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

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

<b>NYS UCS Case Number</b>	<b>Alleged Perpetrator</b>	<b>Defendant #</b>	<b>Defendants</b>	<b>Plaintiff</b>
510647/2021	McComiskey, Fr. Joseph	3	St. Joseph RC Church & School Babylon NY, Franciscan Brothers of Brooklyn, & Joseph McComiskey.	DOE, PC-50

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF KINGS

<p>PC-50 DOE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>ST. JOSEPH ROMAN CATHOLIC CHURCH AT BABYLON IN THE COUNTY OF SUFFOLK IN THE STATE OF NEW YORK (d/b/a ST. JOSEPH CATHOLIC SCHOOL AND ST. JOSEPH ROMAN CATHOLIC CHURCH), FRANCISCAN BROTHERS, INC. (d/b/a FRANCISCAN BROTHERS OF BROOKLYN), AND JOSEPH MCCOMISKEY,</p> <p style="text-align: center;">Defendants.</p>
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Index No.

**SUMMONS**

Plaintiff designates the County of Kings as the place of trial. The basis of venue is Defendant FRANCISCAN BROTHERS, INC. (d/b/a FRANCISCAN BROTHERS OF BROOKLYN) principal place of business.

***TO THE ABOVE NAMED DEFENDANTS:***

***You are hereby summoned*** to answer in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not to 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: May 3, 2021  
New York, New York

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To:

ST. JOSEPH ROMAN CATHOLIC CHURCH AT BABYLON IN THE COUNTY OF  
SUFFOLK IN THE STATE OF NEW YORK (d/b/a ST. JOSEPH CATHOLIC SCHOOL AND  
ST. JOSEPH ROMAN CATHOLIC CHURCH)  
39 N CARLL AVE  
BABYLON, NY 11702

FRANCISCAN BROTHERS, INC.  
(d/b/a FRANCISCAN BROTHERS OF BROOKLYN)  
135 REMSEN STREET  
BROOKLYN, NY 11201

JOSEPH MCCOMISKEY  
271 LORENZO CIR  
RONKONKOMA, NY 11779-2287

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STATE OF NEW YORK  
SUPREME COURT: COUNTY OF KINGS

<p>PC-50 DOE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>ST. JOSEPH ROMAN CATHOLIC CHURCH AT BABYLON IN THE COUNTY OF SUFFOLK IN THE STATE OF NEW YORK (d/b/a ST. JOSEPH CATHOLIC SCHOOL AND ST. JOSEPH ROMAN CATHOLIC CHURCH), FRANCISCAN BROTHERS, INC. (d/b/a FRANCISCAN BROTHERS OF BROOKLYN), AND JOSEPH MCCOMISKEY,</p> <p style="text-align: center;">Defendants.</p>
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**COMPLAINT**

Index No.:

Plaintiff PC-50 DOE, by and through his undersigned attorneys, as and for his Complaint, alleges as follows:

**NATURE OF THE ACTION**

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Plaintiff PC-50 Doe was repeatedly sexually abused and assaulted by the person known as Fr. Joseph McComiskey, who was hired, retained, supervised, placed, directed, and otherwise authorized to act by Defendants St. Joseph Roman Catholic Church at Babylon in the County of Suffolk in the State of New York (d/b/a St. Joseph Catholic School and St. Joseph Roman Catholic Church) (hereinafter "St. Joseph"), and Franciscan Brothers, Inc., (d/b/a Franciscan Brothers of Brooklyn), in conjunction with the Diocese of Rockville Centre, N.Y. (herein "Diocese").

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3. In or about 1974, when Plaintiff was about 15 years old, he was abused by McComiskey while a parishioner, student, and/or altar boy at Defendant St. Joseph.

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 and others, in particular with 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.

5. At all relevant times, McComiskey was hired, retained, supervised, placed, directed and otherwise authorized to act by the Defendants, in conjunction with the Diocese.

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 McComiskey, permitted the abuse to occur, failed to supervise McComiskey, failed to timely investigate McComiskey's misconduct, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for McComiskey's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

#### **PARTIES**

7. Plaintiff is an individual residing in Suffolk County, New York.

8. Plaintiff was born in 1958.

9. At all relevant times, Defendant St. Joseph was and still is a Roman Catholic parish and school, organized pursuant to the laws of the State of New York and located at 39 N. Carll Ave, Babylon, NY 11702.

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10. At all relevant times, Defendant St. Joseph was and still is under the direct authority, control and province of the Diocese.

11. At all relevant times, Defendant St. Joseph owned the premises where Defendant St. Joseph was located.

12. At all relevant times, Defendant St. Joseph oversaw, managed, controlled, directed and operated Defendant St. Joseph.

13. At all relevant times, Defendants oversaw, managed, controlled, directed, and assigned priests and other clergy to work in parishes, churches, and schools of the Diocese, including Defendant St. Joseph.

14. At all relevant times, Defendant Franciscan Brothers, Inc., (d/b/a Franciscan Brothers of Brooklyn) (hereinafter “Franciscan Brothers”), was and still is a not for profit corporation, organized pursuant to the laws of the State of New York and located at 135 Remsen Street, Brooklyn, NY 11201.

15. At all relevant times, Defendant Franciscan Brothers employed, oversaw, managed, controlled, directed, and supervised McComiskey.

16. At all relevant times, Joseph McComiskey was a Roman Catholic priest employed by or under the control of the Defendants.

#### **FACTUAL ALLEGATIONS**

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

18. At all relevant times, Plaintiff was a parishioner, student, and/or altar boy at St. Joseph.

19. At all relevant times, McComiskey were under the direct supervision, employ, and control of the Defendants.

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20. During the time that Plaintiff was an altar boy and student at Defendant St. Joseph, Defendants assigned McComiskey to supervise and teach children at Defendant St. Joseph.

21. By assigning McComiskey to teach and supervise children, Defendants gave McComiskey complete access to minors, including Plaintiff, and empowered him to exercise complete authority over minors.

22. McComiskey's duties and responsibilities included teaching, supervising, interacting with, mentoring, and counseling minor boys.

23. In the performance of their duties, Defendants authorized McComiskey to be alone with minor boys, including Plaintiff, and to have unfettered and unsupervised access to them on Defendants' property.

24. Defendants also authorized McComiskey to have physical contact with minor boys, 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 McComiskey and other clergy and teachers, and to obey their instructions.

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, including McComiskey.

27. During Plaintiff's time at Defendant St. Joseph, McComiskey, acting in his capacity as a priest/teacher, and in furtherance of the business of Defendants, singled Plaintiff out for sexual abuse.

28. On multiple occasions, McComiskey sexually abused Plaintiff by engaging in unpermitted, forcible, and harmful sexual contact with Plaintiff.

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29. McComiskey threatened Plaintiff to ensure Plaintiff stayed silent about the abuse.

30. In addition to these threats, Plaintiff's relationship to Defendants as a vulnerable child and student, and the culture of the Catholic Church which Defendants endorsed, put pressure on Plaintiff not to report McComiskey's abuse or his threats.

31. Defendants knew or should have known that McComiskey was a danger to minor boys like Plaintiff before he sexually abused Plaintiff.

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

33. Upon information and belief, not only were Defendants aware of sexual abuse of children, but they 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.

34. 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 McComiskey posed to Plaintiff.

35. Prior to the time of Plaintiff's abuse by McComiskey, 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.

36. The sexual abuse of Plaintiff by McComiskey was foreseeable.

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37. Prior to the time of Plaintiff's abuse by McComiskey, Defendants knew or should have known of McComiskey's acts of child sexual abuse on other minors.

38. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to St. Joseph; 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 McComiskey, 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 McComiskey, to spend time with, interact with, and recruit children.

39. 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.

40. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm 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 will continue to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses

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for medical and psychological treatment, and was otherwise damaged in an amount that exceeds the jurisdictional limits of all courts of limited jurisdiction.

42. 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.

### **COUNT I**

#### **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 McComiskey 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 McComiskey's propensity to commit sexual abuse and of the risk to Plaintiff's safety.

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

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

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48. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention of McComiskey, failed to properly investigate his background and employment history, and/or hired, appointed, and/or assigned him to Defendant St. Joseph 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 McComiskey, failed to monitor his 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 McComiskey posed a threat of sexual abuse to minors; allowed the misconduct describe above to occur and continue; failed to investigate McComiskey's dangerous activities and remove him from their premises; and Defendants were otherwise negligent.

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

51. At all relevant times, McComiskey 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. Plaintiff suffered grave injury as a direct result of McComiskey's sexual abuse and misconduct, including physical, psychological and emotional injury as described above.

54. As a direct and proximate result of Defendants' sexual abuse and misconduct, Plaintiff suffered grave injury including physical, psychological, and emotional injury as described above.

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55. By the reason of the foregoing, Defendants are 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

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

57. 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 McComiskey, 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.

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

59. Defendants were negligent and did not use reasonable care in their training, if any, of minors about the risk of sexual abuse in their institution or facilities, to identify signs of sexual abuse, grooming behaviors, and sexual predators, and to report suspicions that a minor was abused, maltreated, groomed, and/or otherwise sexually abused.

60. 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 or facilities, to identify signs of sexual abuse, grooming behaviors, and sexual predators, and their statutory duty to report suspicions that a minor was abused, maltreated, groomed, and/or otherwise sexually abused.

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61. Defendants carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice for making hiring and assignment decisions, so as to protect vulnerable children in their care from sexual abuse.

62. Defendants carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice to monitor, supervise or oversee McComiskey's interactions with minor students such as Plaintiff, in order to keep them safe from sexual abuse. Defendants maintained a policy and practice of covering up criminal activity committed by clergy members within the Diocese.

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

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

66. 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.

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

68. Upon information and belief, Defendants covered up acts of abuse by McComiskey, and concealed facts concerning McComiskey's sexual misconduct from Plaintiff and his family.

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

70. Defendants failed to warn Plaintiff and his parents that McComiskey posed a risk of child sexual assault.

71. 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.

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

73. 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.

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74. By the reason of the foregoing, Defendants are 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**

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

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

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

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

79. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury 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, plus interest and costs.

### **COUNT IV**

#### **PREMISES LIABILITY**

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

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82. At all relevant times, Defendants owned, operated, and /or controlled the premises known as St. Joseph, including the areas where the sexual abuse of Plaintiff occurred.

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

84. 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.

85. Defendants willfully, recklessly, and negligently failed to provide reasonably safe premises free from the presence of sexual predators and/or the assault by the occupants of the premises, including McComiskey. Defendants thereby breached their duty of care of Plaintiff.

86. 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.

87. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

#### **COUNT V**

#### **BREACH OF FIDUCIARY DUTY**

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

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

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

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

92. 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.

93. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

#### **COUNT VI**

#### **BREACH OF DUTY *IN LOCO PARENTIS***

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

95. 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.

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

97. 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.

98. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

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**COUNT VII****BREACH OF STATUTORY DUTIES TO REPORT**

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

100. 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.

101. Defendants breached their statutory duty by willfully and knowingly failing to report reasonable suspicion of abuse by McComiskey of children in their care.

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

103. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus 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**

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

Dated: May 3, 2021

Yours, etc.

**PHILLIPS & PAOLICELLI, LLP**

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