



Fr. Gerard Smyczynski Assignment History

This assignment history corrects other publicly available histories of Fr. Gerard Smyczynski. Others have incorrect dates, and diocesan directories incorrectly refer to him as Gerald.

Year	Assignment	Location
Unknown, likely 1980	Ordination	Diocese of Buffalo
1980-81	Parochial Vicar	Our Mother of Good Counsel Church & School; Blasdell, NY
1981-82	Parochial Vicar	Infant of Prague Church & School; Cheektowaga, NY
1982-83	Sick leave	Unknown
1983-99	Not listed in any directory; No indication of laicization	Unknown
1999	Deceased at age 46	St. Stanislaus Cemetery; Cheektowaga, NY

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

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

NYS UCS Case Number	Alleged Perpetrator	Defendant #	Defendants	Plaintiff
810929/2021	Smyczynski, Fr. Gerard A.	5	Infant of Prague Church & School et al	DOE, PB-83
817374/2019	Smyczynski, Fr. Gerard A.	4	Diocese of Buffalo, Infant of Prague Church & School & Bishop Donald W. Trautman.	PB-14 DOE
807475/2020	Smyczynski, Fr. Gerard A.	6	Infant of Prague Church, School, Donald W. Trautman, Our Mother of Good Counsel Church, St. Edmund Church & St. Christopher RC Church.	PB-27 DOE
808440/2020	Smyczynski, Fr. Gerard A.	3	Our Mother of Good Counsel Church, St. Edmund Church & St. Christopher RC Church.	PB-30 Doe

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TO:

INFANT OF PRAGUE CHURCH, INC.

921 Cleveland Drive
Cheektowaga, NY 14225

INFANT OF PRAGUE SCHOOL

921 Cleveland Drive
Cheektowaga, NY 14225

OUR MOTHER OF GOOD COUNSEL CHURCH

3688 S. Park Drive
Blasdell, NY 14219

ST. EDMUND CHURCH

530 Ellicott Creek Road,
Tonawanda, NY 14150

ST. CHRISTOPHER ROMAN CATHOLIC CHURCH

2660 Niagara Falls Blvd.
Tonawanda, NY 14150

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-83 DOE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>INFANT OF PRAGUE CHURCH INC., INFANT OF PRAGUE SCHOOL, OUR MOTHER OF GOOD COUNSEL CHURCH, ST. EDMUND CHURCH, and ST. CHRISTOPHER ROMAN CATHOLIC CHURCH,</p> <p style="text-align: center;">Defendants.</p>
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COMPLAINT

Index No.:

Plaintiff PB-83 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 was sexually abused, assaulted and molested by a priest, whose name is known to Defendants and will be revealed during discovery, referred herein as Father Gerard A. Smyczynski (“Fr. Smyczynski”) –a priest hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants INFANT OF PRAGUE CHURCH INC., INFANT OF PRAGUE SCHOOL, OUR MOTHER OF GOOD COUNSEL CHURCH, ST. EDMUND CHURCH, and ST. CHRISTOPHER ROMAN CATHOLIC CHURCH (herein “Defendants”) in conjunction with the Diocese of Buffalo, N.Y. (“Diocese or Buffalo Diocese”).

3. From about 1981 to 1982, starting when Plaintiff was approximately 14 years old, Plaintiff was sexually abused by Fr. Smyczynski while a parishioner at Infant of Prague Church and Infant of Prague School.

4. To date, there is another CVA complaint against Infant of Prague Church which alleges their priests sexually abused minor parishioners.¹

5. 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. Smyczynski, who is now deceased.

6. 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.

7. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendant negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse by Fr. Smyczynski, permitted the abuse to occur, neglected to adequately supervise Fr. Smyczynski, failed to timely investigate Fr. Smyczynski'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

¹ See PB-14 v. Buffalo Diocese of N.Y., et al., Index No. 817374/2019.

detriment of innocent children, and are otherwise responsible for Fr. Smyczynski's sexual assault of Plaintiff and his consequential injuries and damages.

PARTIES

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

9. Plaintiff was born in 1966.

10. At all relevant times, Infant of Prague Church of Cheektowaga, N.Y. 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 921 Cleveland Drive, Cheektowaga, NY 14225. At all relevant and material times, the Roman Catholic Bishop of Cheektowaga, New York was the President of Infant of Prague Church, and the Roman Catholic Vicar General of Cheektowaga, New York was the Vice-President of Infant of Prague Church.

11. At all relevant times, Infant of Prague School of Cheektowaga, N.Y. 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 921 Cleveland Drive, Cheektowaga, NY 14225. At all relevant and material times, the Roman Catholic Bishop of Cheektowaga, New York was the President of Infant of Prague School, and the Roman Catholic Vicar General of Cheektowaga, New York was the Vice-President of Infant of Prague School.

12. At all relevant times, Our Mother of Good Counsel Church of Blasdell, 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 3688 S. Park Ave, Blasdell, New York 14219. At all relevant and material times, the Roman Catholic Bishop of Blasdell, New York was the President of Our Mother of Good Counsel Church, and the Roman

Catholic Vicar General of Blasdell, New York was the Vice-President Our Mother of Good Counsel Church.

13. At all relevant times, St. Edmund Church of Tonawanda, N.Y. 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 530 Ellicott Creek Road, Tonawanda, NY 14150. At all relevant and material times, the Roman Catholic Bishop of Tonawanda, New York was the President of St. Edmund Church, and the Roman Catholic Vicar General of Tonawanda, New York was the Vice-President of St. Edmund Church.

14. On or about 2007, St. Edmund Church of Tonawanda, N.Y. merged with and adopted the name of St. Christopher Roman Catholic Church. St. Christopher Roman Catholic Church is in Erie County, New York, with its principal place of business at 2660 Niagara Falls Blvd., Tonawanda, NY 14150. Upon information and belief, Defendant St. Christopher Roman Catholic Church assumed some or all of the liabilities and/or assets of Defendant St. Edmund Church.

15. At all relevant times, Infant of Prague Church oversaw, managed, controlled, and directed agents, clergy members, priests, parishioners of Infant of Prague Church.

16. At all relevant times, the Diocese of Buffalo operated and owned the premises where Defendant Infant of Prague Church and Infant of Prague School is located.

17. At all relevant times, Defendants Infant of Prague Church Inc., Infant of Prague School, Our Mother of Good Counsel Church, St. Edmund Church, and St. Christopher Roman Catholic Church were and/or are still under the direct authority, control, and province of the Diocese of Buffalo.

FACTUAL ALLEGATIONS

18. At all relevant times, Plaintiff was a parishioner and student of Defendant Infant of Prague Church and Infant of Prague School.

19. Fr. Smyczynski was ordained a Roman Catholic priest in approximately 1980.

20. Prior to the sexual abuse of Plaintiff, in approximately 1980-1981 Fr. Smyczynski served as Parochial Vicar at Defendant Our Mother of Good Counsel Church. Also prior to the sexual abuse of Plaintiff, Fr. Smyczynski was affiliated with St. Edmund Church. These Defendants each negligently retained Fr. Smyczynski 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.

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

22. The Roman Catholic Bishop and Vicar General of Buffalo concealed the information about the danger Fr. Smyczynski posed to minor children, in order that the Roman Catholic Bishop and Vicar General of Buffalo could assign Fr. Smyczynski 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. Smyczynski posed to minor children.

23. Fr. Smyczynski 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.

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

25. At all relevant times, Fr. Smyczynski 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, attending Defendants Infant of Prague Church and Infant of Prague School.

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

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

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

29. 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.

30. When Plaintiff was approximately 14 to 15 years old, on or about 1981-1982, Fr. Smyczynski engaged in unpermitted, forcible and harmful sexual contact with Plaintiff, and otherwise sexually abused him. This sexual abuse took place on the premises of Defendant Infant of Prague Church.

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

32. 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. Smyczynski.

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

34. 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.

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

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. Smyczynski, Defendants knew or should have known of other acts of child sexual abuse by Fr. Smyczynski.

39. 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. Smyczynski posed to Plaintiff.

40. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited parishioners and others to send their children to Infant of Prague Church; 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. Smyczynski, 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. Smyczynski to spend time with, interact with, and recruit children.

41. 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.

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

43. 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.

44. 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.

AS TO ALL DEFENDANTS

FIRST CAUSE OF ACTION

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

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

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

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

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

49. 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. Smyczynski 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. Smyczynski did not use his assigned position 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. Smyczynski, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned Fr. Smyczynski to Defendant Infant of Prague Church when Defendants knew or should have known of facts that would make him 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. Smyczynski, 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. Smyczynski posed a threat of sexual abuse to minors; allowed the misconduct described above to occur; failed to investigate Fr. Smyczynski's dangerous activities and remove him from their premises; and Defendants were otherwise negligent.

52. Fr. Smyczynski 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. Smyczynski.

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

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 Fr. Smyczynski's and Defendants' misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury as described above.

56. 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

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

58. 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. Smyczynski, 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.

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

60. 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.

61. 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.

62. 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.

63. 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.

64. Upon information and belief, Defendants covered up acts of abuse by Fr. Smyczynski, and concealed facts concerning his 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. Smyczynski 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.

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 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

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. Smyczynski 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 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

AIDING AND ABETTING FRAUD

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

78. The Roman Catholic Bishop and Vicar General of Buffalo fraudulently concealed from the parishioners of Defendants information that would have shown that Fr. Smyczynski was a danger to minor children.

79. Defendants had information that would have shown Fr. Smyczynski was 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. Smyczynski posed to parishioners.

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

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

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

83. 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.

FIFTH CAUSE OF ACTION**BREACH OF STATUTORY DUTIES TO REPORT**

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

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

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

87. 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.

88. 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.

AS TO DEFENDANTS INFANT OF PRAGUE CHURCH INC. AND INFANT OF PRAGUE SCHOOL**SIXTH CAUSE OF ACTION****PREMISES LIABILITY**

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

90. At all relevant times, Defendants owned, operated, and /or controlled the premises of Defendant Infant of Prague Church and School, including the areas where the sexual abuse of Plaintiff occurred.

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

92. 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.

93. 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. Smyczynski. Defendant thereby breached its duty of care to Plaintiff.

94. 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.

95. 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.

SEVENTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

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

97. 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 Defendant a fiduciary duty to act in the best interests of Plaintiff.

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

99. By reason of the foregoing, Defendants breached its fiduciary duties to Plaintiff.

100. 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.

101. 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.

EIGHTH CAUSE OF ACTION

BREACH OF DUTY IN LOCO PARENTIS

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

103. 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.

104. By reason of the foregoing, Defendants breached its duties to act in loco parentis.

105. 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.

106. 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

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

Dated: New York, New York

August 9, 2021

Phillips & Paolicelli, LLP
Attorneys for Plaintiffs

/s/ Michael DeRuve
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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB- 14 Doe,</p> <p style="text-align: center;">Plaintiff,</p> <p>-against-</p> <p>THE DIOCESE OF BUFFALO, N.Y., INFANT OF PRAGUE CHURCH INC., INFANT OF PRAGUE SCHOOL, and BISHOP DONALD W. TRAUTMAN,</p> <p style="text-align: center;">Defendants.</p>

SUMMONS

Index No.:

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
December 30, 2019

Phillips & Paolicelli, LLP
Attorneys for Plaintiffs



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THE DIOCESE OF BUFFALO, N.Y.

795 Main Street
Buffalo, New York 14206

INFANT OF PRAGUE CHURCH, INC.

69 Ohara Road
Tonawanda, NY 14150

INFANT OF PRAGUE SCHOOL

921 Cleveland Dr.
Cheektowaga, NY 14225

DONALD W. TRAUTMAN

1324 S. Shore Dr. Apt. 207
Erie, PA 16505

DONALD W. TRAUTMAN

429 East Grandview Blvd
Erie, PA 16504

DONALD W. TRAUTMAN

7100 W. Ridge Rd.
Fairview, PA 16415

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

PB-14 Doe,

Plaintiff,

-against-

THE DIOCESE OF BUFFALO, N.Y., INFANT
OF PRAGUE CHURCH INC., INFANT OF
PRAGUE SCHOOL, and BISHOP DONALD W.
TRAUTMAN,

Defendants.

COMPLAINT

Index No.:

Plaintiff PB-14 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-14 Doe ("Plaintiff") was repeatedly sexually abused and assaulted by Fr. Gerard A. Smyczynski ("Fr. Smyczynski"), who was hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants THE DIOCESE OF BUFFALO, N.Y., INFANT OF PRAGUE CHURCH INC, and INFANT OF PRAGUE SCHOOL, BISHOP DONALD W. TRAUTMAN (hereinafter collectively referred to as "Defendants").
3. Plaintiff met Fr. Smyczynski when Plaintiff was a student and altar boy at Defendants Infant of Prague Church and Infant of Prague School.
4. Fr. Smyczynski remained Plaintiff's family's priest as he moved to at least one other parish within the Diocese of Buffalo.

5. Plaintiff was about 10 years old when the abuse began. The abuse lasted for approximately one year.

6. Despite years of refusal to publically address rampant child abuse by priests, Defendant The Diocese of Buffalo, New York recently published a long list clergy in their employ who were credibly accused of molesting children. The list includes Fr. Smyczynski, who is now deceased.

7. 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, students, 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.

8. 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. Smyczynski, permitted the abuse to occur, failed to supervise Fr. Smyczynski, failed to timely investigate Fr. Smyczynski's misconduct, failed to train minor students, altar boys, and/or adult staff about the risk of sexual abuse in their schools and churches, 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. Smyczynski's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

9. Plaintiff is an individual residing in Erie County, New York.

10. Plaintiff was born in 1974.

11. Defendant The Diocese of Buffalo, N.Y. (herein "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 Erie County, New York, with its principal place of business at 795 Main Street, Buffalo, New York 14206. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and operated parishes, churches and schools within the Diocese.

12. At all relevant times, Defendant Infant of Prague Church, Inc., is a Roman Catholic Church, organized pursuant to the laws of the State of New York and located at 69 Ohara Road, Tonawanda, NY 14150.

13. At all relevant times, Defendant Infant of Prague School is a Roman Catholic School, organized pursuant to the laws of the State of New York and located at 921 Cleveland Dr., Cheektowaga, NY 14225.

14. At all relevant times, Defendants Infant of Prague Church, Inc. and Infant of Prague School (collectively referred to herein as "Infant of Prague") were under the direct authority, control and province of Defendant Diocese.

15. At all relevant times, Defendant Diocese owned the premises where Defendant Infant of Prague was located.

16. At all relevant times, Defendant Diocese oversaw, managed controlled, directed and operated Defendant Infant of Prague.

17. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and assigned priests and other clergy to work in parishes, churches and schools of the Diocese, including Defendant Infant of Prague.

18. At all relevant times, Defendant Bishop Donald W. Trautman ("Bishop Trautman") was Bishop of Defendant Diocese of Buffalo.

19. Bishop Trautman currently resides at 7100 W. Ridge Rd., Fairview PA 16415.

20. Bishop Trautman currently resides at 1324 S. Shore Drive, Apt. 207, Erie Pennsylvania 16505.

21. Bishop Trautman currently maintains an office at 429 East Grandview Blvd, Erie, Pennsylvania, 16514.

FACTUAL ALLEGATIONS

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

23. At all relevant times, Plaintiff and his family were parishioners and students of Defendants Infant of Prague Church and Infant of Prague School.

24. At all relevant times, Plaintiff was recruited to serve as an altar boy and student for Defendants Diocese and Infant of Prague, and was made to serve in that capacity under Fr. Smyczynski for some period of time.

25. At all relevant times, Fr. Smyczynski was a Roman Catholic priest employed by Defendants.

26. At all relevant times, Fr. Smyczynski was under the direct supervision and control of the Defendants. His assigned duties included serving as a priest, interacting with, mentoring and counseling children, including altar boys and children like Plaintiff who were attending Defendant Infant of Prague, as well as other churches within the Diocese.

27. By assigning Fr. Smyczynski to the role of priest, Defendants gave Fr. Smyczynski complete access to minors, including Plaintiff, and empowered him to discipline, punish, reprimand, chastise, expel and otherwise exercise complete authority over minors.

28. In the performance of their duties, Defendants authorized Fr. Smyczynski to be alone with minor children, including Plaintiff, and to have unfettered and unsupervised access to them on Defendants' property.

29. Defendants also authorized Fr. Smyczynski to have physical contact with minors, in a manner consistent with providing discipline, counseling, educational and spiritual guidance, and leadership.

30. 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. Smyczynski.

31. On multiple occasions over the course of approximately one year Fr. Smyczynski engaged in unlawful, unpermitted, harmful sexual contact with Plaintiff.

32. 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 Fr. Smyczynski's abuse.

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

34. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to Fr. Smyczynski's abuse of Plaintiff, 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.

35. Upon information and belief, not only were Defendants Diocese and Bishop Trautman 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.

36. 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. Smyczynski posed to Plaintiff.

37. Prior to the time of Plaintiff's abuse by Fr. Smyczynski, 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.

38. The sexual abuse of Plaintiff by Fr. Smyczynski was foreseeable.

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

40. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to Infant of Prague and other parish churches within the Diocese; 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. Smyczynski, 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. Smyczynski, to spend time with, interact with, and recruit children.

41. 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.

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

43. 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 limits of the lower courts in this State.

44. 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

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

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

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

48. Defendants were negligent and did not use reasonable care in their supervision and direction of Fr. Smyczynski, 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. Smyczynski posed a threat of sexual abuse to minors; allowed the misconduct describe above to occur and continue; failed to investigate Fr. Smyczynski's dangerous activities and remove him from their premises; and Defendants were otherwise negligent.

49. Upon information and belief, Defendant Bishop Trautman had actual knowledge of prior victims of sexual assault perpetrated by Fr. Smyczynski, failed to report this abuse, and actively covered up these abuses, thereby permitting Fr. Smyczynski to continue abusing other victims, including Plaintiff.

50. Fr. Smyczynski 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. Smyczynski.

51. Upon information and belief, Defendant Bishop Trautman expedited an annulment for a member of Plaintiff's family with the hope of ensuring their silence about the abuses perpetrated by Fr. Smyczynski and covering up those abuses.

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

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

54. Plaintiff suffered grave injury as a result of Fr. Smyczynski's sexual abuse and misconduct, including physical, psychological and emotional injury as described above.

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 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

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 Fr. Smyczynski, 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 were negligent and did not use reasonable care in their training, if any, of minor students, altar boys, and/or adult staff about the risk of sexual abuse in their institution and facilities.

59. Defendants were negligent and did not use reasonable care in their training, if any, 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 knew or should have known this representation was false and that employing Fr. Smyczynski and giving him 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. Defendant Diocese failed to report multiple allegations of sexual abuse by its employees, agents and representatives, to the proper authorities, thereby putting children at risk of sexual assault.

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

65. It was not until April 2019 that Defendant Diocese publicly named Fr. Smyczynski as having been accused of sexual assault of a minor. Abuse by Fr. Smyczynski was determined to be eligible for compensation under the IRCP.

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

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

68. 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.

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

70. 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.

71. 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.

THIRD CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

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

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

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

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

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

77. 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

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

79. At all relevant times, Defendants owned, operated, and /or controlled the premises known as Infant of Prague Parish, Infant of Prague Church and Infant of Prague School, including the areas where the grooming of Plaintiff and sexual abuse of Plaintiff occurred.

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

81. 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.

82. Defendants 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. Smyczynski. Defendants thereby breached their duty of care of Plaintiff.

83. 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.

84. 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.

FIFTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

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

86. 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.

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

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

89. 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.

90. 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.

SIXTH CAUSE OF ACTION

BREACH OF DUTY *IN LOCO PARENTIS*

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

92. 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.

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

94. 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.

95. 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.

SEVENTH CAUSE OF ACTION

BREACH OF STATUTORY DUTIES TO REPORT

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

97. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420 and New York Education Law Article 23-B, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

98. Defendants, including Bishop Trautman, breached their statutory duty by failing to report reasonable suspicion of abuse by Fr. Smyczynski of children in their care.

99. Upon information and belief, Defendant Bishop Trautman had actual knowledge of prior victims of sexual assault perpetrated by Fr. Smyczynski, failed to report this abuse, and actively covered up these abuses, thereby permitting Fr. Smyczynski to continue abusing other victims, including Plaintiff.

100. Upon information and belief, Defendant Bishop Trautman took his playbook of covering up clergy abuse from Buffalo New York to Erie Pennsylvania, where he currently resides and maintains an office.

101. 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.

102. 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

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

Dated: December 31, 2019

Yours, etc.

PHILLIPS & PAOLICELLI, LLP



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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-27 Doe,</p> <p style="text-align: center;">Plaintiff,</p> <p>-against-</p> <p>INFANT OF PRAGUE CHURCH INC., INFANT OF PRAGUE SCHOOL, BISHOP DONALD W. TRAUTMAN, OUR MOTHER OF GOOD COUNSEL CHURCH, ST. EDMUND CHURCH, and ST. CHRISTOPHER ROMAN CATHOLIC CHURCH,</p> <p style="text-align: center;">Defendants.</p>

SUMMONS

Index No.:

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. The basis for venue and jurisdiction in Supreme Court of the State of New York, County of Erie is the Defendants' residence. Defendant Infant of Prague Church, Inc, and Defendant Infant of Prague School, both reside and make their principle places of business at 921 Cleveland Drive, Cheektowaga, NY 14225, County of Erie.

DATED: New York, New York
July 20, 2020

Phillips & Paolicelli, LLP
Attorneys for Plaintiffs

/s/ Danielle George
By: Danielle George
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INFANT OF PRAGUE SCHOOL

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OUR MOTHER OF GOOD COUNSEL CHURCH

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ST. CHRISTOPHER ROMAN CATHOLIC CHURCH

2660 Niagara Falls Blvd.
Tonawanda, NY 14150

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-27 Doe,</p> <p style="text-align: center;">Plaintiff,</p> <p>-against-</p> <p>INFANT OF PRAGUE CHURCH INC., INFANT OF PRAGUE SCHOOL, BISHOP DONALD W. TRAUTMAN, OUR MOTHER OF GOOD COUNSEL CHURCH, ST. EDMUND CHURCH, and ST. CHRISTOPHER ROMAN CATHOLIC CHURCH,</p> <p style="text-align: center;">Defendants.</p>

COMPLAINT

Index No.:

Plaintiff PB-27 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-27 Doe (“Plaintiff”) was repeatedly sexually abused and assaulted by Fr. Gerard A. Smyczynski (“Fr. Smyczynski”), who was hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants INFANT OF PRAGUE CHURCH INC, and INFANT OF PRAGUE SCHOOL, BISHOP DONALD W. TRAUTMAN, OUR MOTHER OF GOOD COUNSEL CHURCH, ST. EDMUND CHURCH, and ST. CHRISTOPHER ROMAN CATHOLIC CHURCH, (hereinafter collectively referred to as “Defendants”), in conjunction with the Diocese of Buffalo, New York (“Diocese of Buffalo” “Buffalo Diocese” or “Diocese”).

3. Plaintiff met Fr. Smyczynski when Plaintiff was a student and altar boy at Defendants Infant of Prague Church and Infant of Prague School.

4. Upon information and belief, Fr. Smyczynski remained Plaintiff's family's priest as he moved to at least one other parish within the Diocese of Buffalo.

5. Upon information and belief, at one point Fr. Smyczynski represented to Plaintiff's family that he was on leave due to his brother's health problems.

6. Plaintiff was groomed for several years prior to the abuse commencing. Plaintiff was about 12 years old when the abuse began. The abuse lasted for approximately one year.

7. Despite years of refusal to publically address rampant child abuse by priests, the Diocese of Buffalo recently published a long list of clergy in their employ who were credibly accused of molesting children. The list includes Fr. Smyczynski, who is now deceased.

8. In fact, the Roman Catholic Church, the Diocese of Buffalo 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, students, 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.

9. 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. Smyczynski, permitted the abuse to occur, failed to supervise Fr. Smyczynski, failed to timely investigate Fr. Smyczynski's misconduct, failed to train minor students, altar boys, and/or adult staff about the risk of sexual abuse in their schools

and churches, 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. Smyczynski's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

10. Plaintiff is an individual residing in Erie County, New York.

11. Plaintiff was born in 1971.

12. At all relevant times, Defendant Infant of Prague Church, Inc., is a Roman Catholic Church, organized pursuant to the laws of the State of New York and located at 921 Cleveland Dr. Cheektowaga, NY 14225.

13. At all relevant times, Defendant Infant of Prague School is a Roman Catholic School, organized pursuant to the laws of the State of New York and located at 921 Cleveland Dr., Cheektowaga, NY 14225.

14. At all relevant times, Defendant Infant of Prague School was and still is under the direct authority, control and province of Defendant Infant of Prague Church, Inc.

15. At all relevant times, Defendant Infant of Prague Church, Inc. owned the premises where Defendant Infant of Prague School was located.

16. At all relevant times, Defendant Bishop Donald W. Trautman ("Bishop Trautman") was Bishop of the Diocese of Buffalo.

17. Bishop Trautman currently resides at 7100 W. Ridge Rd., Fairview PA 16415.

18. Bishop Trautman currently resides at 1324 S. Shore Drive, Apt. 207, Erie Pennsylvania 16505.

19. Bishop Trautman currently maintains an office at 429 East Grandview Blvd, Erie, Pennsylvania, 16514.

20. At all relevant times, Defendant Our Mother of Good Counsel Church is a Roman Catholic Church, organized pursuant to the laws of the State of New York and located at 3688 S. Park Ave, Blasdell, New York 14219.

21. At all relevant times, Defendant St. Edmund Church is a Roman Catholic Church, organized pursuant to the laws of the State of New York and located at 530 Ellicott Creek Road, Tonawanda, NY 14150.

22. At all relevant times, Defendant St. Christopher Roman Catholic Church is a Roman Catholic Church, organized pursuant to the laws of the State of New York and located at 2660 Niagara Falls Blvd., Tonawanda, NY 14150.

23. At all relevant times, Defendants Infant of Prague Church, Inc. and Infant of Prague School (collectively referred to herein as “Infant of Prague”) were under the direct authority, control and province of the Buffalo Diocese.

24. At all relevant times, Defendant Our Mother of Good Counsel Church (herein “Our Mother of Good Counsel”) was under the direct authority, control and province of the Buffalo Diocese.

25. At all relevant times, Defendant St. Edmund Church (herein “St. Edmund”) was under the direct authority, control and province of the Buffalo Diocese.

26. At some point in time, Defendant St. Edmund Church merged with Defendant St. Christopher Roman Catholic Church (herein “St. Christopher”) located at 2660 Niagara Falls Blvd., Tonawanda NY 14150.

27. Upon information and belief, St. Christopher assumed some or all of the liabilities and/or assets of St. Edmund upon its merger with St. Edmund.

FACTUAL ALLEGATIONS

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

29. At all relevant times, Plaintiff and his family were parishioners and students of Defendants Infant of Prague Church and Infant of Prague School, both within the Buffalo Diocese.

30. At all relevant times, Plaintiff was recruited to serve as an altar boy and student for the Buffalo Diocese and Infant of Prague, and was made to serve in that capacity under Fr. Smyczynski for some period of time.

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

32. Prior to the sexual abuse of Plaintiff, Fr. Smyczynski was parochial vicar at, and affiliated with, Defendant Infant of Prague, whose priests, administrators, agents, servants and employees knew or should have known of the danger Fr. Smyczynski posed to children.

33. Prior to the sexual abuse of Plaintiff, Fr. Smyczynski was parochial vicar at, and affiliated with, Defendant Our Mother of Good Counsel Church, whose priests, administrators, agents, servants and employees knew or should have known of the danger Fr. Smyczynski posed to children.

34. Prior to the sexual abuse of Plaintiff, Fr. Smyczynski was affiliated with St. Edmund Church, whose priests, administrators, agents, servants and employees knew or should have known of the danger Fr. Smyczynski posed to children.

35. Prior to the sexual abuse of Plaintiff, priests and other employees and agents affiliated with Defendant St. Edmund Church knew or should have known of the danger Fr. Smyczynski posed to children.

36. At some point in time, Fr. Smyczynski maintained vestments, a chalice and other communion materials at the home of Plaintiff's family, and would regularly conduct mass at Plaintiff's home.

37. At all relevant times Fr. Smyczynski represented that he was authorized by the Defendants and the Buffalo Diocese to perform sacraments.

38. At all relevant times, Fr. Smyczynski was under the direct supervision and control of the Defendants, in conjunction with the Diocese of Buffalo. His assigned duties included serving as a priest, interacting with, mentoring and counseling children, including altar boys and children like Plaintiff who were attending Defendant Infant of Prague, as well as other churches within the Buffalo Diocese.

39. By assigning Fr. Smyczynski to the role of priest, Defendants gave Fr. Smyczynski complete access to minors, including Plaintiff, and empowered him to groom, guide, discipline, punish, reprimand, chastise, expel and otherwise exercise complete authority over minors.

40. In the performance of their duties, Defendants authorized Fr. Smyczynski to be alone with minor children, including Plaintiff, and to have unfettered and unsupervised access to them on Defendants' property.

41. Defendants also authorized Fr. Smyczynski to have physical contact with minors, in a manner consistent with providing discipline, counseling, educational and spiritual guidance, and leadership.

42. Defendants required parishioners and students, like Plaintiff, and including Plaintiff, to accept and obey guidance, discipline and instruction from Fr. Smyczynski and other clergy members.

43. 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. Smyczynski.

44. On multiple occasions over the course of over approximately one year in or about approximately 1983-1985, Fr. Smyczynski acting in his capacity as priest, and in furtherance of the business of Defendants, sought Plaintiff out, lured Plaintiff to secluded locations, and engaged in unlawful, unpermitted, forcible, harmful sexual contact with Plaintiff.

45. 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 Fr. Smyczynski's abuse.

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

47. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to Fr. Smyczynski'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.

48. Upon information and belief, not only were Defendants, including Bishop Trautman 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.

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

50. Prior to the time of Plaintiff's abuse by Fr. Smyczynski, Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Buffalo 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.

51. The sexual abuse of Plaintiff by Fr. Smyczynski was foreseeable.

52. Upon information and belief, prior to the time of Plaintiff's abuse by Fr. Smyczynski, Defendants knew or should have known of Fr. Smyczynski's acts of child sexual abuse on other minors.

53. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to Infant of Prague and other parish churches and schools within the Buffalo Diocese; 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. Smyczynski, 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. Smyczynski, to spend time with, interact with, and recruit children.

54. 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.

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

56. 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 limits of the lower courts in this State.

57. 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

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

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

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

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

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

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

64. Defendants were negligent and did not use reasonable care in their supervision and direction of Fr. Smyczynski, 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. Smyczynski posed a threat of sexual abuse to minors; allowed the misconduct describe above to occur and continue; failed to investigate Fr. Smyczynski's dangerous activities and remove him from their premises; and Defendants were otherwise negligent.

65. Upon information and belief, Defendant Bishop Trautman had actual knowledge of prior victims of sexual assault perpetrated by Fr. Smyczynski, failed to report this abuse, and actively covered up these abuses, thereby permitting Fr. Smyczynski to continue abusing other victims, including Plaintiff.

66. Fr. Smyczynski 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. Smyczynski.

67. Upon information and belief, Defendant Bishop Trautman, acting in the course and scope of his employment with Defendants and within the course and scope of his employment with the Diocese, expedited an annulment for a member of Plaintiff's family with the hope and intent of ensuring their silence about the abuses perpetrated by Fr. Smyczynski and covering up those abuses.

68. Upon information and belief, Defendant Bishop Trautman fraudulently misrepresented to Plaintiff and his family that Fr. Smyczynski had been "stripped of his vows in or about September 1983."

69. Upon information and belief, Fr. Smyczynski was never laicized.

70. In or about December 1995, the Buffalo Diocese fraudulently induced Plaintiff to execute a settlement release for pastoral care, "counseling and related expenses" in the wholly inadequate amount of \$9,000, when they knew the value of his suffering and damages was extreme.

71. The aforesaid settlement release was executed by Plaintiff in reliance upon Defendants fraudulent misrepresentations.

72. The aforesaid settlement release was executed by Plaintiff under duress.

73. The aforesaid settlement release was illegal, contrary to public policy, and unenforceable.

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

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

76. As a direct and proximate result of Defendants' negligent hiring, retention and supervision and Fr. Smyczynski's sexual abuse and misconduct, Plaintiff suffered grave injury including physical, psychological and emotional injury as described above.

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

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

79. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that clergy, including Fr. Smyczynski, 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.

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

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

82. Defendants were negligent and did not use reasonable care in their training, if any, of minor students, altar boys, 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.

83. 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.

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

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

86. Maintaining a policy and practice of covering up criminal activity committed by clergy members was perpetrated by Defendant Trautman as Bishop of Buffalo Diocese and further perpetrated by Defendant Trautman as Bishop of Erie Pennsylvania Diocese.

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

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

89. Upon information and belief, it was not until April 2019 that the Buffalo Diocese publicly named Fr. Smyczynski as having been accused of sexual assault of a minor. Abuse by Fr. Smyczynski was determined to be eligible for compensation under the IRCP.

90. 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.

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

92. 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.

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

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

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

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

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

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

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

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

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

101. At all relevant times, Defendants owned, operated, and /or controlled the premises known as Infant of Prague Parish, Infant of Prague Church and Infant of Prague School, including the areas where the grooming of Plaintiff and sexual abuse of Plaintiff occurred.

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

103. 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 and parishioners, like Plaintiff, whose presence was reasonably anticipated.

104. Defendants 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. Smyczynski. Defendants thereby breached their duty of care of Plaintiff.

105. 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.

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

FIFTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

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

108. 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.

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

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

111. 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.

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

SIXTH CAUSE OF ACTION

BREACH OF DUTY IN LOCO PARENTIS

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

114. 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.

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

116. 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.

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

SEVENTH CAUSE OF ACTION

BREACH OF STATUTORY DUTIES TO REPORT

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

119. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420 and New York Education Law Article 23-B, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

120. Defendants, including Bishop Trautman, breached their statutory duty by failing to report reasonable suspicion of abuse by Fr. Smyczynski of children in their care.

121. Upon information and belief, Defendant Bishop Trautman had actual knowledge of prior victims of sexual assault perpetrated by Fr. Smyczynski, failed to report this abuse, and actively covered up these abuses, thereby permitting Fr. Smyczynski to continue abusing other victims, including Plaintiff.

122. Upon information and belief, Defendant Bishop Trautman took his playbook of covering up clergy abuse from Buffalo New York to Erie Pennsylvania, where he currently resides and maintains an office, and where he continued to carry out the aforesaid cover up for decades.

123. 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.

124. 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

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

Dated: July 20, 2020

{00053179}

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Yours, etc.

PHILLIPS & PAOLICELLI, LLP

/s/ Danielle George

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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-30 Doe,</p> <p style="text-align: center;">Plaintiff,</p> <p>-against-</p> <p>OUR MOTHER OF GOOD COUNSEL CHURCH, ST. EDMUND CHURCH, and ST. CHRISTOPHER ROMAN CATHOLIC CHURCH,</p> <p style="text-align: center;">Defendants.</p>

SUMMONS

Index No.:

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. The basis for venue and jurisdiction in Supreme Court of the State of New York, County of Erie is the Defendants' residence.

DATED: New York, New York
August 4, 2020

Phillips & Paolicelli, LLP
Attorneys for Plaintiffs

/s/ Danielle George
By: Danielle George
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ST. EDMUND CHURCH

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Tonawanda, NY 14150

ST. CHRISTOPHER ROMAN CATHOLIC CHURCH

2660 Niagara Falls Blvd.
Tonawanda, NY 14150

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-30 Doe,</p> <p style="text-align: center;">Plaintiff,</p> <p>-against-</p> <p>OUR MOTHER OF GOOD COUNSEL CHURCH, ST. EDMUND CHURCH, and ST. CHRISTOPHER ROMAN CATHOLIC CHURCH,</p> <p style="text-align: center;">Defendants.</p>

COMPLAINT

Index No.:

Plaintiff PB-30 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-30 Doe (“Plaintiff”) was repeatedly sexually abused and assaulted by Fr. Gerard A. Smyczynski (“Fr. Smyczynski”), who was hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants OUR MOTHER OF GOOD COUNSEL CHURCH, ST. EDMUND CHURCH, and ST. CHRISTOPHER ROMAN CATHOLIC CHURCH, (hereinafter collectively referred to as “Defendants”), in conjunction with the Diocese of Buffalo, New York (“Diocese of Buffalo” “Buffalo Diocese” or “Diocese”).
3. Plaintiff met Fr. Smyczynski when Plaintiff was a student and altar boy at Infant of Prague Church and Infant of Prague School.

4. Upon information and belief, Fr. Smyczynski remained Plaintiff's family's priest as he moved to at least one other parish within the Diocese of Buffalo.

5. Upon information and belief, at one point Fr. Smyczynski represented to Plaintiff's family that he was on leave due to his brother's health problems.

6. Plaintiff was groomed for several years prior to the abuse commencing. Plaintiff was about ten (10) years old when the abuse began. The abuse lasted for approximately one year.

7. Despite years of refusal to publically address rampant child abuse by priests, the Diocese of Buffalo recently published a long list of clergy in their employ who were credibly accused of molesting children. The list includes Fr. Smyczynski, who is now deceased.

8. In fact, the Roman Catholic Church, the Diocese of Buffalo 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, students, 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.

9. 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. Smyczynski, permitted the abuse to occur, failed to supervise Fr. Smyczynski, failed to timely investigate Fr. Smyczynski's misconduct, failed to train minor students, altar boys, and/or adult staff about the risk of sexual abuse in their schools and churches, 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. Smyczynski's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

10. Plaintiff is an individual residing in Erie County, New York.

11. Plaintiff was born in 1974.

12. At all relevant times, Defendant Our Mother of Good Counsel Church is a Roman Catholic Church, organized pursuant to the laws of the State of New York and located at 3688 S. Park Ave, Blasdell, New York 14219.

13. At all relevant times, Defendant St. Edmund Church is a Roman Catholic Church, organized pursuant to the laws of the State of New York and located at 530 Ellicott Creek Road, Tonawanda, NY 14150.

14. At all relevant times, Defendant St. Christopher Roman Catholic Church is a Roman Catholic Church, organized pursuant to the laws of the State of New York and located at 2660 Niagara Falls Blvd., Tonawanda, NY 14150.

15. At all relevant times, Defendant Our Mother of Good Counsel Church (herein "Our Mother of Good Counsel") was under the direct authority, control and province of the Buffalo Diocese.

16. At all relevant times, Defendant St. Edmund Church (herein "St. Edmund") was under the direct authority, control and province of the Buffalo Diocese.

17. At some point in time, Defendant St. Edmund Church merged with Defendant St. Christopher Roman Catholic Church (herein "St. Christopher") located at 2660 Niagara Falls Blvd., Tonawanda NY 14150.

18. Upon information and belief, St. Christopher assumed some or all of the liabilities and/or assets of St. Edmund upon its merger with St. Edmund.

FACTUAL ALLEGATIONS

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

20. At all relevant times, Plaintiff and his family were parishioners and students of Infant of Prague Church and Infant of Prague School, both within the Buffalo Diocese.

21. At all relevant times, Plaintiff was recruited to serve as an altar boy and student for the Buffalo Diocese, and was made to serve in that capacity under Fr. Smyczynski for some period of time.

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

23. Prior to the sexual abuse of Plaintiff, Fr. Smyczynski was parochial vicar at, and affiliated with, Defendant Our Mother of Good Counsel Church, whose priests, administrators, agents, servants and employees knew or should have known of the danger Fr. Smyczynski posed to children.

24. Prior to the sexual abuse of Plaintiff, Fr. Smyczynski was affiliated with St. Edmund Church, whose priests, administrators, agents, servants and employees knew or should have known of the danger Fr. Smyczynski posed to children.

25. Prior to the sexual abuse of Plaintiff, priests and other employees and agents affiliated with Defendant St. Edmund Church knew or should have known of the danger Fr. Smyczynski posed to children.

26. At some point in time, Fr. Smyczynski maintained vestments, a chalice and other communion materials at the home of Plaintiff's family, and would regularly conduct mass at Plaintiff's home.

27. At all relevant times Fr. Smyczynski represented that he was authorized by the Defendants and the Buffalo Diocese to perform sacraments.

28. At all relevant times, Fr. Smyczynski was under the direct supervision and control of the Defendants, in conjunction with the Diocese of Buffalo. His assigned duties included serving as a priest, interacting with, mentoring and counseling children, including altar boys and children like Plaintiff who were attending churches within the Buffalo Diocese.

29. By assigning Fr. Smyczynski to the role of priest, Defendants gave Fr. Smyczynski complete access to minors, including Plaintiff, and empowered him to groom, guide, discipline, punish, reprimand, chastise, expel and otherwise exercise complete authority over minors.

30. In the performance of their duties, Defendants authorized Fr. Smyczynski to be alone with minor children, including Plaintiff, and to have unfettered and unsupervised access to them on Defendants' property.

31. Defendants also authorized Fr. Smyczynski to have physical contact with minors, in a manner consistent with providing discipline, counseling, educational and spiritual guidance, and leadership.

32. Defendants required parishioners and students, like Plaintiff, and including Plaintiff, to accept and obey guidance, discipline and instruction from Fr. Smyczynski and other clergy members.

33. 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. Smyczynski.

34. On multiple occasions over the course of over approximately one year, Fr. Smyczynski acting in his capacity as priest, and in furtherance of the business of Defendants, sought Plaintiff out, lured Plaintiff to secluded locations, and engaged in unlawful, unpermitted, forcible, harmful sexual contact with Plaintiff.

35. 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 Fr. Smyczynski's abuse.

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

37. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to Fr. Smyczynski'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.

38. Upon information and belief, not only were Defendants, including Bishop Trautman 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.

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

40. Prior to the time of Plaintiff's abuse by Fr. Smyczynski, Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Buffalo 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.

41. The sexual abuse of Plaintiff by Fr. Smyczynski was foreseeable.

42. Upon information and belief, prior to the time of Plaintiff's abuse by Fr. Smyczynski, Defendants knew or should have known of Fr. Smyczynski's acts of child sexual abuse on other minors.

43. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to parish churches and schools within the Buffalo Diocese; 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. Smyczynski, 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. Smyczynski, to spend time with, interact with, and recruit children.

44. 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.

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

46. 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 limits of the lower courts in this State.

47. 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

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

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

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

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

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

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

54. Defendants were negligent and did not use reasonable care in their supervision and direction of Fr. Smyczynski, 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. Smyczynski posed a threat of sexual abuse to minors; allowed the misconduct describe above to occur and continue; failed to investigate Fr. Smyczynski's dangerous activities and remove him from their premises; and Defendants were otherwise negligent.

55. Upon information and belief, Defendant Bishop Trautman had actual knowledge of prior victims of sexual assault perpetrated by Fr. Smyczynski, failed to report this abuse, and actively covered up these abuses, thereby permitting Fr. Smyczynski to continue abusing other victims, including Plaintiff.

56. Fr. Smyczynski 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. Smyczynski.

57. Upon information and belief, Defendant Bishop Trautman, acting in the course and scope of his employment with Defendants and within the course and scope of his employment with the Diocese, expedited an annulment for a member of Plaintiff's family with the hope and intent of ensuring their silence about the abuses perpetrated by Fr. Smyczynski and covering up those abuses.

58. Upon information and belief, Defendant Bishop Trautman fraudulently misrepresented to Plaintiff and his family that Fr. Smyczynski had been "stripped of his vows in or about September 1983."

59. Upon information and belief, Fr. Smyczynski was never laicized.

60. In or about December 1995, the Buffalo Diocese fraudulently induced Plaintiff to execute a settlement release for pastoral care, "counseling and related expenses" in the wholly inadequate amount of \$9,000, when they knew the value of his suffering and damages was extreme.

61. The aforesaid settlement release was executed by Plaintiff in reliance upon Defendants fraudulent misrepresentations.

62. The aforesaid settlement release was executed by Plaintiff under duress.

63. The aforesaid settlement release was illegal, contrary to public policy, and unenforceable.

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

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

66. As a direct and proximate result of Defendants' negligent hiring, retention and supervision and Fr. Smyczynski's sexual abuse and misconduct, Plaintiff suffered grave injury including physical, psychological and emotional injury as described above.

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

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

69. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that clergy, including Fr. Smyczynski, 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.

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

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

72. Defendants were negligent and did not use reasonable care in their training, if any, of minor students, altar boys, 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.

73. 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.

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

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

76. Maintaining a policy and practice of covering up criminal activity committed by clergy members was perpetrated by Defendant Trautman as Bishop of Buffalo Diocese and further perpetrated by Defendant Trautman as Bishop of Erie Pennsylvania Diocese.

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

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

79. Upon information and belief, it was not until April 2019 that the Buffalo Diocese publicly named Fr. Smyczynski as having been accused of sexual assault of a minor. Abuse by Fr. Smyczynski was determined to be eligible for compensation under the IRCP.

80. 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.

81. Defendants' aforesaid actions were negligent, reckless, willful and wonton in their disregard for the rights and safety of children, including 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 the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount 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

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

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

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

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

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

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

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

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

91. At all relevant times, Defendants owned, operated, and /or controlled the premises where the grooming of Plaintiff and sexual abuse of Plaintiff occurred.

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

93. 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 and parishioners, like Plaintiff, whose presence was reasonably anticipated.

94. Defendants 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. Smyczynski. Defendants thereby breached their duty of care of Plaintiff.

95. 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.

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

FIFTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

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

98. 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.

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

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

101. 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.

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

SIXTH CAUSE OF ACTION

BREACH OF DUTY *IN LOCO PARENTIS*

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

104. 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.

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

106. 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.

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

SEVENTH CAUSE OF ACTION

BREACH OF STATUTORY DUTIES TO REPORT

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

109. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420 and New York Education Law Article 23-B, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

110. Defendants, including Bishop Trautman, breached their statutory duty by failing to report reasonable suspicion of abuse by Fr. Smyczynski of children in their care.

111. Upon information and belief, Defendant Bishop Trautman had actual knowledge of prior victims of sexual assault perpetrated by Fr. Smyczynski, failed to report this abuse, and actively covered up these abuses, thereby permitting Fr. Smyczynski to continue abusing other victims, including Plaintiff.

112. Upon information and belief, Defendant Bishop Trautman took his playbook of covering up clergy abuse from Buffalo New York to Erie Pennsylvania, where he currently resides and maintains an office, and where he continued to carry out the aforesaid cover up for decades.

113. 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.

114. 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

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

Dated: August 4, 2020

Yours, etc.

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