII**

**BREACH OF STATUTORY DUTIES TO REPORT**

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

96. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

97. Defendants breached their statutory duty by failing to report reasonable suspicion of abuse by Fr. Freeman and by Fr. Mach of children in their care.

{00045681}

14

98. As a direct and proximate result of Defendants' foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

99. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount 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.

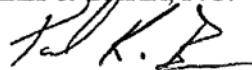
**JURY TRIAL DEMANDED**

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

Dated: New York, New York  
September 9, 2019

Yours, etc.

**FANIZZI & BARR, P.C.**



By: Paul K. Barr  
*Attorneys for Plaintiff*  
2303 Pine Avenue  
Niagara Falls, NY 14301  
716-284-8888  
[pbarr@fanizziandbarr.com](mailto:pbarr@fanizziandbarr.com)

{00045681}

-and-

**PHILLIPS & PAOLICELLI, LLP**

Diane Paolicelli  
*Attorneys for Plaintiff*  
747 Third Avenue, Sixth Floor  
New York, New York 10017  
212-388-5100  
[dpaolicelli@p2law.com](mailto:dpaolicelli@p2law.com)

{00045681}