

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

ARK117 DOE,

Plaintiff,

v.

ARCHDIOCESE OF NEW YORK;
SACRED HEART CHURCH a/k/a
THE CHURCH OF THE SACRED
HEART a/k/a SACRED HEART;
and DOES 1-5 whose identities are
unknown to Plaintiff,

Defendants.

Index No. _____

**PROPOSED
COMPLAINT
AND DEMAND
FOR JURY TRIAL**

Plaintiff, by and through Plaintiff's attorneys, states and alleges as follows:

PARTIES

A. Plaintiff

1. At all times material, Plaintiff resided in the State of New York.
2. Plaintiff seeks leave of Court to bring this action under a pseudonym.
3. This is a revival action brought pursuant to the New York Child Victims

Act, CPLR § 214-g. 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, incest as defined in section 255.27, 255.26 or 255.25 of the New York Penal Law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the New York Penal Law, or a predecessor statute that prohibited such conduct

at the time of the act which conduct was committed against a child less than eighteen years of age, which is barred as of the effective date of this section because the applicable period of limitation has expired, and/or the plaintiff previously failed to file a notice of claim or a notice of intention to file a claim.

B. Defendants

4 Whenever reference is made to any Defendant entity, such reference includes that entity, its parent companies, subsidiaries, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

5 At all times material, Defendant Archdiocese of New York ("Archdiocese") 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 New York with its principal place of business at 1011 First Avenue, New York, NY 10022.

6 The Archdiocese was created in approximately 1850. Later, the Archdiocese created a corporation called the Archdiocese of New York to conduct some of its affairs. The Archdiocese operates its affairs as both a corporate entity and as the organization known as the Archdiocese of New York. Both of these entities and all other affiliated corporations and entities controlled by the Archbishop are included in this Complaint as

the "Archdiocese." The Archdiocese functions as a business by engaging in numerous revenue producing activities and soliciting money from its members in exchange for its services.

7. The Archdiocese has several programs that seek out the participation of children including, but not limited to, schools and other educational programs. The Archdiocese, through its officials, has complete control over those activities and programs involving children. The Archdiocese has the power to appoint, train, supervise, monitor, remove, and terminate each and every person working with children within the Archdiocese.

8. At all times material, Sacred Heart Church a/k/a The Church of the Sacred Heart a/k/a Sacred Heart ("Sacred Heart") was and continues to be an organization authorized to conduct business and conducting business in the State of New York, with its principal place of business at 26 Still Road, Monroe, NY 10950. Sacred Heart includes, but is not limited to, Sacred Heart and any other organizations and/or entities operating under the same or similar name with the same or similar principal place of business.

9. At all times material, Sacred Heart was and continues to be under the direct authority, control, and province of Defendant Archdiocese and the Archbishop of Defendant Archdiocese. Defendant Sacred Heart includes any school affiliated with Sacred Heart. At all times material, Sacred Heart School was under the direct authority, control, and province of Defendant Archdiocese and the Archbishop of Defendant Archdiocese. At all times material, Defendants Sacred Heart and Archdiocese owned, operated, managed, maintained, and controlled the Sacred Heart School.

10. Defendants Does 1 through 5 are unknown agents whose identities will be provided when they become known pursuant to CPLR § 1024.

JURISDICTION

11. This Court has jurisdiction pursuant to CPLR § 301 as Defendants' principal places of business are in New York and because the unlawful conduct complained of herein occurred in New York.

12. Venue is proper pursuant to CPLR § 503 in that New York County is the principal place of business of Defendant Archdiocese. In addition, many of the events giving rise to this action occurred in New York County.

FACTUAL ALLEGATIONS

13. At all times material, Fr. Edward Pipala ("Fr. Pipala") was a Roman Catholic cleric employed by the Archdiocese and Sacred Heart. Fr. Pipala remained under the direct supervision, employ, and control of Defendants.

14. Defendants placed Fr. Pipala in positions where he had access to and worked with children as an integral part of his work.

15. Plaintiff was raised in a devout Roman Catholic family and attended Sacred Heart in Monroe, New York, in the Archdiocese. Plaintiff and Plaintiff's family came in contact with Fr. Pipala as an agent and representative of Defendants, and at Sacred Heart.

16. Plaintiff, as a youth, participated in activities at Sacred Heart. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for the Roman Catholic Church, including Defendants and their agents, including Fr. Pipala. During and through these activities, Plaintiff, as a minor and vulnerable child, was dependent on

Defendants and Fr. Pipala. Defendants had custody of Plaintiff and accepted the entrustment of Plaintiff and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

17. From approximately 1984 to 1988, when Plaintiff was approximately 14 to 18 years old, Fr. Pipala engaged in unpermitted sexual contact with Plaintiff.

18. Plaintiff's relationship to Defendants and Fr. Pipala, as a vulnerable child, parishioner, and participant in church activities, was one in which Plaintiff was subject to the ongoing influence of Defendants and Fr. Pipala.

19. The culture of the Catholic Church over Plaintiff created pressure on Plaintiff not to report the abuse Plaintiff suffered.

COUNT I: NEGLIGENCE

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

21. Each Defendant owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

22. Each Defendant owed Plaintiff a duty of care because each Defendant had a special relationship with Plaintiff.

23. Defendants also had a duty arising from the special relationship that existed with Plaintiff, Plaintiff's parents, and other parents of young, innocent, vulnerable children to properly train and supervise its clerics. This special relationship arose because of the high degree of vulnerability of the children entrusted to their care. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such a special

relationship, Defendants had a duty to establish measures of protection not necessary for persons who are older and better able to safeguard themselves.

24. Each Defendant owed Plaintiff a duty to protect Plaintiff from harm because each Defendant also had a special relationship with Fr. Pipala.

25. Defendants owed Plaintiff a duty of reasonable care because they solicited youth and parents for participation in their youth programs; encouraged youth and parents to have the youth participate in their programs; undertook custody of minor children, including Plaintiff; promoted their facilities and programs as being safe for children; held their agents, including Fr. Pipala, out as safe to work with children; encouraged parents and children to spend time with their agents; and/or encouraged their agents, including Fr. Pipala, to spend time with, interact with, and recruit children.

26. By accepting custody of the minor Plaintiff, Defendants established an *in loco parentis* relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury. Further, Defendants entered into a fiduciary relationship with Plaintiff by undertaking the custody, supervision of, and/or care of the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendants undertaking the care and guidance of the Plaintiff, Defendants also held a position of empowerment over Plaintiff. Further, Defendants, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. Defendants, through its employees, exploited this power over Plaintiff and, thereby, put the minor Plaintiff at risk for sexual abuse.

27. By establishing and/or operating the Archdiocese and Sacred Heart,

accepting the minor Plaintiff as a participant in their programs, holding their 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, Defendants entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children, who participated in their programs. Defendants owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Defendants had the duty to exercise the same degree of care over minors under their control as a reasonably prudent person would have exercised under similar circumstances.

28. By establishing and operating the Archdiocese and Sacred Heart, which offered educational programs to children and which may have included a school, and by accepting the enrollment and participation of the minor Plaintiff as a participant in those educational programs, Defendants owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

29. Each Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendants invited Plaintiff onto their property and Fr. Pipala posed a dangerous condition on Defendants' property.

30. Each Defendant breached its duties to Plaintiff. Defendants failed to use ordinary care in determining whether their facilities were safe and/or determining whether they had sufficient information to represent their facilities as safe. Defendants' breach of their duties include, but are not limited to: failure to protect Plaintiff from a known danger, failure to have sufficient policies and procedures in place to prevent child

sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to ensure that 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 employees at institutions and programs within Defendants' geographical confines, failure to train the minors within Defendants' geographical confines about the dangers of sexual abuse by clergy, failure to have any outside agency test their safety procedures, failure to protect the children in their 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 their 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.

31. Defendants also breached their duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Fr. Pipala posed and the risks of child sexual abuse in Catholic institutions. They also failed to warn them about any of the knowledge that Defendants had about child sexual abuse.

32. Defendants breached their duties to Plaintiff by failing to use reasonable care. Defendants' failures include, but are not limited to, failing to properly supervise Fr. Pipala, failing to properly supervise Plaintiff, and failing to protect Plaintiff from a known danger.

33. Defendants additionally violated a legal duty by failing to report known and/or suspected abuse of children by Fr. Pipala and/or its other agents to the police and law enforcement.

34. Defendants knew or should have known that Fr. Pipala was a danger to children before Fr. Pipala sexually assaulted Plaintiff.

35. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that Fr. Pipala was not fit to work with children. Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Fr. Pipala's propensity to commit sexual abuse and of the risk to Plaintiff's safety. At the very least, Defendants knew or should have known that they did not have sufficient information about whether or not their leaders and people working at Sacred Heart and other Catholic institutions within the Archdiocese of New York were safe.

36. Defendants knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within the Archdiocese. At the very least, Defendants knew or should have known that they 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 Archdiocese.

37. Defendants knew or should have known that Defendants had numerous agents who had sexually molested children. Defendants knew or should have known that child molesters have a high rate of recidivism. They knew or should have known that there was a specific danger of child sex abuse for children participating in their youth programs.

38. However, despite this knowledge, Defendants negligently deemed that Fr. Pipala was fit to work with children; and/or that any previous suitability problems Fr. Pipala had were fixed and cured; and/or that Fr. Pipala would not sexually molest children; and/or that Fr. Pipala would not injure children.

39. Defendants' actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child participating in the programs and activities Defendants offered to minors, Plaintiff was a foreseeable victim. Additionally, as a vulnerable child who Fr. Pipala had access to through Defendants' facilities and programs, Plaintiff was a foreseeable victim.

40. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

COUNT II: NEGLIGENT TRAINING AND SUPERVISION OF EMPLOYEES

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

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

43. Defendants had a duty, arising from their employment of Fr. Pipala, to ensure that he did not sexually molest children.

44. Further, Defendants owed a duty to train and educate employees and

administrators and establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct between clerics and children.

45. At least some of the abuse complained of herein occurred on Defendants' property and with the use of its chattels.

46. Defendants breached their duties to Plaintiff by actively maintaining and employing Fr. Pipala in a position of power and authority through which Fr. Pipala had access to children, including Plaintiff, and power and control over children, including Plaintiff.

47. Defendants were negligent in the training, supervision, and instruction of their employees. Defendants failed to timely and properly educate, train, supervise, and/or monitor their agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed. Defendants were additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Fr. Pipala and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Fr. Pipala's sexual abuse of Plaintiff. In failing to properly supervise Fr. Pipala, and in failing to establish such training procedures for employees and administrators, Defendants failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

48. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

COUNT III: NEGLIGENT RETENTION OF EMPLOYEES

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

50. At all times material, Fr. Pipala was employed by Defendants and was under each Defendant's direct supervision, employ, and control when he committed the wrongful acts alleged herein.

51. Defendants negligently retained Fr. Pipala with knowledge of Fr. Pipala's propensity for the type of behavior which resulted in Plaintiff's injuries in this action. Defendants failed to investigate Fr. Pipala's past and/or current history of sexual abuse and, through the exercise of reasonable diligence, should have known of Fr. Pipala's propensity for child sexual abuse. Defendants should have made an appropriate investigation of Fr. Pipala and failed to do so. An appropriate investigation would have revealed the unsuitability of Fr. Pipala for continued employment and it was unreasonable for Defendants to retain Fr. Pipala in light of the information they knew or should have known.

52. Defendants negligently retained Fr. Pipala in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendants taken reasonable care.

53. In failing to timely remove Fr. Pipala from working with children or terminate the employment of Fr. Pipala, Defendants failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

54. As a direct result of the foregoing, Plaintiff sustained physical, emotional,

and psychological injuries, along with pain and suffering.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing causes of action, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate Plaintiff for Plaintiff's injuries and damages and for any other relief the Court deems appropriate. The amount of damages sought in this Complaint exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable. Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.

Dated: January 17, 2020
New York, New York

/s/ Nahid A. Shaikh
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