

NEW YORK STATE SUPREME COURT
NASSAU COUNTY

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Index No.: _____

S.T.,

Date Filed: _____

SUMMONS

Plaintiff,

-against-

Plaintiff designates Nassau County as the place of trial.

DIOCESE OF ROCKVILLE CENTRE and ST. PHILIP
AND ST. JAMES CHURCH,

Defendants.

The basis of venue is one defendant's residence.

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Child Victims Act Proceeding
22 NYCRR 202.72

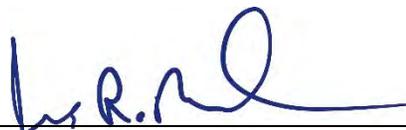
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the 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 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: August 14, 2019

Respectfully Yours,

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NEW YORK STATE SUPREME COURT
NASSAU COUNTY

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Index No.: _____/___

S.T.,

COMPLAINT

Plaintiff,

-against-

Child Victims Act Proceeding
22 NYCRR 202.72

DIOCESE OF ROCKVILLE CENTRE and ST. PHILIP
AND ST. JAMES CHURCH,

Defendants.

Plaintiff, by and through his attorneys, the Marsh Law Firm PLLC and Pfau Cochran Vertetis Amala PLLC, respectfully allege for his complaint the following:

I. INTRODUCTION

1. The Diocese of Rockville Centre (the “Diocese”) knew for decades that its priests, clergy, employees, and volunteers were using their positions within the Diocese to groom and to sexually abuse children. Despite that knowledge, the Diocese failed to take reasonable steps to protect children from being sexually abused and actively concealed the abuse. Based on the Diocese’s wrongful conduct, a reasonable person could and would conclude that it knowingly and recklessly disregarded the abuse of children and chose to protect its reputation and wealth over those who deserved protection. The result is not surprising: for decades hundreds, if not thousands, of children were sexually abused by Catholic clergy and others who served the Diocese. The plaintiff in this lawsuit is one of those children who were sexually abused because of the Diocese’s wrongful conduct.

II. PROCEEDING IN ACCORDANCE WITH CPLR 214-G AND 22 NYCRR 202.72

2. This complaint is filed pursuant to the Child Victims Act (CVA) 2019 Sess. Law News of N.Y. Ch. 11 (S. 2440), CPLR 214-G, and 22 NYCRR 202.72. The CVA opened a historic one-year one-time window for victims and survivors of childhood sexual abuse in the State of New

York to pursue lapsed claims. Prior to the passage of the CVA, plaintiff's claims were time-barred the day they turned 22 years old. The enactment of the CVA allows plaintiff, for the first time in his life, to pursue restorative justice in New York State.

III. PARTIES

3. Plaintiff S.T. is an adult male who currently resides in Sanford, Florida.

4. While he was a minor, plaintiff S.T. was a victim of one or more criminal sex acts in the State of New York. Since such criminal violation is the basis for this action, plaintiff S.T. S.T. is entitled to the protection of Civil Rights Law 50-b and will file a motion asking this Court for permission to proceed using a pseudonym.

5. In the alternative, plaintiff S.T. will seek a stipulation from the defendants agreeing to enter into a protective order which will ensure that his identity is protected from the public while allowing the defendants full access to information necessary for their defense.

6. Upon information and belief, the Diocese is currently a not-for-profit religious corporation organized under New York law with its principal office in Rockville Centre, New York.

7. Upon information and belief, at all relevant times the Diocese conducted business as the "Diocese of Rockville Centre."

8. Upon information and belief, at all relevant times the Diocese employed priests and others who served various Catholic institutions and families, including plaintiff S.T. and his family.

9. Upon information and belief, Father Joseph McComiskey ("Father McComiskey") was a priest employed by the Diocese to serve Catholic families, including plaintiff S.T. and his family. During the time Father McComiskey was employed by the Diocese, he used his position as a priest to groom and to sexually abuse plaintiff S.T.

10. To the extent that the Diocese was a different entity, corporation, or organization during the period of time during which Father McComiskey used his position as a priest to sexually abuse plaintiff S.T., such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

11. To the extent the Diocese is a successor to a different entity, corporation, or organization which existed during the period of time during which Father McComiskey used his position as a priest to sexually abuse plaintiff S.T., such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

12. All such Diocese-related entities, corporations, or organizations are collectively referred to herein as the “Diocese.”

13. Upon information and belief, at all relevant times defendant St. Philip and St. James Church (“St. Philip and St. James”) was a not-for-profit religious corporation organized under New York law and wholly owned, operated, and controlled by the Diocese.

14. Upon information and belief, St. Philip and St. James is currently a not-for-profit religious corporation organized under New York law with its principal office in St. James, New York.

15. Upon information and belief, at all relevant times St. Philip and St. James Church conducted business as “St. Philip and St. James Parish,” “St. Philip and St. James Church,” or “St. Philip and St. James.”

16. St. Philip and St. James is a parish with a church located in St. James, New York.

17. Upon information and belief, Father Joseph McComiskey was a priest employed by St. Philip and St. James to serve Catholic families in its geographic jurisdiction, including

plaintiff S.T. and his family. During the time Father Joseph McComiskey was employed by St. Philip and St. James, he used his position as a priest to groom and to sexually abuse plaintiff S.T.

18. To the extent that St. Philip and St. James was a different entity, corporation, or organization during the period of time during which Father McComiskey used his position as a priest to sexually abuse S.T., such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

19. To the extent St. Philip and St. James is a successor to a different entity, corporation, or organization which existed during the period of time during which Father McComiskey used his position as a priest to sexually abuse S.T., such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

20. All such St. Philip and St. James-related entities, corporations, or organizations are collectively referred to herein as “St. Philip and St. James.”

IV. VENUE

21. Venue is proper because the Diocese is a domestic corporation authorized to transact business in New York with its principal office located in Nassau County.

22. Venue is proper because Nassau is the county in which a substantial part of the events or omissions giving rise to each plaintiff’s claim occurred.

V. STATEMENT OF FACTS AS TO PLAINTIFF S.T.

23. Upon information and belief, at all relevant times the Diocese was the owner of St. Philip and St. James and held itself out to the public as the owner of St. Philip and St. James.

24. Upon information and belief, at all relevant times the Diocese, its agents, servants, and employees managed, maintained, operated, and controlled St. Philip and St. James.

25. Upon information and belief, at all relevant times the Diocese employed priests and others who served Catholic families at St. Philip and St. James, including plaintiff S.T. and his family.

26. Upon information and belief, at all relevant times the Diocese, its agents, servants, and employees managed, maintained, operated, and controlled St. Philip and St. James, and held out to the public its agents, servants, and employees as those who managed, maintained, operated, and controlled St. Philip and St. James.

27. Upon information and belief, at all relevant times the Diocese was responsible for the hiring and staffing, and did the hiring and staffing, at St. Philip and St. James.

28. Upon information and belief, at all relevant times the Diocese was responsible for and did the recruitment and staffing of volunteers at St. Philip and St. James.

29. Upon information and belief, at all relevant times the Diocese materially benefited from the operation of St. Philip and St. James, including the services of Father McComiskey and the services of those who managed and supervised Father McComiskey.

30. Upon information and belief, at all relevant times St. Philip and St. James owned a parish and church.

31. Upon information and belief, at all relevant times St. Philip and St. James held itself out to the public as the owner of St. Philip and St. James.

32. Upon information and belief, at all relevant times St. Philip and St. James employed priests and others who served Catholic families, including plaintiff S.T. and his family.

33. Upon information and belief, at all relevant times St. Philip and St. James, its agents, servants, and employees managed, maintained, operated, and controlled St. Philip and St.

James, and held out to the public its agents, servants and employees as those who managed, maintained, operated, and controlled St. Philip and St. James.

34. Upon information and belief, at all relevant times St. Philip and St. James was responsible for and did the staffing and hiring at St. Philip and St. James.

35. Upon information and belief, at all relevant times St. Philip and St. James was responsible for and did the recruitment and staffing of volunteers at St. Philip and St. James.

36. Upon information and belief, at all relevant times St. Philip and St. James materially benefitted from the operation of St. Philip and St. James, including the services of Father McComiskey and the services of those who managed and supervised Father McComiskey.

37. Upon information and belief, at all relevant times Father McComiskey was a priest of the Diocese.

38. Upon information and belief, at all relevant times Father McComiskey was on the staff of, acted as an agent of, and served as an employee of the Diocese.

39. Upon information and belief, at all relevant times Father McComiskey was acting in the course and scope of his employment with the Diocese.

40. Upon information and belief, at all relevant times Father McComiskey was employed by the Diocese and assigned to St. Philip and St. James.

41. Upon information and belief, at all relevant times Father McComiskey was a priest of St. Philip and St. James.

42. Upon information and belief, at all relevant times Father McComiskey was on the staff of, was an agent of, and served as an employee of St. Philip and St. James.

43. Upon information and belief, at all relevant times Father McComiskey was acting in the course and scope of his employment with St. Philip and St. James.

44. Upon information and belief, at all relevant times Father McComiskey had an office on the premises of St. Philip and St. James.

45. When plaintiff S.T. was a minor, he and his parents were members of the Diocese and St. Philip and St. James.

46. At all relevant times, the Diocese and St. Philip and St. James, their agents, servants, and employees, held Father McComiskey out to the public, to S.T., and to his parents, as their agent and employee.

47. At all relevant times, the Diocese and St. Philip and St. James, their agents, servants, and employees, held Father McComiskey out to the public, to S.T., and to his parents, as having been vetted, screened, and approved by those defendants.

48. At all relevant times, S.T. and his parents reasonably relied upon the acts and representations of the Diocese and St. Philip and St. James, their agents, servants, and employees, and reasonably believed that Father McComiskey was an agent or employee of those defendants who was vetted, screened, and approved by those defendants.

49. At all relevant times, S.T. and his parents trusted Father McComiskey because the Diocese and St. Philip and St. James held him out as someone who was safe and could be trusted with the supervision, care, custody, and control of S.T.

50. At all relevant times, S.T. and his parents believed that the Diocese and St. Philip and St. James would exercise such care as would a parent of ordinary prudence in comparable circumstances when those defendants assumed supervision, care, custody, and control of S.T.

51. When S.T. was a minor, Father McComiskey sexually abused him.

52. S.T. was sexually abused by Father McComiskey when S.T. was approximately 16 years old.

53. Based on the representations of the Diocese and St. Philip and St. James that Father McComiskey was safe and trustworthy, S.T. and his parents allowed S.T. to be under the supervision of, and in the care, custody, and control of, the Diocese and St. Philip and St. James, including when S.T. was sexually abused by Father McComiskey.

54. Based on the representations of the Diocese and St. Philip and St. James that Father McComiskey was safe and trustworthy, S.T. and his parents allowed S.T. to be under the supervision of, and in the care, custody, and control of, Father McComiskey, including when S.T. was sexually abused by Father McComiskey.

55. Neither S.T. nor his parents would have allowed him to be under the supervision of, or in the care, custody, or control of, the Diocese, St. Philip and St. James, or Father McComiskey if the Diocese or St. Philip and St. James had disclosed to S.T. or his parents that Father McComiskey was not safe and was not trustworthy, and that he in fact posed a danger to S.T. in that Father McComiskey was likely to sexually abuse S.T.

56. No parent of ordinary prudence in comparable circumstances would have allowed S.T. to be under the supervision of, or in the care, custody, or control of, the Diocese, St. Philip and St. James, or Father McComiskey if the Diocese or St. Philip and St. James had disclosed to S.T. or his parents that Father McComiskey was not safe and was not trustworthy, and that he in fact posed a danger to S.T. in that Father McComiskey was likely to sexually abuse him.

57. In approximately 1976, Father McComiskey exploited the trust and authority vested in him by defendants by grooming S.T. to gain his trust and to obtain control over him as part of Father McComiskey's plan to sexually molest and abuse S.T. and other children.

58. Father McComiskey used his position of trust and authority as a priest of the Diocese and of St. Philip and St. James to groom S.T. and to sexually abuse him, including when

S.T. was under the supervision of, and in the care, custody, or control of, the Diocese, St. Philip and St. James, and Father McComiskey.

59. Father McComiskey's sexual abuse of S.T. occurred during activities that were sponsored by, or were a direct result of activities sponsored by, the Diocese and St. Philip and St. James, including during a camping trip on Long Island.

60. Upon information and belief, prior to the time mentioned herein, Father McComiskey was a known sexual abuser of children.

61. At all relevant times, defendants, their agents, servants, and employees, knew or should have known that Father McComiskey was a known sexual abuser of children.

62. At all relevant times, it was reasonably foreseeable to defendants, their agents, servants, and employees that Father McComiskey's sexual abuse of children would likely result in injury to others, including the sexual abuse of S.T. and other children by Father McComiskey.

63. The defendants, their agents, servants, and employees, knew or should have known that Father McComiskey was sexually abusing S.T. and other children at St. Philip and St. James and elsewhere.

64. Upon information and belief, the Diocese and St. Philip and St. James, their agents, servants, and employees, knew or should have known that Father McComiskey was likely to abuse children, including S.T., because in approximately 1974—years before S.T. was abused by Father McComiskey—it was reported to St. Philip and St. James Church and the Diocese that another child was sexually abused by Father McComiskey.

65. Upon information and belief, the Diocese and St. Philip and St. James, their agents, servants, and employees, knew or should have known before and during Father McComiskey's

sexual abuse of S.T. that priests and other persons serving the Diocese and St. Philip and St. James had used their positions with those defendants to groom and to sexually abuse children.

66. Upon information and belief, the Diocese and St. Philip and St. James, their agents, servants, and employees, knew or should have known before and during Father McComiskey's sexual abuse of S.T. that such priests and other persons could not be "cured" through treatment or counseling.

67. Upon information and belief, the Diocese and St. Philip and St. James, their agents, servants, and employees, concealed the sexual abuse of children by Father McComiskey in order to conceal their own bad acts in failing to protect children from him, to protect their reputation, and to prevent victims of such sexual abuse by him from coming forward during the extremely limited statute of limitations prior to the enactment of the CVA, despite knowing that Father McComiskey would continue to molest children.

68. Upon information and belief, the Diocese and St. Philip and St. James, their agents, servants, and employees, consciously and recklessly disregarded their knowledge that Father McComiskey would use his position with the defendants to sexually abuse children, including S.T.

69. Upon information and belief, the Diocese and St. Philip and St. James, their agents, servants, and employees, disregarded their knowledge that Father McComiskey would use his position with them to sexually abuse children, including S.T.

70. Upon information and belief, the Diocese and St. Philip and St. James, their agents, servants, and employees, acted in concert with each other or with Father McComiskey to conceal the danger that Father McComiskey posed to children, including S.T., so that Father McComiskey could continue serving them despite their knowledge of that danger.

71. Upon information and belief, the Diocese and St. Philip and St. James, their agents, servants, and employees, knew that their negligent, reckless, and outrageous conduct would inflict severe emotional and psychological distress, as well as personal physical injury, on others, including S.T., and he did in fact suffer severe emotional and psychological distress and personal physical injury as a result of their wrongful conduct.

72. Upon information and belief, the Diocese and St. Philip and St. James, their agents, servants, and employees, concealed the sexual abuse of children by priests and others in order to conceal their own bad acts in failing to protect children from being abused, to protect their reputation, and to prevent victims of such sexual abuse from coming forward during the extremely limited statute of limitations prior to the enactment of the CVA, despite knowing that those priests and other persons would continue to molest children.

73. By reason of the wrongful acts of the Diocese and St. Philip and St. James as detailed herein, S.T. sustained physical and psychological injuries, including but not limited to, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, family turmoil and loss of faith, a severe shock to his nervous system, physical pain and mental anguish, and emotional and psychological damage, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature, and S.T. has and/or will become obligated to expend sums of money for treatment.

VI. CAUSES OF ACTION

A. FIRST CAUSE OF ACTION – NEGLIGENCE

74. Plaintiff S.T. repeats and re-alleges all of his allegations above and below.

75. The Diocese and St. Philip and St. James had a duty to take reasonable steps to protect plaintiff S.T., a child, from foreseeable harm when he was under their supervision and in their care, custody, and control.

76. The Diocese and St. Philip and St. James also had a duty to take reasonable steps to prevent Father McComiskey from using the tasks, premises, and instrumentalities of his position with the defendants to target, groom, and sexually abuse children, including S.T.

77. The Diocese and St. Philip and St. James were supervising S.T., and had care, custody, and control of S.T., when he attended St. Philip and St. James as a parishioner and when he attended their camping trip, during which time those defendants had a duty to take reasonable steps to protect him.

78. These circumstances created a special relationship between the Diocese and S.T., and between St. Philip and St. James and S.T., which imposed on each of those defendants a duty to exercise the degree of care of a parent of ordinary prudence in comparable circumstances.

79. The Diocese and St. Philip and St. James breached each of the foregoing duties by failing to exercise reasonable care to prevent Father McComiskey from harming S.T., including sexually abusing him.

80. In breaching their duties, including hiring, retaining, and failing to supervise Father McComiskey, giving him access to children, entrusting their tasks, premises, and instrumentalities to him, failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm, failing to warn S.T., his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for S.T. and other children who were under their supervision and in their care, custody, and control, the Diocese and St. Philip and St. James created a risk that S.T. would be sexually abused by Father McComiskey. The Diocese and St. Philip and St. James through their actions and inactions created an environment that placed S.T. in danger of unreasonable risks of harm under the circumstances.

81. In breaching their duties, including hiring, retaining, and failing to supervise Father McComiskey, giving him access to children, entrusting their tasks, premises, and instrumentalities to him, failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm, failing to warn S.T., his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for S.T. and other children who were under their supervision and in their care, custody, and control, the Diocese and St. Philip and St. James acted willfully and with conscious disregard for the need to protect S.T. The Diocese and St. Philip and St. James through their actions and inactions created an environment that placed S.T. in danger of unreasonable risks of harm under the circumstances.

82. It was reasonably foreseeable that defendants' breach of these duties of care would result in the sexual abuse of S.T.

83. As a direct and proximate result of the acts and omissions of the Diocese and St. Philip and St. James, Father McComiskey groomed and sexually abused S.T., which has caused S.T. to suffer general and special damages as more fully described herein.

B. SECOND CAUSE OF ACTION – OUTRAGE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

84. Plaintiff S.T. repeats and re-alleges all of his allegations above and below.

85. The Diocese and St. Philip and St. James engaged in reckless, extreme, and outrageous conduct by providing Father McComiskey with access to children, including plaintiff S.T., despite knowing that he would likely use his position to groom and to sexually abuse them, including S.T. Their misconduct was so shocking and outrageous that it exceeds the reasonable bounds of decency as measured by what the average member of the community would tolerate and demonstrates an utter disregard by them of the consequences that would follow.

86. As a result of this reckless, extreme, and outrageous conduct, Father McComiskey gained access to S.T. and sexually abused him.

87. The Diocese and St. Philip and St. James knew that this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury, on others, and S.T. did in fact suffer severe emotional and psychological distress and personal physical injury as a result, including severe mental anguish, humiliation and emotional and physical distress.

VII. CPLR 1603 – NO APPORTIONMENT OF LIABILITY

88. 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.

VIII. PRAYER FOR RELIEF

89. Plaintiff demands judgment against the defendants named in his causes of action, together with compensatory and punitive damages to be determined at trial, and the interest, cost and disbursements pursuant to his causes of action, and such other and further relief as the Court deems just and proper.

90. Plaintiff specifically reserves the right to pursue additional causes of action, other than those outlined above, that are supported by the facts pleaded or that may be supported by other facts learned in discovery.

Dated: August 14, 2019

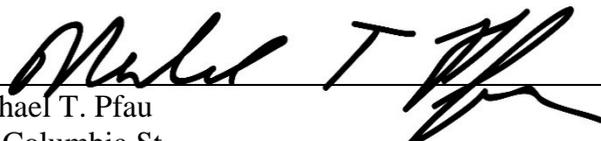
Respectfully Yours,

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