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Attorneys for Plaintiff

KEVIN KIERNAN,

Plaintiff,

v.

**THE ROMAN CATHOLIC
ARCHDIOCESE OF NEWARK a/k/a
ARCHDIOCESE OF NEWARK;
BROTHERS OF ST. FRANCIS
XAVIER a/k/a XAVERIAN
BROTHERS, U.S.A. INC. f/k/a ST.
JOSEPH PROVINCE a/k/a
AMERICAN NORTHEASTERN
PROVINCE OF XAVERIAN
BROTHERS INC.; ST. JOSEPH
REGIONAL HIGH SCHOOL; ABC
ENTITY, its priests, reverends, teachers,
deacons, directors, officers, employees,
agents, servants, representatives and/or
volunteers, is a fictitious name of an
entity believed to have employed Br.
Peter Russel, C.F.X. and/or Br. John H.
Dagwell, C.F.X.; and **JOHN DOES 1-5,**
individually, and in their capacity as a
former and/or current priest, reverend,
teacher, deacon, director, officer,
employee, agent, servant, representative
and/or volunteer of the defendants, are
persons whose identities are unknown to
Plaintiff,**

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - ESSEX COUNTY

: DOCKET NO.: _____

: CIVIL ACTION

: COMPLAINT, JURY DEMAND, AND
: DESIGNATION OF TRIAL COUNSEL

Plaintiff, Kevin Kiernan, by and through Plaintiff's attorneys, by way of Complaint against the Defendants, states and alleges as follows:

PARTIES

1. At all times material to this Complaint, Plaintiff resided in the State of New Jersey.
2. At all times material, Defendant The Roman Catholic Archdiocese of Newark a/k/a Archdiocese of Newark (hereinafter "Archdiocese of Newark") was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and representatives/agents/employees, authorized to conduct business and conducting business in the State of New Jersey with its principal place of business at 171 Clifton Avenue, Newark, New Jersey 07104-9500. The Newark Diocese was established in approximately 1853, which was erected to an Archdiocese in approximately 1937. At some point, a corporation was formed called the Roman Catholic Diocese of Newark, which eventually became the Roman Catholic Archdiocese of Newark, to conduct some of its affairs. The Archdiocese of Newark operates its affairs as both a corporate entity and as an organization named the Roman Catholic Archdiocese of Newark, with the Archbishop as the top official. Both of these entities and all other corporations and entities controlled by the Archbishop are included in this Complaint as being the Archdiocese of Newark. The Archbishop is the top official of the Archdiocese and is given authority over all matters within the Archdiocese as a result of his position. The Archdiocese functions as a business by engaging in numerous revenue producing activities and soliciting money from its members in exchange for its services. The Archdiocese of Newark has several programs which seek out the participation of children in the Archdiocese of Newark's activities. The Archdiocese of Newark, through its officials, has control over those activities involving children. The Archdiocese of Newark has the power to appoint, supervise, monitor and terminate each

person working with children within the Archdiocese of Newark.

3. At all times material, Defendant the Brothers of St. Francis Xavier a/k/a Xaverian Brothers, U.S.A. Inc. f/k/a St. Joseph Province a/k/a American Northeastern Province of Xaverian Brothers Inc. (“Xaverian Brothers”) was and continues to be a Roman Catholic religious order of brothers affiliated with the Roman Catholic Church with its headquarters and principal place of business at 4409 Frederick Avenue, Baltimore, MD 21229. At all times material, the Xaverian Brothers was an organization or entity that includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducted business in the State of New Jersey and in the Archdiocese of Newark. The provincial is the top official of the Xaverian Brothers and is given authority over all matters dealing with the Xaverian Brothers as a result of his position. The Xaverian Brothers functions as a business by engaging in numerous revenue producing activities and soliciting money in exchange for its services.

4. The Xaverian Brothers has several programs that seek out the participation of children in the Xaverian Brothers activities. The Xaverian Brothers, through its officials, has control over those activities involving children. The Xaverian Brothers has the power to appoint, supervise, monitor, and fire each person working with children within the Xaverian Brothers.

5. At all times material, Defendant St. Joseph Regional High School (“St. Joseph”) was and continues to be an organization authorized to conduct business and conducting business in the State of New Jersey, with its principal place of business at 40 Chestnut Ridge Road, Montvale, NJ 07645. St. Joseph includes, but is not limited to, St. Joseph and any other organizations and/or entities operating under the same or similar name with the same or similar principal place of business.

6. At all times material, St. Joseph was and continues to be under the direct authority, control, and province of Defendant Archdiocese of Newark and the Archbishop of Defendant

Archdiocese of Newark.

7. The Archdiocese of Newark, the Xaverian Brothers, and St. Joseph are collectively referred to as “Defendants” herein.

8. 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.

9. The Defendant ABC ENTITY, its priests, reverends, teachers, deacons, directors, officers, employees, agents, servants, representatives and/or volunteers, is a fictitious name of an entity believed to have employed Br. Peter Russell, C.F.X. and Br. John H. Dagwell, C.F.X.

10. The Defendant JOHN DOES 1-5, individually, and in their capacity as a former and/or current priest, reverend, teacher, deacon, director, officer, employee, agent, servant, representative and/or volunteer of the defendants, are persons whose identities are unknown to Plaintiff.

JURISDICTION, VENUE, AND NEW LAWS

11. This Court has jurisdiction over this action as Defendants Archdiocese of Newark’s and St. Joseph Regional High School’s principal places of business are in New Jersey and because the unlawful conduct complained of herein occurred in New Jersey.

12. Venue is proper in this county pursuant to New Jersey Court Rule 4:3-2 because this County is the principal place of business of Defendant Archdiocese of Newark. In addition, events that are relevant to this action occurred within this County.

13. Recently, New Jersey passed into law Bills S477 and A3648, which became

effective December 1, 2019. These new laws extend the statute of limitations in civil actions for sexual abuse claims, as well as created a two (2) year window for parties to bring previously time-barred actions based on sexual abuse. The new laws also expand the categories of potential defendants in civil actions and permit retroactive application of standards of liability to past acts of abuse for which liability did not previously exist. The said new laws apply to the parties herein.

FACTUAL ALLEGATIONS

14. At all times material, Br. Peter Russell, C.F.X. (“Br. Russell”) and Br. John H. Dagwell, C.F.X. (“Br. Dagwell”) were Roman Catholic clerics employed by the Archdiocese of Newark, the Xaverian Brothers, and St. Joseph. Br. Russell and Br. Dagwell remained under the direct supervision, employ, and control of Defendants.

15. Defendants placed Br. Russell and Br. Dagwell in positions where Br. Russell and Br. Dagwell had access to and worked with children as an integral part of their work.

16. Plaintiff was raised in a devout Roman Catholic family and attended St. Joseph in Montvale, NJ in the Archdiocese of Newark. Plaintiff and Plaintiff’s family came in contact with Br. Russell and Br. Dagwell as agents and representatives of Defendants, and at St. Joseph.

17. Plaintiff participated in youth activities and/or church activities at St. Joseph. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for the Roman Catholic Church, including Defendants and their agents, including Br. Russell and Br. Dagwell.

18. During and through these activities, Plaintiff, as a minor and vulnerable child, was dependent on Defendants and Br. Russell and Br. Dagwell. Defendants had custody and/or supervision of Plaintiff and accepted the entrustment of Plaintiff and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

19. From approximately 1980 to 1983, when Plaintiff was approximately 14 to 17 years old, Br. Russell engaged in unpermitted sexual contact with Plaintiff.

20. From approximately 1980 to 1983, when Plaintiff was approximately 14 to 17 years old, Br. Dagwell engaged in unpermitted sexual contact with Plaintiff.

21. Plaintiff's relationship to Defendants and Br. Russell and Br. Dagwell, as a vulnerable child, student and participant in church activities, was one in which Plaintiff was subject to the ongoing influence of Defendants and Br. Russell and Br. Dagwell.

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

23. Defendants knew or should have known that Br. Russell and Br. Dagwell were dangers to children before Br. Russell and Br. Dagwell sexually assaulted Plaintiff.

24. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that Br. Russell and Br. Dagwell were not fit to work with children. Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Br. Russell's and Br. Dagwell'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 Catholic institutions within the Diocese were safe.

25. 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 Diocese. 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 Diocese.

26. 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. Defendants knew or should have known that some of the leaders and

people working in Catholic institutions within the Diocese were not safe and that there was a specific danger of child sex abuse for children participating in their youth programs.

27. Instead, Defendants negligently deemed that Br. Russell and Br. Dagwell were fit to work with children and/or that any previous problems were fixed or cured and/or that Br. Russell and Br. Dagwell would not sexually assault children and/or that Br. Russell and Br. Dagwell would not injure children.

28. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risk that Br. Russell and Br. Dagwell posed to Plaintiff, the risk of abuse in general in their programs and/or the risks that their facilities posed to minor children.

29. Defendants owed a duty to Plaintiff to protect Plaintiff from harm because 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. As a vulnerable child who Br. Russell and Br. Dagwell had access to through Defendants' facilities and programs, Plaintiff was a foreseeable victim.

30. Defendants also breached their duty to Plaintiff by actively maintaining and employing Br. Russell and Br. Dagwell in positions of power and authority through which Br. Russell and Br. Dagwell had access to children, including Plaintiff, and power and control over children, including Plaintiff.

31. 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 to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to make sure 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 sex abuse, failure to properly train the employees at institutions and programs within Defendants' geographical confines, failure to train parishioners within Defendants' geographical confines about the risk of sexual abuse, 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 sexual abuse 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.

32. Defendants also breached their duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Br. Russell and Br. Dagwell 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.

33. Defendants additionally violated a legal duty by failing to report known and/or suspected abuse of children by Br. Russell and Br. Dagwell and/or its other agents to the child protection agencies, police and law enforcement.

34. Defendants were negligent and/or made representations to Plaintiff and Plaintiff's family during each and every year of Plaintiff's minority.

35. As a result of Defendants' negligence as 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, on information and belief has and/or will incur loss of income and/or loss of earning capacity.

COUNT I: NEGLIGENCE

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

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

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

38. 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 their 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.

39. Each Defendant owed Plaintiff a duty to protect Plaintiff from harm because each Defendant also had a special relationship with Br. Russell and Br. Dagwell.

40. 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 Br.

Russell and Br. Dagwell, out as safe to work with children; encouraged parents and children to spend time with their agents; and/or encouraged their agents, including Br. Russell and Br. Dagwell, to spend time with, interact with, and recruit children.

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

42. 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 thus entered into a fiduciary relationship with Plaintiff. Defendants exploited their position of empowerment, putting Plaintiff at risk to be sexually assaulted.

43. By accepting custody and/or supervision 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.

44. By establishing and/or operating the Archdiocese of Newark, Xaverian Brothers, and St. Joseph, 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.

45. By establishing and operating the Archdiocese of Newark, Xaverian Brothers, and St. Joseph, 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.

46. Each Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendants invited Plaintiff onto their property and Br. Russell and Br. Dagwell posed dangerous conditions on Defendants' property.

47. Each Defendant breached its duties to Plaintiff by failing to use reasonable care. Each Defendant's failures include, but are not limited to, failing to properly supervise Br. Russell and Br. Dagwell, failing to properly supervise Plaintiff and failing to protect Plaintiff from a known danger.

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

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and/or severally, for compensatory damages, together with interest and costs in an unspecified amount, plus costs, disbursements, reasonable attorneys' fees, interest, and such other and further relief as the court deems just and equitable.

COUNT II: NEGLIGENT TRAINING AND SUPERVISION

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

49. At all times material, Br. Russell and Br. Dagwell were employed by Defendants and was under each Defendant's direct supervision, employ, and control when they committed the wrongful acts alleged herein. Br. Russell and Br. Dagwell engaged in the wrongful conduct while acting in the course and scope of their employment with Defendants and/or accomplished the sexual abuse by virtue of their job-created authority.

50. Defendants had a duty, arising from their employment of Br. Russell and Br. Dagwell, to ensure that Br. Russell and Br. Dagwell did not sexually molest children.

51. 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.

52. 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.

53. Defendants were additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Br. Russell and Br. Dagwell and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Br. Russell's and Br. Dagwell's sexual abuse of Plaintiff.

54. In failing to properly supervise Br. Russell and Br. Dagwell, 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.

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

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and/or severally, for compensatory damages, together with interest and costs in an unspecified amount, plus costs, disbursements, reasonable attorneys' fees, interest, and such other and further relief as the court deems just and equitable.

COUNT III: NEGLIGENT RETENTION

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

56. At all times material, Br. Russell and Br. Dagwell were employed by Defendants and were under each Defendant's direct supervision, employ, and control when they committed the wrongful acts alleged herein.

57. Defendants became aware or should have become aware of Br. Russell's and Br. Dagwell's propensity for sexual abuse, and failed to take any further action to remedy the problem and failed to investigate or remove Br. Russell and Br. Dagwell from working with children.

58. Defendants negligently retained Br. Russell and Br. Dagwell with knowledge of Br. Russell's and Br. Dagwell's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

59. Defendants negligently retained Br. Russell and Br. Dagwell in positions where they had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendants taken reasonable care.

60. In failing to timely remove Br. Russell and Br. Dagwell from working with children or terminate the employment of Br. Russell and Br. Dagwell, Defendants failed to exercise the

degree of care that a reasonably prudent person would have exercised under similar circumstances.

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

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and/or severally, for compensatory damages, together with interest and costs in an unspecified amount, plus costs, disbursements, reasonable attorneys' fees, interest, and such other and further relief as the court deems just and equitable.

DEMAND FOR JURY TRIAL

The Plaintiff demands a trial by jury on all of the triable issues of this Complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

RULE 4:5-1 CERTIFICATION

We hereby certify that the matter in controversy is not the subject of any other pending and/or contemplated action or pending and or contemplated proceeding. We know of no other parties who should be joined in this action at this time.

GIANFORCARO LAW

JEFF ANDERSON & ASSOCIATES PA

/s/ Gregory G. Gianforcaro
Gregory G. Gianforcaro, Esq.
Attorneys for Plaintiff

/s/ Jeffrey R. Anderson / Trusha P. Goffe /
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Jeffrey R. Anderson, Esq.
Trusha P. Goffe, Esq.
Nahid A. Shaikh, Esq.
Rita M. Gribko, Esq.
Attorneys for Plaintiff

Dated: July 13, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Plaintiff hereby designates Gregory G. Gianforcaro, Esq. as trial counsel for Plaintiff.

GIANFORCARO LAW

JEFF ANDERSON & ASSOCIATES PA

/s/ Gregory G. Gianforcaro
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Dated: July 13, 2020