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ROBERT SYLVERSTEIN,

Plaintiff,

v.

ORDER OF ST. BENEDICT OF NEW JERSEY, INC. a/k/a and d/b/a ORDER OF ST. BENEDICT a/k/a and d/b/a ST. MARY’S ABBEY and a/k/a and d/b/a DELBARTON SCHOOL; ABC ENTITY, its priests, reverends, teachers, deacons, directors, officers, employees, agents, servants, representatives, members and/or volunteers, is a fictitious name of an entity believed to have supervised and/or had control over and/or employed Father Justin Capato, O.S.B., Father Donal Fox, O.S.B., and Brother/Deacon Malachy (Robert) Flavin; 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, member and/or volunteer of the Defendant Order/School, are persons whose identities are unknown to Plaintiff,

Defendants.

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

: DOCKET NO.: _____

: CIVIL ACTION

: COMPLAINT, JURY DEMAND AND
: DESIGNATION OF TRIAL COUNSEL

Plaintiff, ROBERT SYLVERSTEIN, by and through Plaintiff's attorneys, by way of Complaint against the Defendant, 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 Order of St. Benedict of New Jersey, Inc. a/k/a and d/b/a Order of St. Benedict a/k/a and d/b/a St. Mary's Abbey a/k/a and d/b/a Delbarton School (hereinafter "Order" or "Delbarton School") 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/members, authorized to conduct business and conducting business in the State of New Jersey with its principal place of business at 230 Mendham Rd., Morristown, NJ 07960. 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 from its members 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 Delbarton School located in Morristown, New Jersey, 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 terminate each person working with children within the Order.
3. Defendant Order is also known as, does business as and owns and operates Delbarton School which is a Benedictine college preparatory school. At all times material, Delbarton was under the direct authority, control and province of Defendant Order and the Abbot. At all times material, Defendant Order owned, operated, and controlled Delbarton.
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. Defendant ABC ENTITY, its priests, reverends, teachers, deacons, directors, officers, employees, agents, servants, representatives, members, and/or volunteers, is a fictitious name of an entity believed to have supervised and/or had control over and/or employed Father Justin Capato, O.S.B., Father Donal Fox, O.S.B., and Brother/Deacon Malachy (Robert) Flavin.

6. Defendants 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, member and/or volunteer of the Defendant Order/Delbarton School, are persons whose identities are unknown to Plaintiff.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action as Defendant's principal place of business is in New Jersey and because the unlawful conduct complained of herein occurred in New Jersey.

8. 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 Order/Delbarton School. In addition, events that are relevant to this action occurred within this County.

FACTUAL ALLEGATIONS

9. At all times material, Father Donal Fox, O.S.B. ("Fr. Fox") was a Roman Catholic cleric employed by and/or a member of the Defendant Order. Fr. Fox remained under the direct supervision, employ, and control of Defendant Order.

10. At all times material, Father Justin Capato, O.S.B. ("Fr. Capato") was a Roman

Catholic cleric employed by and/or a member of the Defendant Order. Fr. Capato remained under the direct supervision, employ, and control of Defendant Order.

11. At all times material, Brother/Deacon Malachy (Robert) Flavin (“Br./Dn. Flavin”) was a Roman Catholic cleric was employed by and/or a member of the Defendant Order. Flavin remained under the direct supervision, employ, and control of Defendant Order.

12. Defendant Order placed Fr. Fox, Fr. Capato, and Br./Dn. Flavin in positions where Fr. Fox, Fr. Capato, and Br./Dn. Flavin had access to and worked with children as an integral part of their work.

13. Plaintiff attended Delbarton in Morristown, NJ. Plaintiff and Plaintiff’s family came in contact with Fr. Fox, Fr. Capato, and Br./Dn. Flavin as agents and representatives of Defendant Order, and at Delbarton.

14. Plaintiff was a student at Delbarton. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for Defendant Order and their agents, including Fr. Fox, Fr. Capato, and Br./Dn. Flavin.

15. At all times herein, Plaintiff, as a minor and vulnerable child, was dependent on Defendant Order, Fr. Fox, Fr. Capato, and Br./Dn. Flavin. Defendant Order had custody and/or supervision of Plaintiff and accepted the entrustment of Plaintiff and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

16. In approximately 1984, when Plaintiff was approximately 15 years old, Fr. Fox engaged in unpermitted sexual contact with Plaintiff.

17. In approximately 1984, when Plaintiff was approximately 15 years old, Fr. Capato engaged in unpermitted sexual contact with Plaintiff.

18. From approximately 1983 to 1984, when Plaintiff was approximately 14 to 15 years old, Br./Dn. Flavin engaged in unpermitted sexual contact with Plaintiff.

19. Plaintiff's relationship to Defendant Order, Fr. Fox, Fr. Capato, and Br./Dn. Flavin, as a vulnerable child, and student, was one in which Plaintiff was subject to the ongoing influence of Defendant Order and Fr. Fox, Fr. Capato, and Br./Dn. Flavin.

20. The culture of the Catholic Church and/or Defendant Order over Plaintiff created pressure on Plaintiff not to report the abuse Plaintiff suffered.

21. Defendant Order knew or should have known that Fr. Fox, Fr. Capato, and Br./Dn. Flavin were a danger to children before Fr. Fox, Fr. Capato, and Br./Dn. Flavin sexually assaulted Plaintiff.

22. Prior to the sexual abuse of Plaintiff, Defendant Order learned or should have learned that Fr. Fox, Fr. Capato, and Br./Dn. Flavin were not fit to work with children. Defendant Order, by and through their members, representatives, agents, servants and/or employees, became aware, or should have become aware of Fr. Fox's, Fr. Capato's, and Br./Dn. Flavin's propensity to commit sexual abuse and of the risk to Plaintiff's safety. At the very least, Defendant Order 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 Catholic Church and/or Defendant Order were safe.

23. Defendant Order knew or should have known that there was a risk of child sexual abuse of children participating in Catholic programs and activities and/or attending Delbarton School. At the very least, Defendant Order knew or should have known that they did not have sufficient information about whether or not there was a risk of child sexual abuse of children participating in Catholic programs and activities and/or attending Delbarton School.

24. 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. Defendant Order knew or should have known that

some of the leaders and people working in Catholic institutions and/or in the Defendant Order were not safe and that there was a specific danger of child sexual abuse of children attending Delbarton School.

25. Instead, Defendant Order negligently deemed that Fr. Fox, Fr. Capato, and Br./Dn. Flavin were fit to work with children and/or that any previous problems were fixed or cured and/or that Fr. Fox, Fr. Capato, and Br./Dn. Flavin would not sexually assault children and/or that Fr. Fox, Fr. Capato, and Br./Dn. Flavin would not injure children.

26. Defendant Order owed Plaintiff a duty of reasonable care because they had superior knowledge about the risk that Fr. Fox, Fr. Capato, and Br./Dn. Flavin posed to Plaintiff, the risk of abuse in general in their programs and/or the risks that their facilities posed to minor children.

27. Defendant Order owed a duty to Plaintiff to protect Plaintiff from harm because Defendant Order's actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child attending Delbarton School, Plaintiff was a foreseeable victim. As a vulnerable child who Fr. Fox, Fr. Capato, and Br./Dn. Flavin had access to through Defendant Order's facilities and programs, Plaintiff was a foreseeable victim.

28. Defendant Order also breached their duty to Plaintiff by actively maintaining, permitting and employing Fr. Fox, Fr. Capato, and Br./Dn. Flavin in positions of power and authority through which Fr. Fox, Fr. Capato, and Br./Dn. Flavin had access to children, including Plaintiff, and power and control over children, including Plaintiff.

29. Defendant Order breached its duties to Plaintiff. Defendant 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. Defendant Order's 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 sexual abuse, failure to properly implement

policies and procedures to prevent child sexual abuse, failure to take reasonable measures to make sure that policies and procedures to prevent child sexual abuse were working, failure to adequately inform families and children of the risks of child sexual abuse, failure to investigate risks of child sexual abuse, failure to properly train the members and/or employees at institutions and programs within Defendant Order's geographical confines, failure to train members and/or employees within Defendant Order's 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 sexual 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 members and/or employees properly to identify signs of child sexual abuse by fellow members and/or employees, failure by relying upon mental health professionals, and/or failure by relying on people who claimed that they could treat child molesters.

30. Defendant Order also breached their duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that their clerics, including but not limited to Fr. Fox, Fr. Capato, and Br./Dn. Flavin, posed and the risks of child sexual abuse in Catholic institutions and/or in the Defendant Order. They also failed to warn them about any of the knowledge that Defendant Order had about child sexual abuse.

31. Defendant Order additionally violated a legal duty by failing to report known and/or suspected abuse of children by Fr. Fox, Fr. Capato, and Br./Dn. Flavin, and/or its other members and/or agents to the child protection agencies, police and law enforcement.

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

33. As a result of Defendant Order's 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.

34. Defendant Order owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

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

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

37. Defendant Order owed Plaintiff a duty to protect Plaintiff from harm because Defendant Order also had a special relationship with Fr. Fox, Fr. Capato, and Br./Dn. Flavin.

38. Defendant Order owed Plaintiff a duty of reasonable care because they solicited

youth and parents for enrollment in their school; encouraged youth and parents to have the youth attend their school; undertook custody of minor children, including Plaintiff; promoted their facilities, school and programs as being safe for children; held their members and/or agents, including Fr. Fox, Fr. Capato, and Br./Dn. Flavin, out as safe to work with children; encouraged parents and children to spend time with their members and/or agents; and/or encouraged their members and/or agents, including Fr. Fox, Fr. Capato, and Br./Dn. Flavin, to spend time with, interact with, and recruit children.

39. By holding Fr. Fox, Fr. Capato, and Br./Dn. Flavin 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.

40. Further, Defendant Order, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. Defendant Order thus entered into a fiduciary relationship with Plaintiff. Defendant Order exploited their position of empowerment, putting Plaintiff at risk to be sexually assaulted.

41. By accepting custody and/or supervision 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. Further, Defendant Order 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 Defendant Order undertaking the care and guidance of the Plaintiff, Defendant Order also held a position of empowerment over Plaintiff. Further, Defendant Order, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. Defendant Order, through its members and/or

employees, exploited this power over Plaintiff and thereby put the minor Plaintiff at risk for sexual abuse.

42. By establishing and/or operating Delbarton, accepting the minor Plaintiff as a participant in their school and/or programs, holding their facilities, school 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 Order entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children, who attended their school and participated in their programs. Defendant Order owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Defendant Order 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.

43. By establishing and operating Delbarton, which offered educational programs to children and which included a school, and by accepting the enrollment and participation of the minor Plaintiff as a participant in those educational programs, Defendant Order owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

44. Defendant Order owed Plaintiff a duty to protect Plaintiff from harm because Defendant Order invited Plaintiff onto their property and their clerics, including Fr. Fox, Fr. Capato, and Br./Dn. Flavin, posed a dangerous condition on Defendant Order's property.

45. Defendant Order breached its duties to Plaintiff by failing to use reasonable care. Defendant's failures include, but are not limited to, failing to properly supervise their clerics, including Fr. Fox, Fr. Capato, and Br./Dn. Flavin, failing to properly supervise Plaintiff and failing to protect Plaintiff from a foreseeable danger.

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

WHEREFORE, Plaintiff demands judgment against Defendant Order, 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.

47. At all times material, Fr. Fox, Fr. Capato, and Br./Dn. Flavin were members and/or employed by Defendant Order and were under Defendant's direct supervision, employ, and control when they committed the wrongful acts alleged herein. Fr. Fox, Fr. Capato, and Br./Dn. Flavin engaged in the wrongful conduct while acting in the course and scope of their membership and/or employment with Defendant Order and/or accomplished the sexual abuse by virtue of their membership and/or job-created authority.

48. Defendant Order had a duty, arising from their membership and/or employment of Fr. Fox, Fr. Capato, and Flavin, to ensure that Fr. Fox, Fr. Capato, and Br./Dn. Flavin did not sexually molest children.

49. Further, Defendant Order owed a duty to train and educate members, 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.

50. Defendant Order was negligent in the training, supervision, and instruction of their members and/or employees. Defendant Order failed to timely and properly educate, train, supervise, and/or monitor their members, agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed.

51. Defendant Order was additionally negligent in failing to supervise, monitor,

chaperone, and/or investigate their clerics, including Fr. Fox, Fr. Capato, and Br./Dn. Flavin, and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Fr. Fox's, Fr. Capato's, and Br./Dn. Flavin's sexual abuse of Plaintiff.

52. In failing to properly supervise Fr. Fox, Fr. Capato, and Br./Dn. Flavin, and in failing to establish such training procedures for members, employees and administrators, Defendant Order failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

53. 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 Defendant Order, 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.

54. At all times material, Fr. Fox, Fr. Capato, and Br./Dn. Flavin were members of and/or employed by Defendant Order and were under Defendant's direct supervision, employ, and control when they committed the wrongful acts alleged herein.

55. Defendant Order became aware or should have become aware of Fr. Fox's, Fr. Capato's, and Br./Dn. Flavin's propensity for sexual abuse, and failed to take any further action to remedy the problem and failed to investigate or remove Fr. Fox, Fr. Capato, and Br./Dn. Flavin from working with children.

56. Defendant Order negligently retained Fr. Fox, Fr. Capato, and Br./Dn. Flavin with knowledge of Fr. Fox's, Fr. Capato's, and Br./Dn. Flavin's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

57. Defendant Order negligently retained Fr. Fox, Fr. Capato, and Br./Dn. Flavin in positions where they had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendant Order taken reasonable care.

58. In failing to timely remove Fr. Fox, Fr. Capato, and Br./Dn. Flavin from working with children or terminate the position and/or membership and/or employment of Fr. Fox, Fr. Capato, and Br./Dn. Flavin, Defendant Order failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

59. 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 Defendant Order, 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

I 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. I 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 Goffe / Rita Gribko
Jeffrey R. Anderson, Esq.
Trusha Goffe, Esq.
Rita Gribko, Esq.
Attorneys for Plaintiff

Dated: July 7, 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
Gregory G. Gianforcaro, Esq.
Attorneys for Plaintiff

/s/ Jeffrey R. Anderson / Trusha Goffe / Rita Gribko
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Attorneys for Plaintiff

Dated: July 7, 2020