

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF STEARNS

SEVENTH JUDICIAL DISTRICT

Case Type: Personal Injury

Doe 413,

Plaintiff,

SECOND AMENDED SUMMONS

vs.

The Order of St. Benedict, a/k/a and d/b/a
St. John's Abbey, and a/k/a and d/b/a St. John's
Preparatory School; and Father Timothy Backous OSB,

Defendants.

THIS SECOND AMENDED SUMMONS IS DIRECTED TO THE DEFENDANTS ABOVE NAMED.

1. YOU ARE BEING SUED. The Plaintiff has started a lawsuit against you. The Plaintiff's Second Amended Complaint against you is attached to this Second Amended Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Second Amended Summons.

2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS. You must give or mail to the person who signed this Second Amended Summons a **written response** called an Answer within 20 days of the date on which you received this Second Amended Summons. You must send a copy of your Answer to the person who signed this Second Amended Summons located at Jeff Anderson & Associates, P.A., 366 Jackson Street, Suite 100, St. Paul, MN 55101.

3. YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiff's Second Amended Complaint. In your Answer you must state whether

you agree or disagree with each paragraph of the Second Amended Complaint. If you believe the Plaintiff should not be given everything asked for in the Second Amended Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE SECOND AMENDED COMPLAINT TO THE PERSON WHO SIGNED THIS SECOND AMENDED SUMMONS. If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Second Amended Complaint. If you do not want to contest the claims stated in the Second Amended Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Second Amended Complaint.

5. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Second Amended Complaint even if you expect to use alternative means of resolving this dispute.

Dated: 4/27/16

JEFF ANDERSON & ASSOCIATES, P.A.



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STATE OF MINNESOTA
COUNTY OF STEARNS

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
Case Type: Personal Injury

Doe 413,

Plaintiff,

SECOND AMENDED COMPLAINT

vs.

The Order of St. Benedict, a/k/a and d/b/a
St. John's Abbey, and a/k/a and d/b/a St. John's
Preparatory School; and Father Timothy Backous OSB,

Defendants.

Plaintiff, for his cause of action against Defendants, alleges that:

PARTIES

1. At all times material, Plaintiff Doe 413 resided in the State of Minnesota. The identity of Plaintiff Doe 413 has been disclosed under separate cover to Defendant.
2. At all times material, Defendant Order of St. Benedict a/k/a and d/b/a St. John's Abbey (hereinafter "Order") was, and continues to be, an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducting business in the State of Minnesota with its principal place of business located in Collegeville, Minnesota. The Abbot is the top official of the Order and is given authority over all matters dealing with the Order as a result of his position. The Order functions as a business by engaging in numerous revenue producing activities and soliciting money in exchange for its services. The Order has several programs which seek out the participation of children in the Order's activities, including but not limited to St. John's Preparatory School located in Collegeville, Minnesota, and other educational programs. The Order, through its officials, has

control over those activities involving children. The Order has the power to appoint, supervise, monitor, and fire each person working with children within the Order.

3. Defendant Order is also known as, does business as, and owns and operates St. John's Abbey, which is a Benedictine religious community located in Collegeville, Minnesota.

4. Defendant Order is also known as, does business as and owns and operates St. John's Preparatory School (hereinafter "SJP") which is a Benedictine college preparatory school with grades 6 through 12. Defendant Order represents SJP to be an exceptional middle and high school that provides its students a safe and secure environment through the use of full-time staff that supervises and mentors students. At all times material, St. John's Preparatory School was under the direct authority, control, and province of Defendant Order and the Abbot. At all times material, Defendant Order owned, operated, and controlled St. John's Preparatory School.

5. At all times material, Defendant Timothy Backous, (hereinafter "Backous") was a Roman Catholic monk employed by Defendant Order. Backous remained under the direct supervision, employ and control of Defendant Order. Defendant Order placed Backous in positions where he had access to and worked with children as an integral part of his work.

FACTS

6. Plaintiff was raised in a devout Roman Catholic family and attended St. John's Preparatory in Collegeville, Minnesota. Plaintiff and Plaintiff's family came in contact with Backous as an agent and representative of Defendant Order at St. John's Preparatory School.

7. Plaintiff was a resident, student, and participated in youth activities and church activities at St. John's Preparatory School. Plaintiff, therefore, developed great admiration, trust, reverence and respect for the Roman Catholic Church, including Defendant and its agents, including Backous.

8. During and through these activities, Plaintiff, as a student, resident at St. John's, minor and vulnerable child, was dependent on Defendant Order. Defendant Order had custody of Plaintiff and accepted the entrustment of Plaintiff. Defendants had responsibility for Plaintiff and authority over him.

9. Defendant Order negligently or recklessly created and/or allowed a sexually charged culture to exist at St. John's, in which adults in positions of authority openly discussed sexual encounters, propositioned minor students to engage in criminal sexual conduct, and otherwise engaged in inappropriate sexual behavior with minor students. As a result of the environment negligently or recklessly created and/or allowed by Defendant Order, Plaintiff was propositioned by Brother John Kelly, an agent of Defendant Order, on numerous occasions while Plaintiff was a minor student at St. John's Preparatory School. Brother Kelly repeatedly and openly asked Plaintiff to allow Kelly to perform oral sex on him. Brother Kelly plied Plaintiff with attention, and told Plaintiff that numerous St. John's Prep Students had "allowed" Kelly to perform oral sex on them and that Plaintiff would not be the only one. Kelly was brazen in his attempted sexual abuse of Plaintiff.

10. From approximately 1982 to 1983, when Plaintiff was approximately 16 to 17 years old, Defendant Backous engaged in unpermitted sexual contact with Plaintiff.

11. Plaintiff's relationship to Defendants, as a vulnerable child, student, parishioner, and participant in Order activities, was one in which Plaintiff was subject to the ongoing influence of Defendants Order and Backous. The culture of the Catholic Church over Plaintiff created pressure on Plaintiff not to report Backous's abuse of him.

12. Prior to the sexual abuse of Plaintiff, Defendant Order learned or should have learned that Backous was not fit to work with children.

13. Defendant Order knew or should have known that Backous was a danger to children before Backous sexually molested Plaintiff.

14. Defendant Order negligently or recklessly believed that Backous was fit to work with children and/or that any previous problems he had were fixed and cured; that Backous would not sexually molest children and that Backous would not injure children; and/or that Backous would not hurt children.

15. By holding Backous out as safe to work with children, and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, Defendant Order entered into a fiduciary relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendant Order undertaking the care and guidance of the then vulnerable minor Plaintiff, Defendant Order held a position of empowerment over Plaintiff.

16. By accepting custody of the minor Plaintiff, Defendant Order established an *in loco parentis* relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury.

17. Further, Defendant Order, by holding itself out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented the then minor Plaintiff from effectively protecting himself and Defendant Order thus entered into a fiduciary relationship with Plaintiff.

18. Defendant Order had a special relationship with Plaintiff.

19. Defendant Order owed Plaintiff a duty of reasonable care because it had superior knowledge about the risk that Backous posed to Plaintiff, the risk of abuse in general in their programs and/or the risks that their facilities posed to minor children.

20. Defendant Order owed Plaintiff a duty of reasonable care because it solicited youth

and parents for participation in its youth programs; encouraged youth and parents to have the youth participate in its programs; undertook custody of minor children, including Plaintiff; promoted its facilities and programs as being safe for children; held its agents, including Backous, out as safe to work with children; encouraged parents and children to spend time with its agents; and/or encouraged its agents, including Backous, to spend time with, interact with, and recruit children.

21. Defendant Order owed a duty to Plaintiff to protect him from harm because Defendant Order's actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child participating in the program and activities Defendant Order offered to minors, Plaintiff was a foreseeable victim. As a vulnerable child who Backous had access to through Defendant Order's facilities and programs, Plaintiff was a foreseeable victim.

22. Defendant Order's breach of its duties include, but are not limited to: failure to have sufficient policies and procedures to prevent child sex abuse, failure to properly implement the policies and procedures to prevent child sex abuse, failure to take reasonable measures to make sure that the policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child molestation, failure to properly train the workers at institutions and programs within Defendant Order's geographical confines, failure to have any outside agency test its safety procedures, failure to protect the children in its programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the institutions, programs, leaders and people as safe, failure to train its employees properly to identify signs of child molestation by fellow employees, failure by relying upon mental health professionals, and/or failure by relying on people who claimed that they could treat child molesters.

23. Defendant Order failed to use ordinary care in determining whether its facilities were safe and/or to determine whether it had sufficient information to represent its facilities as safe. Defendant Order's failures include, but are not limited to: failure to have sufficient policies and procedures to prevent abuse at its facilities, failure to investigate risks at its facilities, failure to properly train the workers at its facilities, failure to have any outside agency test its safety procedures, failure to investigate the amount and type of information necessary to represent its facilities as safe, failure to train its employees properly to identify signs of child molestation by fellow employees, failure by relying upon mental health professionals, and/or failure by relying upon people who claimed that they could treat child molesters.

24. Defendant Order also breached its duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Backous posed and the risks of child sexual abuse by clerics. It also failed to warn them about any of the knowledge that Defendant Order had about child sex abuse.

25. Defendant Order also violated a legal duty by failing to report known and/or suspected abuse of children by Backous and/or its other agents to the police and law enforcement.

26. Defendant Order also breached its duty to Plaintiff by actively maintaining and employing Defendant Backous in a position of power and authority through which Backous had access to children, including Plaintiff, and power and control over children, including Plaintiff.

27. Defendant Order knew or should have known that some of the leaders and people working within the Order were not safe.

28. Defendant Order knew or should have known that it did not have sufficient information about whether or not its leaders and people working within the Order were safe.

29. Defendant Order knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within the Order.

30. Defendant Order knew or should have known that it did not have sufficient information about whether or not there was a risk of child sex abuse for children participating in Catholic programs and activities within the Order.

31. Defendant Order knew or should have known that Defendant Order had numerous agents who had sexually molested children. Defendant Order knew or should have known that child molesters have a high rate of recidivism. It knew or should have known that there was a specific danger of child sex abuse for children participating in its youth programs.

32. Defendant Order held its leaders and agents out as people of high morals, as possessing immense power, teaching families and children to obey these leaders and agents, teaching families and children to respect and revere these leaders and agents, soliciting youth and families to its programs, marketing to youth and families, recruiting youth and families, and holding out the people that worked in the programs as safe.

33. Defendant Order was negligent and/or made representations to Plaintiff and Plaintiff's family during each and every year of Plaintiff's minority.

34. As a direct result of Defendants Order's and Backous's conduct described herein, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, physical, personal and psychological injuries. Plaintiff was prevented, and will continue to be prevented, from performing normal daily activities and obtaining the full enjoyment of life; and/or has incurred and will continue to incur expenses for psychological

treatment, therapy, and counseling, and has and will incur loss of income and loss of earning capacity.

COUNT I: SEXUAL BATTERY AGAINST DEFENDANT BACKOUS

Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further alleges:

35. From approximately 1981 to 1983, Defendant Timothy Backous inflicted unpermitted, harmful, and offensive sexual contact upon the person of Plaintiff.

36. As a direct result of Defendant Timothy Backous's wrongful conduct, Plaintiff has suffered the injuries alleged herein.

COUNT II: NEGLIGENCE AGAINST DEFENDANT ORDER

Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

37. Defendant owed Plaintiff a duty of reasonable care.

38. Defendant owed Plaintiff a duty of care because Defendant had a special relationship with Plaintiff.

39. Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendant had a special relationship with Backous.

40. Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendant's active misfeasance created a foreseeable risk of harm.

41. Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendant invited Plaintiff onto its property and Backous posed a dangerous condition on Defendant's property.

42. By establishing and/or operating St. John's Preparatory School, accepting minor

Plaintiff as a participant in its programs, holding its facilities and programs out to be a safe environment for Plaintiff, accepting custody of the minor Plaintiff *in loco parentis*, and by establishing a fiduciary relationship with Plaintiff, Defendant entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children, who participated in its programs. Defendant owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers.

43. By establishing and operating the Order and St. John's Preparatory School, which offered educational programs to children, and by accepting the enrollment and participation of minor Plaintiff as a participant in its educational programs, Defendant owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

44. Defendant breached its duties to Plaintiff. Defendant's failures include but are not limited to failing to properly supervise Backous, failing to properly supervise Plaintiff and failing to protect Plaintiff from a known danger.

45. Defendant's breach of its duties was the proximate cause of Plaintiff's injuries.

46. As a direct result of Defendant's negligent conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT III: NEGLIGENT SUPERVISION AGAINST DEFENDANT ORDER

Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

47. At all times material, Backous was employed by Defendant and was under Defendant's direct supervision, employ and control when he committed the wrongful acts alleged herein. Backous engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant and/or accomplished the sexual abuse by virtue of his job-created

authority. Defendant failed to exercise ordinary care in supervising Backous in his assignments and failed to prevent the foreseeable misconduct of Backous from causing harm to others, including the Plaintiff herein.

48. As a direct result of Defendant's negligent conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT IV: NEGLIGENT RETENTION AGAINST DEFENDANT ORDER

Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

49. Defendant, by and through its agents, servants and/or employees, became aware, or should have become aware, of problems indicating that Backous was an unfit agent with dangerous and exploitive propensities, yet Defendant failed to take any further action to remedy the problem and failed to investigate or remove Backous from working with children.

50. As a direct result of Defendant's negligent conduct, Plaintiff has suffered the injuries and damages described herein.

PRAYER FOR RELIEF

51. Plaintiff demands judgment against Defendants, individually, jointly and severally in an amount in excess of \$50,000.00, plus costs, disbursements, reasonable attorney's fees, interest, and such other and further relief as the court deems just and equitable.

DEMAND IS HEREBY MADE FOR A TRIAL BY JURY.

Dated: 4/27/16

JEFF ANDERSON & ASSOCIATES, P.A.



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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions, including costs, disbursements, and reasonable attorney fees may be awarded pursuant to Minn. Stat. § 549.211 to the party against whom the allegations in this pleading are asserted.

