

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

Chapter 11

DIOCESE OF ROCHESTER,

Case No. 19-20905

Debtor.

**OBJECTION TO THE DISCLOSURE STATEMENT FILED BY THE DIOCESE OF
ROCHESTER AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

To: Hon. Paul R. Warren, United States Bankruptcy Judge:

The Sisters of Saint Joseph of Rochester, Inc. (the “SSJ”) objects to the adequacy of the information set forth in the above-described proposed disclosure statement filed by the Debtor and the Official Committee of Unsecured Creditors (“Proponents”) and states as follows:

Background

1. The above-named Debtor filed a petition for relief pursuant to Chapter 11 of the Code in August 2019. The Clerk entered an order for relief pursuant to Chapter 11 of the Code.
2. Debtor continued in possession of its property and continued its operations and religious functions as a debtor in possession under Chapter 11.
3. The SSJ is a creditor of the Debtor by reason of what is described in the Proponents’ proposed plan and/or disclosure statement as an “in-bound contribution claim.” Before the Debtor filed its petition various abuse claim creditors filed state court complaints naming the SSJ and the Debtor and/or entities designated as Protected Parties in Proponents’ plan documents as defendants. The state court Plaintiffs have asserted that the SSJ and the Debtor and/or Protected Parties were joint tortfeasors. After Debtor filed its petition other abuse creditors filed state court complaints alleging the SSJ was liable for abuse claims that arose at or on real property owned and

operated by the Debtor and/or Protected Parties, such as the Villa of Hope, parish churches, parish schools, and/or Diocesan schools at which the abuse was inflicted by priests or employees of the Diocese and/or a Protected Party. Once again, the parties filing complaints asserted causes of action for which the Debtor or a Protected Party or both were necessarily liable if the SSJ was even arguably liable.

4. The Proponents filed a proposed amended plan (“Plan”) and proposed amended disclosure statement (“Disclosure Statement”).

5. On November 21, 2023, SSJ attorneys spoke to Debtor’s bankruptcy counsel in an attempt to resolve the SSJ’s objections to the Plan. Debtor’s counsel carefully and courteously listened to the SSJ’s concerns and stated that they had read and generally understood the concerns SSJ counsel previously emailed to Debtor’s counsel. They expressed appreciation for the SSJ’s attorneys seeking to resolve the SSJ’s concerns without adding to complications in the case. Debtor’s counsel advised that they would need to consult with the other Proponent’s counsel before responding to the SSJ’s concerns. Debtor’s counsel advised they would share the SSJ’s concerns with the other Proponent’s counsel but could not state whether or when they could respond to the SSJ’s concerns. Neither of Proponents’ counsel has responded to the SSJ’s concerns. Therefore, the SSJ brings its’ concerns with the plan documents to the Court’s attention.

General Overview of The SSJ’s Objections

6. The core of the SSJ’s concerns with the plan documents is that the proposed Plan and other plan documents could be read in a manner which would limit, impair or completely deprive the SSJ of rights and defenses the SSJ would have to CVA creditors’ claims brought against the SSJ in New York State courts in the absence of a bankruptcy case. Further, the Plan seemingly seeks expand the rights of CVA creditors litigating with the SSJ beyond the claims,

demands, remedies, and causes of action CVA would have against the SSJ outside of bankruptcy. The SSJ is not seeking an advantage not afforded to a like situated party or a “leg up” over CVA creditors in non-bankruptcy proceedings. Instead, the SSJ seeks to prevent a loss or limitation of rights which would tilt the state court proceedings in CVA creditor’s favor when litigating with the SSJ in non-bankruptcy courts. The SSJ’s principal objections are discussed below. Because many of the SSJ’s objections implicate confirmation issues in addition to disclosure issues, the SSJ specifically notes that all its objections to confirmation are reserved without prejudice to the confirmation hearing even if not hereinafter stated.

Failure To Disclose Grounds For Classification Of Claims

7. A fair reading of the Plan documents leads to the conclusion that the Plan either improperly classifies the SSJ with Abuse Claimants or the Disclosures fail to explain to anyone the reasons for putting the SSJ and other in-bound contribution creditors in the same class as Abuse Claimants. The dissimilarity and outright conflict between holders of inbound contribution claims and Abuse Claimants’ claims is self-evident. The only apparent reason for lumping these two dissimilar groups into one class is to “bury” the votes on the plan by inbound contribution creditors under the mass of Abuse Claimants’ votes on the Plan. The reason the SSJ infers for seeking to gerrymander voting is to prevent the inbound contribution creditors from rejecting the Plan and opposing confirmation by a cramdown under the “fair and equitable and does not unfairly discriminate against the inbound contribution claim creditors” requirements. See 11 USC 1129(b)(1). As discussed in subsequent paragraphs the Plan could not be “crammed down” over a rejection by inbound contribution claim creditors because it is neither fair and equitable nor free from unfair discrimination. The Plan seeks to unlawfully deprive inbound contribution creditors of rights under both New York and federal law. [This objection to the utter failure to disclose the

grounds for classification is aimed at the disclosure statement, but improper classification is also an objection to confirmation to which all rights are reserved as noted above.]

8. The SSJ filed answers with affirmative defenses in CVA actions. An example of an SSJ answer is annexed as **Exhibit A**. The SSJ's affirmative defenses invoke among other points rights provided by the Legislature under CPLR Articles 14 and 16, as well as General Obligations Law 15-108. The general thrust of these statutory provisions is to assure that, while the injured party is fully compensated for the injured party's legally cognizable losses, joint tortfeasor defendants are not unfairly burdened by being forced to pay damages that do not fairly approximate the portion of the damages attributable to each defendant's degree of fault for the compensable damages. In particular, the Legislature sought to avoid so-called "deep pocket" defendants from bearing the entire burden of paying for an injured party's losses when the "deep pocket" defendants bear only a minimal share of all the fault causing the injuries. Rangolan v County of Nassau, 96 NY2d 42, 46-47 (2001) ("Article 16, as enacted, limits a joint tortfeasor's liability noneconomic losses to its proportionate share, provided it is 50% or less at fault . . .") and (" . . . article 16 was intended to remedy the inequities created by joint and several liability on low-fault, 'deep pocket' defendants . . ."); Hill v St. Clare's Hospital, 67 NY2d 72, 85 (1986)(The equitable shares under GOL 15-108 are determined by the damage inflicted by each joint tortfeasor.); Whalen v Kawasaki Motors Corp. USA, 92 NY2d 288, 292 (1998)(describing the purposes of CPLR 1411 and GOL 15-108 as including: "Plaintiffs should be fairly compensated, but non-settling defendants should not bear more than their fair share of a plaintiff's loss. Moreover, the possibility of double recovery should be avoided. (cites omitted)").

There Is a Substantial Risk of Prejudicial Injury to the SSJ Without the Plan Specifically Providing Nothing in the Confirmed Plan Will Reduce or Limit the SSJ's Rights and Defenses In State Court Actions by CVA Plaintiffs Against Alleged Non-Debtor Joint Torfeasor

9. The SSJ has objected to CVA plaintiffs pleading in loose, vague, conclusory terms that fail to differentiate between the SSJ, the Protected Party Villa of Hope, Inc. ("Villa"), The Diocese of Rochester ("DOR"), County of Monroe ("County") and/or other purported abusers. For example, in **Exhibit B** one CVA plaintiff alleged in one action the DOR and Holy See successfully, intentionally and willfully concealed for improper purposes decades of priestly abuse, but at the same time insisted that the SSJ should have seen through the DOR's successful schemes sufficiently so the SSJ could be held liable. The complaint alleges a SSJ sister employed by the Villa as a "housemother" must have heard rumors about a priest the DOR assigned to the Villa, other SSJ sisters witnessed abuse by "older boys", and no sister attempted to stop the abuse at the Villa. (The SSJ does not agree with the claims, but states them to explain the claims it will face in state courts.) The same complaint treats the SSJ, Villa, and DOR as virtually interchangeable. In **Exhibit C**, a wholly separate action, the same plaintiff alleges the County operated a public care/foster system with absolute indifference to the rights children under the County's care; knew of the risks to children in care; had duties of visitation, supervision, and creating retaliation-free complaint system for children; and the like, all of which duties the County ignored. The County in turn brought a third party action against the Villa, DOR, and SSJ asserting indemnification by a contract with one of them. The same CVA plaintiff brought a third separate complaint against a Protected Party, as set forth in **Exhibit D** alleging a vicious, violent physical and sexual assault with serious physical injuries. The CVA plaintiff did not disclose Exhibits B and C to the SSJ and would have been content to allow these actions to proceed independently except that the SSJ eventually learned of the last two actions. [The action against the County was

dismissed on lack of a special duty grounds. But in other actions, the County's grounds for dismissal were challenged and a stay granted pending a motion requesting the Court of Appeals to resolve a clear split between various Departments on the special duty issue.]

10. The SSJ is concerned that CVA plaintiffs will seek to attribute duties and trace injuries to the SSJ which fall squarely within the duties plaintiffs have alleged in Exhibit A against the Villa and DOR, in Exhibit B against the County (and the relevant Social Service Law agency, such as the Villa [and the DOR as the party purported in control of and operating the Villa]), and Exhibit C against a successor alleged joint tortfeasor which is a Protected Party. Because the SSJ was not authorized to act as a Social Services Law agency, the County by allegedly entering a contract with the SSJ to perform Social Services Law agency duties would constitute a wrong that could only occur with the County's gross negligence and reckless disregard of records public records available and important to the County. Contracting with an unauthorized agency, if that is what the proof showed, would also tend to support a CVA plaintiff's claims that the County was deliberately indifferent to children in the public/foster care system. After all, determining that a party is authorized as a Social Service Law agency is both easy and an obvious step in the County's care processes before contracting and certainly before giving the unauthorized agency physical custody of children.

11. If the County and its Social Service Law authorized agencies (including Debtor and the Villa as contracts may eventually be determined) are bound by duties to children in the foster/public care system and liable for breaches of such duties as alleged in Exhibits A, B, and C, then it is self-evident that, if the SSJ could be held liable in full for breaches of the same duties and the same injuries traced to those breaches, then the Legislature's policy of equitably distributing recoverable damages for injuries to those at fault would be defeated. The complaints

in Exhibits A, B, and C seek more than recovery in full and multiple opportunities for the CVA plaintiff to obtain the best possible outcome after multiple trials. The CVA plaintiff seeks to cut off the equitable apportionment of damages.

12. The Legislature's enacted policies would be defeated in cases before the New York courts because the SSJ was neither a Social Service Law authorized agency; nor the operator of the Villa; nor the employer of the SSJ sisters providing services to children at the Villa; nor able to hire, supervise, or fire persons such as Fr. Hanna or other Villa employees alleged to have abused CVA plaintiffs; nor authorized to discipline or remove allegedly sexual abusive children residing at the Villa as alleged in the referenced complaints against the SSJ and/or County. Upon information and belief, children were removed from their homes and placed at the Villa by order of or with the approval of the Monroe County Family Court. Even if a child was not placed in the Villa by order or the approval of the Family Court at the County's request, upon information and belief, a child at the Villa was a child who was receiving services in a program operated for and on behalf of the County to carry out foster/public care policies and responsibilities. The County claimed in its third party action after service of Exhibit C that the SSJ, Debtor and/or Villa were responsible for carrying out the duties imposed on the County. SSJ counsel requested the Monroe County Attorney to provide a copy of the purported agreement between the County and the SSJ. The Monroe County Attorney's office advised me that the County does not have possession of any agreement with the SSJ (or any other party) for care of children placed at Villa by the County. The SSJ has consistently maintained that it had no authority operate a Social Service agency under the Social Services Law; it did not operate or control a Social Service agency (especially the Villa) in fact; it was not a contractor for the County for any purpose relating to the Villa; and it did not own, operate, or control the Villa. The CVA plaintiff has failed to adequately differentiate its claims

against the County, DOR, Villa, and SSJ. The CVA plaintiff's pleading appears to treat them as interchangeable or a unitary group for all purposes of liability and damages, despite their separate incorporation and operation. When all the CVA plaintiff's pleadings are considered and the conclusory (that is factually unsupported) claims are disregarded, the facts alleged are the CVA plaintiff was placed in the Villa (a Protected Party) by the County, he was abused there by Fr. Hanna (both before and after a sister might have heard some rumor about Fr. Hanna) and "older boys" (placed by the County), he was later placed with another Protected Party (where he allegedly suffered horrendous abuse and physical injury); and Fr. Hanna was a priest assigned by the Debtor to the Villa as part of a long standing plan of concealment. These alleged facts point to the Debtor and two Protected Parties bearing a significant portion of the total fault attributable to Debtor and Protected Parties and a minor degree of fault, if any, which can be linked to a SSJ sister (and no fault at all linked to the SSJ except by conclusory assertions).

13. A proper resolution under the New York law of issues raised or implicated in the complaints attached as Exhibits A, B, and C are important to the SSJ obtaining fair trials. First, the parties must understand the full scope of the duties owed to the injured plaintiffs; the party(ies) owing those duties to injured plaintiffs; the relationship (if any) between the responsible parties and individual actors; to whom the injuries established can be traced under applicable state law. Without knowing those duties, who owes those duties, the relationships between the defendants, and what injuries can be traced to a tortfeasor, any trial will be a proverbial "fire drill" or "shadow boxing" in which the rules are unknown and the identity of all the responsible parties is unknown. CVA plaintiffs risk asserting rights and duties purportedly created under the Plan which may not exist; try to pin those duties on parties which do not owe the alleged duties to the injured party; try to allocate damage to a party to which damage cannot be allocated under state law; and/or exclude

from the allocation of duty a party to which fault or damage can be allocated. The SSJ will be injured in not being able to adequately prepare for trial and have its trial tactics impaired by not knowing the rules and, thus, possibly not bring relevant material facts to the attention of the state court and fact finders with proper emphasis or altogether fail to raise issues of law and fact which would have been raised if the rules were known in advance. Adequate instructions to a jury depend on a full and correct understanding of the applicable law. An erroneous instruction to the jury has a high potential for prejudicial error if a potentially liable party with a legal duty to the plaintiff is omitted from the jury's deliberation under the circumstances presented by the Plan. The goal of an inexpensive, speedy, and just trial as instructed by the Legislature in CPLR 104 would be impaired or lost.

14. Similar issues arise in most of the CVA actions brought against the SSJ, but relate to alleged wrongdoing at parishes, parish schools, or Diocesan schools at which SSJ sisters are employed or serve. The SSJ has focused on a single CVA creditor for injuries allegedly arising in part at the Villa and another Protected Party because the particular CVA claimant's pleading and litigation strategy so clearly demonstrates the risks to non-debtor, non-Protected Party targets of CVA claimants. Other CVA plaintiffs have also pled as if the Debtor, parish, parish school, and SSJ are essentially interchangeable and each of them essentially owned, operated, and profited from, and/or controlled the operation and/or facility at which abuse is alleged. The Court and Proponents (and certainly Debtor) know that the SSJ did not hire, supervise, evaluate and/or discharge any priest; that each parish had far more members allegedly with excellent reasons for monitoring priests for all sorts of abuse; that the Debtor had a Board of Education to control parish schools, and that at the time of the alleged wrongs, women, such as SSJ sisters, especially "front line" sisters, were not afforded the same respect as one might hope would be the rule today so that

any “whistle-blowing” by them would be heeded, especially when it would upset the plan the Debtor and higher authorities as alleged by plaintiffs described in Exhibit A. In short, CVA plaintiffs with complaints involving the SSJ, Debtor and Protected Parties have attributed to the SSJ powers, ability, knowledge and the like beyond reason and even good faith belief.

15. CVA creditors’ apparent reasons for magnifying the SSJ’s role is to access the SSJ’s assets, which may be thought ample compared to the allegedly financially feeble Debtor and Protected Parties in this Chapter 11 case.

16. With this background the SSJ will state its objections.

Specific Objections to The Plan and Disclosure

17. The Plan seeks among other things to explicitly cut off any application of CPLR Article 14 and 16 and GOL 15-108 principles in CVA litigation outside of the bankruptcy proceeding. The proposed plan at ¶1.1.1 defines abuse to include “actual or alleged” conduct or misconduct. It includes “. . . epebophilia, or sexually related physical, psychological, or emotional harm . . . “and“. . . interactions of a sexual nature . . . “ and “. . . sexual psychological or emotional abuse, humiliation, or intimidation or other sexual misconduct.” These terms far exceed the scope of conduct for which the Legislature allowed CVA claims to be brought. An “abuse claim” is defined in ¶1.1.3 as a claim which could be asserted “. . . under any theory of liability. . . “ arising from Abuse. A Joint Tortfeasor is defined in ¶1.1.85 to include anyone “. . . alleged to be a joint tortfeasor. . . “ and “. . . in connection . . . with the Abuse relating to an Abuse Claim . . . “ This definition exceeds the concept of a joint tortfeasor under New York law.

18. A key provision of the Plan is the treatment of CVA claimants’ claims in ¶2.3.4 providing for “fair and equitable” treatment pursuant to an Allocation Protocol which does not yet exist and the terms of which are unknown. The Plan provides for a waiver of jury trials as to the

DOR's and Protected Parties' obligations and damages but makes no provision for the protection of parties such as the SSJ from the reach of that provision. If read literally, that provision would exclude any jury from assessing the extent of the DOR's and Protected Parties' share of damages contrary to New York law noted above. The same paragraph purports to provide that the Protected Parties do not accept the Allocation Protocol, seemingly impairing a conclusion that the Plan is a settlement of CVA claimants claims. The same paragraph provides that a payment to a CVA claimant is not a release or settlement.

19. The same paragraph permits so-called Non-Settling Insurers to asserts rights of setoff against the DOR and Protected Parties, implicitly suggesting that the SSJ and others similarly situated lack such setoff rights. The same paragraph purports to preserve CVA claimants' rights (as expanded in the above definition) against joint tortfeasors (also as expanded in the above definition) without any hint that purported joint tortfeasors retain their state law rights. Likewise, the same paragraph purports that nothing in the plan shall be deemed a limitation on abuse claimants' recovery, a determination of the DOR/Participating Parties' liability or damage causes, or give a right to any party to challenge any abuse claim except by certain parties (not including the SSJ), takes away any review of the Abuse Claims Reviewer's decisions, and provides nothing in the plan shall be construed an admission. The same paragraph provides that parties such as the SSJ cannot obtain copies of release agreements without entering into a confidentiality agreement with unknown terms created by unknown parties. These provisions, if confirmed, would impair the SSJ's ability to defend against a CVA's claimant state court action by resort to applicable GOL or CPLR provisions the SSJ could employ outside of the bankruptcy context and would utterly prevent the application of the collateral source rule CPLR §4545 in respect to payments made to claimants pursuant and through to the confirmed plan.

20. The DOR plan at ¶4.2 that provides terms that disclaim the otherwise available principles of res judicata, collateral estoppel, and, although not explicitly mentioned, judicial estoppel, to permit CVA claimants to tell one story in the bankruptcy case and another, inconsistent, story in New York courts. If the Court has any doubt that CVA claimants could stoop to such conduct, the Court should re-read Exhibits A, B, and C.

21. Paragraph 4.2 purports to declare the applicable law to be applied in respect to parties bound by the confirmed plan, which includes the SSJ as a holder of potential contribution claims. (See the broad definition of claim in 11 USC 101(5) and (12).) The plan does not provide for the SSJ or other similarly situated creditors to access a CVA claimant's presentations in the bankruptcy proceeding or before the Abuse Claim Reviewer to compare the claimant's statements in the course of this case to the story told in New York court proceedings.

22. Paragraph 4.2 purporting to dictate the legal effect of the fixing of claims in the bankruptcy case and the legal effect of payment of plan distributions, if confirmed by the bankruptcy judge, would be an advisory opinion and, under 28 USC 157(b)(5), a determination which the bankruptcy court lacks jurisdiction to make. Only the US District Court or a state court has any jurisdiction to try personal injury cases, whether in whole or in part, and declare the relevant law in fixing the extent of a personal injury claim.

23. Paragraph 4.2 (last unnumbered paragraph) purports to deny a trust distribution on an abuse claim as a defense to a joint tortfeasor's liability, when New York law plainly requires a defendant asserting CPLR Article 14 and 16 and GOL 15-108 to assert contribution/indemnity/allocation of liability for damages as a defense. See CPLR 3018(b) and 1603. Paragraph 4.4 seeks to impair res judicata and/or joint tortfeasors' rights by recognizing a CVA claimant may have a claim denied in this case on the merits but making no provision for

other CVA defendants to learn of the denial or the reasons for the denial or allowing other defendants to show that the DOR/Protected Parties are liable. The Plan cuts off the SSJ's right to participate in claims determination or take advantage of a finding by the Abuse Claim Reviewer. For example, the Abuse Claim Reviewer might deny a claim finding that the claimant has lied through his/her teeth in alleging any wrongdoing by anyone. See also ¶¶4.6 and 4.7 providing for dismissal and/or withdrawal of claims without providing that parties such as the SSJ do not have any of their rights impaired.

24. The plan provides at ¶8.8.2 for "insurance neutrality" for non-settling insurers. It is easy to imply from the absence of any like provision for parties in the position of the SSJ that there is no neutrality as to alleged joint tortfeasors and the plan is intended to deprive them of their rights. Paragraph 12.3 at subparagraph (VI) purports to cut off rights of set off, indemnity, and contribution on channeled claims, which impairs the SSJ's rights as described above.

25. Finally, the plan at ¶¶15.13 and 15.16 purports to cut off use of the plan by the SSJ by styling it as a mere "settlement communication" and create an additional denial that the plan includes any "admissions." These provisions simply defy general legal principles. This is especially the case where a claimant has voted for the Plan and it is confirmed. The Proponents seek to dispense with concepts of New York law such as notification, adoption, and acquiescence.

A
**The Plan Is Inconsistent With The Well Settled Principle That
A Confirmed Plan Is Interpreted as A Contract**

26. A plan of reorganization, once confirmed, is no more than a court approved contract and must be treated as such. See In Re Dow Corning Corporation, 456 F3d 668, 676 (6th Cir. 2006) (" . . . the plan is effectively a new contract between the debtor and creditors . . . " and interpreted under state law contract principles.) Hillis Motors Inc. v Hawaii Automobile Dealers

Assn., 997 F2d 581, 588 (9th Cir. 1993); In Re Sunbrite Cleaners, Inc., 284 BR 336 (NDNY 2002) citing In Re Victory Markets, Inc., 221 BR 298, 303 (2nd Cir BAP, 1998). The Plan contains challenges for contract interpretation starting with the jurisdiction of the bankruptcy court to approve a plan purporting to deprive any non-debtor party of rights and defenses in a personal injury action.

B
**The Code Does Not Have “A Doctrine of Necessity” For Depriving a Creditor
of State Law Rights in Litigation Between Non-Debtors**

27. The Plan purports by its’ terms to compensate whatever abuse claims there may be in a reasonably fair and equitable manner. Many constituencies in the DOR case may see a need for a plan under which CVA plaintiffs receive what they deem to be reasonably fair, equitable, and relatively speedy compensation. There may be a strategic need on the part of the DOR to “dump” and walk away (both terms used in a financial sense) from what is thought, though hardly proven, to be debt far in excess of assets by obtaining a discharge pursuant to 11 USC 1141, as substantially bolstered by Plan provisions and discharges for multiple parties which have never filed a bankruptcy petition and forced “to empty their pockets for benefit of creditors” under court control as they would be if in their own bankruptcy proceedings. For parties who will be discharged, the overreaching Plan terms set forth above (along with many others not discussed herein) may be necessary to assure that every purported CVA claim, past, present and future claims are included in the discharge to be obtained under the Plan so that all CVA-related liabilities are pinned down forever. The need for a confirmed plan may be thought by some parties in interest to justify impinging on the rights of parties such as the SSJ because any plan which extricates the DOR, Protected Parties, Settling Insurers, and CVA plaintiffs from the delay and multi-million-dollar professional fee expense of the case is better than no plan at all. The Second Circuit noted in In

Re First Central Financial Corp, 377 F. 3d 209, 217 (2nd Cir. 2004) that one of the chief purposes of a bankruptcy case is “ ‘...to protect the creditors from one another’ Young v Higbee Co., 324 US 204, 210, 65 S.Ct. 594, 89 L.Ed. 890 (1945).” It may be necessary to have the terms found in the Plan to truly settle the case, but that bankruptcy purpose should not overwhelm the equally valid purpose of protecting creditors from one another. The Plan undermines a valid, important bankruptcy purpose. The Plan is being used to manipulate non-bankruptcy proceedings and, therefore, exhibits bad faith. In Re Nash Engineering Co., 619 F. Supp. 3d 268, 274 (D. Conn. 2022). The Court cannot use 11 USC 105 to create or manipulate substantive rights not available under non-bankruptcy law. United States v Sutton, 786 F.2d 1305, 1309 (5th Cir. 1986). The Court should designate each vote in favor of the Plan under §1126(e). CVA creditors seek to do more than protect their share of the estate assets, but are, “ ‘...attempting to obtain some benefit to which they are not entitled.’ (cite omitted)” In Re DBSD North America, Inc., 634 F.3d 79, 102 (2nd Cir. 2010).

C **The Plan Conflicts With New York Case Law**

28. New York courts reject the over-reach in the proposed plan discussed above. Moy v St. Vincent’s Hospital and Medical Center of New York, 92 AD3d 651 (2nd Dept. 2012) ruled:

. . . as Wayne correctly contends, equity requires that the defendants have the benefit of their rights under CPLR article 16, such that if their culpability is 50% or less, their exposure for [non]economic damages should be limited proportionately to their share of fault (cites omitted).

92 AD3d at 652. Similarly, Kharmah v Metropolitan Chiropractic Center, 288 AD2d 94 (1st Dept. 2001) noted that although it was proper to sever claims against a bankruptcy defendant:

. . . while the bankruptcy defendants will not participate in the trial, equity requires that defendants-appellants have the benefit of CPLR article 16 rights, even though there is an automatic stay by virtue of the bankruptcy (see Duffy v County of Chautauqua, 225 AD2d 261, 267, *lv dismissed* 89 NY2d 980).

288 AD2d at 94-5. The Kharmah Court proceeded to note that CPLR Article 16 should operate as enacted regardless of a defendant's bankruptcy filing. Duffy explained that jurisdiction as used in CPLR Article 16 meant only personal jurisdiction could not be obtained but had no effect on allocation of fault when the court had subject matter jurisdiction. Duffy notes that only federal courts have viewed matters differently, but no recent federal cases have disregarded the points made in Duffy. Regardless of the law, only an unbridled optimist would defend a CVA action where there is a bankrupt co-defendant and a plan with the terms proposed by the DOR and expect to avoid arguments that the plan and confirmation order somehow displaced the law a state court could apply and that the law dictated in the confirmed plan had to prevail.

D **Problems With Bankruptcy Court Jurisdiction**

29. The proposed plan creates a de facto administrative tribunal for liquidating and determining personal injury claims for the purpose of distribution, not merely claims estimation. In Re Johns-Manville Corp., 45 BR 827, 829-30 (SDNY 1984) notes that 28 USC 157(b)(5) appears to require that all personal injury claims (other than those that the injured party is willing to settle by some other method) be tried by an Article III court for the purposes of distribution, but 11 USC 502(c) provides for the estimation of claims for certain other purposes. Thus, the bankruptcy court can provide for estimation of claims for voting on a plan, but if demanded by a party in interest, the allowance of or liquidation of the claim must be by the district court or other court of general jurisdiction. See also, In Re UNR Industries, Inc. 45 BR 322, 325-7 (N.D.Ill. 1984), to the same effect. In Re Nash Engineering Co., 619 F. Supp.3rd 268, 275-6 (D. Conn. 2022) citing In Re Chateaugay Corp., 111 BR 67 (Bankr. SDNY. 1990) notes that case law clearly shows that bankruptcy courts may not hear proceedings to liquidate personal injury claims for

purposes of allowance and, if asked to do so the bankruptcy court should simply rebuff the attempt to have it determine the merits of such a claim. Chateaugay held that bankruptcy courts had “core” jurisdiction to determine whether a personal injury claim existed at all, on points such as the statute of limitations or whether the claim was asserted against the correct debtor, but not the merits of the claim. The Plan seeks to distort the trial of claims by impacting the state law concepts that otherwise would apply, something that goes far beyond the inroads (definitively rejected by Congress) which would be created by a presumptively fair bankruptcy court trying the claim according to applicable law creating a right to a money judgment. There is no federal common or statutory law of sexual abuse recoveries, though abuse claimants and the DOR ask this Court to remedy that purported “deficiency” on Congress’ part.

30. Although, a claimant may agree to estimation and liquidation of a claim, sec. 157(b)(5) does not limit the scope or breath of its language to give claimants the sole or final “vote” on where a personal injury claim shall be heard. The section reads in relevant part: “The district court shall order that personal injury claims . . . shall be tried in the district court . . .” The Second Circuit explains that “shall” is generally a word of command that deprives courts of discretion. In Re Barbieri, 199 F3d 616, 619 (2nd Cir. 1999). Statutory interpretation starts with the language of the statute, which, when unambiguous must be enforced as written. Trials of personal injury claims must be held in a non-bankruptcy forum when the issue is fixing the amount of a claim for distribution and a party to or having an interest demands that the District Court do its duty by making an order under sec. 157(b)(5) or withdrawing the reference to the bankruptcy court for that portion of the bankruptcy proceeding that involves liquidation of the personal injury claim for purposes of distribution. Although a personal injury creditor may complain about the mandatory effect of sec. 157(b)(5) and who can invoke that section, the claimant’ complaint must be voiced

to Congress to change the statute. Congress has taken away all courts' discretion by using the mandatory "shall." Suffice it to say that the SSJ insists on compliance with the plain language of the statute, which as enacted has the salutary effect of protecting the SSJ's rights unimpaired from overreaching language in the Plan. Further, by having the District Court determine the personal injury claim in cases in which the SSJ may be alleged joint tortfeasors along with non-debtor Protected Parties, the SSJ's demand will better comply with 11 USC 524(e) providing that the discharge of the debtor does not affect the liability of any other entity for the discharged debt.

31. The liquidation of personal injury claims for purposes of distribution under the Plan involves an Abuse Claim Reviewer. The liquidation process presumably allows abuse claim creditors to present their claims along with all relevant information and documentation so that each abuse claimant receives the claimant's fair and equitable share of the "pot" created under the plan. The Plan does not allow the SSJ or other creditors to participate in the process. The Plan seeks to insulate abuse creditors against the results of this Plan-created quasi-judicial liquidation process for all purposes.

E **Problems With Collateral Estoppel And The Court Which Determines The Issue**

32. Plan provisions that seek to insulate abuse creditors from the results of the claims liquidation proceeding are contrary to both applicable bankruptcy-related law and New York law. In Re Farley, 146 BR 748, 753 (Bankr. N.D. Ill. 1992) notes that the collateral estoppel effects of the estimation process are not issues in the purview of the court making an order or deciding a case but are issues for the court in the subsequent case in which collateral estoppel is asserted, citing Pettibone Corp. v Easley, 935 F2d 120, 123 (7th Cir. 1991). Pettibone explained:

Once the bankruptcy court confirms a plan of reorganization, the debtor may go about its business without further supervision or approval. The firm is also without the *protection* of the bankruptcy court. It may not come running to the bankruptcy

judge every time something unpleasant happens. (cites omitted) . . . A firm that has emerged from bankruptcy is just like any other defendant in a tort case: it must protect its interests in the way provided by the applicable non-bankruptcy law, here by pleading the statute of limitations in the pending cases.

935 F2d at 122. (emphasis in original) Pettibone ruled in the context of a plan that purported to cut off tort claimants' rights to continue tort actions unless the tort claimant took further action in 30 days after confirmation. The decision forced the debtor to raise that issue in the non-bankruptcy district courts in which actions were pending stating: "Disputes about effect of a decision in one case on the prosecution of another are for the judge presiding in the second case. In the law of preclusion the second court normally determines the effects of the first judge's order." 935 F2d at 123. Pettibone also ruled that the bankruptcy judge in the reorganization case had no jurisdiction under the 28 USC 1334 "related to" jurisdiction to determine the statute of limitation dispute because there was no close relationship after confirmation on the reorganization of the debtor. The Court disparaged the concept that "bankruptcy is forever" allowing a party to gain a "leg up" after plan confirmation. 935 F2d at 121. See, In Re Westinghouse Electric Company LLC, 605 BR 591, 597 (Bankr. S.D.N.Y. 2019) recognizing Pettibone decision. Although the legal principles which the SSJ claims should prevail is fixed, that is unlikely to deter opportunistic tort creditors emboldened by the Plan terms, thereby creating delay, complication and uncertainty in the New York courts.

33. New York courts also allocate collateral estoppel determinations to the subsequent court in which the issues is raised. See, generally, 73A New York Jur2d, Judgments §333 et seq. for a discussion of issues and when the issues are raised.

34. New York courts recognize the collateral estoppel effect of,

. . . quasi-judicial determinations of administrative agencies are entitled to collateral estoppel effect where the issue a party seeks to preclude in a subsequent civil action is identical to a material issue that was necessarily decided by the administrative

tribunal and where there was a full and fair opportunity to litigate before that tribunal (cite omitted). Whether collateral estoppel should be applied in a particular case turns on ‘general notions of fairness involving a practical inquiry into the realities of the litigation (cites omitted)

Augui v Seven Thirty One LP, 22NY3d 246, 255 (2013). The Court noted that administrative determinations are treated more flexibly than court proceedings and require a determination of whether the proceedings were sufficient in a quantitative and qualitative sense to assure the facts were adequately tested. See Ryan v New York Telephone Co., 62 NY2d 494, 501 (1984) for the allocation of the burdens for admitting and opposing submission of matters of collateral estoppel. In Liss v Trans Auto Systems, Inc., 68 NY2d 15, 21-2 (1986) the Court noted that collateral estoppel may not be applied to the detriment of a party precluded from the first proceeding. Although the Abuse Review proceedings are not an administrative or judicial proceeding in the usual sense, those proceedings are intended to perform what Congress designated as a purely judicial function, that is the liquidation of claims for purposes of distribution under the auspices of a court proceeding which requires the plan distributions to be determined in a “fair and equitable” manner. [The term “fair and equitable” are words that are well-known in bankruptcy proceedings, for example, sec. 1129(b)(1) permits a plan to be “crammed down” only when it is found the proposed plan is “. . . does not discriminate unfairly, and is fair and equitable . . . “ in respect to dissenting classes of creditors.] With that concept of “fair and equitable” in mind and presumably intended in the proposed plan, the proceedings held before the Abuse Claims Reviewer will provide the level of assurance that abuse creditors will be able to present proof of their injury to bind them in subsequent proceedings. Likewise, the Court should note that abuse creditors have an option to opt out of the proceedings before the Abuse Claims Reviewer which cannot be curtailed under 28 USC 157(b)(5) as noted above. It is unthinkable that abuse creditors and the Committee representing them would agree to a plan in which the long-deprived abuse creditors

would not be able to make a full presentation unless they voluntarily agreed to some other method of liquidating their claims for distribution purposes. Put another way, abuse claimants, if they vote to accept the Plan will have agreed to a methodology which they believe will treat their abuse claims fully, fairly and give them adequate scope to make a full presentation of their claims. Abuse creditors are not being forced into the Abuse Claims Review without recourse. It is ridiculous and insulting to believe that abuse creditors, most of them represented by experienced counsel, will “pull their punches” and make a sloppy, unreliable presentation. The allocation of the burden of proof or going forward noted above explains why barring creditors such as the SSJ from access to the record of the Abuse Claim Reviewer proceedings will wrongfully impair the SSJ’s and similarly situated creditors of important rights.

F
Issues Arising Because SSJ Sisters Are Insureds Under DOR Insurance Policies

35. SSJ sisters, when acting as employees of the Villa and/or DOR, are insureds under DOR insurance policies. The employee-insureds SSJ sisters are not Protected Parties under the Plan. Thus, there is no bar to the SSJ bringing an action to recover from an allegedly wrongdoing sister and her employer, then looking to the insurance policy(ies). See, Frank v Meadwakes Dev. Corp., 6 N.Y.3d 687, 691-2 (2006) noting that indemnification rights are preserved under CPLR Article 16. The Plan, most likely intentionally, fails to address this rather obscure point. This is meaningful because, as this Court can observe in Exhibit A, except for the most general and conclusory assets of SSJ ownership, operation and control, the SSJ is implicated only by the acts of omission of SSJ sisters employed by the Villa or DOR and engaging in services for the Villa as a Social Services Law agency. [The same applies to an SSJ sister employed at a school or parish and under the control of a priest, parish counsel or DOR’s Board of Education in parish or school activities. The SSJ, if held in because of the misdeeds of a sister employed and controlled by a

parish, school or DOR, is being deprived of an important protection. The SSJ would be held liable because the DOR, Protected Parties and Insurers are, essentially, paying money in exchange for whatever protection they obtain under the Plan.] The Plan needs to protect the SSJ either (a) by defending the SSJ sisters and indemnifying the SSJ or (b) by recognizing and providing the SSJ cannot be held liable to a CVA claimant merely because the wrongdoer is an SSJ sister or otherwise protect the SSJ's rights to access applicable insurance assets.

WHEREFORE the SSJ requests the Court refuse to approve the proposed Disclosures and grant such other and further relief as is just and proper.

Dated: December 12, 2023.



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LACY KATZEN LLP
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of Rochester, Inc.*
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Rochester, New York 14692-2878
Telephone: 585-324-5707

EXHIBIT "A"

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 3658483

Book Page CIVIL

No. Pages: 17

Instrument: MISCELLANEOUS DOCUMENT

Control #: 202312041415

Index #: E2019008210

Date: 12/04/2023

Time: 5:39:54 PM

Return To:
PETER T. RODGERS

OBRIEN, JOHN

Villa of Hope
Sisters of Saint Joseph of Rochester, Inc.
Roman Catholic Diocese of Rochester
MATANO, SALVATORE RONALD

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

JOHN O'BRIEN

Plaintiff,

-vs-

AMENDED ANSWER

Index No. E2019008210

THE ROMAN CATHOLIC DIOCESE OF
ROCHESTER, BISHOP SALVATORE
RONALD MATANO, VILLA OF HOPE
f/k/a ST. JOSEPH'S VILLA, SISTERS OF
SAINT JOSEPH OF ROCHESTER, INC.,

Defendants.

Defendant Sisters of Saint Joseph of Rochester, Inc. (hereinafter "SSJ") for its answer alleges:

1. In the event the matters set forth in the unnumbered paragraph under "Introduction" are intended to be a portion of Plaintiff's complaint, the first sentence states a contention of law and requires no response and SSJ lacks sufficient information and belief to plead to the second sentence and denies the same.

2. Admits ¶1, first sentence and last sentence and lacks sufficient information and belief to plead to the remainder of such allegation and denies the same.

3. Admits ¶2.

4. Admits ¶3 to the extent of the second sentence and that Defendant Villa of Hope (hereafter "Villa") was formerly known as a St. Joseph's Villa and is or was a Catholic-related entity but denies that it was an orphanage though orphans may have been placed at the Villa.

5. Admits ¶4, first sentence and denies the second sentence.
6. Admits ¶5.
7. Admits ¶6 as to the location of Defendants' principal place of business and incorporation and are not required to plead in respect to the assertions of law in such paragraph.
8. Admits that the complaint alleges events occurring in Monroe County and Defendants are located in Monroe County and otherwise deny ¶7.
9. SSJ has insufficient information and belief to plead to ¶8 and denies the same.
10. SSJ has insufficient information and belief to plead to ¶9 and denies the same.
11. SSJ has insufficient information and belief to plead to ¶10 and denies the same.
12. SSJ admits that Sister Elizabeth Beauchamp performed a mission at the Villa as a childcare worker who performed services at a Villa residence in which Plaintiff resided for some period during which Plaintiff resided at the Villa and deny the remainder of ¶11.
13. SSJ has insufficient information and belief to plead to ¶12 and denies the same.
14. Denies ¶13.
15. Denies ¶14.
16. SSJ has insufficient information and belief to plead to ¶15, first sentence, and denies the same and denies the remainder of such paragraph.
17. SSJ has insufficient information and belief to plead to ¶16 and denies the same.
18. SSJ has insufficient information and belief to plead to ¶17 and denies the same.
19. Denies ¶18 as to the SSJ and lacks sufficient information and belief to plead to the remainder of such paragraph and denies the same.
20. Denies ¶19 as to the SSJ and lacks sufficient information and belief to plead to the remainder of such paragraph and denies the same.

21. Denies ¶20 as to the SSJ and lacks sufficient information and belief to plead to the remainder of such paragraph and denies the same.

22. Denies ¶21 as to the SSJ and lacks sufficient information and belief to plead to the remainder of such paragraph and denies the same.

23. Denies ¶22 as to the SSJ and lacks sufficient information and belief to plead to the remainder of such paragraph and denies the same.

24. Denies ¶23 as to the SSJ and lacks sufficient information and belief to plead to the remainder of such paragraph and denies the same.

25. Denies sufficient information and belief to plead to ¶24 and denies the same.

26. Denies sufficient information and belief to plead to ¶25 and denies the same.

27. Denies sufficient information and belief to plead to ¶26 and denies the same.

28. Denies sufficient information and belief to plead to ¶¶27 – 39 inclusive and denies the same.

29. Paragraph 40 does not allege facts which require a response but an explanation of what Plaintiff claims he has alleged.

30. Denies ¶41.

31. Repeats ¶¶1-30 inclusive in response to ¶42.

32. Paragraphs 43 and 44 allege assertions of law which do not require responsive pleading.

33. SSJ lacks sufficient information and belief to plead in response to the allegations of the Villa alleged breach of duties, denies that Fr. Hanna was an agent or employee of any entity other than the Roman Catholic Diocese of Rochester (“Diocese”), and believes that if there was a

failure to supervise showers, the failure was that of a recreation supervisor employed by the Villa and/or Diocese.

34. Upon information and belief denies ¶46.

35. Denies sufficient information and belief to plead to ¶47 and denies the same.

36. Denies sufficient information and belief to plead to ¶48 and denies the same.

37. Denies sufficient information and belief to plead to ¶49 and denies the same.

38. Repeats ¶¶1 – 37 inclusive in response to ¶50.

39. Paragraph 51, first sentence and second sentence through the first use of the word “control,” upon information and belief, states legal principles which are contrary to civil law as determined by the New York Court of Appeals and contrary to Canon Law and as statements of law do not required a responsive pleading. Upon information and belief the Villa was subject to the control of the Diocese.

40. Paragraph 52 alleges a principle of law which does not require a responsive pleading.

41. Admit so much of ¶53 that the Diocese was Fr. Hanna’s employer and state the remainder of the paragraph states alleged legal principles which do not require a responsive pleading.

42. Paragraph 54 states alleged legal principles which do not require a responsive pleading.

43. SSJ lacks sufficient information and belief to plead to ¶55 and denies the same.

44. SSJ lacks sufficient information and belief to plead to ¶56 and denies the same.

45. SSJ lacks sufficient information and belief to plead to ¶57 and denies the same.

46. SSJ lacks sufficient information and belief to plead to ¶58 and denies the same.

- 47. SSJ lacks sufficient information and belief to plead to ¶59 and denies the same.
- 48. Repeats and realleges ¶¶1 -47 inclusive in response to ¶1, page 11.
- 49. Denies ¶2.
- 50. Denies ¶3.
- 51. Denies ¶4.
- 52. Denies ¶5.
- 53. Denies ¶6.
- 54. Denies ¶7.
- 55. Denies ¶8.

First Affirmative Defense

- 56. Plaintiff fails to state a claim against the SSJ for which relief can be granted.

Second Affirmative Defense

- 57. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

Third Affirmative Defense

- 58. Plaintiff's claims are barred by laches.

Fourth Affirmative Defense

- 59. Plaintiff's claims are barred by waiver and/or estoppel.

Fifth Affirmative Defense

- 60. Plaintiff fails to plead with the specificity required by CPLR 3013, 3015, and 3016.
- 61. Plaintiff refers to "defendants" in the complaint without adequately identifying the named defendant intended to be referenced.

Sixth Affirmative Defense

62. Plaintiff's injuries were not proximately caused by any act or omission of SSJ.

Seventh Affirmative Defense

63. SSJ's liability for non-economic loss is limited as provided in CPLR Article 16.

Eighth Affirmative Defense

64. Any liability of the SSJ must be reduced pursuant to CPLR 4545(c) by those amounts received from collateral sources.

Ninth Affirmative Defense

65. SSJ sisters providing services at the Villa were employed by, hired by, supervised by, trained by the Villa in matters unique to the Villa, evaluated by, and subject to discharge from service at the Villa by the Villa and/or Diocese.

Tenth Affirmative Defense

66. SSJ did not recruit Fr. Hanna to the priesthood, did not supervise him, did not control him, could not discipline or discharge him, could not reassign him, did not evaluate his performance of duties or his morals, did not train him for any duties, and was barred by canon law and the longstanding customs and practices of the Roman Catholic Church from engaging in any of the foregoing activities.

67. Upon information and belief, Fr. Hanna was assigned to duties at the Villa by the Diocese, was supervised by the Diocese, was evaluated by the Diocese, trained by the Diocese or by those deemed satisfactory to the Diocese, and could be discharged, reassigned, removed or controlled solely by the Diocese.

68. SSJ possessed neither information nor other reason to believe that Fr. Hanna engaged in the types of activities alleged in the complaint nor reason to ask any third party to inquire into Fr. Hanna.

69. If anyone was aware of Fr. Hanna's alleged propensity for engaging in sexual abuse, such third parties concealed and withheld such information from the SSJ.

Eleventh Affirmative Defense

70. The Villa was at all times in issue and starting no later than 1942 a corporate entity separate and distinct from the SSJ.

71. The SSJ is a religious corporation of a religious order of women duly existing in the State of New York.

72. The SSJ was at all times in issue and since the formation and incorporation of the Villa in 1942 governed and managed separately from and in all respects independently of the Villa and Diocese of Rochester, maintained its property separate from that of the other defendants, maintained separate books and records from other defendants, maintained financial accounts separate from other defendants, and were not controlled by or in control of the other defendants and/or the property, affairs, or operations of the other defendants.

73. The Villa maintained a board of trustee and/or directors which had full and complete control of the Villa and its operations.

74. During the times relevant to this action, no SSJ member served as a member of the Villa's board.

75. During the times relevant to this action, SSJ sisters at the Villa typically were outnumbered by other Villa employees having no connection with the SSJ.

76. SSJ sisters serving at the Villa were compensated for their services by the Diocese.

77. SSJ sisters serving at the Villa were additional insureds under the policies of insurance obtained by the Diocese.

78. The Villa was authorized to operate as a social service entity to care for abandoned, neglected, and other children placed there by court order or by action of the County of Monroe Department of Social Services.

79. SSJ had no authority to operate, control, own, or engage in the operations performed by the Villa and did engage I nor control such operations.

80. The Villa did not provide any report or information to the SSJ concerning Villa operations, personnel, volunteers, or others providing services at the Villa.

81. The Villa's school operations were under the control and direction of the Diocese.

82. SSJ did not have any contractual relation with the County of Monroe in respect to the Villa or its operations and the County of Monroe has been unable to produce any such contract although production of any such agreement has been demanded by the SSJ.

Twelfth Affirmative Defense

83. Individual SSJ sisters providing services at the Villa were not employees of the SSJ.

Thirteenth Affirmative Defense

84. In the event that SSJ sisters were to be deemed SSJ employees in respect to the services they rendered at the Villa, the SSJ cannot be vicariously liable for intentional torts committed outside the scope of their duties as SSJ employees.

Fourteenth Affirmative Defense

85. Plaintiff failed to mitigate his damages including, but limited to, failing to disclose to Sister Betty the abuse Plaintiff allegedly had suffered at the hands of Fr. Hanna and by creating

a false impression that any injuries allegedly known to Sister Betty had been caused by his improper sexual activity with other Villa residents.

Fifteenth Affirmative Defense

86. SSJ sisters did not supervise boys' showers at the Villa..

87. Boys' showers were at all times supervised by Villa recreational supervisors, none of whom were SSJ employees, sisters, or contracted by the SSJ.

Sixteenth Affirmative Defense

88. Plaintiff failed and willfully has refused to name all persons and/or entities who are or may be responsible for injuries claimed by Plaintiff.

89. Plaintiff has failed to disclose the identities of each person or entity who had custody and/or control of his person during his minority after Plaintiff was taken into the custody, control and protection of the County of Monroe ("County").

Seventeenth Affirmative Defense

90. The relative culpability of each person or entity who is or may be responsible for the damages alleged by plaintiff in this action must be determined in accordance with the decisional and statutory laws of the State of New York in such case as made and provided and the equitable chare of each person liable for contribution must be determined and apportioned in accordance with the relative culpability of each person, if any, pursuant to Articles 14 and 16 of the CPLR and General Obligations Law 15-108 in the event of any settlement with the Diocese the Villa and/or DePaul.

91. The SSJ is not responsible for injuries and/or aggravation of injuries caused by or flowing from the acts of entirely independent tortfeasors and/or subsequent tortfeasors

Eighteenth Affirmative Defense

92. The SSJ is not a joint tortfeasor with any other defendant and/or any non-party, including but not limited to DePaul and/or the County.

93. Upon information and belief, the alleged abuse of Plaintiff by Fr. Hanna started before the SSJ knew or should have known of Fr. Hanna's alleged propensities.

94. The abuse of Plaintiff at DePaul occurred outside of the control of the SSJ sisters, years after Plaintiff's last contact with any SSJ sister, at a place out of the control of the SSJ, and involved persons with no relationship to the SSJ.

95. If Plaintiff can establish that any SSJ sister violated any duty to him to his injury, the Villa, as the responsible Social Services Law agency for the Villa, was obligated to determine each sister was suitable for service at the Villa; supervise, evaluate and train each sister employed at the Villa; and discharge any sister who failed to comply with the applicable standards.

96. The SSJ had no role in the placement of Plaintiff in the foster care system or determining Plaintiff was in need of public care.

Nineteenth Affirmative Defense

97. The SSJ requested the Plaintiff to join others who were or might be jointly liable with the SSJ as defendants in this action or contributed to Plaintiff's alleged injuries including foster parents, guardians, and the actual perpetrators of the injuries alleged and/or to consolidate the multiple actions Plaintiff commenced, which requests Plaintiff steadfastly has refused and neglected.

98. The SSJ cannot be held liable much less jointly liable for injuries flowing from events at the Wellington Group Home after 1976.

99. The SSJ cannot be held jointly liable for injuries flowing from conduct by Plaintiff's parents, foster parents, siblings, those with whom Plaintiff resided, those who operated care and/or treatment facilities which Plaintiff resided or was treated, the County of Monroe and/or the structure and general operation of the system for care for abandoned and neglected children in Monroe County whenever such conduct occurred.

100. Plaintiff has willfully impeded the lawful, proper application of CPLR 1001, CPLR Articles 14 and 16, and GOL 15-108 in this action.

CONTINGENT, HYPOTHETICAL AND PRECAUTIONARY AFFIRMATIVE DEFENSE

101. SSJ repeats and realleges ¶¶ 1 through 100 as if set forth at length.

102. In the event that the SSJ is determined in this action to be jointly liable with any other party or non-party to Plaintiff for any non-economic loss Plaintiff has sustained, SSJ is entitled to limit its liability for such non-economic loss pursuant to Civil Practice Law and Rules 1601.

103. Upon information and belief based upon medical records produced by Plaintiff, Plaintiff's alleged mental and emotional injuries flowed in meaningful part from a sense of abandonment, rejection and/or neglect by his natural parents and/or foster parents into whose homes Plaintiff was placed and/or other operating residential or treatment facilities into which Plaintiff was placed both before and after the period 1973-1976 inclusive.

104. Upon information and belief, before he came into contact with any SSJ sister, Plaintiff was tested and determined to suffer from or have psychological, social, intellectual and functional deficits or conditions which meaningfully caused, contributed to or aggravated any injury Plaintiff claims in this action.

105. Upon information and belief, both of Plaintiff's parents suffered psychiatric and/or psychological conditions for which they were hospitalized and which caused or contributed to Plaintiff's feelings of neglect, rejection and abandonment and/or Plaintiff's pre-existing psychological, social, intellectual and/or functional deficits.

106. The SSJ is not responsible for any impact that Plaintiff's pre-existing psychological, social, intellectual or functional deficits and conditions and/or parental psychiatric or psychological conditions or hospitalizations or resulting conduct has, have or had on Plaintiff's alleged injuries or aggravated or contributed to such injuries.

107. Upon information and belief, Plaintiff's psychological, social and intellectual conditions impeded his education achievement, his social integration in general society, his foundation of satisfactory social relationships, his setting of realistic goals and expectations, and contributed materially to Plaintiff's dissatisfaction with his life and surrounding circumstances.

108. Upon information and belief, Plaintiff was placed in more than ten (10) foster homes and was removed from each of them for reasons attributable to his unsatisfactory conduct and interaction with each foster family with which he was placed.

109. Upon information and belief, Plaintiff's siblings were successfully placed with foster/adoptive families and successfully interacted with Plaintiff and/or other family members, all of which contributed to Plaintiff's present unfortunate condition.

110. The SSJ and the sisters bear no responsibility for the Plaintiff's siblings' more successful lives and/or Plaintiff's feelings of inadequacy in comparison.

111. Plaintiff's unfortunate circumstances surrounding his birth, his lack of family life, the need for public protective action, his social, intellectual, functional and psychological capabilities and limitations, and the limitations of the foster care system are not attributable to the

SSJ or any SSJ sister in any part and the SSJ has no legal responsibility for such misfortunes or their impact on Plaintiff.

112. The SSJ did not cause and does not bear any responsibility in fact for Plaintiff's parents' conduct while alive and/or the death of Plaintiff's natural parents.

113. The SSJ did not cause or have any responsibility for Plaintiff's interactions or lack of satisfactory interactions with Plaintiff's siblings and/or other person with whom he has resided.

114. The SSJ did not cause, participate in, counsel, or in any manner assist in Plaintiff's parents abandoning and/or neglecting him and/or the conduct of any foster parent into whose homes Plaintiff was placed.

115. The SSJ did not remove Plaintiff from the custody of his natural parents, place Plaintiff in any foster care, supervise any of Plaintiff's foster care facility or the home life existing in any foster care facility, remove Plaintiff from any foster care facility or participate in any judicial or administrative proceeding in respect to Plaintiff's removal from his natural parents' custody or for any other purpose..

116. Upon information and belief, Plaintiff's interactions or lack of satisfactory interactions with his natural and foster parents, Plaintiff's siblings, persons with whom he resided, and those staffing residential or care facilities at which Plaintiff resided contributed to Plaintiff's present condition.

117. Upon information and belief based upon claims made by other CVA claimants in cases before this Court, CVA claimants have asserted that the foster care system operated by the County of Monroe was deficient, ineffective, and dangerous.

118. The SSJ is not and never played a role nor was it responsible for the structuring and overall operation of the allegedly dangerous, deficient, and ineffective Monroe County foster care

system or the mental injuries suffered by children in the system and cannot be held liable for such injuries.

119. Heretofore on or about January 5, 2022 Plaintiff filed an affidavit in which Plaintiff testified that in 1981 through 1983 Plaintiff was placed by the County of Monroe in the “Wellington Group Home” where he remained under the care of the County of Monroe which assigned Sarah Lichterman as his case worker. (Plaintiff’s affidavit ¶5)

120. Plaintiff testified that while at the Wellington Group Home he was “routinely sexually and physically abused, raped, and sexually assaulted on over 20 separate occasions. (Plaintiff affidavit ¶6)

121. Plaintiff testified the events described in his affidavit caused skull fractures, a broken rib, and “other permanent and severe physical injuries.” (Plaintiff affidavit ¶7)

122. Plaintiff’s complaint against the County of Monroe at ¶¶41-55 inclusive alleged brutal, violent and repeated sexual assaults, physical injuries, a suicide attempt causing multiple weeks of hospital treatment all while Plaintiff resided in the Wellington Group Home.

123. All of the events which are described in Plaintiff’s affidavit as well as the events in Plaintiff’s complaint against the County of Monroe referenced above and the injuries flowing from such events occurred after transactions, events, and occurrences alleged in Plaintiff’s complaint against the SSJ.

124. The wrongs alleged against the SSJ did not cause or contribute to unknown third parties residing in and/or staffing the Wellington Group Home to physically and/or sexually assault Plaintiff and/or the injuries flowing from events at the Wellington Group Home.

125. The SSJ cannot be reasonably or justly held liable for injuries sustained at or flowing from events at the Wellington Group Home or be found jointly liable for such injuries.

126. Plaintiff's complaint in this action ¶¶24-41 allege the Bishops of the Diocese and other authoritative Catholic personnel knew for a period in excess of 50 years before the events alleged in respect to the SSJ that at least some of the Roman Catholic Church's priests sexually molested children.

127. Plaintiff alleges in ¶¶ 24-41 that the Bishop of the Diocese and other authoritative Catholic personnel knew that the problem was systematically concealed from the public and public authorities the wrongdoing and risks from offending priests, and permitted priests, including Fr. Hanna to stay in active service as priests at the risk of persons such as Plaintiff.

128. Plaintiff alleges in his complaint ¶36, "The Diocese was in the best position to protect against the risk of harm [as described in the complaint] . . . "

129. Plaintiff alleges in his complaint ¶37 ". . . the Diocese had special and unique knowledge of the risk of child sexual abuse by its Priests, . . . "

130. Plaintiff alleges in his complaint ¶38: "Plaintiff and his guardians had no opportunity to protect Plaintiff against a danger that was solely within the knowledge of the Diocese."

131. The SSJ and Sister Betty lacked knowledge of priestly wrongdoing, including wrongdoing alleged against Fr. Hanna, which Plaintiff alleges was known solely held the Bishop, Diocese and others in the Catholic Church's hierarchy.

132. Plaintiff has failed and neglected to disclose the identity of Plaintiff's guardians.

133. Upon information and belief, Plaintiff's guardians failed to learn any fact or investigate any rumors which would have caused them to seek to protect Plaintiff against Fr. Hanna or any other type of wrongdoing by anyone at the Villa.

134. Upon information and belief, if the SSJ is liable to Plaintiff, Plaintiff's guardians at the time of the events put in issue are jointly liable with the SSJ and should be added as defendants.

135. The SSJ pleads this precautionary defense not as an affirmative defense but out of an abundance of caution to avoid any claim of surprise on Plaintiff's part as to the facts relating to the causation of damages in this action.

CONTINGENT SECOND AFFIRMATIVE DEFENSE

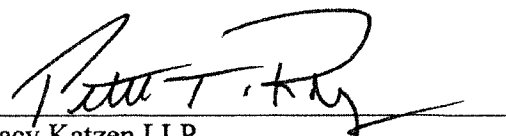
136. The sisters of the SSJ providing services at the Villa were at all times employees of the Villa and/or the Diocese and under the control of such parties in respect to sisters' activities at the Villa.

137. The SSJ had no control over the performance of sisters' duties on behalf of the Villa or at the Villa.

138. The Diocese admits that individual sisters at the Villa were Diocesan employees

WHEREFORE, SSJ demands judgment dismissing Plaintiff's complaint as to it, the costs and disbursements of this action, and such other and further relief as to the Court seems just and proper.

Dated: December 4th, 2023.



Lacy Katzen LLP
Peter T. Rodgers, Esq. of counsel
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Rochester, New York 14692-2878
Tele: 585-324-5707

EXHIBIT "B"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

-----X

J.O.

Index No. _____

Plaintiff,

SUMMONS

-against-

Date Index No. Purchased: _____

THE ROMAN CATHOLIC DIOCESE OF ROCHESTER, a/k/a THE MOST REV. SALVATORE R. MATANO, as Bishop and Corporate Sole of the DIOCESE OF ROCHESTER, VILLA OF HOPE f/k/a ST. JOSEPH'S VILLA, SISTERS OF SAINT JOSEPH OF ROCHESTER, INC.,

Defendants.

-----X

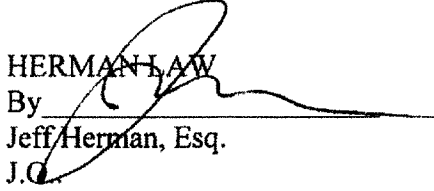
To the above named Defendant(s)

THE ROMAN CATHOLIC DIOCESE OF ROCHESTER 1150 BUFFALO ROAD, ROCHESTER, NY 14624
VILLA OF HOPE C/O CHIEF EXECUTIVE OFFICER, 3300 DEWEY AVENUE, ROCHESTER, NY 14616
SISTERS OF SAINT JOSEPH OF ROCHESTER, INC., 150 FRENCH ROAD, ROCHESTER, NY 14618

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 Plaintiff's 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 of venue is address and principal place of business of The Roman Catholic Diocese of Rochester which is Monroe County.

Dated: New York, NY
August 28, 2019

HERMAN LAW
By 
Jeff Herman, Esq.
J.O.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

-----X

J.O.,

Plaintiff,

COMPLAINT

-against-

THE ROMAN CATHOLIC DIOCESE OF
ROCHESTER, BISHOP SALVATORE RONALD
MATANO, VILLA OF HOPE F/K/A ST. JOSEPH'S
VILLA, SISTERS OF SAINT JOSEPH OF
ROCHESTER, INC.

Index No. _____

Defendants.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, J.O., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when he was a minor, was sexually assaulted by a Priest of the Diocese of Rochester, Austin Hanna, who was assigned to St Joseph's Villa, now known as Villa of Hope.

Parties, Jurisdiction and Venue

1. Plaintiff, J.O., is a citizen and resident of the State of New York. Plaintiff brings this Complaint using his initials because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment and further psychological damage if his identity as a victim of child sexual abuse were to become

publicly known. His identity will be made known to Defendant, at the latest, upon service of the Summons and Complaint.

2. Defendant, Diocese of Rochester, and Salvatore Ronald Matano as Bishop and Corporate Sole of the Diocese of Rochester (hereafter, the “Diocese”) is a religious institution and organization with principal offices located at 1150 Buffalo Rd, Rochester, NY 14624. The Diocese of Rochester controls all Catholic religious, pastoral and educational functions in 12 counties in New York, with approximately 125 faith communities (parishes and chapels), 22 diocesan elementary schools and 7 independent parochial high schools.

3. Defendant, Villa of Hope f/k/a St. Joseph’s Villa (“St. Joseph’s Villa”), is a Catholic orphanage. At all relevant times, St. Joseph’s Villa was owned, controlled and operated by the Diocese of Rochester.

4. Defendant, Sisters of Saint Joseph of Rochester, Inc. (“Sisters of St. Joseph”), also known as the Congregation of the Sisters of St. Joseph is a Roman Catholic religious congregation of women. At all relevant times, St. Joseph’s Villa was run by the Sisters of Saint Joseph of Rochester.

5. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

6. Personal jurisdiction lies over Defendants Diocese, St. Joseph’s Villa and the Sisters of St. Joseph as they are present and domiciled in the State of New York.

7. Venue of this action lies in Monroe County as a substantial part of the events or omissions giving rise to the claim occurred in Monroe County or one of the Defendants resides in Monroe County.

Facts of Sexual Abuse

8. Plaintiff became an orphan at the age of five when he lost both his parents.

9. Plaintiff was an orphan at St. Joseph's Villa from 1973 to 1976 between the ages of eight to twelve.

10. While at St. Joseph's Villa, Plaintiff's residence was overseen by Sister Betty. Plaintiff was assigned to chapel duty by Sister Betty to assist Father Hanna at the age of eight.

11. Father Hanna started to sexually abuse Plaintiff when he was assigned to chapel duty at eight years old. For the first couple of years, the sexual abuse consisted of fondling and oral sex. When Plaintiff turned ten, Father Hanna sodomized Plaintiff multiple times a week for the following two years. Most of the sexual abuse occurred in the chapel and in Father Hanna's studio-like apartment located in the chapel.

12. Father Hanna's sexual abuse caused Plaintiff physical injury. He experienced rectal bleeding and soiled his underwear. Sister Betty found Plaintiff's soiled underwear and accused him of being promiscuous at the age of ten. Plaintiff was apprehensive about disclosing Father Hanna's sexual abuse and stayed silent. She then beat him without asking any questions.

13. Sister Betty found Plaintiff's soiled underwear for a second time. She hit Plaintiff's genitals and forced him to the chapel to confess his "sins" to Father Hanna. Sister Betty left Plaintiff in the chapel where Father Hanna then forced Plaintiff to perform oral sex on him.

14. Upon information and belief, there were rumors at St. Joseph's Villa that Father Hanna was having sex with Plaintiff. The Sisters at the Chapel, specifically Sister Betty, failed to investigate said rumors.

15. Plaintiff was not only sexually abused by Father Hanna, he was also sexually abused by older boys at St. Joseph's Villa on multiple occasions. Plaintiff was fondled and

sodomized by the older boys at the facility during the time allotted for showers. The Sisters had notice of the rampant sexual abuse that occurred mostly during showers as there were many complaints and, on some occasions, the Sisters witnessed the sexual abuse. Nevertheless, the sexual abuse continued.

16. Plaintiff's sexual abuse by Father Hanna and the older boys at the facility ceased when Plaintiff was assigned to a foster home in 1976.

17. Upon information and belief, Father Hanna was at all relevant times a serial sexual predator who sexually abused multiple boys over a period of decades.

18. At all relevant times, the Diocese, St. Joseph's Villa and the Sisters of St. Joseph knew or in the exercise of reasonable care should have known that Father Hanna had a propensity for the misconduct which caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

19. At all relevant times, it was reasonably foreseeable to the Diocese, St. Joseph's Villa and the Sisters of St. Joseph that Father Hanna would commit acts of child sexual abuse or assault on a child.

20. At all relevant times, Diocese, St. Joseph's Villa and the Sisters of St. Joseph knew or should have known that Father Hanna was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

21. With such actual or constructive knowledge, the Diocese, St. Joseph's Villa and the Sisters of St. Joseph provided Father Hanna unfettered access to Plaintiff and gave him the opportunity to commit foreseeable acts of child sexual abuse or assault.

22. At all relevant times, the Diocese, St. Joseph's Villa and the Sisters of St. Joseph knew or in the exercise of reasonable care should have known that older boys residing in St. Joseph's Villa had a propensity for the misconduct which caused injury to Plaintiff, in particular.

23. With such actual or constructive knowledge, the Diocese, St. Joseph's Villa and the Sisters of St. Joseph continued to allow unsupervised showers, resulting in Plaintiff's sexual abuse by the older boys at the facility.

Diocese's Concealment of Acts of Sexual Abuse by Priests

24. The Bishop of the Diocese at all relevant times knew that Priests of the Diocese, under his supervision and control, were grooming and sexually molesting children with whom the Priests would have contact in their ministry and pastoral functions. At all relevant times, the Bishop knew that this was a widespread, ubiquitous and systemic problem in the Diocese, involving many Priests and numerous victims.

25. In 1922, the Holy See released a confidential document to its Bishops and other officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents, including the Bishop of the Diocese, to use when a cleric abused children using the confessional. This document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

26. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as "*Crimen Sollicitationis*"). The heading of the document states, "From the Supreme and Holy

Congregation of the Holy Office to All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite,'" and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an "instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail." *Crimen Sollicitationis* at paragraph 24.

27. The 1962 document reinforced that the Holy See and its agents to whom the documents was directed had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

28. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

29. Fr. Fitzgerald's reports were kept secret under the Holy See's standing policy to avoid scandal at all costs. It's recommendation was ignored, however, and instead the Holy See made a choice to return known offending priests to active duty. At this point, it is clear that the Holy See and its agents, including the Diocese, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

30. The Holy See's policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Priests from consequence. Through this policy and others, the Holy

See and its agents, including the Diocese, knowingly allowed, permitted and encouraged child sex abuse by the Diocese's Priests.

31. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move offending priests to other locations once they have been determined to be "delinquent." In response to allegations, the document mandates that supplementary penalties include: "As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place." *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

32. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including the Bishop of the Diocese, in 1988 and 2001.

33. The policies and practices of the Diocese designed to conceal sexual abuse by clergy and protect it from scandal and liability included the following:

- (a) transfer and reassignment of clergy known or suspected to abuse minors to deflect attention from reports or allegations of child sexual abuse;
- (b) concealing from parishioners and even other clergy that a priest reassigned to their parish posed a danger of sexual abuse to children;
- (c) failing to alert parishioners from the Priest's prior assignments that their children were exposed to a known or suspected child molester;

(d) failing to report sexual abuse to criminal authorities; and

(e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.

34. Indeed, the policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See and Diocese believed it to be perceived as a perquisite, which it condoned and used to its advantage in controlling Priests.

35. Plaintiff was in a zone of foreseeable harm as a child engaged in Catholic activities in close proximity to or with Catholic clergy.

36. The Diocese was in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of its Priests to sexually abuse children.

37. At all relevant times, while the Diocese had special and unique knowledge of the risk of child sexual abuse by its Priests, such Priests who would prey on children were outside the reasonable contemplation of the Catholic community and families who trusted Priests to have access to their children.

38. Plaintiff and his guardians had no opportunity to protect Plaintiff against a danger that was solely within the knowledge of the Diocese.

39. Upon information and belief, after Plaintiff was abused, the Diocese engaged in a plan and scheme pursuant to the Holy See's secrecy policies and practices to avoid discovery of Father Hanna's child sexual abuse and the Diocese's wrongful conduct which facilitated the sexual abuse of young children.

Nature of Conduct Alleged

40. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

41. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendant acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Father Hanna, to retain Father Hanna in ministry with unfettered access to children.

COUNT I
NEGLIGENCE
(against St. Joseph’s Villa)

42. Plaintiff repeats and realleges Paragraphs 1 through 41 above.

43. At all material times, St. Joseph’s Villa and Plaintiff were in a special relationship of in loco parentis in which St. Joseph’s Villa owed Plaintiff a duty of reasonable care.

44. St. Joseph’s Villa owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of St. Joseph’s Villa. St. Joseph’s Villa’s duties encompassed providing a safe environment for Plaintiff.

45. St. Joseph’s Villa breached these duties by failing to protect the minor J.O. from

sexual assault and lewd and lascivious acts committed by an agent and employee of St. Joseph's Villa.

46. At all relevant times, the St. Joseph's Villa created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

47. At all relevant times, the St. Joseph's Villa had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

48. As a direct and proximate result of St. Joseph's Villa's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

49. St. Joseph's Villa acts and conduct shows a reckless or willful disregard for the safety and well-being of J.O.

WHEREFORE, Plaintiff demands judgment against St. Joseph's Villa for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT II
NEGLIGENCE
(against the Diocese)

50. Plaintiff repeats and realleges Paragraphs 1 through 41 above.

51. At all material times the Diocese, as principal, and the Church, as agent, were in an agency relationship, such that the Church acted on the Diocese's behalf, in accordance with the Diocese's instructions and directions on all matters, including those relating to clergy personnel. The acts and omissions of the Church were subject to the Diocese's plenary control, and St. Joseph's Villa consented to act subject to the Diocese's control.

52. At all material times, the Diocese and Plaintiff were in a special relationship of, in which the Diocese owed Plaintiff a duty of reasonable care.

53. At all material times, the Diocese and Father Hanna were in a special relationship of employer – employee, in which the Diocese owed a duty to control the acts and conduct of Father Hanna to prevent foreseeable harm.

54. The Diocese owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of the Diocese. The Diocese’s duties encompassed the retention and supervision of Father Hanna and otherwise providing a safe environment for Plaintiff.

55. The Diocese breached these duties by failing to protect the minor J.O. from sexual assault and lewd and lascivious acts committed by an agent and employee of the Diocese.

56. At all relevant times, the Diocese created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

57. At all relevant times, the Diocese had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

58. As a direct and proximate result of the Diocese’s negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

59. The Diocese’s acts and conduct shows a reckless or willful disregard for the safety and well-being of J.O.

WHEREFORE, Plaintiff demands judgment against the Diocese for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT III
NEGLIGENCE
(against the Sisters of St. Joseph)

1. Plaintiff repeats and realleges Paragraphs 1 through 41 above.

2. At all material times the Sisters of St. Joseph were in a special relationship of in loco parentis, in which the Diocese owed Plaintiff a duty of reasonable care.

3. The Sisters of St. Joseph owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of the Sisters of St. Joseph. The Sisters of St. Joseph's duties encompassed providing a safe environment for Plaintiff.

4. The Sisters of St. Joseph breached these duties by failing to protect the minor J.O. from sexual assault and lewd and lascivious acts committed by Father Hanna after receiving actual and/ or constructive notice of J.O. being sexually abused by Father Hanna and other boys at St. Joseph's Villa.

5. At all relevant times, the Sisters of St. Joseph created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

6. At all relevant times, the Sisters of St. Joseph had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

7. As a direct and proximate result of the Sisters of St. Joseph's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

8. Sisters of St. Joseph's acts and conduct shows a reckless or willful disregard for the safety and well-being of J.O.

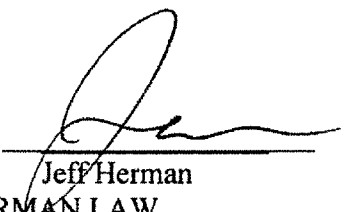
WHEREFORE, Plaintiff demands judgment against the Sisters of St. Joseph for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
August 28, 2019

By: _____


Jeff Herman

HERMAN LAW
434 W. 33rd St., Penthouse
New York, NY 10001
Tel: 212-390-0100
jherman@hermanlaw.com

EXHIBIT "C"

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

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Book Page CIVIL

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11 BROADWAY, STE 615
NEW YORK, NY 10004

O'Brien, John

Monroe County

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

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE**

-----X

JOHN O'BRIEN

Index No.:

Plaintiff,
v.

SUMMONS

MONROE COUNTY

Defendant.

-----X

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys 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

PLEASE TAKE NOTICE 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: July 30, 2021

Respectfully Yours,



Kathleen Thomas, Esq.
Kat@tlclawllc.com
THOMAS COUNSELORS AT LAW, LLC
11 Broadway, Suite 615
New York, NY 1000
917-508-9698

DEFENDANT'S ADDRESS:

307 County Building, 39 W Main St. Rochester, NY 14614

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE**

-----X
JOHN O'BRIEN

Index No.:

Plaintiff,

**COMPLAINT
JURY TRIAL DEMANDED**

v.

MONROE COUNTY

Defendant.
-----X

PLAINTIFF JOHN O'BRIEN ("Plaintiff"), by and through his attorneys, Soloff and Zervanos, P.C. and Thomas Counselor at Law, LLC, as and for his Complaint in this matter against Defendants MONROE COUNTY ("Defendant"), hereby alleges as follows:

NATURE OF CLAIM

1. This case is brought pursuant to New York's Child Victims Act Child Victims Act the Child Victims Act ("CVA") 2019 Sess. Law News of N.Y. Ch. 11 (S. 2440), CPLR 214-G, and 22 NVCRR 202.72.

2. Pursuant to the CVA, Plaintiff timely brings his causes of action within the two year "retroactive revival window" which removes the previously applicable statute of limitations.

3. Pursuant to the CVA, Defendant is liable for the intentional and negligent acts and omissions which contributed to Plaintiff being a victim of child sexual abuse and resulted in serious psychological, emotional harms, and physical trauma resulting in permanent injuries suffered by Plaintiff.

4. As defined by the CVA, Plaintiff was less than eighteen years of age at the times of the criminal sexual assaults and sexual abuse alleged herein.

5. Pursuant to CVA, the General Municipal Laws governing the Notice of Claims periods to do not pertain to Plaintiff’s causes of action.

CPLR 1603 – NO APPORTIONMENT OF LIABILITY

6. Pursuant to CPLR 1603, the foregoing causes of action are exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(2), CPLR 1602(5), 1602(7) and 1602(11), thus precluding defendants from limiting their liability by apportioning some portion of liability to any joint tortfeasor.

JURISDICTION AND VENUE

7. This Court has jurisdiction over Defendant pursuant to CPLR § 301 and § 302, in that the Defendant is a municipal corporation with its principal places of business within the State of New York, transact business, and contracts to supply services within the State of New York and committed tortious acts within the State of New York.

8. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceed the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

9. Venue for this action is proper in the County of Monroe pursuant to CPLR § 503, in that Defendant resides in this County.

PARTIES

10. Plaintiff JOHN O’BRIEN (hereinafter “Plaintiff”) is an adult resident of the State of New York, County of Monroe.

11. “Defendant” in this matter refers to the named Defendant and its predecessors, successors, affiliates, subsidiaries, and the agencies and departments of the Defendant.

12. At all times material, Defendant MONROE COUNTY (hereinafter “Defendant”) is a municipal corporation organized and existing under the laws of the State of New York, with its principal place of business located at 307 County, Building, 39 W. Main St. Rochester NY, 14614.

13. At all times relevant, the (hereinafter “Child Services”), was, and is, a division of Defendant charged with providing child and family welfare services required by the Monroe County community, including services for children requiring foster care.

14. At all times relevant, “with few exceptions, most of the foster children in Monroe County are in the care and custody of the Department of Human and Health Services” of Defendant. (*Foster Care, Child and Family Services*, Monroe County.gov, available at <https://www.monroecounty.gov/hs-fostercare>).

15. At all times relevant, Defendant is statutorily mandated to the standard of care of a reasonable and prudent parent to apply “careful and sensible parental decisions that maintain the health, safety, and best interests of a child in foster care while at the same time encouraging the emotional and developmental growth of the child” in their care, custody and control. (*See* 18 CRR-NY 441.25).

16. At all times relevant, Defendant contracts with private organizations and agencies to provide foster care services and placement for children in their care, custody, and control.

17. At all times relevant, Defendant remained responsible for health, safety, and well-being of all foster children, including Plaintiff, throughout the foster child’s placement, and at every type and level of foster care placement, regardless of the private organization or agency contract to assist with the placement and/or services.

STATEMENT OF FACTS

18. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

19. Upon information and belief, the facts and background currently known to the Plaintiff are as follows:

Sexual Abuse at St. Joseph's Home

20. In approximately 1970, Plaintiff was admitted to the care, custody, and control of Defendant, through the Children and Family Services Division of the Monroe County Department of Human Services, to receive foster care services as a result of a Family Court proceeding.

21. In 1973, Defendant placed and assigned Plaintiff to live at the Villa of Hope f/k/a St. Joseph's Villa ("St. Joseph's home"), a full time residential childcare facility located at 3300 Dewey Avenue, Rochester, County of Monroe, State of New York.

22. From 1973 – 1976, Plaintiff's only foster care placement by Defendant was at the St. Joseph's home. Plaintiff did not have any additional foster care placements until 1976 when he was placed with other various foster families, but returned and remained primarily at St. Joseph's home until he was 16 years old.

23. During his 1973 – 1976 foster care placement at St. Joseph's Home under Defendant's care, custody and control, Defendant failed to adequately supervise, monitor and inspect the care provided to Plaintiff at the St. Joseph's home.

24. Defendant did not properly supervise Plaintiff, meet with Plaintiff, interview Plaintiff, conduct on-site investigations, wellness checks and/or inspections of Plaintiff's residency at any time that Plaintiff was at St. Joseph's home.

25. Defendant did not properly monitor, observe or exercise reasonable care to ensure that Plaintiff was properly supervised and not subjected to repeated and foreseeable child sexual abuse.

26. Plaintiff never met with Defendants employees and/or agents during his uninterrupted stay at St. Joseph's home from 1973 – 1976.

27. Defendant did not properly monitor, observe or supervise the St. Joseph's home, their employees, staff, volunteers, counselors and agents to ensure that the children that were placed and remained at St. Joseph's Home by Defendant were properly cared for and remained free from all forms of child sexual abuse.

28. During Plaintiff's placement at St. Joseph's Home, Plaintiff was assigned a case worker named Sarah Lichterman, an employee and/or agent and case worker of Defendant. Plaintiff was never made aware of his Monroe County social worker and never met with Sarah Lichterman. He did not learn that he had a case worker until Plaintiff was an adult and no longer residing at St. Joseph's home.

29. Sarah Lichterman, reported to Evelyn Contestable, Sarah's direct supervisor who was also Defendant's employee responsible the care, safety and well-being of the Plaintiff.

30. At no time during his stay at St. Joseph's Home, did Sarah Lichterman, Evelyn Contestable, or any other employee/agent of Defendant meet with, visit, or conduct interviews with Plaintiff.

31. Defendant failed to provide any oversight or direct supervision of Plaintiff while he remained in the care, custody, and control of Defendant.

32. Without investigation, supervision or inspection by Defendant of Plaintiff's placement in St. Joseph's Home, Evelyn Contestable, repeatedly petitioned to the Court to have

Plaintiff remain in the care, custody and control of Defendant and in the placement of St. Joseph's Home, arguing that Plaintiff required the "life-long care of the county."

33. During the time that Plaintiff was assigned by Defendant to live at St. Joseph's home, he was repeatedly sexually abused, sexually assaulted, and raped by Father Hanna, a priest assigned to perform ministries at the St. Joseph's home.

34. Father Hanna started to sexually abuse Plaintiff when Plaintiff was assigned to chapel duty at eight years old. For the first couple of years, the sexual abuse consisted of fondling and oral sex. When Plaintiff turned ten, Father Hanna sodomized Plaintiff multiple times a week for the following two years. Most of the sexual abuse occurred in the chapel and in Father Hanna's studio-like apartment located in the chapel.

35. Father Hanna's sexual abuse due to defendant's failures in supervising Plaintiff caused Plaintiff physical injury. He experienced rectal bleeding and soiled his underwear. Sister Betty, who was assigned to oversee Plaintiff's residency, found Plaintiff's soiled underwear and accused him of being promiscuous at the age of ten and "giving himself to the older boys." Sister Betty then beat him without asking any questions.

36. Plaintiff was not only sexually abused by Father Hanna, he was also sexually abused by older boys at St. Joseph's Home on multiple occasions. Plaintiff was fondled and sodomized by the high school-aged boys at the facility during the time allotted for showers and at the dormitory at night.

37. In approximately 1976, Defendant placed Plaintiff to live with a foster family. After approximately two years, Plaintiff was removed from the foster family. Defendant placed Plaintiff back in St. Joseph's home. At this time, Father Hanna was no longer at St. Joseph's Home.

38. However, after Defendant placed Plaintiff back at the St. Joseph's Home, the sexual assaults by the high school residents continued against Plaintiff. The abuse included, but was not limited to forced oral sex and anal rape. He was subjected to continued and repeated child sexual abuse as a result of Defendant's failure to remove Plaintiff, and failure to properly care for and supervise Plaintiff.

39. At all times relevant, despite being assigned a case worker by Defendant, Defendant's case workers, employees and/or agents did not engage in proper safety checks, wellness screenings, casework contact, assessment, or any form of visitation to ensure that Plaintiff was safe and living in an environment free from all forms of abuse.

40. At all times relevant, had Defendant provided reasonable supervision and care, over Plaintiff and St. Joseph's Home, including but not limited to, interviewing Plaintiff, physical examination of Plaintiff, safety checks, wellness screenings, and routine inspections of the residency, then Defendants would have been made aware of the repeated and ongoing sexual abuse perpetrated by the staff, employees and residents of St. Joseph's Home.

Sexual Abuse at DePaul Group Home

41. In approximately 1981, when Plaintiff was sixteen years old, Plaintiff was placed in the Wellington Group Home located in Monroe County, New York, owned and operated by DePaul Adult Care Communities, Inc. f/k/a The DePaul Mental Health Services, Inc. ("DePaul"). At that time, Plaintiff was also enrolled in the DePaul youth program located at the Wellington Group Home, owned and operated by DePaul.

42. While Plaintiff participated in the DePaul youth program and resided at the Wellington Group Home, Plaintiff remained under the continued care of Defendant. Defendant continued to assign Sarah Lichterman as Plaintiff's case worker until Plaintiff turned 18 years old.

43. During the two years that Plaintiff resided at Wellington Group Home and enrolled in the DePaul programs.

44. From approximately 1981 through 1983, when Plaintiff was sixteen and seventeen years old, he was violently sexually abused and raped on a regular basis and on over twenty separate times at DePaul by a DePaul recreational director.

45. The sexual and physical abuse by the recreational director consisted of piercing his nipples, sodomy, beating him violently with a bat while sexually assaulting him, and tying Plaintiff with straps and chains or handcuffing him while brutally sexually abusing him. Plaintiff was also forced to have sex with other boys at the facility. Plaintiff was kidnapped by the director from Wellington for a week and held in a private home where he was sexually abused continuously.

46. In 1981, on one occasion, when Plaintiff was 16 years old, the director violently attacked Plaintiff on his head with a baseball bat after he refused to perform oral sex and threatened to report his attacker. Plaintiff's head was struck with a baseball bat and he was sodomized with that same bat causing bleeding to his head and rectum. Plaintiff lost consciousness and required emergency hospitalization.

47. Plaintiff underwent emergency surgery and several days of hospitalizations after the violent sexual attack at DePaul. Plaintiff suffered skull fractures, which required emergency surgeries, a broken rib, and other permanent and severe physical injuries.

48. While Plaintiff was hospitalized from the assault and rape, he was visited by a government official who conducted an interview of Plaintiff. Plaintiff reported to the official that he was raped and assaulted at the Wellington Group Home.

49. The government official took photographs of the injuries, including photographs of the bite marks and infections on Plaintiff's chest with a polaroid camera. The official told Plaintiff

that the photographs were part of his investigation.

50. Plaintiff was not removed by Defendant from the Wellington Group Home after his hospitalization. Defendant allowed for and approved Plaintiff's return to the Group Home after the Defendant had actual and constructive notice of the violent assaults and rape that resulted in hospitalization.

51. As a direct result of Defendant's failure to remove Plaintiff from Wellington Group Home placement, Plaintiff continued to be repeatedly sexually assaulted and threatened there on five or six more occasions. Plaintiff was sixteen and seventeen years old at the time of the post-hospitalization rapes and sexual abuse. Plaintiff was also forced to undress, fondle himself, and have his nipples squeezed and pierced with unsterilized pins until they discharged causing an infection. Plaintiff was also forced to perform oral sex.

52. In addition, after being returned to his perpetrator with no protection, Plaintiff attempted to commit suicide by ingesting over the counter drugs.

53. Plaintiff lost consciousness from the attempted suicide and was taken to the emergency room at St. Mary's Hospital where he was treated and remained in the hospital for approximately two weeks.

54. At all relevant times, Defendant knew or in the exercise of reasonable care should have known that Plaintiff was being subjected to repeated rape and sexual assault.

55. As a direct and proximate result of Defendant's gross failure to reasonably ensure the health, safety, and best interests of Plaintiff, Plaintiff suffered, and continues to suffer, serious physical, mental, emotional, and psychological damages.

AS AND FOR THE FIRST CAUSE OF ACTION AS AGAINST DEFENDANT FOR NEGLIGENCE, GROSS NEGLIGENCE, RECKLESSNESS, AND FAILURE TO EXERCISE A REASONABLE STANDARD OF CARE

56. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the proceeding and subsequent paragraphs as though fully set forth herein.

57. Prior to sexual abuse perpetrated against Plaintiff as described herein, the sexual misconduct perpetrated against Plaintiff could have been reasonably anticipated to result from Defendant's failure to properly supervise, inspect and monitor.

58. Prior to sexual abuse perpetrated against Plaintiff as described herein, Defendant, its agents, contractors, agency partners, and/or employees, had actual knowledge and constructive knowledge of Plaintiff's abusers' propensity for the child sexual abuse perpetrated against Plaintiff.

59. At all relevant times, Defendant, its agents and/or employees, had a duty to Plaintiff and similarly situated children to use the same degree of care as a reasonably prudent parent would use to provide a safe and secure foster home environment free from foreseeable harms.

60. At all relevant times, Defendant, its agents and/or employees, had a statutory duty pursuant to 18 CRR-NY 441.25 to Plaintiff to exercise the "reasonable and prudent parent standard" to ensure that while Plaintiff was in foster care Defendant acted with "careful and sensible parental decisions that maintain the health, safety, and best interests of a child in foster care while at the same time encouraging the emotional and developmental growth of the child."

61. At all relevant times, Defendant, its agents and/or employees, negligently, recklessly, and carelessly breached their duty owed to Plaintiff to provide reasonable care and ensure a safe and suitable foster care placement, including, but is not limited to, the following:

- a. Defendant failed to institute and/or implement and execute proper policies and procedures to ensure the safety of foster children under their care, custody, and control;

- b. Defendant failed to institute and/or implement and execute proper policies and security measures that would have prevented Plaintiff from being placed into and remain in a facility where it was foreseeable that he would be repeatedly sexually abused;
- c. Defendant failed to create and/or follow a safety protocol and any corresponding and related rules, regulations, policies, practices, and procedures that would have discovered, prevented, and/or intervened the causes of action that resulted in Plaintiff's injuries;
- d. Defendant failed to conduct proper and necessary investigations, interviews, examinations and inspection that would have led to the actual notice of the abuse perpetrated against Plaintiff;
- e. Defendant failed to report and notify the proper authorities upon discovery and notification of the sexual abuse perpetrated against Plaintiff.

62. Defendant, its agents and/or employees, had a duty and opportunity to inspect, monitor, intervene and prevent the sexual abuse perpetrated against Plaintiff and failed to do so.

63. Defendant, its agents and/or employees, failed to discover, intervene, and come to the aide or rescue of Plaintiff, after placing him in an inadequately supervised and unsafe foster home environment, in which it was reasonably foreseeable and known that criminal sexual misconduct and sexual abuse could, and did, occur.

64. Defendant, its agents and/or employees, were negligent by failing to provide sufficient, competent and qualified social workers, case workers, supervisors, counselors, and medical personnel for the care and supervision of Plaintiff and other similarly situated children in

their care; in failing to enact, adopt and enforce a program intended to create a foster care environment that is free from inappropriate touch, sexual misconduct, sexual assault and abuse, and molestation.

65. As a direct and proximate result of Defendant, its agents and/or employees', negligence, gross negligence, negligent supervision, and careless and reckless conduct, Plaintiff sustained in the past and will sustain in the future pain and suffering,

66. Plaintiff sustained said injuries by reason of carelessness, recklessness, breach of duties, and negligence of Defendant, their agents and/or employees, all without any negligence on the part of Plaintiff.

**AS AND FOR THE SECOND CAUSE OF ACTION AS AGAINST
DEFENDANT FOR NEGLIGENT OVERSIGHT OF A FOSTER HOME,
NEGLIGENT TRAINING, NEGLIGENT SUPERVISION, AND FAILURE TO
REMOVE PLAINTIFF**

67. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the proceeding and subsequent paragraphs as though fully set forth herein.

68. At all times relevant, Plaintiff was entrusted into the care, custody and control of Defendant.

69. Defendant, its agents and/or employees, are responsible for the welfare of Plaintiff and similarly situated children in the foster care system, who are entrusted in their care and being cared for away from their families.

70. Defendant, its agents and/or employees, had a duty to adequately supervise, monitor, and inspect the foster care facilities of Plaintiff and similarly situated foster care children in order to reasonably prevent and mitigate the foreseeable harms of child sexual abuse.

71. Defendant, its agents and/or employees, had a duty to ensure that all employees were properly trained and educated on the proper policies, procedures, and standards of care for

safe placement and removal of children in foster families.

72. Defendant, its agents and/or employees, had a duty to ensure that all employees were properly trained and educated on the proper policies, rules, regulations, procedures, and standards of care for New York State mandatory reporters for reporting maltreatment of children.

73. Defendant, its agents and/or employees, had a duty to ensure that all employees were properly trained and educated on the proper policies, rules, regulations, procedures, and standards of care for immediate investigation and removal of children from facilities where reasonable suspensions of child sexual abuse have been made known.

74. Defendant, its agents and/or employees, had a duty to investigate, supervise, and inspect the St. Joseph's Home prior to placing Plaintiff at St. Joseph's Home and throughout the years that Plaintiff remained at St. Joseph's Home.

75. Defendant, its agents and/or employees, failed in their duty to adequately and routinely oversee, supervise, monitor, and inspect the St. Joseph's Home that Plaintiff was placed in by it.

76. Defendant, its agents and/or employees, failed in their duty to Plaintiff to properly train and educate their employees and/or agents on the proper policies, procedures, and standards of care for safe placement and removal of children in foster care facilities that would have prevented and mitigated the sexual abuse perpetrated against Plaintiff.

77. Defendant breached its duties to Plaintiff to ensure that proper safety checks, wellness screening, casework contact, assessment, or any form of visitation were conducted by its case workers, employees and/or agents to ensure that Plaintiff was kept reasonably safe and living in an environment free from all forms of abuse.

78. As a direct and proximate result of Defendant, its agents and/or employees,

negligent oversight, negligent training, negligent supervision, and failure to remove Plaintiff, Plaintiff sustained in the past and will sustain in the future pain and suffering.

79. Plaintiff sustained said injuries by reason of carelessness, recklessness, breach of duties, and negligence of Defendant, its agents and/or employees, its agents and/or employees, all without any negligence on the part of Plaintiff.

AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST DEFENDANT FOR ABSOLUTE LIABILITY AND/OR NEGLIGENCE PER SE

80. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the proceeding and subsequent paragraphs as though fully set forth herein.

81. Pursuant to Child Protective Service Act of 1973, N.Y. Soc. Serv. Law § 411 et seq., (hereinafter “Child Protective Services Act”) Defendant, its agents and/or employees had a statutory duty to report reasonable suspicions of child abuse to the appropriate authorities.

82. At all times relevant and pursuant to § 413 of the Child Protective Service Act, Defendant’s case workers, social workers, and other employees and agents were “mandatory reporters” required to report or cause a report to be made when they had reasonable suspicions of child sexual abuse.

83. In violation of the Child Protective Services Act, Defendant failed in their statutory duty to report any and all reasonable suspicions of child sexual abuse perpetrated against Plaintiff in her foster care homes.

84. Pursuant to § 420 of the Child Protective Services Act, by knowingly and willfully failing to report reasonable suspicions of child sexual abuse perpetrated by her abusers, Defendant is “civilly liable for the damages proximately caused by such failure” (N.Y.Soc. Serv. Law § 420).

85. Plaintiff was a member of the class for which this statute is designed to protect from

child abuse.

86. Defendant had actual notice of the sexual abuse perpetrated against Plaintiff and had a reasonable suspicion that Plaintiff was being sexually abused and failed to report.

87. As a direct and proximate result of Defendant, its agents and/or employees' violation of Child Protective Services Act, Plaintiff sustained in the past and will sustain in the future pain and suffering,

88. Plaintiff sustained said injuries by reason of carelessness, recklessness, breach of duties, and negligence of Defendant, its agents and/or employees, all without any negligence on the part of Plaintiff.

**AS AND FOR THE FOURTH CAUSE OF ACTION AS AGAINST
DEFENDANT FOR NEGLIGENCE AS A RESULT OF VIOLATIONS OF 18 NYCRR
§ 430.11**

89. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the proceeding and subsequent paragraphs as though fully set forth herein.

90. Pursuant to N.Y. Comp. Codes R. & Regs. tit. 18 § 430.11, Defendant had a duty to provide Plaintiff with an appropriate and safe foster care placement that met the proper standards of care.

91. Specifically, Defendant was required, at all times, to provide for Plaintiff as follows:

“Standard for appropriate level of placement. (1) The most appropriate level of placement for each child will always be considered to be the least restrictive and most homelike setting in which the child can be maintained safely and receive all services specified in his or her service plan.” N.Y. Comp. Codes R. & Regs. tit. 18 § 430.11.

92. Defendant failed in its statutory duty to provide Plaintiff with an appropriate level of placement in which Plaintiff would be provided a safe and secure home environment.

93. As a direct and proximate result of Defendant, its agents and/or employees,

negligent violations of the applicable New York code, rules, and regulations, Plaintiff sustained in the past and will sustain in the future pain and suffering.

94. Plaintiff sustained said injuries by reason of carelessness, recklessness, breach of duties, and negligence of Defendant, its agents and/or employees, its agents and/or employees, all without any negligence on the part of Plaintiff.

AS AND FOR THE FIFTH CAUSE OF ACTION AS AGAINST ALL DEFENDANTS FOR NEGLIGENCE AS A RESULT OF VIOLATIONS OF N.Y. SOCIAL SERVICES LAW § 398

95. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the proceeding and subsequent paragraphs as though fully set forth herein.

96. Pursuant to N.Y. Soc. Serv. Law § 398, Defendant had a statutory duty to properly “[s]upervise children who have been cared for away from their families until such children become twenty-one years of age or until they are discharged to their own parents, relatives.”

97. Pursuant to N.Y. Soc. Serv. Law § 398, Defendant had a statutory duty to place Plaintiff and similarly situated children “in family homes, agency boarding homes, group homes or institutions under the proper safeguards.”

98. Defendant failed in its statutory duty to properly supervise Plaintiff an Plaintiff’s foster home environment.

99. Defendant failed in its statutory duty to institute the proper safeguards intended to prevent and mitigate the foreseeable and reported sexual abuse perpetrated against Plaintiff.

100. As a direct and proximate result of Defendant, its agents and/or employees, negligent violations of the applicable New York code, rules, and regulation Plaintiff sustained in the past and will sustain in the future pain and suffering.

101. Plaintiff sustained said injuries by reason of carelessness, recklessness, breach of

duties, and negligence of Defendant, its agents and/or employees, all without any negligence on the part of Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant, for general, compensatory, special and punitive damages, in a sum which exceeds the jurisdictional limits of all lower Courts which might otherwise have jurisdiction; together with the costs and disbursements of this action and for such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: July 30, 2021

Respectfully Submitted,

Jeffrey P. Fritz

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EXHIBIT "D"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

-----X

J.O.

Index No. _____

Plaintiff,

SUMMONS

-against-

THE ROMAN CATHOLIC DIOCESE OF ROCHESTER, a/k/a THE MOST REV. SALVATORE R. MATANO, as Bishop and Corporate Sole of the DIOCESE OF ROCHESTER, DEPAUL ADULT CARE COMMUNITIES, INC. (FORMERLY KNOWN AS THE DEPAUL MENTAL HEALTH SERVICES, INC.),

Date Index No. Purchased: _____

Defendants.

-----X

To the above named Defendant(s)

THE ROMAN CATHOLIC DIOCESE OF ROCHESTER 1150 BUFFALO ROAD, ROCHESTER, NY 14624

DEPAUL ADULT CARE COMMUNITIES, INC., 1931 BUFFALO ROAD, ROCHESTER, NY 114624

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 Plaintiff's 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 of venue is address and principal place of business of The Roman Catholic Diocese of Rochester which is Monroe County.

Dated: New York, NY
August 28, 2019

HERMAN LAW

By _____

Jeff Herman, Esq.

J.O..

c/o Herman Law
434 W. 33rd Street

Penthouse
New York, NY 10001

(212) 390-0100

jherman@herman.law.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

-----X

J.O.,

Plaintiff,

COMPLAINT

-against-

THE ROMAN CATHOLIC DIOCESE OF
ROCHESTER, a/k/a THE MOST REV.
SALVATORE RONALD MATANO, as Bishop and
Corporate Sole of the DIOCESE OF ROCHESTER;
DEPAUL ADULT CARE COMMUNITIES, INC.
(FORMERLY KNOWN AS THE DEPAUL
MENTAL HEALTH SERVICES, INC.),

Index No. _____

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, J.O., by and through undersigned counsel, respectfully shows to this Court and
alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-
g. The Plaintiff, when he was a minor, was sexually assaulted by a staff member of DePaul Adult
Care Communities, Inc. f/k/a The DePaul Mental Health Services, Inc., formerly operated by the
Diocese of Rochester.

Parties, Jurisdiction and Venue

1. Plaintiff, J.O., is a citizen and resident of the State of New York. Plaintiff brings
this Complaint using his initials because of the sensitive nature of the allegations of child sexual
abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment

VOICE FOR VICTIMS

HERMAN

and further psychological damage if his identity as a victim of child sexual abuse were to become publicly known. His identity will be made known to Defendant, at the latest, upon service of the Summons and Complaint.

2. Defendant, Diocese of Rochester, and Salvatore Ronald Matano as Bishop and Corporate Sole of the Diocese of Rochester (hereafter, the "Diocese") is a religious institution and organization with principal offices located at 1150 Buffalo Rd, Rochester, NY 14624. The Diocese of Rochester controls all Catholic religious, pastoral and educational functions in 12 counties in New York, with approximately 125 faith communities (parishes and chapels), 22 diocesan elementary schools and 7 independent parochial high schools. At all relevant times, Defendant Diocese of Rochester operated, managed and owned the DePaul Adult Care Communities, Inc.

3. Defendant, DePaul Adult Care Communities, Inc. f/k/a The DePaul Mental Health Services, Inc. ("DePaul") is located at 1931 Buffalo Road Rochester, NY 14624.

4. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

5. Personal jurisdiction lies over Defendants Diocese and DePaul as they are present and domiciled in the State of New York.

6. Venue of this action lies in Monroe County as a substantial part of the events or omissions giving rise to the claim occurred in Monroe County or one of the Defendants resides in Monroe County.

Facts of Sexual Abuse

7. Plaintiff became an orphan at the age of five when he lost both his parents. For the following eleven years, Plaintiff was assigned to an orphanage and several foster homes until he petitioned the court for emancipation at the age of sixteen.

8. Plaintiff was referred by a social worker to the DePaul youth program at the age of sixteen located in the Wellington Group Home, operated and managed by DePaul. The program was created and designed to assist children aging out of the foster care system in gaining independence.

9. While Plaintiff participated in the youth program at DePaul, Dan Charcholla was the Director of Recreation. During the two years Plaintiff resided at the Wellington Group Home, Dan Charcholla violently sexually abused Plaintiff regularly.

10. The sexual and physical abuse consisted of piercing his nipples, sodomy, beating him violently with a bat while sexually assaulting him, and tying Plaintiff with straps and chains or handcuffing him while brutally sexually abusing him. Dan Charcholla also forced Plaintiff to have sex with other boys at the facility.

11. Dan Charcholla kidnapped Plaintiff for a week and held him in his home where he sexually abused him continuously.

12. Doug Kavanaugh, an intern at DePaul, witnessed the sexual abuse and failed to report the incidents. Soon after, Doug Kavanaugh also sexually abused Plaintiff. Upon information and belief, Doug Kavanaugh became a registered sex offender after being convicted in an unrelated case.

13. When Dan Charcholla violently attacked Plaintiff over his head with a baseball bat after he refused to perform oral sex and threatened to report him, Plaintiff was severely injured. Dan Charcholla knocked the side of Plaintiff's head with a baseball bat and sodomized him with the bat causing bleeding to his head and rectum. Plaintiff lost consciousness.

14. Plaintiff underwent emergency surgery after the violent sexual attack by Dan Charcholla. Dan Charcholla reported to DePaul that he found Plaintiff injured in the facility gym

from a fall. Plaintiff, fearful of retaliation by Dan Charcholla, did not disclose Dan Charcholla's sexual abuse. DePaul did not investigate the incident further.

15. Soon after Plaintiff returned to DePaul from the hospital, Dan Charcholla went off property with Plaintiff and threatened Plaintiff's life. Dan Charcholla showed Plaintiff the bat he beat him and sodomized him with. The bat was still covered in Plaintiff's blood.

16. Dan Charcholla continued to sexually abuse Plaintiff on five or six more occasions. Dan Charcholla made Plaintiff undress, made him fondle himself, and squeezed and pierced Plaintiff's nipples with unsterilized pins until they discharged causing an infection. He also aggressively forced Plaintiff to perform oral sex.

17. While Dan Charcholla abused Plaintiff, Plaintiff asked staff member, Mike Knope, to allow him to speak with administration to disclose the sexual abuse by Dan Charcholla. Plaintiff was denied the opportunity to speak with administration.

18. During the sexual abuse, Plaintiff told his resident group home counselor, Barbara Austin, that he was suicidal. Barbara Austin never inquired as to why he made this statement and failed to investigate or protect Plaintiff from what was causing him mental and emotional distress. An hour later, Plaintiff attempted to commit suicide by ingesting over the counter drugs.

19. Plaintiff lost consciousness and was taken to the emergency room at St. Mary's Hospital where he was treated and remained in the hospital for approximately two weeks.

20. Upon information and belief, Dan Charcholla was at all relevant times a serial sexual predator who sexually abused multiple boys over a period of decades. Nevertheless, upon information and belief, Dan Charcholla is still employed at DePaul.

21. At all relevant times, the Diocese and DePaul knew or in the exercise of reasonable care should have known that Dan Charcholla had a propensity for the misconduct which caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

22. At all relevant times, it was reasonably foreseeable to the Diocese and DePaul that Dan Charcholla would commit acts of child sexual abuse or assault on a child.

23. At all relevant times, Diocese and DePaul knew or should have known that Dan Charcholla was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

24. With such actual or constructive knowledge, the Diocese and DePaul provided Dan Charcholla unfettered access to Plaintiff and gave him the opportunity to commit foreseeable acts of violent child sexual abuse.

Nature of Conduct Alleged

25. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

26. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that the Diocese and DePaul acted with reckless disregard

for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Dan Charcholla, to retain Dan Charcholla with unfettered access to children.

COUNT I
NEGLIGENCE
(against DePaul)

26. Plaintiff repeats and realleges Paragraphs 1 through 25 above.

27. At all material times, DePaul and Plaintiff were in a special relationship in which DePaul owed Plaintiff a duty of reasonable care.

28. At all material times, DePaul and Dan Charcholla were in a special relationship of employer – employee, in which DePaul owed a duty to control the acts and conduct of Dan Charcholla to prevent foreseeable harm.

29. DePaul owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of DePaul. DePaul's duties encompassed the retention and supervision of Dan Charcholla and otherwise providing a safe environment for Plaintiff.

30. DePaul breached these duties by failing to protect the minor J.O. from sexual assault and lewd and lascivious acts committed by an agent and employee of DePaul.

31. At all relevant times, the DePaul created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

32. At all relevant times, DePaul had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

33. As a direct and proximate result of DePaul's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

34. DePaul's acts and conduct shows a reckless or willful disregard for the safety and well-being of J.O.

WHEREFORE, Plaintiff demands judgment against DePaul for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT II
NEGLIGENCE
(against the Diocese)

35. Plaintiff repeats and realleges Paragraphs 1 through 25 above.

36. At all material times the Diocese, as principal, and DePaul, as agent, were in an agency relationship, such that DePaul acted on the Diocese's behalf, in accordance with the Diocese's instructions and directions on all matters, including those relating to clergy personnel. The acts and omissions of DePaul were subject to the Diocese's plenary control, and DePaul consented to act subject to the Diocese's control.

37. At all material times, the Diocese and Plaintiff were in a special relationship in which the Diocese owed Plaintiff a duty of reasonable care.

38. At all material times, the Diocese and Dan Charcholla were in a special relationship of employer – employee, in which the Diocese owed a duty to control the acts and conduct of Diocese to prevent foreseeable harm.

39. The Diocese owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of the Diocese. The Diocese's duties encompassed the retention and supervision of Dan Charcholla and otherwise providing a safe environment for Plaintiff.

40. The Diocese breached these duties by failing to protect the minor J.O. from sexual assault and lewd and lascivious acts committed by an agent and employee of the Diocese.

41. At all relevant times, the Diocese created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

42. At all relevant times, the Diocese had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

43. As a direct and proximate result of the Diocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

44. The Diocese's acts and conduct shows a reckless or willful disregard for the safety and well-being of J.O.


WHEREFORE, Plaintiff demands judgment against the Diocese for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
August 28, 2019

By: _____


Jeff Herman
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