

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

THE PEOPLE OF THE STATE OF NEW YORK,
By LETITIA JAMES, Attorney General of the State
of New York,

Plaintiff,

v.

DIOCESE OF BUFFALO, RICHARD J. MALONE,
EDWARD M. GROSZ, and EDWARD B.
SCHARFENBERGER, in his capacity as Apostolic
Administrator for the Diocese of Buffalo,

Defendants.

Index No.

Summons

Date Index No. Purchased:
November 23, 2020

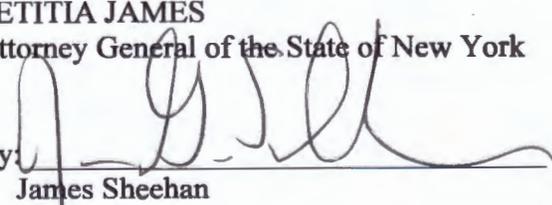
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

New York County is designated as the place of trial because the Attorney General has an office located at 28 Liberty Street, New York, New York 10005.

Dated: November 23, 2020
New York, New York

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Attorney General of the State of New York

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Complaint

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Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York, respectfully alleges as follows.

Preliminary Statement

1. The Attorney General brings this lawsuit to obtain remedial and injunctive relief for the persistent violation of New York nonprofit law by the Diocese of Buffalo (the “Diocesan Corporation” or the “Diocese”). For nearly two decades, the Diocesan Corporation ignored standards established by the U.S. Conference of Catholic Bishops (“USCCB”) in June 2002 to address and prevent the sexual abuse of minors by U.S. clergy. In direct defiance of the USCCB’s public commitment to reform, the Diocesan Corporation, through the conduct of its senior leadership, evaded key provisions of these standards, ignoring requirements for the investigation and review of alleged clergy sexual abuse.

2. Complaints of sexual abuse against priests continued unabated at the Diocesan Corporation from 2002 forward. Rather than adequately investigate and formally review the allegations to determine if priests were qualified to maintain their clerical status, the Diocesan Corporation privately designated priests that it considered to have abused minors as “unassignable.” Some of these unassignable priests were removed from ministry or allowed to retire in anticipation or shortly after the adoption of the USCCB’s 2002 standards. The Diocese permitted these unassignable priests to remain incardinated without any meaningful supervision or monitoring. These tactics together amounted to a practice of non-compliance with the USCCB’s principles and procedures, and they operated to conceal the actual nature and scope of sexual abuse allegations in the Diocesan Corporation. When the Diocesan Corporation’s mishandling of specific cases was exposed, the Diocesan Corporation misled its beneficiaries about its response to sexual abuse allegations and the measures that its leaders had taken to

protect the public. The Diocesan Corporation now seeks bankruptcy protection principally because it faces hundreds of private claims arising out of its sexual abuse crisis and the inadequacy of its response.

3. As set forth below, through their actions and inactions in response to the sexual abuse crisis, the Diocesan Corporation and its two most senior leaders, Defendants former Bishop Richard J. Malone and former Auxiliary Bishop Edward M. Grosz, violated multiple provisions of the Not-for-Profit Corporation Law (“N-PCL”) and Estates, Powers and Trusts Law (“EPTL”). These provisions expressly require the Diocesan Corporation to operate in a manner consistent with the public policy of the State of New York and to properly administer itself. Malone and Grosz also failed to meet basic fiduciary duties of care and loyalty by ignoring the Diocesan Corporation’s own stated standards for addressing abuse allegations and preventing future abuse.

4. The Attorney General seeks injunctive relief to accomplish three objectives: provide mechanisms for independent review of the Diocesan Corporation’s response to alleged sexual abuse; require reporting to the Attorney General for a period of five years; and mandate external oversight of an appropriate remedial and compliance plan. This action also seeks to hold Bishop Malone and Auxiliary Bishop Grosz individually responsible for violating their secular duties as fiduciaries of the Diocesan Corporation by enjoining them from future service in a secular role as a director or officer of any charitable organization subject to New York law and by obtaining damages against and restitution from them for the waste of charitable assets caused by their misconduct.

5. In 2002 the USCCB acknowledged at the opening of its semi-annual meeting in Dallas, Texas that “[t]he Catholic Church in the United States is in a very grave crisis.” The

USCCB President described “a profound loss of confidence by the faithful in our leadership as shepherds, because of our failures in addressing the crime of the sexual abuse of children and young people by priests and church personnel,” and he confessed that specific actions and failures to act by Church leadership had contributed to the abuse. The USCCB committed at its 2002 meeting to implementing “policies that will ensure the full protection of . . . children and young people and . . . bring an end to sexual abuse in the church,” and it promised to match those policies with “an uncommon and persistent vigilance.” Bishop Malone and Auxiliary Bishop Grosz both attended the 2002 gathering and voted alongside fellow bishops to adopt the USCCB’s reforms as “a full and recommitted effort toward the protection of . . . children.” Those reforms were embodied in the USCCB’s 2002 *Charter for the Protection of Children and Young People* (“*Charter*”) and the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* (“*Essential Norms*”).

6. Sixteen years after the 2002 gathering, in 2018, the USCCB issued a nearly identical assessment of its sexual abuse crisis that acknowledged an alarming and troubling failure to change: since 2002, it explained, the sexual abuse by priests, deacons, and bishops had continued to feed a “crisis without precedent in our times.” Incidents of abuse, and the ways in which those crimes had been addressed, continued to cause enormous pain, anger, and confusion for victims, their families, and the entire Church. The institutional resistance that has prevented meaningful progress in the U.S. Catholic Church’s sexual abuse crisis for almost two decades is evident in the Diocesan Corporation’s own record of its operation since 2002.

7. In December 2019, roughly one year after the commencement of the Attorney General’s investigation (the “Investigation”), Bishop Malone resigned as the bishop of the Diocese, citing “tremendous turmoil” in the Diocese that reflected a “culmination of systemic

failings over many years in the worldwide handling of sexual abuse of minors by members of the clergy” and a “failure to regard these violations as grave offenses that warranted the full weight of civil and ecclesiastical justice.” At the time of his resignation, Malone had overseen the Diocesan Corporation and its response to sexual abuse allegations for more than seven years, working with Auxiliary Bishop Grosz throughout that period. During that time, they were responsible for reviewing allegations of sexual misconduct according to the standards that they had personally approved in 2002. Grosz also retired during the pendency of the Investigation.

8. The Investigation corroborated the failure that Bishop Malone admits. In extensive business records and sworn witness testimony from Malone and Auxiliary Bishop Grosz, the Investigation found that the Diocesan Corporation repeatedly evaded its responsibility to the Church, the Church’s mission, and its beneficiaries by failing to follow its own publicly-stated policies and procedures for addressing sexual abuse allegations. While the Diocesan Corporation claimed to have adopted and followed the *Charter* and the *Essential Norms*, the Investigation determined that the Diocesan Corporation did not do so and that it failed to take reasonable measures to respond to sexual abuse allegations. In particular, the Diocesan Corporation, Malone, and Grosz, in accordance with their respective roles, failed to:

- investigate or conduct timely, independent, sufficient, or reasonable internal investigations into allegations of the sexual abuse of minors;
- seek or reasonably document the assessments of allegations by an advisory board established to assist the bishop’s evaluation of sexual abuse claims;
- refer or timely refer unassignable priests to the Vatican authority with oversight of the adjudication of claims of clergy sexual abuse of minors;
- inquire into violations of the *Charter* and the *Essential Norms*;
- adequately monitor priests they believed had sexually abused minors;
- consider the risk that such priests could commit acts of abuse;

- prepare accurate business records regarding accused priests; and
- train personnel who had violated the *Charter*, the *Essential Norms*, or applicable standards of care.

9. The documents and testimony obtained during the Investigation confirm that Bishop Malone and Auxiliary Bishop Grosz repeatedly breached their fiduciary duties of care, loyalty, and fidelity to the Diocese's mission through their individual actions and omissions. In numerous cases, Malone and Grosz failed to properly examine or address individual complaints and disregarded the risks created by their decisions to avoid procedures required under Church law and the Diocesan Corporation's policies and procedures.

10. The Diocesan Corporation's compliance with the *Charter*, the *Essential Norms*, and its own policies and procedures is vital to ensuring the accountability and transparency that the Diocese owes its beneficiaries. The conduct discussed throughout this Complaint denied beneficiaries the promise of these critical, institutional reforms and violated clear standards of care and fiduciary loyalty required by New York law. For example, the Diocesan Corporation sheltered accused priests from adjudication and public disclosure by not referring them to the Vatican. The Diocesan Corporation also misused or wasted its charitable assets by supporting priests, who it considered to have committed sexual abuse. For these reasons, Court intervention is justified and necessary to ensure that the Diocesan Corporation and its leadership comply with their own mandates and governing law to address the tragic and longstanding crisis of sexual abuse and to ensure that the Diocesan Corporation properly addresses future allegations of abuse.

The Parties

11. The Attorney General is responsible for overseeing New York nonprofit corporations, including entities that elect to incorporate under the provisions of the Religious

Corporations Law (“RCL”), and the conduct of their respective officers and other fiduciaries. Through this regulatory function, the Attorney General bears a unique authority and responsibility to enforce the fiduciary standards in New York law that require the Diocesan Corporation to adequately address institutional harms of the scale and magnitude of the clergy sex abuse crisis. The nature and scope of relief available to accomplish these functions under New York law is extensive: the N-PCL and EPTL empower this Court with broad discretion to fashion remedies that will ensure effective regulatory oversight across a wide variety of institutions and charitable purposes.

12. The Diocesan Corporation is the secular legal embodiment of the Diocese of Buffalo, a juridic person recognized under Roman Catholic canon law. The juridic person of the Diocese was canonically established in April 1847. Thereafter, a corporation was formed in October 1897 to constitute the Diocesan Corporation under New York law. That initial corporation was dissolved, and the Diocesan Corporation as it exists today was reincorporated in May 1951 by a special act of the New York State Legislature. This corporation is governed by the provisions of section 5 of the RCL, which give the trustees of the corporation “the custody and control of all the temporalities and property . . . belonging to the corporation”; require that they “shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject, and with the provisions of law relating thereto, for the support and maintenance of the corporation”; and prohibit them from using such “property or revenues for any other purpose or divert the same from such uses.” The 1951 special act provides that the three trustees of the Diocesan Corporation are the bishop, vicar general, and chancellor. A vicar general is a priest appointed by a diocesan bishop to function as his principal deputy in the exercise of the bishop’s

administrative authority in a diocesan corporation. The chancellor is an official appointed by the diocesan bishop and primarily responsible for a diocese's maintenance of its files or archives.

13. The Diocese serves approximately 600,000 Catholics across 163 parishes in Western New York. Three bishops have led the Diocese since the USCCB adopted the *Charter* and the *Essential Norms* in 2002. Bishop Henry Mansell began his term in 1995 and held that position until he left in October 2003 to become the archbishop for the Archdiocese of Hartford, Connecticut. Bishop Edward Kmiec, who died in July 2020, succeeded Mansell from October 2004 to May 2012, and Bishop Malone served from August 2012 until his resignation in December 2019.

14. As noted, Defendant Bishop Malone served as the bishop of the Diocese for seven years until 2019. Prior to his installation in 2012, Malone served as the bishop and Apostolic Administrator of the Diocese of Portland, Maine for ten years and he also served as an auxiliary bishop in the Archdiocese of Boston from 2000 to 2004. Malone was a fiduciary in his roles as a trustee, officer, and *de facto* director and officer of the Diocesan Corporation.

15. Defendant Auxiliary Bishop Grosz served as an auxiliary bishop of the Diocese for thirty years until Pope Francis accepted his resignation in March 2020. Grosz was ordained as the Diocese's auxiliary bishop in 1990 under Bishop Edward Head. During his tenure, Grosz served as Diocesan Administrator from May to October 2004; a diocesan administrator temporarily governs a diocese pending the appointment of a bishop. As early as 1993, Grosz was involved in the Diocesan Corporation's response to allegations of sexual abuse of minors. At the request of each succeeding bishop, Grosz continued in this role. In sworn testimony, Bishop Malone indicated that Grosz served as the "point man" for the Diocesan Corporation's response to sexual abuse allegations. Grosz was a fiduciary in his roles as a trustee, officer, and

de facto director and officer of the Diocesan Corporation.

16. Defendant Bishop Edward B. Scharfenberger was appointed in December 2019 by Pope Francis to serve as the Diocese's Apostolic Administrator following Bishop Malone's resignation. As Apostolic Administrator, Scharfenberger generally maintains the same rights, offices, and faculties within the Diocese that belong to the bishop of the Diocese. Scharfenberger is named as a defendant solely in his official capacity as Apostolic Administrator and not with respect to his role as the bishop of the Diocese of Albany.

17. Defendants Diocesan Corporation, Bishop Malone, and Auxiliary Bishop Grosz are collectively referred to as "Defendants."

Jurisdiction and Venue

18. This Court has personal jurisdiction over the Diocesan Corporation because the Diocesan Corporation is a New York charitable organization and religious corporation. The Diocesan Corporation has purposely availed itself of the opportunity to incorporate, do business, and serve its charitable mission and beneficiaries in New York.

19. This Court has personal jurisdiction over Bishop Malone, Auxiliary Bishop Grosz, and Bishop Scharfenberger pursuant to N-PCL section 309 because each of them is "a director, officer, key person or agent of a [New York charitable] corporation."

20. Venue is properly set in New York County pursuant to CPLR sections 503 and 505 because the Attorney General has an office located in New York County.

Applicable Law

21. The Attorney General brings this action on behalf of the People of the State of New York under the RCL, N-PCL, and EPTL against the Diocesan Corporation; Bishop Malone and Auxiliary Bishop Grosz, individually; and Bishop Scharfenberger in his capacity as

Apostolic Administrator.

22. The Diocesan Corporation is a religious corporation subject to the provisions of the RCL. The RCL applies “to every corporation formed under any . . . special act of this state which would, if it were to be formed currently under the laws of this state, be formed under [the RCL].” RCL § 2-a. Under section 2-b(1) of the RCL, the Diocesan Corporation is also subject to the N-PCL, except for certain sections not relevant here.

23. Pursuant to section 717 of the N-PCL, directors, officers, and *de facto* directors and officers of a corporation organized under the N-PCL are obligated to discharge the duties of their positions “in good faith and with the care [of] an ordinarily prudent person.” This statutory provision is a codification of the fiduciary duties of due care, loyalty, and obedience to mission owed by directors and officers to a corporation. Pursuant to RCL section 2-b(1), the bishop and senior officers of the Diocesan Corporation are subject to N-PCL section 717.

24. Fiduciaries of New York corporations governed by the N-PCL have a duty to comply with governing law and to assure that those corporations comply with governing law. Pursuant to section 1101(a)(2) of the N-PCL, such regulated corporations may not engage in unauthorized actions nor “carr[y] on . . . [their] business in a persistently . . . illegal manner, or by the abuse of its powers contrary to the public policy of the state.”

25. Pursuant to RCL section 2-b(1), together with N-PCL section 112(a)(1), the Attorney General is authorized to bring an action to restrain the Diocesan Corporation from carrying on unauthorized activities, including activities in violation of the Penal Law or the public policy of the State of New York. The Attorney General may also seek an accounting for the neglect of, failure to perform, or other violation of a director’s or officer’s duties related to the management and disposition of corporate assets. N-PCL § 720(a).

26. The EPTL also applies to this action. As a corporation that holds and administers property for a charitable purpose, the Diocesan Corporation is a “trustee” subject to the provisions of the EPTL. Bishop Malone and Auxiliary Bishop Grosz, as officers of the Diocesan Corporation, are also “trustees” under the EPTL. Pursuant to the EPTL, each director, officer, trustee, or fiduciary of a charitable corporation, including the Diocesan Corporation, has an obligation to properly administer that corporation’s assets, to avoid waste, and to adhere to their fiduciary duties.

27. Pursuant to EPTL section 8.1-4(m), the Attorney General may institute appropriate proceedings to secure the proper administration of any charitable corporation subject to the EPTL, including the Diocesan Corporation.

Overview of the Complaint

This Complaint is comprised of the following sections: **Section I**, the background on the crisis of clergy sexual abuse and the policies and procedures adopted in 2002 by U.S. dioceses, including the Diocesan Corporation, for addressing allegations of clergy sexual abuse of minors; **Section II**, an overview of the Investigation; **Section III**, a summary of the factual bases for the Attorney General’s claims of (a) improper administration of and unauthorized activities by the Diocesan Corporation and (b) breach of fiduciary duty by Bishop Malone and Auxiliary Bishop Grosz; **Section IV**, the Diocesan Corporation’s efforts to mislead the public and its beneficiaries about its handling of sexual abuse allegations, further demonstrating the Diocesan Corporation’s improper administration; **Section V**, twenty-five detailed case studies demonstrating the Diocesan Corporation’s failure to respond to complaints of clergy sexual abuse in conformity with its own policies and procedures or New York law; and **Section VI**, the Attorney General’s causes of action.

I. The USCCB Adopts the *Charter* and the *Essential Norms*

28. Beginning in early 2002, *The Boston Globe* published a series of articles that detailed extensive abuse by numerous priests in the Archdiocese of Boston. These articles also uncovered a pattern of priest reassignments intended to obscure and conceal the scope of the abuse. The articles found a culture of secrecy and clericalism within the archdiocesan leadership, which prioritized protection for abusive priests over the redress of harm to victims. Almost immediately after *The Boston Globe* published its findings, the USCCB convened an eight-member Ad Hoc Committee on Sexual Abuse, which began to develop the *Charter*. Two members of the committee were laypeople; one was a victim of sexual abuse.

29. The full body of U.S. bishops approved the *Charter* at a meeting in Dallas, Texas in June 2002. Soon thereafter, the USCCB, with the approval of the Vatican, decreed the *Essential Norms* to establish binding procedures for responding to allegations of sexual abuse of minors. The *Charter* is an agreement among U.S. bishops to adopt and implement certain policies and procedures. The *Essential Norms* convert these and related commitments into canon law, enforceable as the ecclesiastical law that governs the U.S. dioceses. As stated on the Diocese's website, the Diocesan Corporation's own internal policies and procedures, entitled *Policy and Procedures for the Protection of Children, Young People and Vulnerable Adults* ("*Diocesan Policies and Procedures*"), were revised to incorporate the *Charter* and the *Essential Norms*.

30. When the USCCB adopted the *Charter* and established the *Essential Norms* in 2002, Bishop Malone and Auxiliary Bishop Grosz each voted in favor of their adoption. Both testified during the Investigation that they reviewed and discussed the *Charter* at length in connection with its adoption during the 2002 conference. Malone also acknowledged the

Diocesan Corporation's duty to comply with the *Charter*.

31. The USCCB amended the *Charter* in 2005, 2011, and 2018.

32. To address allegations of sexual abuse of a minor, the Diocesan Corporation is governed by interrelated policies and procedures that are reflected in three writings: (a) the *Charter*, (b) the *Essential Norms*, and (c) the *Diocesan Policies and Procedures*.¹ Some of these policies are founded on canon law, but the Diocesan Corporation trusts the laity to implement many of them, which, at their core, are secular in nature. Together, the three policies mandate a multi-layered approach to reviewing, evaluating, and investigating allegations of sexual abuse of minors by clergy. They specify the steps that the Diocesan Corporation is required to take at each juncture in its response to a sexual abuse allegation, particularly, the initial receipt of an allegation, the Diocesan Corporation's internal investigation, the potential adjudication of the allegation, and eventual public disclosure of any finding of abuse. In particular:

- upon receipt of an allegation, the Diocesan Corporation must determine whether the allegation merits an internal investigation using lenient standards that require investigation as long as, for example, the allegation is not “manifestly false or frivolous”;
- if the allegation meets this minimal standard, an independent and timely internal investigation must be conducted;
- the findings of the investigation are presented to an advisory committee known as the Diocesan Review Board, which provides an assessment to the bishop;
- “[w]hen there is sufficient evidence that sexual abuse of a minor has occurred,” the bishop must refer the matter to the Vatican, specifically, the Congregation for the Doctrine of the Faith (“CDF”), which determines whether to direct a canonical trial to adjudicate the allegations;
- if found guilty at a canonical trial, the accused may be permanently removed from ministry; and

¹ As of August 18, 2020, the *Diocesan Policies and Procedures*, dated October 17, 2016, is available on the Diocesan Corporation's website.

- the Diocesan Corporation must communicate with the public about the accused in an open and honest manner.

Initial Inquiry into an Allegation

33. Upon receipt of an allegation of sexual abuse of a minor, the *Diocesan Policies and Procedures* require the auxiliary bishop or vicar general to conduct an initial inquiry into the allegation. There are several articulations of the standard of review for the initial inquiry, including whether the allegation: “appears to . . . have any credibility”; has any “semblance of truth”; or is not “manifestly false or frivolous.” All are understood to set a low threshold of proof necessary to support the allegation. To illustrate the standard, Bishop Malone has stated that if the accused priest was out of the country at the time of the alleged abuse, an internal investigation would not be required. Auxiliary Bishop Grosz testified to the Attorney General that, in practice, an attorney, not a member of the clergy or canon law adviser, would opine, in the first instance, whether or not a sexual abuse allegation was manifestly false or frivolous. If the allegation satisfies the lenient evidentiary standard, the *Diocesan Policies and Procedures* require the Diocesan Corporation to proceed and conduct an internal investigation.

Internal Investigation

34. The *Essential Norms* require an internal investigation, referred to as the preliminary investigation: “When an allegation of sexual abuse of a minor by a priest or deacon is received, a preliminary investigation in accordance with canon law will be initiated and conducted promptly and objectively ([citing canon 1717 of the canon law] . . .).”²

² See USCCB, Charter for the Protection of Children & Young People art. 5 (“When the preliminary investigation of a complaint against a priest or deacon so indicates, the diocesan/eparchial bishop will relieve the alleged offender promptly of his ministerial duties.”) (2002); USCCB, Charter for the Protection of Children & Young People art. 5 (“A priest or deacon who is accused of sexual abuse of a minor is to be accorded the presumption of innocence during the investigation of the allegation . . .”) (2005); USCCB, Charter for the Protection of Children & Young People art. 5 (same) (2018).

35. The *Essential Norms* further mandate that a diocese’s internal policies and procedures “comply fully with, and . . . specify in more detail, the steps to be taken in implementing the requirements of canon law, particularly . . . canons 1717-1719.” Canons 1717 to 1719 require that, after the initial inquiry, a bishop must issue decrees documenting the beginning and completion of an internal investigation. These canons also mandate preservation of the records—known as the “acts”—which reflect a diocese’s investigation. Other canons governing canonical trials echo the requirement that the acts be in writing: “The judicial acts, both the acts of the case, that is, those regarding the merit of the question, and the acts of the process, that is, those pertaining to the procedure, must be put in writing.”³ As one commentary to the canon law explains: “All of the acts must be committed to writing since ‘quod non est in actis non est in mundo,’ [l]oosely translated, this reads, ‘whatever is not included in the acts is considered non-existent.’” In accord with this requirement, Bishop Malone’s general practice when he served as the bishop in Maine was to maintain a written investigatory record.

36. Similarly, the *Diocesan Policies and Procedures* reflect the requirement that the Diocesan Corporation document its internal investigations: “Appropriate records will be kept of each complaint and investigation. Records shall be confidential and be kept securely at the Bishop’s office, with access limited to the Bishop, the Vicar General, the assigned investigator, and counsel for the Diocese.” The Vatican’s guidance for internal investigations, published in July 2020, reiterates this intent: “[O]nce the preliminary investigation has concluded, whatever its outcome, the [bishop] is obliged to send, without delay, an authentic copy of the relative acts to the CDF.”

37. This expectation of maintaining documentation is further evidenced in document-

³ Code of Canon Law pt. I, tit. III, ch. 5, canon 1472 § 1.

retention requirements in canon law. Specifically, records concerning sexual abuse allegations are maintained in accordance with canon 489, which requires in section 1 that a diocese maintain “a secret archive, or at least in the common archive . . . a safe or cabinet, completely closed and locked, which cannot be removed [and in which] documents [are] to be kept secret [and] protected most securely.” Additionally, section 2 of canon 489 provides: “Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained.”

38. The *Diocesan Policies and Procedures* direct the appointment of an investigator to conduct the investigation and, according to Auxiliary Bishop Grosz, prepare a written report. The investigator’s role is secular and does not require expertise in canon law. For example, as illustrated below, in instances where the Diocesan Corporation appointed an investigator, it selected a private law firm—not a canon law adviser. Yet the Attorney General found many instances where investigative records were not maintained—contrary to Grosz’s claim in his testimony that the Diocesan Corporation’s investigator presents its findings in a written report to the Diocesan Review Board (“DRB”).

Diocesan Review Board

39. The DRB, pursuant to the provisions of the *Charter* and the *Essential Norms*, is a lay review panel—not a religious or spiritual body—designed to provide the bishop with an advisory assessment of allegations of clergy sexual abuse and a recommendation on how to respond. As the Diocesan Corporation recently highlighted in a 2018 press conference to address its response to sexual abuse allegations, a principal purpose of the DRB is the laity’s involvement in the Diocesan Corporation’s decisions regarding accused priests. The *Charter*

requires that a majority of a DRB consist of lay persons not employed by a diocese, and it explains that the DRB “will” or “is” to assist the bishop in reviewing particular allegations, a priest’s fitness for ministry, and relevant policies and procedures.⁴

40. The *Essential Norms* contain additional DRB requirements and specifically mandate that the DRB consist of (a) at least five members “of outstanding integrity and good judgment in full communion with the Church,” who will serve for a term of five years; (b) at least one member, who is an “experienced and respected pastor” of the diocese; and (c) at least one member experienced in the “treatment of the sexual abuse of minors.” The *Essential Norms* also urge dioceses to allow their Promoters of Justice to participate in DRB meetings. A Promoter of Justice is appointed in a diocese to prosecute a Church crime before a Church tribunal.

41. On information and belief, it is the practice of some dioceses in the United States to record the business and recommendations of their DRBs by maintaining meeting minutes and agendas for DRB meetings.⁵

Permanent Removal from Ministry: Referral to the CDF and Zero Tolerance

42. Before the adoption of the *Charter* and the *Essential Norms*, in 2001 Pope John Paul II formally determined that the sexual abuse of a minor constitutes a grave offense subject to a review by the CDF, a group of senior officials at the Vatican. This review represented a new procedure for a cleric’s alleged sexual abuse of a minor. The Pope made this determination and

⁴ The *Essential Norms* do mandate DRB consultation but then provide that the consultation “may” include reviewing allegations, fitness for ministry, and policies and procedures related to the sexual abuse of minors.

⁵ See, e.g., Secretariat of Child and Youth Protection, 2019 Annual Report: Findings and Recommendations at 24 (2020); Secretariat of Child and Youth Protection, 2018 Annual Report: Findings and Recommendations at 21 (2019); Secretariat of Child and Youth Protection, 2017 Annual Report: Findings and Recommendations at 20 (2018); Secretariat of Child and Youth Protection, 2013 Annual Report: Findings and Recommendations at 10 (2014).

created this new procedure “to underscore the Holy See’s aversion to this betrayal of the trust which the faithful rightly place in Christ’s ministers, and to ensure that the guilty [would] be appropriately punished.”

43. The Vatican instituted the new 2001 procedure through two governance documents. The first, a decree issued in April 2001, recognized the necessity to promulgate norms to specifically define the grave offenses within the CDF’s exclusive jurisdiction.⁶ The second, a May 2001 letter from the then-head of the CDF, Cardinal Joseph Ratzinger, to all bishops advised that: (a) the sexual abuse of a minor is a Church crime reserved to the CDF; (b) bishops must refer these cases to the CDF; and (c) the CDF could decide the case on its own or direct a diocese to hold a canonical trial. The trial could result in a sentence of laicization (also known as the removal from the clerical state).⁷

44. The 2002 *Charter* recognizes Pope John Paul II’s mandate to refer priests to the CDF. Specifically, by citing to the CDF’s May 2001 letter, the 2002 *Charter* acknowledges that the Pope’s mandate remained in force in 2002: “In every case, the processes provided for in canon law must be observed, and the various provisions of canon law must be considered (. . . cf. Letter from the Congregation for the Doctrine of the Faith, May 18, 2001).”

45. The *Charter* also established a zero-tolerance policy: “Where sexual abuse by a priest or a deacon is admitted or is established after an appropriate investigation in accord with canon law, . . . [d]iocesan/eparchial policy will provide that for even a single act of sexual abuse . . . of a minor—past, present, or future—the offending priest or deacon will be permanently

⁶ “The[] regional applications of Universal Canon Law that apply to a specific episcopal conference are referred to as Complementary Norms.” USCCB, Beliefs and Teachings: What We Believe, at Canon Law, *available at* <http://www.usccb.org/beliefs-and-teachings/what-we-believe/canon-law/index.cfm> (last visited July 10, 2020).

⁷ The formal term for the event commonly known as “laicization” is “removal from the clerical state.” We use the lay term “laicization” throughout this Complaint for ease of reference only.

removed from ministry.” All subsequent versions of the *Charter* contain this policy, and the *Essential Norms* reiterate the same standard.

46. Under canon law, bishops may only *temporarily* remove priests from ministry. To permanently remove a priest, a bishop must abide by Church judicial procedures, including review by the CDF, in part, to afford formal process to accused priests. Therefore, the *Essential Norms*, adopted within months of the *Charter*, preserve a priest’s right to canonical review of the allegations against him and expressly incorporate Pope John Paul II’s mandate to refer accused priests to the CDF:

6. When an allegation of sexual abuse of a minor by a priest or deacon is received, a preliminary investigation in harmony with canon law will be initiated and conducted promptly and objectively. . . . When there is sufficient evidence that sexual abuse of a minor has occurred, the [CDF] shall be notified.

. . . .

8. When even a single act of sexual abuse by a priest or deacon is admitted or is established after an appropriate process in accord with canon law, the offending priest or deacon will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants.

A. In every case involving canonical penalties, the processes provided for in canon law must be observed, and the various provisions of canon law must be considered (. . . Letter from the [CDF], May 18, 2001). Unless the [CDF], having been notified, calls the case to itself because of special circumstances, it will direct the diocesan bishop/eparch to proceed.

47. After the adoption of the *Essential Norms* in December 2002, subsequent versions of the *Charter* were amended to expressly acknowledge the CDF’s role:

Sexual abuse of a minor by a cleric is a crime in the universal law of the Church. Because of the seriousness of this matter, jurisdiction has been reserved to the [CDF] In fulfilling this article, dioceses/eparchies are to follow the requirements of the universal law of the Church and of the *Essential Norms* approved for the United States.

48. Following the CDF’s consideration of the referral, the CDF can order a canonical

trial of the accused priest in the referring diocese, another diocese, or the CDF. Available remedies at trial include laicization or a sentence to a life of prayer and penance.

49. Bishop Malone testified to the Attorney General that unless and until a priest is laicized, that priest will continue to receive compensation and benefits from the Diocesan Corporation even if the priest is designated unassignable or sentenced to a life of prayer and penance. If a priest is laicized, however, the Diocesan Corporation is no longer required to provide him any financial support.⁸

50. According to Bishop Malone, the sentence of laicization after a canonical trial would be publicly disclosed pursuant to the *Charter*'s requirement of transparency.

The Policy of Transparency

51. Transparency is an essential objective of the USCCB's *Charter*, which is expressly addressed in the original and each subsequent version of the *Charter*. The 2002 *Charter* provides:

Each diocese/eparchy will develop a communications policy that reflects a commitment to transparency and openness. Within the confines of respect for the privacy and the reputation of the individuals involved, dioceses/eparchies will deal as openly as possible with members of the community. This is especially so with regard to assisting and supporting parish communities directly affected by ministerial misconduct involving minors.

52. The 2005 *Charter* builds on the 2002 policy and adds an explicit requirement that parishes "be open and transparent in communicating with the public about sexual abuse of minors by clergy." The 2005 *Charter* further stresses transparency when "informing parish[es] and other church communities directly affected by ministerial misconduct involving minors."

⁸ During his testimony to the Attorney General, Bishop Malone explained that one exception to this rule is a canon law provision that allows a diocese to provide some sustenance to a laicized priest to prevent him from becoming destitute. In his over forty-five years as a priest, however, Malone never encountered an instance where this provision had been applied.

(emphasis added). The 2011 and 2018 versions of the *Charter* revise the term “ministerial misconduct” to refer expressly to “sexual abuse of a minor.”

II. The Attorney General’s Investigation

53. In September 2018, the Attorney General began to investigate the Diocesan Corporation’s institutional response to allegations of sexual abuse by clergy.⁹ In accordance with the Attorney General’s well-established mandate to oversee the lawful operation of charitable entities across New York, the Investigation focused on the adequacy of the Diocesan Corporation’s response to a crisis already identified by Church leaders across the United States. Further, the Investigation sought to ensure compliance with civil standards of care and fiduciary loyalty applicable to the Diocesan Corporation and its leadership under New York law.

54. The Attorney General served a comprehensive subpoena on the Diocesan Corporation for all documents concerning improper sexual conduct by the Diocesan Corporation’s personnel, including complete personnel files for any priest alleged to have engaged in such conduct; all “[d]ocuments relating to the Church’s implementation of the . . . *Charter*”; and all relevant documents maintained in “any location ever referred to as the ‘secret archives.’” The term “secret archives” is the literal, English translation of the Latin term used to refer to diocesan files maintained to record a priest’s misconduct or alleged misconduct.

55. The Attorney General expressly requested that the Diocesan Corporation confirm that its production of documents in response to the subpoena “include[d] all records and/or reports generated through [the processes outlined by the *Charter* and the *Essential Norms*] (e.g., investigative reports, minutes or recommendations from the [DRB], [and] records of referral to

⁹ This pleading will discuss certain priests who have been publicly identified by the Diocesan Corporation as having “substantiated allegations of abuse of a minor.” The allegations in this pleading should in no way should be interpreted as *finding* that these priests sexually abused minors. Under the U.S. Constitution, those accused of crimes are entitled to due process and a presumption of innocence.

the [CDF]).”

56. Over the course of approximately one year, the Diocesan Corporation produced documents to the Attorney General in response to the subpoena. The Diocesan Corporation’s production contained files for sixty-nine priests accused of sexual abuse or misconduct. These files were typically extensive and contained contemporaneous memoranda and correspondence. As detailed below, a sampling of the Diocesan Corporation’s document production, however, contained few, if any, reports of investigation, formal records of DRB business, and referrals to the CDF.

57. As of November 2019, approximately one year after the Attorney General commenced the Investigation, the Diocesan Corporation had published a list of seventy-eight priests that it identified as the subjects of substantiated allegations of sexual abuse of a minor. The Diocesan Corporation has not produced files for approximately one-half of the priests on its published list.

58. The documentary evidence that the Diocesan Corporation did produce—together with the sworn testimony of Bishop Malone and Auxiliary Bishop Grosz—establishes unauthorized corporate activity by the Diocesan Corporation itself, an improper administration of the Diocesan Corporation’s response to sexual abuse allegations, and repeated breaches of fiduciary duty.

III. Summary of Breaches of Fiduciary Duties, the Improper Administration of the Diocesan Corporation, and the Diocesan Corporation’s Unauthorized Activities

59. When the Defendants were faced with alleged clergy sexual abuse of minors, in accordance with secular, fiduciary duties and the obligation to properly administer the Diocesan Corporation pursuant to the N-PCL and EPTL, the Defendants were required to (a) ensure that the Diocesan Corporation had adequate policies in place to prevent the sexual abuse of minors;

(b) respond to sexual abuse allegations; *and* (c) confirm that their policies were followed.

60. In addition, the Defendants' secular obligations as a corporation or as fiduciaries of a corporation required them to (a) inquire into any historical failure by the Diocesan Corporation to adhere to material policies; (b) implement remedial measures to avoid these failures in the future; (c) reasonably monitor priests accused of the sexual abuse of minors; (d) reasonably address the risk that certain priests could sexually abuse minors; (e) maintain accurate business records regarding sexual abuse allegations; and (f) train the Diocesan Corporation's fiduciaries and staff to ensure compliance with the *Charter*, the *Essential Norms*, and applicable standards of care.

61. The Defendants were also obligated to exercise due care when responding to allegations of clergy sexual abuse of adults, including to (a) reasonably document allegations of sexual abuse; (b) sufficiently investigate these allegations; and (c) reasonably regard the risks that certain priests could sexually abuse adults.¹⁰

62. The Defendants repeatedly violated New York law by breaching their fiduciary duties; improperly administering the Diocesan Corporation and the temporalities and property belonging to the corporation; and engaging in unauthorized activities. These claims are supported by the Diocesan Corporation's violations of the *Charter* and the *Essential Norms*. Specifically, the Defendants failed to (a) conduct sufficient, timely, or independent internal investigations into sexual abuse allegations; (b) seek or reasonably document the DRB's assessments of sexual abuse allegations; and (c) refer or timely refer accused priests to the CDF, as required by the discipline, rules, and usages of the corporation and ecclesiastical governing body.

¹⁰ In September 2019, the Diocesan Corporation implemented written policies and procedures to address allegations of adult abuse.

63. The Defendants engaged in additional misconduct and separately breached their fiduciary duties or improperly administered the Diocesan Corporation by:

- failing to inquire into the Diocesan Corporation's violations of the *Charter* and the *Essential Norms*;
- failing to reasonably monitor priests accused of the sexual abuse of minors;
- disregarding the risk of sexual abuse by allowing certain priests to remain in ministry;
- preparing false or misleading business records regarding priests accused of the sexual abuse of minors;
- failing to train personnel, who had violated the *Charter*, the *Essential Norms*, or applicable standards of care; and
- in a few instances of alleged adult abuse reviewed by the Attorney General, failing to reasonably document or sufficiently investigate the allegations and disregarding the risks that certain priests could sexually abuse adults.

Insufficient and Unreasonable Internal Investigations

Unreasonable and Delayed Investigations

64. The Attorney General reviewed a sampling of the Diocesan Corporation's files for individual priests. Within that sample, the Diocesan Corporation's business records contain numerous files that show no evidence of reasonable or prompt investigations into sexual abuse allegations received by the Diocesan Corporation. The failure to conduct such investigations alone demonstrates a systemic failure to follow the Diocesan Corporation's governing policies and procedures.

65. In those instances where there is evidence of *some* inquiry, diocesan records and testimony by Auxiliary Bishop Grosz establish that the actions taken were woefully inadequate. Grosz expressly disavowed responsibility for conducting the Diocesan Corporation's internal investigations, yet, in a sampling of files reviewed by the Attorney General, often the only

evidence of any inquiry is by Grosz. Grosz contacted accused priests (sometimes by telephone) to personally question them in order to determine whether they had sexually abused minors. Despite his role, Grosz could not recall ever receiving training regarding the investigation of alleged sexual abuse; gathering of evidence in sex abuse cases; or questioning victims, witnesses, and accused priests. He remarked to the Attorney General that “[a] lot of this was experiential[, meaning b]eing on the spot and just kind of as you go along learning what to do, guided by legal counsel, of course, and by the protocol.”

66. Auxiliary Bishop Grosz claimed that investigators prepared written reports for presentation to the DRB. But no written, investigatory reports appear in the majority of the accused priests’ files reviewed by the Attorney General. The absence of a written record of the investigatory steps taken and information collected fundamentally undermined the adequacy of the review of sexual abuse allegations by the DRB and the bishops.

Lack of Independence

67. The Diocesan Corporation failed to meet the requirement in the *Essential Norms* that internal investigations be conducted independently. In his testimony, Auxiliary Bishop Grosz could not identify who conducted investigations by the Diocesan Corporation between 2002 and 2010. But Grosz testified that the Diocesan Corporation’s longtime, defense counsel conducted the internal investigations into allegations of sexual abuse from about 2011 to 2019.

68. Diocesan counsel lacked the independence required by the *Essential Norms* because of their established role, advising and defending the Diocesan Corporation on its handling of the clergy sexual abuse crisis in various respects, including:

- representing the Diocesan Corporation in its defense to sexual abuse allegations for over two decades, including at least two joint-defense arrangements with attorneys representing priests accused of sexually abusing minors;

- assisting with public announcements regarding priests alleged to have sexually abused minors;
- acting as a diocesan spokesperson during press conferences regarding the sexual abuse of minors;
- assisting in drafting disclosures, which publicly identified priests as having sexually abused minors; and
- communicating with families of deceased priests, who were publicly identified by the Diocesan Corporation as having sexually abused minors.

Failure To Seek or Reasonably Document DRB Assessments

69. The Diocesan Corporation repeatedly failed to incorporate or reasonably document DRB assessments into its review of alleged clergy sex abuse.

70. Auxiliary Bishop Grosz testified that the DRB regularly meets and reviews investigative reports in order to assist the bishop in his determination regarding the credibility of an allegation of sexual abuse of a minor. Bishop Malone testified that the DRB's chairman would generally call for a consensus among DRB members to reach their final recommendation.

71. The Diocesan Corporation, however, has provided little documentation or other evidence demonstrating the DRB's review, deliberations, and recommendations. In a sampling of diocesan files, the Attorney General found no documentation prepared directly by the DRB. Indeed, the Diocesan Corporation's documents, at best, include indirect evidence of DRB activity. That evidence consists of documents referring to the DRB, including memos prepared by diocesan attorneys; bishops' letters to accused priests; occasional decrees issued by bishops in connection with purported internal investigations; and individual memos drafted by Auxiliary Bishop Grosz. Grosz's memos, by his own testimony, could not have been based on a firsthand account of the DRB's activities because all pre-date his first attendance at a DRB meeting in 2019.

72. The DRB maintains no written minutes of its meetings. This practice departs from the procedure of other dioceses across the United States, which, on information and belief, maintain DRB meeting minutes.¹¹

73. Auxiliary Bishop Grosz testified that he did not know of any document that reflects the DRB's business since 2002. And despite Bishop Malone's claim that "[diocesan] attorneys would have some record of what happened [at the DRB]," Malone also could not identify any records prepared by the DRB to document its review.

74. Priest personnel files revealed that a priest who served on the DRB beginning in about 2003 was later identified by the Diocesan Corporation as having a substantiated allegation of the sexual abuse of a minor. This raises serious concerns about whether the accused priest's personal conduct affected the objectivity and operation of the DRB. But these questions cannot be resolved because no records have been identified to reflect the DRB's deliberations, assessments, and recommendations during the accused priest's tenure on the DRB.

Failure To Refer Priests to the CDF

Bishop Malone and Auxiliary Bishop Grosz Knew of the Diocesan Corporation's Failure

75. It is undisputed that, for the fifteen-year period between 2002 and July 2017, the Diocesan Corporation failed to comply with the requirement that it refer alleged incidents of clergy sexual abuse of minors to the CDF. Auxiliary Bishop Grosz admitted in his testimony to the Attorney General that, before 2017, the Diocesan Corporation had not referred a single priest to the CDF. Bishop Malone separately confirmed that, before his installation, his predecessor

¹¹ See, e.g., Secretariat of Child and Youth Protection, 2019 Annual Report: Findings and Recommendations at 24 (2020); Secretariat of Child and Youth Protection, 2018 Annual Report: Findings and Recommendations at 21 (2019); Secretariat of Child and Youth Protection, 2017 Annual Report: Findings and Recommendations at 20 (2018); Secretariat of Child and Youth Protection, 2013 Annual Report: Findings and Recommendations at 10 (2014).

bishops in the Diocesan Corporation had failed to refer priests to the CDF pursuant to governing policies. Malone further admitted that he had not made his first CDF referral until 2017—five years after his installation as bishop.

76. The Diocesan Corporation's internal records similarly confirm that it had not complied with its own procedures concerning the CDF. A draft of a submission to the CDF—prepared in 2017 in support of the Diocesan Corporation's first referral to the CDF—remarks on the Diocesan Corporation's historical non-compliance and expresses concern about the Diocesan Corporation's legal exposure if New York were to extend the civil statute of limitations for sex abuse victims:

[T]he issue that is pending in New York State is the possibility of removing all civil statute [sic] of limitation requirements, which could open up a window for many of these cases to be reopened and it is my goal to assure you and the state that we followed our procedures accordingly so [sic] limit any liability if it were to come to that. I share this because this case in particular has caused me to review many cases like this that I have discovered since [sic] I arrived here in Buffalo nearly 5 years ago, and were [sic] not handled properly.

The Diocesan Corporation Misled the Public and Its Beneficiaries

77. In October 2018, Fr. Robert Zilliox, a diocesan priest, canon lawyer, and advisor to Bishop Malone on matters of clergy sexual abuse, publicly disclosed his view that the Diocese had failed to remove eight or nine priests from the priesthood (or the clerical state) for the sexual abuse of minors.

78. Bishop Malone and Auxiliary Bishop Grosz well knew that Fr. Zilliox's statement was accurate, but at a press conference on November 5, 2018, the Diocesan Corporation, through its representative, sought to deflect attention from its failure to comply with the *Charter* and take steps to permanently remove credibly accused priests. The Diocesan Corporation gave the false impression that removing a priest from the clerical state was a lengthy and technical process with no substantive effect:

I won't dispute, [Zilliox] was technically correct. What he said, there are eight or nine priests that . . . he would argue, I would argue actually that it's higher than that, but he would argue should be removed from the priesthood, that is permanently removed from the clerical state. . . . So . . . when Fr. Bob Zilliox, when he made that statement, okay, what does it mean to be removed from the clerical state? . . . You have to go through these canonical processes, where you make this big thick packet called a *votum* and you send it over to Rome. They usually send it back and then you have to do a canon law trial. . . . The notion that the person needs to be removed from the clerical state will have zero impact on the people's lives around that person. The priest, the day before he's removed from the clerical state, and the day after he's removed from the clerical state, his life so far as everyone else can observe, is identically the same. . . . He is a priest, but he is not what you and I would call a priest: he is not saying Mass, he's not seeing kids, he's not wearing the Roman collar. No one is getting confused by him wearing clerical garb. Those eight or nine people are all not acting as priests.

79. Contrary to these statements, removing a priest from the clerical state for sexual abuse is materially different from allowing an unassignable priest to remain in the priesthood under locally-enforced restrictions on his ministry. Priests designated as unassignable by the Diocesan Corporation were protected from an adjudication of the allegations against them; were generally not publicly identified as subject to any complaint or penalty; and, as continuing diocesan employees, presented an ongoing risk that required monitoring, which the Diocesan Corporation failed to do adequately. In contrast, if the priest was subject to a CDF-ordered canonical trial that sentenced him to a permanent removal from the clerical state, there would be findings concerning the priest's sexual abuse and, if applicable, a sentence of laicization would be made public. He would cease to be a cleric and become a lay person in the eyes of the Church. He would not be entitled to any income or other benefits as a cleric. And he would be permanently prohibited from exercising priestly ministry, presenting himself as a priest, or using the title of "Father."

80. In the same November 5, 2018 press conference, Bishop Malone misleadingly implied that the Diocesan Corporation had been diligently working to refer priests to the CDF

and that the Vatican had caused any delay in consideration of cases. When asked about diocesan efforts to address another priest, *Fr. R*, who had purportedly “acknowledged abusing probably dozens of boys” nine months earlier, Malone stated:

[*Fr. R*’s] case is one of several that are now in preparation to be sent to the Vatican for their adjudication. . . . [O]ne’s already gone over there, that’s *Fr. [G]*. I signed off on three others today. It’s a very complicated canonical process to prepare the documentation. It really has to be perfect in the information provided, so that when it gets to the Vatican they don’t have to say, “is there something missing here,” send it back to us and then, on these things, as in many other things, the Vatican moves kind of slowly.

Malone did not acknowledge that the Diocesan Corporation had not referred a single accused priest to the CDF until July 2017, fifteen years after the *Charter* and five years after his installation as bishop. In addition, contrary to Malone’s statements about delays by the Vatican, the CDF responded thirty-seven days after its receipt of the Diocesan Corporation’s single referral in 2017.

81. In a radio interview five months later, on or about April 16, 2019, Bishop Malone acknowledged that as of 2001 “every case of substantiated abuse by a cleric was to be sent to the Vatican for their adjudication” to determine whether the priest should be “dismissed from the clerical state or given a lifelong penance, a sentence of prayer and penance.” He further acknowledged any such determination “would have been public information.” He admitted that “for whatever reasons, that never happened [in the Diocesan Corporation] until [he] started [at the Diocesan Corporation].” He did not disclose, however, that he had personally taken *five years* to make a single referral to the CDF and that numerous long-standing complaints of clergy sexual abuse had not yet been referred by the spring of 2019.

The Diocesan Corporation Admitted That It Failed To Refer More than Two Dozen Priests to the CDF

82. In about September 2019, the Diocesan Corporation publicly revealed the scope

of its failure to make timely, or, in some instances, any referrals to the CDF. In the iteration of the list that the Diocesan Corporation published at that time, it identified seventy-five priests as “Diocesan Priests with Substantiated Allegations of Abuse of a Minor.” This list is duplicated below with information concerning the priests’ “status.”

[Disclosure on next page]

83. The September 2019 list confirms that fifty-two accused priests were alive as of June 2002, when the *Charter* came into effect. More than two dozen of these accused priests are listed as cases that are “in Rome” (the CDF); “will go to Rome”; or were “sent from Rome to a US Tribunal.”¹² The list purports that only nine of the priests identified as warranting CDF review had actually been referred to the CDF by September 12, 2019. Except for *Fr. G*, the Diocesan Corporation produced no evidence that it had actually transmitted any of these priests to the CDF.

84. An additional thirteen now-deceased priests are identified on the list as having been (a) alive in June 2002 when the USCCB adopted the CDF-referral requirement and (b) “removed from ministry” or suspended prior to their death.¹³ There is no indication in the list that the Diocesan Corporation referred these priests to the CDF.

85. At his December 2019 examination, Bishop Malone admitted that as of the examination, the Diocesan Corporation still had not referred to the CDF all of the cases that it identified as warranting referral in the September 2019 list.

Consequences of the Failure To Refer to the CDF

86. The Diocesan Corporation’s failure to refer accused priests to the CDF meant that many of them remained incardinated priests of the Diocese subject only to a removal from ministry by the bishop. Their conduct remained hidden from the public and some continued to receive salaries and benefits for as long as fifteen years, even though the Diocesan Corporation itself was on notice of a substantial likelihood that these accused priests had sexually abused minors. Eight priests publicly identified by the Diocesan Corporation in its September 2019 list,

¹² Twenty-three of the priests identified on the Diocesan Corporation’s September 2019 list died or had left the priesthood before the *Charter* was adopted.

¹³ This does not include one priest, who was laicized in 1988.

for example, are identified as removed from ministry in the early 2000s but were not referred or scheduled to be referred to the CDF until after June 2017. The benefits available to these priests included health, dental, and car insurance as well as room and board, a salary, or retirement benefits. Had the Diocesan Corporation followed its policies and procedures and referred accused priests to the CDF for canonical trials and potential laicizations, laicized priests would not have been entitled to financial support from the Diocesan Corporation.

87. By failing to refer priests to the CDF as required by the *Charter* and the *Essential Norms*, the Diocesan Corporation also forestalled any determination of the merits of the allegations against the accused priests. This deprived the accused and victims of an opportunity to be heard.

88. The absence of any formal review or finding against an accused priest also allowed the Diocesan Corporation to avoid damaging disclosures and public scrutiny. According to Bishop Malone's testimony, the Diocesan Corporation would have publicly disclosed laicizations ordered as a consequence of a CDF referral. Such a disclosure would have provided the transparency promised in the *Charter*, giving the public and the Diocesan Corporation's beneficiaries notice of past abuse and potentially allowing abuse victims some validation, relief, or closure. By treating accused priests as "unassignable" and placing them in retirement or on medical leave, the Diocesan Corporation offered none of the transparency promised in the *Charter*, and instead operated to prevent any public consideration of the Diocesan Corporation's ongoing response to widespread allegations of abuse.

Failure To Inquire into Violations of the *Charter* and the *Essential Norms*

89. The Diocesan Corporation's treatment of abuse allegations was well-known to Bishop Malone and Auxiliary Bishop Grosz throughout their tenures. In about 2013, early on in

his tenure as bishop, Malone learned that the Diocesan Corporation had failed to refer priests to the CDF during the decade since the *Charter* was adopted. Additionally, Grosz continuously handled the Diocesan Corporation's response to allegations of clergy sexual abuse prior to and after the implementation of the *Charter*. Thus, Grosz knew or should have known that none of Malone's predecessor bishops had referred any priests to the CDF.

90. The Diocesan Corporation's failures to perform other specific steps under the *Charter* and the *Essential Norms* were apparent in diocesan records for accused priests. For example, in approximately 2015, when Bishop Malone directed Fr. Zilliox to begin personally reviewing priest files for accused priests that had been removed from pastoral positions on the basis of abuse allegations, Zilliox identified basic procedural gaps, writing in his review notes: "Where is the decree of suspension" and "What about the [internal] Investigation."

91. As fiduciaries, Bishop Malone and Auxiliary Bishop Grosz were obligated to inquire into the Diocesan Corporation's failure to adhere to its material policies and to attempt, in good faith, to develop remedial measures to avoid this failure in the future. There is no evidence that Malone or Grosz took any meaningful steps to investigate or remediate the Diocesan Corporation's past failures. Malone admitted that he did not inquire into why the Diocesan Corporation had previously failed to refer accused priests to the CDF.

Failure To Reasonably Monitor Accused Priests

92. Auxiliary Bishop Grosz testified that he was responsible, beginning in the early 1990s, for monitoring priests who had been removed from their assignments in the Diocese on the basis of sexual abuse allegations. Grosz testified that he monitored these priests to ensure that they: (a) did not commit sexual abuse; (b) abided by ministry restrictions; (c) followed recommendations from mental health professionals; and (d) received what he described as

“proper compensation and insurance” from the Diocesan Corporation.

93. In his examination, Auxiliary Bishop Grosz admitted to substantial deficiencies in his and the Diocesan Corporation’s ability to adequately monitor accused, removed priests. He acknowledged that the Diocesan Corporation lacked any policies and procedures regarding the supervision of these priests, who were in a removed status for many years. He admitted that he had no training to monitor suspects of sex crimes for recidivism and that at times he had monitored these priests through phone calls. He also conceded that he had not regularly monitored these priests because of his “total commitment with all of the sexual abuse cases” and the out-of-state residences of some priests. Indeed, out of a sampling of files reviewed by the Attorney General, at least two priests engaged in instances of public ministry despite a complete prohibition.¹⁴

The Disregard of the Risk of Sexual Abuse by Active Priests

94. The Diocesan Corporation’s failure to investigate and refer the allegations it received against accused priests created a general risk for its beneficiaries because individual allegations would remain unconfirmed and the diocesan community would remain unaware of systematic efforts to avoid the policies and procedures created to address and prevent abuse.

95. In addition, in several instances the Diocesan Corporation allowed particular priests to remain in ministry or at work in a church even though it was aware of the priests’ alleged sexual abuse or misconduct. This conduct by the Diocesan Corporation created specific risks of sexual abuse for its beneficiaries.

96. For example, in 2006 the Diocesan Corporation allowed *Fr. G* to minister out of state even though it knew of eight alleged incidents of his sexually inappropriate behavior with

¹⁴ See *infra* ¶¶ 211-12, 659-60.

young girls.¹⁵

97. As late as 2008, *Fr. H*, a priest who was unassignable due to sexual abuse allegations, worked at a diocesan worship site.¹⁶

98. Until at least 2013, the Diocesan Corporation allowed *Fr. Q* to remain in ministry even though by 2002 the Diocesan Corporation had been on notice of a substantial likelihood that he had engaged in sexual misconduct with minors and young adults.¹⁷

99. As late as 2017, the Diocesan Corporation allowed *Fr. V* to remain in ministry even though it found that he had groomed a minor and engaged in inappropriate sexual misconduct with adults.¹⁸

False or Misleading Business Records and Public Statements

100. The Diocesan Corporation and its agents repeatedly prepared and maintained false or misleading business records regarding accused priests in violation of New York law.

101. A person is guilty of falsifying business records in the second degree if he (a) “[m]akes or causes a false entry in the business records of an enterprise” or (b) “[o]mits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law or by the nature of his position.” Penal Law § 175.05.

102. In several instances, the Diocesan Corporation’s internal records falsely describe a priest as “retired,” on “medical leave,” or on “sabbatical,” where the priest had actually been removed from ministry because of either sexual abuse allegations or the Diocesan Corporation’s finding that the priest had sexually abused a minor. At times and in connection with drafting

¹⁵ See *infra* ¶ 270.

¹⁶ See *infra* ¶¶ 318-19.

¹⁷ See *infra* ¶¶ 526-27.

¹⁸ See *infra* ¶ 657.

internal business records, the Diocesan Corporation also publicly announced the false or misleading description of the priest's removal from ministry. These internal records and public statements omitted any reference to or information regarding sexual abuse allegations.

103. Further, the Diocesan Corporation issued letters of good standing and similar recommendations that enabled accused priests to minister or publicly hold themselves out as priests in other dioceses. In these letters, the Diocesan Corporation generally gave assurances that the accused priests were in good standing and that the Diocesan Corporation was unaware of any risk these priests could present to the public or to minors, in particular. The Diocesan Corporation provided these letter-endorsements despite documented knowledge that contradicted the letters' unconditional recommendations and assurances of good standing.

104. By creating these false or misleading records, the Diocesan Corporation covered up sexual abuse allegations and its response to these allegations. This practice also prevented complainants from obtaining an accurate record of the alleged conduct if they sought the records through litigation or by less formal requests. Falsified records further prevented the Diocesan Corporation from accurately documenting the problem of alleged sexual abuse and implementing appropriate policies and procedures to address the problem.

Failure To Adequately Train the Diocesan Corporation's Personnel

105. Bishop Malone was on notice from early on in and throughout his tenure that the Diocesan Corporation, through its personnel, had failed to properly respond to certain allegations of sexual abuse of minors as required by the *Charter*, the *Essential Norms*, or the *Diocesan Policies and Procedures*. Despite this knowledge, Malone did not take steps to provide appropriate or additional training to Auxiliary Bishop Grosz or any other officials of the Diocesan Corporation who were directly responsible for these compliance failures.

IV. The Diocesan Corporation Misled the Public About Its Adherence to its Policies and Practices in an Improper Administration of the Diocesan Corporation.

106. In 2018 and 2019 the Diocesan Corporation faced intense scrutiny from the public and the media for its alleged handling of sexual abuse complaints. The Diocesan Corporation, through Bishop Malone, Auxiliary Bishop Grosz, and authorized spokespersons responded by making repeated misleading statements to the public about the Diocesan Corporation's adherence to its own policies and procedures, particularly as set forth in the *Charter* and the *Essential Norms*. Those false or misleading statements were inconsistent with the *Charter*'s policy of transparency and were an improper administration and operation of the Diocesan Corporation. These statements also aided the Diocesan Corporation's concealment of the true scope of the sexual abuse scandal and the Diocesan Corporation's failure to properly investigate and address sexual abuse allegations.

107. For example, in February 2018, a Buffalo-area newspaper reported that *Fr. R* purportedly admitted that he had sexually abused dozens of minors in the late 1970s and early 1980s. In response, the Diocesan Corporation released a statement that read, in part: "“Since 1990, the Diocese of Buffalo has had policies to address sexual abuse,’ ‘Every complaint that we receive is addressed pursuant to a protocol that is designed both to protect children and to respond to victims. . . .’” The “protocol” is a term used by the Diocesan Corporation to refer to the *Charter* and the *Essential Norms*. As demonstrated below, at the time of this statement, the Diocesan Corporation had consistently failed to follow material aspects of its policies when responding to allegations against priests, including *Fr. R*.

108. On March 1, 2018, the day after the *Fr. R*-story, the Diocesan Corporation held a press conference, in part, to announce the establishment of a settlement fund for claimants of alleged sex abuse. During the press conference, when asked about other measures the Diocesan

Corporation was taking “so that this is not repeated,” Bishop Malone stated that Auxiliary Bishop Grosz “meets . . . regularly with priests who are unassignable.” Malone also described the Diocesan Corporation as having “a very serious program,” “always looking at how to make sure that that is a strong kind of a vigilance we keep.” Grosz then bolstered these points:

We . . . make sure that the priest goes through a process of rehabilitation. We have several of those centers. . . . And then the important thing as I say is the follow-up, and that’s to what the bishop is referring, to make sure that, again, there’s not a repeat of that inappropriate behavior. And so, when they are discharged [from a rehabilitation center] after [a] period of eighteen months, I continue to keep tabs on them. And they have an actual program of steps. For example, regular counselling, their spiritual director, their confessor, the accountability to me. In fact, there are individuals who meet with me on a regular basis, monthly, to be sure that they’re following their program as outlined by these professional people. . . . I [also] do have a group of priests who have been, we call unassignable priests, who do meet monthly and basically, it’s a spirituality kind of group in which they support one another, they pray together, but again the accountability is there, so on occasion I meet with them. I’ve attempted to form several of those groups, so they’re just not out there ready to kind of do the same thing they did before. So there is an accountability which has to be there and the oversight that definitely has to be there.

These statements falsely suggested that the Diocesan Corporation: (a) had a functional and reasonable policy or practice for monitoring accused priests, which included regular meetings between the Diocesan Corporation and the priests, and (b) regularly analyzed its monitoring efforts to strengthen them. In fact, the Diocesan Corporation lacked policies or procedures for monitoring accused priests and failed to reasonably monitor these priests. The Attorney General uncovered no evidence that the Diocesan Corporation regularly attempted to strengthen a monitoring program.

109. In March 2018, the Diocesan Corporation publicly identified forty-two priests accused of sexual abuse. When releasing the list of priests, Bishop Malone falsely touted the Diocesan Corporation’s “strict” compliance with the zero-tolerance policy and the *Charter*:

When we have . . . priests who have either admitted to have abused a minor or for

whom we have evidence that in fact that did take place, it seems to me, that that has to come out of the darkness into the light. . . . But sometimes, in decades past . . . , we would retire them or they would go on extended medical leave. And a lot of them were on medical leaves because they had to be sent for evaluation at various institutes that do that work for us. So, but that was, that was the way of the past. **Now, we follow strictly what's called a zero-tolerance policy. And all of the United States bishops, we have 197 Catholic Dioceses in this country, all of us have pledged ourselves through something called the *Charter for the Protection of Children and Young People*. And there are *Norms that go with that to do things right*.** . . . (emphasis added).

110. Bishop Malone appeared before the media on August 26, 2018, to address allegations about clergy sex abuse and again claimed, despite a record of non-compliance, that the Diocesan Corporation had made diligent efforts to adhere to the *Charter*:

Since 2002, the *Charter for the Protection of Children and Young People* has been our guiding mandate. Our focus then has been on our children and teens. Those of us in Church leadership have worked diligently to apply its protocols to our handling of abuse allegations. In many ways, I have sought to make the *Charter* my personal charge to enforce this promise in a manner that honors survivors and protects those we serve. However, reflecting on my handling of recent allegations of sexual misconduct with adults, I fear that in seeking to uphold the *Charter* to the letter—remember the *Charter* is for young people—I may have lost sight of the *Charter*'s spirit, which applies to people of all ages.

111. In the fall of 2018, whistleblowers from the Diocesan Corporation alleged on the national television news show, *60 Minutes*, that the Diocesan Corporation knowingly omitted priests from its March 2018 disclosure of forty-two accused priests and that the Diocesan Corporation had failed to remove certain priests from the priesthood for sexually abusing minors.

112. On November 2, 2018, Bishop Malone once again falsely claimed that the Diocesan Corporation was “following [the *Charter*] very, very carefully.” These statements were not accurate, and Malone later admitted to the Attorney General that his statements “should have been qualified.”

113. On November 5, 2018, the Diocesan Corporation disclosed the identity of twenty additional diocesan priests with substantiated claims of sexual abuse of a minor who were

omitted from the Diocesan Corporation's March 2018 list. On the same day, at a press conference, the Diocesan Corporation's Judicial Vicar, Salvatore Manganello, incorrectly suggested that the Diocesan Corporation had observed the *Charter* since its adoption in 2002.¹⁹ In his examination, Bishop Malone admitted that Manganello's and the Diocesan Corporation's statements about compliance with the *Charter* were inaccurate:

Q: Monsignor Manganello states that the *Charter* has been followed since that time referencing 2002. Fair to say the public would believe that the Buffalo Diocese was following the material terms of the *Charter* when . . . Monsignor Manganello made those statements?

A: Yes.

Q: But that was . . . inaccurate, correct, because of the CDF failures?

A: That would be the one inaccuracy I could think of. Generally if I could—generally, I did believe the *Charter* was being followed which is—which is what he is saying.

. . .

Q: And fair to say statements from the diocese since 2012. . . [t]hat reassured the public that the *Charter* was being followed, in retrospect should have been qualified because of the failure of the diocese to refer priests to the CDF?

A: I—probably it should. I mean, I would—as I said before, I was—I am so committed, I am not the bishop anymore but I was so committed to correcting that error and moving forward with the CDF cases that that was my mentality, that we're doing this the way we ought to now but in retrospect, looking back at it, clearly that element needed attention that it did not get.

V. Individual Cases Demonstrating the Defendants' Breaches of Fiduciary Duties, Improper Administration of the Diocesan Corporation, or Unauthorized Activities

114. Specific actions or inactions that demonstrate the Defendants' failures to meet their legal obligations in responding to sexual abuse allegations—including their continued

¹⁹ The chief judge of a diocese is the diocesan bishop. The bishop is obligated to appoint a priest to the position of judicial vicar to serve as a judge in a diocese's tribunal and oversee a diocese's functions involving canon law.

evasion of the Diocesan Corporation's publicly-identified policies and procedures—are illustrated below by case studies. These studies concern twenty-five priests and are drawn from diocesan business records and the testimony of Bishop Malone and Auxiliary Bishop Grosz. Some, but not all, of the priests were publicly identified by the Diocesan Corporation in September 2019 as warranting referral to the CDF. Only one among their twenty-five respective files contains any evidence of such a referral. With the exception of *Fr. E* and *Fr. N* (who died in 2010 and 2011, respectively), Bishop Malone, upon his installation in August 2012, held exclusive responsibility for the status and assignments of the following priests discussed below:

1. *Fr. A*
2. *Fr. B*
3. *Fr. C*
4. *Fr. D*
5. *Fr. E*
6. *Fr. F*
7. *Fr. G*
8. *Fr. H*
9. *Fr. I*
10. *Fr. J*
11. *Fr. K*
12. *Fr. L*
13. *Fr. M*
14. *Fr. N*
15. *Fr. O*
16. *Fr. P*
17. *Fr. Q*
18. *Fr. R*
19. *Fr. S*
20. *Fr. T*
21. *Fr. U*

22. *Fr. V*

23. *Fr. W*

24. *Fr. X*

25. *Fr. Y*

115. The twenty-five priest files, verified as a complete record of reported allegations and related determinations by the Diocesan Corporation, demonstrate that the Defendants, contrary to their secular obligations, the *Charter*, and the *Essential Norms*:

- designated many of these priests as unassignable, thereby placing in suspension both the accused priests and their accusers;
- removed many of these priests from ministry or allowed them to retire in anticipation or shortly after the adoption of the *Charter* and the *Essential Norms*, demonstrating a systematic approach to circumvent the policies and procedures intended to protect children;
- took inadequate steps—in some cases, no steps at all—to conduct an independent investigation of the factual allegations they received, *see, e.g., infra* ¶¶ 130-31, 267, 311, 403;
- repeatedly failed to seek or, alternatively, reasonably document the DRB’s assessments of allegations of sexual abuse of minors, *see, e.g., infra* ¶¶ 150, 269, 279;
- failed to refer or timely refer accused priests to the CDF;
- routinely misrepresented the nature of their responses to allegations of abuse in public statements, contacts with beneficiaries, and diocesan files that recorded the accused priests’ status, *see, e.g., supra* § IV (Bishop Malone’s statements to media in March 2018); *see, e.g., infra* ¶ 128 (accused priest’s announcement of his sabbatical for “health problems”); ¶ 151 (accused priest’s announcement of “sabbatical”); ¶¶ 177-78 (accused priest’s “resignation” to take time for “renewal” following the deaths of his brother and mother); ¶¶ 204-05 (records showing accused priest took a “medical leave of absence” and “retired”);
- conducted little or unreasonable monitoring of the unassignable priests’ activities, *see, e.g., infra* ¶¶ 253, 341, 392;
- disregarded the risk of future sexual abuse by allowing certain priests to minister or remain in parishes, and by ensuring that members of the diocesan community would have no notice of the Diocesan Corporation’s routine

departure from stated standards for investigation and canonical review; and

- in specific instances of alleged adult abuse reviewed by the Attorney General, failed to reasonably document or sufficiently investigate the allegations and disregarded the risks that certain priests could sexually abuse adults. *See, e.g., infra* ¶¶ 616-45, 718-22.

Fr. A

116. *Fr. A* was ordained in 1967.²⁰ As early as 1983, the Diocesan Corporation was on notice of a substantial likelihood that he had sexually abused minors. Yet, instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation placed him on medical leave and then permitted him to retire. The Diocesan Corporation continued to receive complaints of sexual abuse about *Fr. A* for years after his “retirement,” but (a) took no steps to follow the procedures mandated by the *Charter* and the *Essential Norms* and (b) used its charitable resources to support *Fr. A* and conceal his alleged conduct from the public.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

117. Prior to 2002, the Diocesan Corporation received at least five complaints against *Fr. A* for alleged inappropriate behavior or sexual abuse. During this period, *Fr. A* ministered at different parishes and was ultimately appointed pastor, which is the head priest of a parish.

118. In July 1983, Complainant 1’s mother wrote to the Diocesan Corporation and alleged that, in about 1974 or 1975, *Fr. A* had sodomized her son. The mother told the Diocesan Corporation that her son had developed a “severe sexual psychiatric problem” as a result of this abuse. In closing, the mother indicated that *Fr. A*’s abuse had been a contributing factor to her

²⁰ Unless otherwise noted, the allegations against *Fr. A* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. A* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

son's own sex crimes against others.²¹

119. In response to Complainant 1's mother, in a memo dated July 15, 1983, Vicar General Donald Trautman made several recommendations to the bishop, including that he, Trautman, contact the mother to indicate the Diocesan Corporation's willingness to share in the Complainant's medical costs. Trautman also suggested that he make this offer verbally because "[w]ritten correspondence [would] be incriminating for the priest." Trautman's memo indicates that he believed the mother's account:

I am not questioning the veracity of the complaint; I only believe it is proper that we hear [*Fr. A*] out on this matter. This matter coupled with other concrete situations that I have brought to his attention on 2 occasions warrant his assignment to Southdown [(a mental health facility, which treated priests alleged to have sexually abused minors)].

120. In a February 1989 letter, *Fr. A* informed Bishop Head that he had applied for a pastorate in the Diocese. Head confided to Auxiliary Bishop Trautman and Vicar General Robert Cunningham that he was not inclined to promote *Fr. A* and that he intended to refer *Fr. A* to Southdown. In May 1989, Head prepared a letter to Southdown, which described several incidents involving *Fr. A*, such as *Fr. A*'s "inappropriate touching" of a young man in 1981 and the mother's 1983 allegations. In his letter, Head reported that he and Trautman had "met with Father [*A*] and [*Fr. A* had] accepted [these incidents] as factual." Handwritten notes in *Fr. A*'s file, however, indicate that he may have denied portions of these incidents.

121. Southdown confirmed to *Fr. A* that he was scheduled to begin its program in October 1989. In February 1990, *Fr. A* wrote to Bishop Head to describe his experience at Southdown. In the letter, *Fr. A* notes his "[b]rokenness in the past" and fear that his "mistakes . .

²¹ Many of the twenty-five case studies concern priests who were the subject of multiple complaints. The complainants are not identified by name but are assigned a number, e.g., "Complainant 1." Numbering of the complainants re-starts for each separate case study.

. would cloud the future for as long as [he] lived.”

122. Roughly one year later, Bishop Head promoted *Fr. A* to pastor.

123. In September 1992, Msgr. Peter Popadick received allegations that *Fr. A* was “inappropriate[ly] behavi[ng]” with Complainant 2, a minor. Complainant 2’s mother alleged, among other things, that *Fr. A* had (a) invited minors to drive with him to various places; (b) discussed masturbation with Complainant 2; (c) given Complainant 2 a tour of the rectory, including *Fr. A*’s bedroom; and (d) drafted a letter excusing a minor from school so that the child could play golf with *Fr. A*. Popadick met with *Fr. A* shortly after receiving the complaint; *Fr. A* told Popadick that he did not agree with the mother’s “conclusions.”

124. In November 1992, Msgr. Popadick met with Complainant 2’s mother and documented the closing of this matter:

I informed [her] again that Father [A] had a rational, reasonable, and acceptable explanation for each and every one of the concerns which she brought to our attention. . . . She, again, is satisfied with the consideration given to her by the Bishop’s Office . . . [and] considers the matter closed.

125. In June 1994, Complainant 3’s father wrote to Bishop Head to request a meeting with the bishop “in regards to the sexual molestation of [his] son” between 1976 and 1977. Four months later, in October 1994, Vicar General Cunningham documented his inquiry into the father’s allegations:

I have investigated the matter and have spoken with Father [A] a number of times about the allegation. He indicated that during the 1970’s [sic] a large number of people came out to help him at his cottage. During that period of time, there was some serious alcohol abuse, and things may have happened that he has no recollection of at the present time.

While he specifically cannot remember showering with anybody or abusing anybody, if drink was involved, he feels he could have acted inappropriately. . . .

The bishop assured himself that any problems that we, the diocese, were aware of had been addressed prior to appointing Father [A] pastor. The bishop does not

appoint anybody if there are doubts or suspicions about behavior.

[Complainant 3's father] asked that vigilance would continue to be kept. He does not want other young people to be compromised He understands and suggested that we would have to accept the priest's word; that he does not want the priest to think that he could get away with something like this. . . .

At this time, [the father] is not requesting any further action, nor is there any other action to be taken.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

126. In April 2002, just two months before the *Charter* was adopted, *Fr. A* quickly went into retirement with the consent of the Diocesan Corporation. On April 2, 2002, Vicar General Cunningham prepared a memo to the file regarding a meeting with *Fr. A*. The memo states that Cunningham and *Fr. A* discussed *Fr. A*'s "health situation," including "the possibility of the early stages of Parkinsons [sic]" and *Fr. A*'s possible "medical leave" or "sabbatical." Three days later, *Fr. A* submitted his resignation and requested that he be placed on medical leave. On April 8, 2002, Bishop Mansell accepted *Fr. A*'s resignation as pastor, granted his request for medical leave, and commended his service: "Allow me to take this opportunity to express my sentiments of gratitude and appreciation for you and for all that you have done"

127. On or about April 11, 2002, within days of accepting *Fr. A*'s resignation, Complainant 4 called Vicar General Cunningham to allege that *Fr. A* had abused him at *Fr. A*'s cottage when he was a minor. The Diocesan Corporation failed to sufficiently investigate Complainant 4's allegation.

128. Internal diocesan records maintained to record a priest's status reflect that, as of the following day, April 12, 2002, *Fr. A* "[r]esigned as Pastor (medical leave)." At about the same time, *Fr. A* publicly announced to parishioners that he would be taking a sabbatical for "health problems." Internal diocesan documents and *Fr. A*'s public statements did not mention

that the Diocese had removed him from ministry because of sexual abuse allegations.

129. On or about April 25, 2002, Complainant 5 notified the Diocesan Corporation that *Fr. A* had molested him and other minors in the late 1970s. On May 29, 2002, Vicar General Cunningham prepared a five-sentence memo to the file regarding a meeting with Complainant 5:

I met with [Complainant 5] and his mother on May 23. We discussed the situation which took place in the late 1970's [sic]

[Complainant 5] . . . is concerned about sending his son to [school]. He asked what steps were being taken in light of the current climate to make sure that children are safe.

[Complainant 5] has only been in the Church 5 or 6 times since the late 1970's [sic] and does not choose to go.

130. In June 2002, the USCCB formally adopted the *Charter*. The Diocesan Corporation failed to conduct an appropriate, independent investigation into Complainant 4's and 5's recent claims. Nor did it amend or modify its public statement that *Fr. A* had voluntarily stepped down from ministry for health reasons. Indeed, more than a year after the *Charter*'s adoption, internal diocesan records, maintained to document a priest's status, reflect that *Fr. A* "[r]etired" on September 1, 2003; *Fr. A* was about sixty-one years old at that time.

131. Complaints continued after *Fr. A*'s retirement. On November 11, 2003, according to a memo of the same date, Vicar General Cunningham met with Complainant 6, who told Cunningham about an "incident," which had occurred when he was thirteen-years old. *Fr. A*'s file indicates that he was the unnamed, accused priest referenced in Cunningham's memo. *Fr. A*'s file does not contain any decrees opening or closing an investigation by the Diocesan Corporation into Complainant 6's claims. Nor is there any evidence that the Diocesan Corporation sufficiently investigated Complainant 6's allegations pursuant to the *Charter* and the *Essential Norms*. Instead, Cunningham's memo reflects that the Diocesan Corporation's inquiry

focused on Complainant 6, specifically noting the complainant's employment history, rehab visits, "failed" marriages, failure to obtain an annulment, and mental health disability.

132. In February 2004, Complainant 1, whose mother had written to the Diocesan Corporation in 1983, filed a complaint with the Diocesan Corporation, alleging that, between 1976 and 1979, *Fr. A* had sexually abused him when he was a minor. *Fr. A*'s file does not contain any decrees opening or closing an investigation by the Diocesan Corporation into Complainant 1's claims. The Diocesan Corporation did not properly investigate these allegations pursuant to the *Charter* and the *Essential Norms*.

133. In September 2007, Complainant 7 filed a complaint with the Diocesan Corporation, alleging that in 1974, when he was about fourteen-years old, *Fr. A* had provided him alcohol when he stayed overnight at *Fr. A*'s cabin and that he had awoken to find *Fr. A* performing oral sex on him. *Fr. A*'s file does not contain any decrees opening or closing an investigation by the Diocesan Corporation into Complainant 7's claims. The Diocesan Corporation failed to independently investigate Complainant 7's allegations pursuant to the *Charter* and the *Essential Norms*.

134. In September 2008, in response to an inquiry about *Fr. A*'s status from a diocesan attorney, Vice Chancellor David LiPuma reviewed *Fr. A*'s file and called former Vicar General Cunningham, who was then serving as the bishop of the Ogdensburg Diocese. Cunningham told LiPuma that in April 2002, verbal restrictions were placed on *Fr. A*'s ministry. In particular, *Fr. A*'s faculties had been revoked and he had been barred from publicly performing Mass or dressing in clerical attire.

135. After *Fr. A*'s retirement, from time to time Auxiliary Bishop Grosz called *Fr. A* to discuss, among other things, *Fr. A*'s physical health. Other than the record of these calls, there is

an absence of documentation in *Fr. A*'s file showing that the Diocesan Corporation regularly and reasonably monitored or supervised him.

136. In about 2015, twelve years after the *Charter* and three years after Bishop Malone's installation at the Diocese, Fr. Zilliox—Malone's advisor on compliance with the *Charter* and the *Essential Norms*—prepared a summary of *Fr. A*'s file that highlights the Diocesan Corporation's failure to comply with procedures mandated by these policies. Zilliox documented the following concerns: (a) "Where is the decree of suspension . . . ?"; (b) "What about the [internal] Investigation?"; and (c) "Where was the Promoter of Justice in this case?" Still, the Diocesan Corporation failed to take any steps to conduct an independent investigation into the allegations.

137. In March 2018, *The Buffalo News* interviewed *Fr. A* about sexual abuse allegations made against him. In the interview, *Fr. A* maintained that "[he is] still a priest." According to *The Buffalo News*, the Diocesan Corporation "confirmed that he was removed from ministry because of abuse allegations." A few days later, the Diocesan Corporation identified *Fr. A* on its public list of "diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor."

138. After the Diocesan Corporation's publication of its March 2018 list, the Diocesan Corporation received at least five new complaints, alleging that *Fr. A* had sexually abused minors in the 1970s.

139. In about September 2019, the Diocesan Corporation, in a disclosure on its website, indicated that it had referred *Fr. A* to the CDF. *Fr. A*'s file, however, contains no referral documents to or from the CDF. *Fr. A*'s file does contain an unsigned letter dated June 2018 from Bishop Malone to the CDF that recommends that the Church take no action against

Fr. A because (a) no evidence showed that he had either continued to abuse after 1989 or that he had violated his ministry restrictions and (b) he was seventy-six years old and ill.

140. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to conduct independent internal investigations of the allegations against *Fr. A* and failing to seek a DRB assessment and refer or timely refer *Fr. A* to the CDF. Instead, it made misrepresentations to the public; created false or misleading internal documents; and failed to adequately monitor *Fr. A*'s activities. The Diocesan Corporation's actions concealed *Fr. A*'s conduct from the public and placed its beneficiaries at risk.

Fr. B

141. *Fr. B* was ordained in 1988.²² As early as 1995, the Diocesan Corporation was on notice of a substantial likelihood that *Fr. B* had engaged in inappropriate behavior with minors. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation: (a) failed to properly investigate sexual abuse allegations; (b) misled its beneficiaries about the true reasons for *Fr. B*'s removal from ministry; and (c) falsely attested to a third party that it had no information that would render *Fr. B* unsuitable to work with minors when it approved *Fr. B*'s ministry outside the Diocese. The Diocesan Corporation's actions protected *Fr. B* from an adjudication of his alleged actions and wasted charitable resources.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

142. Prior to 2002, *Fr. B* was generally assigned to parish ministry. During that time, on at least two occasions, concerns were raised about his conduct. In October 1994, Auxiliary

²² Unless otherwise noted, the allegations against *Fr. B* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. B* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

Bishop Grosz met with *Fr. B's* former pastor to discuss the pastor's concern about *Fr. B's* relationship with two teens:

[The pastor] indicated he felt this relationship was an expression of imprudence on the part of Father [B]. [He] noted an over familiarity between Father [B] and the two teenagers.

. . . For example, Father [B] carried the two kids on his shoulders in the mall.

[The pastor] then indicated that there is a rumor . . . that Father [B] is having a love affair with the two teens.

143. In February 1995, Vicar General Cunningham documented a call he received about *Fr. B* from a captain in a police department:

[The captain] wanted me to know as a private citizen, not as a member of the Police Department, that [*Fr. B*] was stopped twice in mid-December with a 16-year old boy in the car. These events took place on the same night in mid-December. . . .

No charged [sic] were filed; no subpoena was issued; and there was nothing that he had done wrong. But, the police were concerned about a priest being parked in a car with a 16-year old boy twice on one night.

Two months later, Bishop Head confronted *Fr. B* about the report, and *Fr. B* maintained that he was teaching the teen how to drive. *Fr. B* remained in ministry.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

144. In June 2002, after the *Charter* was adopted, the Diocesan Corporation failed to investigate or, alternatively, sufficiently investigate the above allegations pursuant to the *Charter* and the *Essential Norms*. *Fr. B* remained in ministry.

145. On September 4, 2009, Auxiliary Bishop Grosz and *Fr. B* met to discuss a complaint that *Fr. B* had taken a minor, about fourteen-years old, to a Sabres game followed by a tour of the church, without the approval of the boy's parents. *Fr. B* acknowledged that about twice a year, he would take the teen out and that he was encouraging the teen to consider the priesthood. *Fr. B* denied any wrongdoing and agreed "to refrain from any kind of relationship

one on one with [the boy] or any young person.” Despite *Fr. B*’s history of alleged improper relationships with young boys, the Diocesan Corporation again failed to adequately investigate these allegations pursuant to the *Charter* and the *Essential Norms*.

146. On September 16, 2009, a diocesan attorney recommended to his law partner that the DRB’s advice should be sought with respect to *Fr. B*:

Bishop Grosz said that Fr. [B] has a history of . . . conduct [similar to *Fr. B*’s outings with the fourteen-year-old]. About 10 years ago, [*Fr. B*’s] pastor . . . told Bishop Grosz that Fr. [B] was taking teenaged boys up to Fr. [B]’s] bedroom. There was no evidence that anything inappropriate occurred

. . .

In sum, we have a history of a priest being alone with a young person in inappropriate situations (in a parked car at night; in a closed church; in the priest’s room), but we have absolutely no indication that anything else inappropriate—or anything sexual—ever took place. The priest has agreed not to be alone with teenagers, but he agreed twice before—in 1995 and about 10 years ago—not to do so and he apparently nevertheless repeated this behavior. I think it is appropriate to ask the [DRB] for advice in this regard.

147. A diocesan attorney drafted a one-page memo to his file recording the DRB’s purported discussion of *Fr. B*:

On September 17, 2009, I discussed Father [B]’s case at the [DRB].

Several of the members were concerned indicating that they saw “red flags all over the place.”

At first, it was suggested that we talk to [the complainant, who reported the September 2009 information]. Others suggested that we talk to the mother of the teenager, but we advised them that she had declined to speak to us at this time.

There was much discussion about an evaluation and eventually we decided to have Bishop Kmiec bring him into his office, discuss the situation with him and consider whether or not the Bishop should have Father [B] evaluated.

148. In January 2010, Bishop Kmiec and Auxiliary Bishop Grosz confronted *Fr. B* with three e-mails in which *Fr. B* purportedly solicited oral sex on Craigslist in late 2007. *Fr.*

B's file contains three hardcopies of the e-mails with footers indicating that they were printed on September 28, 2009. Documents in the file note: “[*Fr. B* seemed perplexed and] indicated he did not know what would have been the source of those particular e-mails.” During this meeting *Fr. B* agreed to a mental health evaluation at Southdown.

149. *Fr. B* underwent a psychological assessment at Southdown and agreed to begin residential treatment in April 2010.

150. In mid-March 2010, Auxiliary Bishop Grosz documented a meeting with Bishop Kmiec regarding *Fr. B*'s status. In a memo of the meeting, Grosz stated that Kmiec had decided that *Fr. B* would resign his pastorate, enter residential treatment at Southdown for several months, and “then look forward” to another assignment. Grosz’s memo also briefly notes Kmiec’s update that the DRB agreed that *Fr. B* seek residential treatment. However, the Diocesan Corporation failed to reasonably document the DRB’s assessment.

151. In late April 2010, Auxiliary Bishop Grosz reported to Bishop Kmiec that *Fr. B* was prepared to publicly announce his leave of absence: “[*Fr. B*] will inform his parishioners that he will be taking a sabbatical of several months. He will make that announcement from the pulpit the weekend of May 22-23 and for the following week, that is, May 29-30, place an announcement in the bulletin confirming his time of sabbatical.” This public announcement was false or misleading because *Fr. B* did not take a sabbatical. In fact, *Fr. B* entered residential, mental health treatment for conduct related to his alleged, inappropriate behavior with minors.

152. On August 16, 2010, a diocesan attorney reported to his law partner that: (a) Auxiliary Bishop Grosz had attended an evaluation of *Fr. B* at Southdown and was informed that “[*Fr. B*] is not at risk of inappropriate activity with minors”; (b) “Southdown believe[s] that [*Fr. B*] has now taken responsibility and ownership of the inappropriate emails that he sent”; and (c)

“[*Fr. B*] has never been accused of any incident of sexual abuse[; thus] . . . the Bishop and the [DRB] found that there was no reason to remove *Fr. [B]* but there was reason to have him evaluated.” This internal law-firm memo between two diocesan attorneys is the only documentation in the file referencing this DRB finding and fails to reasonably document this DRB assessment.

153. On August 20, 2010, Bishop Kmiec certified *Fr. B*'s fitness to officiate an out-of-state wedding and stated in a certification that: (a) “[*Fr. B*] is a person of good moral character and reputation” and (b) “I am unaware of anything in [*Fr. B*'s] background which would render him unsuitable to work with minor children.”

154. On August 27, 2010, Complainant 1's attorney alleged to the Diocesan Corporation that in about 1999, when the Complainant was thirteen-years old, he became friends with *Fr. B*, who: (a) discussed inappropriate topics with the boy, such as oral sex; (b) inappropriately touched the boy's face in a “sexual way”; and (c) took the boy to a pornographic movie. Roughly one week later, Auxiliary Bishop Grosz met with *Fr. B*, who claimed that the Complainant fabricated the allegations because *Fr. B* had accused the boy of accessing *Fr. B*'s e-mail without authorization.

155. Two months later, in early November 2010, a diocesan attorney forwarded Auxiliary Bishop Grosz a “lengthy memorandum . . . prepared after . . . meetings with [Complainant 1] and *Fr. [B]*.” The attorney notes in his cover letter to Grosz that “there is a great deal more to [the Complainant]'s complaint than was apparent” and asks Grosz to call to discuss soon. There is no documentation of a DRB assessment.

156. Two days after the diocesan attorney's November 2010 letter, Bishop Kmiec certified *Fr. B*'s fitness to serve as chaplain in a government hospital and stated in his

certification that “[he was] unaware of anything in [*Fr. B*’s] background which would render him unsuitable to work with minor children.”

157. In January 2011, Auxiliary Bishop Grosz met with *Fr. B* and his diocesan counselor to discuss *Fr. B*’s counseling and the previous allegations against *Fr. B*. In Grosz’s written summary of this meeting, he notes that: the DRB would be meeting in three days; several DRB members recommended that *Fr. B* be removed as pastor and possibly transferred to another assignment; and some DRB members recommended that *Fr. B* be removed for further investigation. There is no further documentation of the DRB’s assessment. Grosz’s note is not reasonable or adequate documentation.

158. On February 1, 2011, Auxiliary Bishop Grosz and Bishop Kmiec met with *Fr. B* to discuss the DRB’s recommendations. In a memo to Kmiec dated the same day, Grosz recorded that Kmiec had related that the DRB “saw [one specific report] as a ‘Strike’ against [*Fr. B*] according to the Charter” and that “[o]ne member of the [DRB] noted that it appears Father [*B*] was actually grooming [Complainant 1] for a long period of time.” The Diocesan Corporation failed to reasonably document these assessments by the DRB. In the same February 1 meeting, Kmiec urged *Fr. B* to resign his pastorate and submit to another mental health evaluation by the St. Luke Institute in light of Complainant 1’s allegations. The St. Luke Institute, like Southdown, is a mental health facility that treated priests accused of sexual abuse.

159. Days later Bishop Kmiec and Auxiliary Bishop Grosz met with *Fr. B*. Grosz directed *Fr. B* to submit to a “second opinion” by the St. Luke Institute. Kmiec decided that *Fr. B* would resign his pastorate. *Fr. B* agreed to publicly announce his resignation as a medical leave and to move into the Sheehan Residence, a retirement home for priests in Buffalo. In a February 15, 2011 letter, Kmiec accepted *Fr. B*’s resignation as pastor and “approve[d his]

medical leave of absence.” The Diocesan Corporation misled the public by announcing that *Fr. B* was taking a medical leave of absence. In fact, the Diocese removed him from ministry because of allegations of inappropriate conduct with a minor.

160. It was not until after a complainant publicly disclosed his allegations against *Fr. B* that the Diocesan Corporation issued a formal statement on March 3, 2011, acknowledging that *Fr. B* had been accused of inappropriate conduct:

Whenever there is an allegation of inappropriate conduct against a priest . . . , certain policies and procedures are followed. This case is no different.

Fr. [B] has denied the allegations and he has been placed on administrative leave . . . pending completion of our investigation. The decision to place *Fr. [B]* on administrative leave does not imply any determination as to the validity of the allegation.

...

Once the investigation is concluded, the Bishop will determine whether or not Father *[B]* will receive another ministerial assignment.

This announcement demonstrated the misleading nature of the Diocesan Corporation’s prior statement that *Fr. B* was taking a medical leave.

161. On March 5, 2011, Bishop Kmiec issued a Decree of Suspension to *Fr. B* that “placed [him] on administrative leave,” “temporarily relieved [him] of [his] responsibilities,” and, until further notice, revoked his faculties and barred him from publicly officiating Mass, dressing in clerical attire, and holding himself out as a priest.

162. In February 2012, Bishop Kmiec prepared a six-page letter to *Fr. B* to confirm that the DRB had met to reconsider his case at *Fr. B*’s request. Kmiec reaffirmed his decision to remove *Fr. B* from active ministry:

[Y]ou have established a pattern of imprudent and inappropriate behavior that has been going on for more than a decade without any apparent correction. You have been counseled and given opportunities to change, but you have not taken

advantage of those opportunities. Your behavior . . . subjects the Diocese to potential liability if you ever cross the line from inappropriate and imprudent behavior to something worse.

...

Taken in conjunction with your history of inappropriate behavior and the recommendation of the [DRB], the warnings issued by the experts at St. Luke Institute make it impossible for the Diocese to return you to active service.

163. In March 2012, Bishop Kmiec informed *Fr. B* that residents of the Sheehan Residence had “justly raised” that they, but not *Fr. B*, were required to pay room and board. Kmiec gave *Fr. B* until May to leave the Sheehan Residence and noted that he had suggested that *Fr. B* “seriously consider the possibility of laicization.”

164. In June 2012, *Fr. B*'s canon law adviser submitted a letter to Bishop Kmiec that requested a new mental health evaluation of *Fr. B* and a formal determination of *Fr. B*'s status. The adviser's letter challenges the Diocesan Corporation's factual basis for *Fr. B*'s removal and notes multiple, positive recommendations from Southdown and the Diocesan Corporation that post-dated complaints against *Fr. B*. The letter also states that the adviser was unaware of any internal investigation into *Fr. B* even though the basis for *Fr. B*'s administrative leave was to allow for such an investigation.

165. To respond to *Fr. B*'s canon law adviser, diocesan records indicate that Bishop Malone began a review of *Fr. B* almost immediately upon his installation. In a September 2012 memo to Malone, Vicar General David Slubecky provided Malone with background information and remarked that “no formal process has been followed or initiated, and it is understood that our response [to *Fr. B*'s adviser] may lead to a formal request for a formal hearing under church law.” Malone contacted *Fr. B*'s adviser in October 2012, writing that he had taken “a close look at Fr. [B]'s file” in order to prepare a response to the adviser's recent inquiries. Malone's letter

to the adviser affirms Kmiec's conclusions. Malone emphasized that the DRB had found that *Fr. B* had engaged in "grooming" and disclosed that the St. Luke Institute had recommended that *Fr. B* "have 'no one-to-one contact with minors . . . and no ministry to minors.'"

166. Diocesan records for *Fr. B* indicate that the allegations against him were under review by Fr. Zilliox for referral to the CDF no later than 2015—years after Bishop Malone's installation. In an outline of documents in *Fr. B*'s file, Zilliox identified some of his concerns, which included: (a) "Where is the decree of suspension based on [the *Essential Norms*]? All we have is a decree indicating 'Administrative Leave'; (b) "What about the [internal] Investigation?"; and (c) "Where was the Promoter of Justice in this case?"

167. In about September 2019, seven years after Bishop Malone first reviewed the allegations against *Fr. B*, the Diocesan Corporation, in a disclosure on its website, indicated that it would refer *Fr. B* to the CDF, confirming that Malone had not done so before that time.

168. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to conduct sufficient, independent internal investigations of the allegations against *Fr. B*; failing to properly document the DRB's assessments; and failing to refer *Fr. B* to the CDF. Instead, it prepared false or misleading business records and made misrepresentations to the public and third parties, concealing *Fr. B*'s conduct. The Diocesan Corporation's actions placed its beneficiaries at risk.

Fr. C

169. *Fr. C* was ordained in 1966.²³ As early as 1994, the Diocesan Corporation was on

²³ Unless otherwise noted, the allegations against *Fr. C* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. C* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

notice of a substantial likelihood that *Fr. C* had sexually abused a minor. Years later, instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to sufficiently conduct a timely internal investigation into allegations that *Fr. C* had sexually abused a minor; failed to seek the DRB's assessment or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. C*; and failed to refer *Fr. C* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) allowing *Fr. C* to publicly and misleadingly suggest in 2002 that he was resigning because of the deaths of his mother and brother; (b) creating false or misleading business records to establish a purported, legitimate basis for his retirement and eligibility for associated benefits; (c) providing these benefits and other compensation to *Fr. C* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (d) failing to reasonably monitor *Fr. C*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

170. After his ordination, *Fr. C* served in various schools and parishes and was appointed pastor in 1989.

171. In July 1990, Complainant 1 sent a letter to *Fr. C* alleging that, in the fall of 1977, *Fr. C* had sexually abused him at age sixteen, when *Fr. C* taught at a Catholic school. Diocesan records, prepared years after the alleged abuse, indicate that, in about July 1990, *Fr. C* had purportedly admitted the abuse to Bishop Head.

172. In 1990 the Diocesan Corporation placed *Fr. C* on sick leave while he underwent mental health treatment. In 1991 he was re-appointed pastor until he resigned in 2002.

173. In January 1993, Complainant 1 wrote to Vicar General Cunningham: "I am writing to express my outrage and anger at your failure to respond to me in any meaningful way

in the two and one-half years since I told you that I had been sexually abused by Rev [sic] [C].”

In his response, Cunningham did not acknowledge that *Fr. C* had admitted the abuse and claimed that he had not known that Complainant 1 expected a response from the Diocesan Corporation:

If a priest of this diocese has in any way not lived up to his commitment, or abused you, then I am truly sorry. . . .

. . . I am also sorry for any pain that you may have that could have been caused by inappropriate behavior on the part of a priest.

174. Handwritten notes in *Fr. C*'s file dated March 3, 1993, state:

[*Fr. C*] has not been involved in the 12 step program because he finds it “difficult” to publicly state that he is a “person” who has “abused a minor”—[e]ven though he accepts the fact he finds it difficult to “state it publicly” also [illegible] by his lawyer[.] We discussed this and he agrees that he needs to follow up on this since it is at the heart of the problem—I told him about the new [program] at Sisters Hospital + [local psychologist] . . . He plans to call her soon + set up an appointment . . . He plans to see her regularly as she requests.

175. In May 1994, Bishop Head and Vicar General Cunningham met with *Fr. C* to discuss the status of Complainant 1's allegations. *Fr. C* stated that if the matter became public, he would resign. A memo summarizing the May 1994 meeting indicates that mental health professionals recommended that the Diocesan Corporation prohibit *Fr. C* from having unsupervised contact with minors.

176. *Fr. C* continued to serve as pastor until 2002.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

177. In April 2002, in the wake of widespread scrutiny about clergy sexual abuse in the United States, and just two months before the *Charter* was adopted, *Fr. C* quickly resigned. On April 4, 2002, *Fr. C* submitted his resignation to Bishop Mansell, citing “multi emotional [sic] reasons, including the death of [his] brother and mother in so short a time.” Mansell accepted the resignation, “tak[ing] th[e] opportunity to express [his] sentiments of gratitude and

appreciation for [*Fr. C*] and for all that [*Fr. C* had] done as Pastor.”

178. On or about April 7, 2002, *Fr. C* publicly announced his resignation to parishioners, citing the deaths of his brother and mother:

Most of you know, by your own experience, that the death of a loved one changes perceptions, goals and the daily routine. You know that within the last 5 months my brother and mother have died and I see things in a different way.

...

Holy Week was a very difficult emotional week, and many of you witnessed my Easter Message—the emotional stress was there!

I need a break or else I will break.

I spoke to Bishop Mansell on Wednesday of this week and have resigned my pastorate . . . effective today. During the next several months, I will take time to be renewed in body and spirit.

This public announcement was false or misleading. As internal diocesan documents would later show, *Fr. C* resigned because of sexual abuse allegations, not because of the death of his family members.

179. On or about April 11, 2002, Vicar General Cunningham prepared a short memo to the file, incorrectly stating that “Father [*C*] is currently on a medical leave of absence.”

180. In May 2003, nearly a year after the *Charter* was adopted, a letter from *Fr. C* to Bishop Mansell showed that *Fr. C* had recently participated in several activities in which he had publicly held himself out as a priest in Pennsylvania. He described visiting a religious order and “bec[oming] part of their community for 2 weeks.” He also recounted the following encounter after Mass on Easter Sunday: “I was out front of the Church with the pastor greeting the people. In tears [a woman] introduced herself as being from Buffalo and asked if I could possibly visit her husband who was having cancer surgery on Monday.”

181. On or about June 21, 2003, Bishop Mansell called *Fr. C* to revoke *Fr. C*’s

faculties. On the same date, *Fr. C* wrote to Mansell to request that Mansell clarify *Fr. C*'s status and to immediately investigate any allegations against him. In his letter, *Fr. C* wrote that he assumed his faculties were only temporarily revoked because the Diocese could not permanently revoke them.

182. The following month, Bishop Mansell responded to *Fr. C*'s letter, commenting at the outset that "we have attempted to deal with the situation in a discreet manner." Mansell then outlined the "facts" related to *Fr. C*'s case, which included:

. . . In July 1990, [Complainant 1] informed you that he was accusing you of inappropriate behavior and that he intended to inform the Bishop. You went to Bishop Head [and] admitted the behavior

In 1994, [Complainant 1] threatened a lawsuit A confidentiality provision was included in the papers resolving the claim. Of course, the Diocese was concerned for the individual who made the complaint; but the Diocese also was concerned for you and your name and did everything possible to preserve your reputation. No investigation was needed since an admission was made.

. . . In April 2002, with further national developments concerning the sexual abuse of minors by priests, you were asked to resign your pastorate, which you did freely. . . . I accepted your resignation and placed you on a medical leave of absence.

. . . The Essential Norms provide that "[w]hen even a single act of sexual abuse by a priest or deacon is admitted . . . the offending priest or deacon will be removed permanently from ecclesiastical ministry . . ." While I consider you to be a priest on medical leave at this time, your faculties to celebrate Mass publicly or to administer the sacraments have been revoked. You may not present yourself as a priest or dress as a cleric. I also urge you to think about retirement. To open an investigation at this time would not be beneficial.

183. Diocesan documents, maintained to record a priest's status, falsely describe *Fr. C* as "retired" as of September 1, 2003; he was about sixty-two years old at the time. In fact, as internal diocesan records reveal, the Diocese removed him from ministry because of evidence that he had sexually abused a minor.

184. Complaints continued after *Fr. C* resigned his position. In April 2005, an

anonymous complainant—whose identity was only revealed to the Diocesan Corporation’s Victim Assistance Coordinator—filed a complaint with the Diocesan Corporation to allege that, in 1977 or 1978, *Fr. C* had touched her breasts and fondled her genitals, when she was approximately sixteen-years old.

185. On or about May 23, 2006, the Diocesan Corporation learned that *Fr. C* intended to invite guests to a celebration and Mass at his home for his fortieth-year anniversary of ordination. The Diocesan Corporation also uncovered that *Fr. C* had offered to celebrate Mass for parishioners at his home for a small fee. Auxiliary Bishop Grosz contacted *Fr. C* to discuss these reports. According to a memo documenting the discussion, *Fr. C* admitted that he had invited fifty guests to a Mass at his home followed by a public reception. Grosz advised *Fr. C* that the Diocese had removed him from ministry and prohibited him from holding such a public function, wearing a Roman collar, or publicly performing the sacraments. Grosz documented *Fr. C*’s acquiescence: “After some discussion, including the fact that Bishop Grosz indicated that the diocese wanted to maintain respect for the privacy of [*Fr. C*] relative to why he left the priesthood, [*Fr. C*] finally agreed that he would be obedient to Bishop Kmiec in canceling the entire celebration.” Grosz’s memo also notes that he had been unable to contact *Fr. C* since October 2004, nearly two years before, showing that the Diocesan Corporation failed to reasonably monitor *Fr. C*.

186. In July 2014, *Fr. C* wrote to Bishop Malone. *Fr. C* explained that he “[was] one of the priests affected by the Bishops [sic] Charter,” and he thanked Malone for inviting him to the “Senior Priests cook-out” at the bishop’s residence. *Fr. C* noted that Malone’s invitation was the first he had received since “[he] was retired in 2002.” *Fr. C* also highlighted his treatment at the St. Luke Institute:

It's been an interesting, wild and event-filled journey since July 1990. The one event that changed my outlook was my experience at St. Luke's Through anger, despair, loneliness, sickness, I was able to use what I learned at St. Luke's . . . to survive this far.

Malone acknowledged this letter on August 1, 2014.

187. In February 2015, Complainant 3 filed a complaint with the Diocesan Corporation to allege that, in approximately 1983 or 1984, when he was about seven-years old, *Fr. C* had sexually abused him, including by fondling his penis through his clothing. The Diocesan Corporation failed to conduct a sufficient investigation of Complainant 3's allegations pursuant to the *Charter* and the *Essential Norms*.

188. In about February 2015, Fr. Zilliox prepared a summary of *Fr. C*'s file, which recorded the following concerns:

(v.) Where is the decree of suspension . . . ?

(vi.) What about the [internal] Investigation?

(vii.) Where was the Promoter of Justice in this case?

Asked during his testimony whether Zilliox could be mistaken about his assessment that the Diocesan Corporation had not conducted the internal investigation required under the *Charter*, Auxiliary Bishop Grosz responded: "I cannot answer that."

189. On March 12, 2015, Auxiliary Bishop Grosz prepared a memo regarding a call with *Fr. C*. At the outset, the memo notes that "Grosz eventually tracked down Father [C] who [was] presently staying with a friend in Florida." The memo records *Fr. C*'s denial of Complainant 3's allegations.

190. On or before July 23, 2015, Auxiliary Bishop Grosz asked diocesan attorneys for an update regarding the status of Complainant 3's allegations. In a July 23 response, counsel reported that the matter had been presented to the DRB and that "[t]his is one of those matters

that Fr. Zilliox wanted to consider to determine whether any report must be made to the [CDF].”
Fr. C’s file does not contain any presentation to the DRB.

191. In an undated letter to Bishop Malone, *Fr. C* reported that he had physical health issues and spent portions of the year in Florida. The letter apologizes “for the problems [*Fr. C*] caused the diocese” and thanked Malone “for [his] continued support, the continued pension check, the auto insurance, and health insurance.”

192. Among other things, the absence of documents indicating the Diocesan Corporation’s regular supervision of *Fr. C* and the belated discovery of *Fr. C*’s travels to Florida show that the Diocesan Corporation failed to reasonably monitor him.

193. On October 28, 2015, Bishop Malone issued a written decree, opening an internal investigation into *Fr. C*’s conduct. The same day, Malone issued a written decree appointing an investigator to review Complainant 3’s allegations, which had been originally received in February 2015. Malone’s decree, which appointed the investigator, notes that further investigation was warranted because the DRB had found that Complainant 3’s allegation seemed to be true; *Fr. C*’s file does not contain any written recommendations from the DRB. The decree also required the investigator to present a verbal and written report to the DRB within ninety days and specified that both the report and the DRB’s advice would be forwarded to Malone. *Fr. C*’s file does not contain any subsequent reports from the investigator.

194. On March 19, 2016, well after the deadline for delivery of the investigative report, a diocesan attorney prepared a one-sentence memo to his law firm’s file to record that the “[DRB had] discussed [Complainant 3’s] matter at the March meeting and noted that we are waiting to hear from the investigator.” Auxiliary Bishop Grosz testified to the Attorney General that he did not know why diocesan attorneys would write to their own file about the DRB.

195. In April 2017, diocesan counsel called Auxiliary Bishop Grosz to report that Complainant 3 could not be located. In his summary of that call, Grosz noted that counsel and Fr. Zilliox continued to prepare *Fr. C*'s referral to the CDF: "[Counsel] noted that he is working with Fr. Zilliox on this case and other cases to go to Rome."

196. In May 2017, diocesan counsel wrote to Fr. Zilliox regarding Complainant 3. The letter reports that the Diocesan Corporation's investigator could not obtain a response from Complainant 3. The letter also references supposed continuing efforts to refer *Fr. C* to the CDF: "At the last [DRB] meeting, we discussed that you would try to assemble a votum based on the material we have in the file." No *votum* was found in *Fr. C*'s file produced to the Attorney General.

197. In March 2018, the Diocesan Corporation publicly identified *Fr. C* on a list of "diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor."

198. *Fr. C*'s file contains an undated document entitled *Case Summary in accord with Canon 489 § 2 of the Code of Canon Law*, which states in part:

Summary of accusation: Inappropriate sexual behavior after serving [Complainant 1] alcoholic beverages

. . .

Response of accused: After hearing from [Complainant 1], Fr. [C] obtained an attorney who responded to [Complainant 1] and made an appointment to see the Bishop. He accepted the fact that he had abused a minor but found it difficult to admit it publicly. . . .

. . .

Final Settlement of the Case: . . . Fr. [C] continued to serve as . . . Pastor . . . until April 2002 when he was asked to resign his parish. This was a result of national developments concerning the abuse of minors by priests, and the adoption by the USCCB of the Charter for the Protection of Children and Young People. The

Charter necessitated that he be removed permanently from ecclesiastical ministry. His faculties were revoked and he could not present himself as a priest nor dress as a cleric. He was urged to retire.

199. As of November 2019, a disclosure on the Diocesan Corporation's website indicated that Bishop Malone would refer *Fr. C* to the CDF, confirming that Malone had not done so as of that time.

200. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to sufficiently conduct a timely internal investigation into allegations that *Fr. C* had sexually abused a minor; failing to seek the DRB's assessment or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. C*; and failing to refer *Fr. C* to the CDF. Instead, it made false or misleading statements to its beneficiaries; prepared false or misleading business records; and failed to reasonably monitor *Fr. C*. The Diocesan Corporation's actions concealed *Fr. C*'s conduct from the public and placed its beneficiaries at risk.

Fr. D

201. *Fr. D* was ordained in 1969.²⁴ His file contains no complaints of alleged sexual abuse of minors until May 2002. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to sufficiently conduct a timely, independent investigation into allegations that *Fr. D* had sexually abused minors; failed to seek the DRB's assessment or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. D*; and failed to refer or timely refer *Fr. D* to

²⁴ Unless otherwise noted, the allegations against *Fr. D* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. D* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

the CDF. Further, the Diocesan Corporation engaged in other misconduct by (a) creating false or misleading records to establish a purported, legitimate basis for *Fr. D*'s retirement and eligibility for associated benefits; (b) providing these benefits and other compensation to *Fr. D* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (c) failing to reasonably monitor *Fr. D*, exposing itself and minors to unnecessary risks.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

202. On May 1, 2002, Complainant 1 called Vicar General Cunningham to allege that a priest had molested him when he served as an altar boy thirty years earlier. Complainant 1 alleged that the priest had also molested others, including the Complainant's brother. Cunningham's summary of the call does not identify the accused priest, but the summary appears in *Fr. D*'s file. The Diocesan Corporation failed to conduct a timely, independent internal investigation into Complainant 1's allegations.

203. On or about June 5, 2002, Complainant 2 filed an anonymous complaint with the Diocesan Corporation through an attorney who withheld the name of the Complainant. Complainant 2 alleged that in the early 1970s, when he served as an altar boy, *Fr. D* had sexually abused him on multiple occasions over a period of approximately one year. In an unsigned letter dated June 10, 2002, contained within *Fr. D*'s file, diocesan attorneys told Complainant 2's attorney that the Diocesan Corporation would review the allegations but that the review could be complicated by the Complainant's anonymity. The Diocesan Corporation failed to conduct a sufficient, timely independent internal investigation into Complainant 2's allegations.

204. Within weeks of the *Charter*'s adoption on or about June 15, 2002, *Fr. D* went on medical leave. On July 8, 2002, Vicar General Cunningham prepared a memo documenting a call from *Fr. D*. The memo indicates that *Fr. D* called to report a colonoscopy showing "no

abnormalities” and to discuss his continuing medical exams related to his physical health. The memo states that *Fr. D* will be taking a “medical leave of absence” and be compensated during the leave as a priest with thirty-three years of service. The memo further notes that beginning in October 2003, *Fr. D* will be entitled to a medical pension of about \$420 per month. The memo makes no reference to the allegations of sexual abuse.

205. Internal diocesan records identify *Fr. D* as taking a “[m]edical leave of absence” on July 15, 2002, and retiring on September 1, 2003, when he was about sixty years old. The documents make no reference to *Fr. D*’s removal from ministry because of sexual abuse allegations.

206. Among other things, the absence of documentation in *Fr. D*’s file indicating the Diocesan Corporation’s regular supervision of *Fr. D* shows that the Diocesan Corporation failed to reasonably monitor him.

207. In about 2015, three years after Bishop Malone’s installation, Fr. Zilliox prepared a summary of *Fr. D*’s file, which included the following concerns: (a) “Where is the decree of suspension . . . ?”; (b) “What about the [internal] Investigation?”; and (c) “Where was the Promoter of Justice in this case?” During his testimony, Auxiliary Bishop Grosz was asked about Zilliox’s summary:

Q: . . . My question is whether Father Zilliox would be mistaken if he thought the Diocese did not conduct the investigation under the charter for [*Fr. D* and two other priests]?

A: I cannot answer that.

208. On or before June 1, 2016, a pastor contacted Auxiliary Bishop Grosz to express his concern with a recent offer by *Fr. D* to assist with Masses at the pastor’s parish and a senior residence. Grosz confirmed to the pastor that *Fr. D* was an “unassignable priest” and thus

prohibited from “functioning in that capacity.”

209. Auxiliary Bishop Grosz and Fr. Zilliox contacted diocesan attorneys on June 1, 2016, to discuss *Fr. D*. According to Grosz’s summary of the call, Grosz described the substance of the 2002 complaints against *Fr. D*. Grosz also informed Zilliox that he had called *Fr. D*, who told Grosz “that there was no decree of suspension issued nor did he seem to indicate what he was clearly told to do or not to do relative to his priestly ministry.”

210. Auxiliary Bishop Grosz met with *Fr. D* on June 2, 2016. Grosz’s summary of the meeting states that Grosz called the meeting to address the two allegations “which were discovered in [*Fr. D*’s] file.” During the meeting, Grosz confronted *Fr. D* with the allegations against him. With respect to Complainant 1’s allegations, *Fr. D* said that “he is not conscious of touching the boy’s genitalia” and that he may have “just grabb[ed] an altar boy around the waist or patt[ed] a boy on the buttocks.” When confronted with the anonymous complainant’s allegations, *Fr. D* identified the individual as Complainant 2 and noted that the child “liked to horseplay.” *Fr. D* stated that he might have accidentally touched Complainant 2 in the genital area and that he had touched Complainant 2’s leg because the boy was ticklish in the leg area.

211. During the same June 2, 2016 meeting, *Fr. D* told Auxiliary Bishop Grosz that in about June or July of 2002, Vicar General Cunningham had informed *Fr. D* that “[he] would be removed from active priestly ministry in light of the two allegations.” *Fr. D* added that, at that time, he had advised Cunningham that he would resign as a hospital chaplain.

212. *Fr. D* admitted during the June 2, 2016 meeting with Auxiliary Bishop Grosz that, after his removal from ministry, he had heard confessions and publicly celebrated Mass. Grosz’s summary of the meeting states that, following this admission, Grosz provided *Fr. D* with two documents, *Types of Sexual Harassment* and *Funeral Arrangements for Priests Restricted from*

Public Ministry but not Dismissed from the Clerical State.

213. On September 26, 2016, a diocesan attorney sent Auxiliary Bishop Grosz a report of his internal investigation into Complainant 1's and 2's allegations; as discussed above, diocesan attorneys lacked the required independence to investigate sexual abuse allegations pursuant to the *Essential Norms*. The attorney's report recounts his interviews of *Fr. D* and Complainants 1 and 2, conducted more than a decade after they had lodged their complaints. The report's conclusion consists of two paragraphs and does not contain any express findings. The conclusion section does relate that Complainant 1 "made a credible appearance" and that *Fr. D* did not deny the allegations, noting that "it seemed clear to [the diocesan attorney] that [*Fr. D*'s] actions are weighing heavily on his conscience." The report also notes that the DRB would discuss the matter in three days. No documentation of the planned DRB discussion is found in *Fr. D*'s file.

214. In May 2017, diocesan attorneys sent a letter to *Fr. Zilliox*, which states, in part, that "[a]t the last [DRB] meeting, Bishop Malone indicated that he wanted you to prepare a votum on this matter and that he would recommend that *Fr. [D]* be directed to lead a life of prayer and penance." There are no other records of the DRB's and Malone's assessments or anything to explain why Malone did not refer *Fr. D* to the CDF as required by the *Charter* and the *Essential Norms*.

215. In March 2018, the Diocesan Corporation publicly identified *Fr. D* on a list of "diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor." After this disclosure, the Diocesan Corporation received two more complaints, alleging that in about the 1970s, *Fr. D* had sexually abused minors, including through oral sex.

216. In about June 2018, the Diocesan Corporation received assistance from officials of other dioceses, including then-Judicial Vicar James Donlon of the Albany Diocese, to review cases that the Diocesan Corporation had failed to refer to the CDF. Donlon prepared a memo to Bishop Malone and Judicial Vicar Manganello, recommending that the Diocesan Corporation not seek *Fr. D*'s laicization. Donlon based his recommendation on *Fr. D*'s age and health as well as the weakness of the evidence against *Fr. D*. Notably, Donlon did not mention the 2018 complaints accusing *Fr. D* of engaging in sexual activity. Instead, Donlon only referred to two allegations in his recommendation, which he described as “[not] involv[ing] overt sexual activity but, rather, inappropriate touching.” The Attorney General found no evidence to support Donlon’s characterization of the complaints.

217. *Fr. D*'s file contains an undated, one-page document entitled *Case Summary: Allegations of Sexual Abuse*. In a section described as “Response of accused,” the document states that “in 2016 [*Fr. D*] admitted that Msgr. Cunningham had removed him from active ministry in 2002, and he went on medical leave for what was presented as unrelated health issues.” In a section described as “Diocesan or Institutional proceedings,” the document states that the “Diocese failed to accurately document their [sic] response to the 2002 accusations and it appeared that there had been no follow-up on the part of the diocese to the 2002 accusations.”

218. In about September and November of 2019, the Diocesan Corporation published disclosures on its website, entitled *Diocesan Priests with Substantiated Allegations of Abuse of a Minor*. These disclosures incorrectly represent that the Diocese removed *Fr. D* from ministry in 2018, contradicting internal diocesan documents that show that the Diocese removed *Fr. D* in 2002. In the November 2019 disclosure, the Diocesan Corporation indicated that it had referred *Fr. D* to the CDF, but *Fr. D*'s file does not contain any documents demonstrating a referral.

219. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to conduct timely and sufficient independent investigations into allegations that *Fr. D* had sexually abused minors; failing to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. D*; and failing to refer or timely refer *Fr. D* to the CDF. Instead, it prepared false or misleading business records and failed to reasonably monitor *Fr. D*. The Diocesan Corporation's actions concealed *Fr. D*'s conduct from the public and placed its beneficiaries at risk.

Fr. E

220. *Fr. E* was ordained in 1972.²⁵ As early as 1984, the Diocesan Corporation was on notice of a substantial likelihood that *Fr. E* had sexually abused minors. In 1989, the Diocesan Corporation placed *Fr. E* on administrative leave, and, by 1993, he had found a secular job, while still retaining his status as a priest. Years later, instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation failed to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. E*, and the Diocesan Corporation failed to refer *Fr. E* to the CDF. Further, the Diocesan Corporation engaged in other misconduct by (a) making false or misleading statements to its beneficiaries and (b) failing to reasonably monitor *Fr. E*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

221. After *Fr. E*'s ordination, he served in parishes until the Diocesan Corporation placed him on administrative leave in 1989. During this period, the Diocesan Corporation

²⁵ Unless otherwise noted, the allegations against *Fr. E* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. E* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

received at least two complaints alleging that *Fr. E* had acted inappropriately or sexually abused a minor.

222. Handwritten notes by Vicar General Trautman, dated April 1984, state:

I met with [Complainant 1 and his parents]. . . . They came to disclose that two of their sons, [Complainant 1], 21 yrs., and [Complainant 2], 16 yrs., had been propositioned by [*Fr. E*]. . . . [A] homosexual relationship did exist for a long period of time between [Complainant 2] and [*Fr. E*]. Older brother rejected advances, but did have initial involvement. . . . [Complainant 2] was 15 year [sic] old when he got involved with [*Fr. E*]; [*Fr. E*] admits charges. [*Fr. E*] says he and [Complainant 2] were involved “several times” and “only once” with older brother. This is admitted by [*Fr. E*].

[*Fr. E*] had boys stay overnight in Rectory [sic] & slept with them. He also used a home video recorder. He kept taking the boys to . . . swim[] (nude) [*Fr. E*] questioned boys under pretext of counselling about their sexual lives etc. Then he told them he would give them a “backrub” since he was an “athletic Director” etc. He aroused them. . . . This statement is factual.

. . . In my meeting with [*Fr. E*] he accused several other priests, giving names.

The notes do not identify the other priests named by *Fr. E*.

223. Other handwritten notes by Vicar General Trautman in *Fr. E*'s file state: “1984—Southdown prescribes medication . . . ‘any future incidents - - - should be interpreted as outright rejection of your support & self-made decision to leave priesthood.’”

224. Less than five months later, in January 1985, Vicar General Trautman prepared a memo documenting additional complaints and Southdown's reaction to *Fr. E*'s behavior:

[A parish priest] reported that a mother who is separated from her husband and a parishioner of his parish contacted him regarding [*Fr. E*] who, in the mother's view, is spending too much time with her teenage son. . . . [*Fr. E*] sees him approximately 3 or 4 times a week. . . .

Other signs of imprudence include: The buying of gifts and taking the individual out to dinner. . . .

These matters were reported to [Southdown and it] summoned the individual

In the meeting at Southdown, the individual admitted to all of the accusations; he

further agreed to turn back all the gifts that he had purchased for the individual, and he would make no more private appointments with young men. [The Southdown] staff [was] upset because this is a direct violation of the covenant/agreement between the individual and Southdown; since again patterns of exclusive friendship were being shown.

225. In mid-1989 the Diocese removed *Fr. E* from ministry and placed him on administrative leave. In August 1989, Auxiliary Bishop Trautman met with *Fr. E* and another priest, who accompanied *Fr. E* to the meeting. Trautman's memo documenting the meeting states that "[*Fr. E*] brought with him [another priest to the meeting], since he was afraid I was going to have a hidden agenda, such as having him sign laicization papers." At the meeting, Trautman reiterated that a final decision had been made and *Fr. E* should "progress toward a new life."

226. Almost four years later, in April 1993, *Fr. E*'s canonical adviser wrote to Bishop Head and Vicar General Cunningham to seek *Fr. E*'s return to ministry. The adviser noted that, since *Fr. E*'s leave, *Fr. E* had worked as a counselor at a mental health facility.

227. In October 1993, *Fr. E* wrote to Bishop Head to request an assignment, claiming that the Diocese lacked any basis to permanently remove him from ministry. He also stated that he was currently serving as the Clinical Program Director at a "psychiatric unit," and he maintained that he would not seek voluntary laicization. Head directed Vicar General Cunningham to prepare a response to *Fr. E*. In his letter response, Head rejected *Fr. E*'s request to re-enter ministry:

You are well aware that repeated instances of inappropriate behavior made it necessary to remove your priestly faculties. . . .

. . . It would be neither prudent nor just for me to concede the diocesan faculties to you and to grant you an assignment. . . .

[*Fr. E*], we have reviewed the information that we have received and of which you are cognizant. Therefore, I again suggest that it would be in your own

best interest and the best interest of the Church to seek laicization

228. *Fr. E* replied to Bishop Head in December 1993. *Fr. E* refused to seek laicization and insisted that he would continue to seek re-entry into ministry, claiming that diocesan files apparently contained “unsubstantiated allegations” against him.

229. In February 1994, *Fr. E* again asked Bishop Head if he could return to ministry. In his response, Head stated that *Fr. E* remained suspended because of *Fr. E*’s “inappropriate sexual behavior over a prolonged period of time and in a variety of assignments.” Head again urged *Fr. E* to seek laicization.

230. In March 1997, Complainant 3’s brother informed the Diocesan Corporation that in about 1982, *Fr. E* may have abused Complainant 3, who was sixteen years old at the time.

231. In December 1998, *Fr. E* followed up with Bishop Mansell regarding his request to have his faculties restored. In a January 1999 letter, Mansell rejected *Fr. E*’s request and recommended again that *Fr. E* seek laicization.

Defendants’ Violations of Sexual Abuse Policies and Secular Fiduciary Duties

232. After the *Charter* was adopted, *Fr. E* remained a priest on administrative leave. The Diocese took no steps to laicize him.

233. In September 2002, a reporter contacted the Diocesan Corporation about an upcoming story on *Fr. E* and an alleged victim’s contention that *Fr. E* had abused him in approximately 1978. The reporter’s questions included: “Where is [*Fr. E*] today?” The Diocesan Corporation’s Director of Communications responded: “We do not know.” Among other things, this admission plus the absence of documentation in *Fr. E*’s file indicating the Diocesan Corporation’s regular supervision of *Fr. E* show that the Diocesan Corporation failed to reasonably monitor him.

234. *Fr. E* died on January 17, 2010, in Rochester, New York. The next day, a local priest called Auxiliary Bishop Grosz to alert him to *Fr. E*'s death. Grosz told the priest "to keep the funeral 'low key' and not make references to the priesthood of [*Fr. E*]." Grosz's summary of this call records that "[Grosz] consulted the special files which indicate why [*Fr. E*] would not be returned to active ministry."

235. In March 2018, the Diocesan Corporation publicly identified *Fr. E* on a list of "diocesan priests who were removed from ministry, were retired, . . . left ministry after allegations of sexual abuse of a minor[, or . . . were] deceased priests with more than one allegation made against them."

236. Shortly after the publication of the list, Complainant 3 filed a complaint with the Diocesan Corporation, alleging that in approximately 1982 or 1983, on two separate occasions, when he was sixteen years old, *Fr. E* gave him alcohol and performed and attempted to perform oral sex on him while he was unconscious. In April 2018, Auxiliary Bishop Grosz contacted Complainant 3 to discuss the allegations. According to Grosz's summary of the call, Grosz said that "the case need[ed] to go through the [DRB]," which would meet in June 2018. *Fr. E*'s file contains no record of the DRB's assessment of Complainant 3's allegations.

237. In November 2018, *The Buffalo News* published a story alleging that in 1984 or 1985, *Fr. E* had sexually abused a minor and jokingly held a gun to the head of the alleged victim in connection with the abuse. *The Buffalo News* also reported that, when sought for comment, the Diocesan Corporation maintained that "[it] could not provide answers at the moment because [*Fr. E*'s] personnel file—along with the files of other priests accused of abuse—ha[d] been handed over to the state Attorney General's office" and that "[a]t some point, when it is returned to [the Diocesan Corporation], time frame unknown, [the Diocesan

Corporation] will be able to respond to [the newspaper's] questions.” The Attorney General never possessed any of the Diocese’s original files, including files concerning *Fr. E*.

238. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to seek or, alternatively, reasonably document the DRB’s assessment of sexual abuse allegations against *Fr. E* and by failing to refer *Fr. E* to the CDF. Instead, it made false or misleading statements to its beneficiaries and failed to reasonably monitor *Fr. E*. The Diocesan Corporation’s actions concealed *Fr. E*’s conduct from the public and placed its beneficiaries at risk.

Fr. F

239. *Fr. F* was ordained in 1963.²⁶ As early as 1986, the Diocesan Corporation was on notice of a substantial likelihood that *Fr. F* had sexually abused minors. Years later, instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to refer or timely refer *Fr. F* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) preparing false or misleading records to establish a purported, legitimate basis for *Fr. F*’s retirement and eligibility for associated benefits; (b) providing these benefits and other compensation to *Fr. F* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (c) failing to reasonably monitor *Fr. F*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

240. Prior to the adoption of the *Charter* and the *Essential Norms*, the Diocesan

²⁶ Unless otherwise noted, the allegations against *Fr. F* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. F* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

Corporation received at least two complaints alleging that *Fr. F* had sexually abused minors. During this period, *Fr. F* served in parishes and medical facilities.

241. In April 1986, sixteen-year-old Complainant 1 and his parents contacted the Diocesan Corporation to allege inappropriate behavior by *Fr. F*. Complainant 1 alleged that for several months “he ha[d] been receiving ‘rub-downs’ or massages from [*Fr. F*].” At first, Complainant 1 “was fully dressed; as time went on, he began to take his clothes off. First, a shirt, then his pants, etc. Eventually, these rub-downs included the private parts of his body.” The parents reported that Complainant 1 “frequently stayed overnight in the rectory when [*Fr. F*] was alone.” After summarizing the allegations, the unknown author of the diocesan document, which recorded these allegations, wrote: “I do not believe all this could be false.”

242. Shortly thereafter, Vicar General Cunningham met with *Fr. F*. *Fr. F* denied the allegations, admitting only that Complainant 1 had stayed in the rectory on several occasions and that he would sometimes hug the teen when the boy “was depressed.” *Fr. F* was “warned . . . that there could be severe legal consequences if [Complainant 1] went to the authorities.”

243. On April 15, 1986, Auxiliary Bishop Trautman and Vicar General Cunningham met with *Fr. F* to “suggest[] that it would be in [*Fr. F*]’s own interest to resign.” *Fr. F* agreed to resign, and the plan was for *Fr. F* to announce “several days off for health reasons,” and then to later “submit a letter of resignation.” Trautman also insisted that *Fr. F* seek therapy.

244. On April 28, 1986, *Fr. F* resigned as pastor. By letter, *Fr. F* advised Bishop Head that he had “consulted with Bishop Donald Trautman, V.G., and Rev. Msgr. Robert Cunningham, Chancellor, in the past few weeks,” and “wish[ed] to submit [his] resignation . . . due to reasons of continuing health problems as a result of a hypertension condition.”

245. By letter dated December 8, 1986, Southdown advised Auxiliary Bishop

Trautman that *Fr. F* had begun his in-patient treatment program.

246. In a December 23, 1986 letter to Southdown, Auxiliary Bishop Trautman outlined “the difficulties that led to the admission of Fr. [F]” and expressed disappointment about *Fr. F*’s lack of cooperation with Southdown. Trautman then detailed the allegations raised by Complainant 1 and emphasized that “[t]hese facts were not denied”:

It was admitted that the boy had been invited to spend overnight in the rectory on several occasions. This always occurred when the staff was not present in the rectory. On those occasions [*Fr. F*] would put his arm around the boy and hug him. In the words of the boy he was “all over me”. There was also a description of some lotion that was rubbed by [*Fr. F*] on the boy. The boy’s penis was rubbed. . . . I could give more graphic detail but I think it’s sufficient to state that there was admission that the boy stayed overnight one or two times a week in a four to five month period. . . . There was also a veiled threat that if the boy did not cooperate [*Fr. F*] would dock his pay since he was engaged in some work around the property of the church.

247. *Fr. F* did not complete his in-patient program at Southdown. In a February 1987 letter to *Fr. F*, Bishop Head wrote that he was “‘regrettably’ agreeing to [*Fr. F*]’s return to the Diocese of Buffalo because it was [his] hope and real expectation that [*Fr. F*] would enter fully into the programs offered at Southdown.”

248. In May 1987, the Diocesan Corporation received new allegations that *Fr. F* had sexually abused a minor. A therapist, on behalf of Complainant 2, alleged that *Fr. F* had sexually abused the Complainant in the early 1970s when he was fourteen or fifteen years old. Complainant 2 also reported to Vicar General Cunningham that he knew of “another young man . . . victimized” by *Fr. F*. Cunningham took notes of the alleged abuse:

Allegation involves oral sex; both men were slight in build; Fr. invited them to use weights in basement after they worked around parish; after using weights, he would give them a rub-down; it was a complete rub down—first on the back; then he would tell them to roll over; he would rub their genital area; place his mouth over victim’s penis; . . . kiss around genital area; kept victim’s underpants; gave victim money for new underwear.

249. From November 1987 until 2003, *Fr. F* served as a chaplain to a medical facility and a weekend assistant to a parish.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

250. On August 25, 2003, eight months after the adoption of the *Essential Norms*, Bishop Mansell issued a Decree of Suspension, revoking *Fr. F*'s faculties pursuant to the *Essential Norms*. The decree prohibited *Fr. F* from publicly officiating Mass, administering the sacraments, wearing clerical garb, or publicly presenting himself as a priest. *Fr. F*'s file lacks any indication that the Diocesan Corporation publicly disclosed this decree.

251. Diocesan records maintained to reflect a priest's status record that *Fr. F* retired on September 1, 2003. The records do not accurately reflect that the Diocese removed *Fr. F* from ministry because of sexual abuse allegations.

252. Over a decade later, in 2016, the Diocesan Corporation received a call from a friend of *Fr. F*, asking why *Fr. F* had not been included in an article regarding retired priests. According to a memo prepared by Auxiliary Bishop Grosz, Grosz contacted the caller to "indicate that this specific matter is a private matter basically between the Bishop and the particular priest"; "a very confidential kind of thing"; and "a matter handled only between the priest and his diocesan bishop." The caller reported to Grosz that *Fr. F* had recently celebrated Mass. Grosz's memo includes a postscript summary of Grosz's follow-up contact with *Fr. F*:

[*Fr. F*] concurred with the response which Bishop Grosz had given to [the caller].

...

... [*Fr. F*] said he does not celebrate or concelebrate the annual Mass for the class of 1952. He sits in the front row to assist [another priest], who has problems with his eyesight. He does not wear vestments.

Bishop Grosz then read the last two sentences of the August 25, 2003 decree of suspension of Father [*F*], which notes: "*He is not permitted to celebrate Mass publicly or to administer the sacraments. He is not permitted to wear clerical*

garb or to present himself as a priest.”

253. The absence of documentation in *Fr. F*'s file indicating that the Diocesan Corporation regularly supervised him shows that the Diocesan Corporation failed to reasonably monitor him.

254. In early March 2018, after the Diocesan Corporation announced its settlement fund for complainants of alleged clergy sex abuse, the Diocesan Corporation received a third complaint that alleged that in the mid-1960s, *Fr. F* had engaged in inappropriate behavior with Complainant 3, who was fifteen to seventeen years old at the time of the alleged misconduct.

255. In March 2018, the Diocesan Corporation publicly identified *Fr. F* on a list of “diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.”

256. In about September 2019, the Diocese, in a disclosure on its website, indicated that it had removed *Fr. F* from ministry in 2003 and that it had referred *Fr. F* to the CDF. Referral documents were not produced to the Attorney General.

257. The Diocesan Corporation violated the *Charter* and the *Essential Norms* by failing to refer or timely refer *Fr. F* to the CDF. Instead, it prepared false or misleading business records and failed to reasonably monitor *Fr. F*. The Diocesan Corporation's actions concealed *Fr. F*'s conduct from the public and placed its beneficiaries at risk.

Fr. G

258. *Fr. G* was ordained in 1975.²⁷ As early as 1991, the Diocesan Corporation was on

²⁷ Unless otherwise noted, the allegations against *Fr. G* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. G* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

notice of a substantial likelihood that *Fr. G* had inappropriately touched young girls. Years later, instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation failed to conduct internal investigations into allegations that *Fr. G* had sexually abused minors; failed to seek or, alternatively, reasonably document the DRB's assessment of allegations against *Fr. G*; and failed to refer or timely refer *Fr. G* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) disregarding the risk of sexual abuse; (b) preparing false or misleading records that approved *Fr. G*'s out-of-state ministry despite the Diocesan Corporation's knowledge of "8 reported incidents of sexually inappropriate behavior with female children"; (c) making false or misleading statements regarding its response to allegations against *Fr. G*; and (d) providing benefits and compensation to *Fr. G* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

259. Prior to 2002, *Fr. G* served in parish ministry except for a brief time in about 1990 when the Diocese may have temporarily removed him from ministry.

260. In February 1989, a parishioner sent a letter to Bishop Head, reciting several complaints about *Fr. G*, including the alleged "molest[ation of] a young girl." *Fr. G*'s file lacks any record of a resolution of this allegation.

261. In September 1990, two nuns from *Fr. G*'s parish sent letters to Bishop Head regarding *Fr. G*'s behavior with young girls. The first observed that parents had objected to his seating girls on his lap to tickle them. The second claimed that *Fr. G* had embraced and tickled girls and inappropriately brushed up against an eighth-grade girl.

262. In mid-May 1991, Vicar General Cunningham prepared a memo to the file regarding a meeting with Bishop Head, *Fr. G*'s pastor, and the principal of the parish's school.

The group discussed allegations that *Fr. G* had engaged in inappropriate behavior with children, such as hugging, placing them on his lap, and touching.

263. *Fr. G's* file contains a document dated May 30, 1991; titled *Rev. G: Social History*; and prepared for Bishop Head's signature. The document shows Head's basis for sending *Fr. G* to the St. Luke Institute for a mental health evaluation:

Since [September 1990], Father [G]'s assignment was changed Those changes took place after a number of discussions between myself and Father [G] concerning his actions with young people which are, at least, gravely imprudent and highly immature. . . .

We had a lengthy discussion about this pattern of activity that seems to be somewhat compulsive in nature. It is a serious situation and one in which I have told Father [G] we must take some definite action. . . .

. . .

In summary, this is a young priest who seemingly is not aware of the inappropriate actions that he performs by tickling young girls of kindergarten and first and second grade age and sitting them on his lap and being over demonstrative in his expression of attention to them. The record shows that he has also been imprudent in his actions with older girls of seventh and eighth grade age.

264. In July 1993, the Diocesan Corporation received a letter from the principal, who had met with the Diocesan Corporation in 1991. She reported that she had barred *Fr. G* from the school and terminated his involvement in all school activities due to: his alleged "inappropriate" conduct with girls at a school picnic; questions about whether his alleged misconduct had led students to withdraw from the school; and reports that he had "rub[ed] a little girl's legs" and accompanied an eight year old on rides during a school outing to a theme park.

265. In June 1994, diocesan staff informed Vicar General Cunningham about complaints by two adult sisters alleging that, prior to 1984, *Fr. G* had inappropriately touched them on numerous occasions when they were minors. The staff reported that *Fr. G* had

“sexual[ly] abuse[d], molest[ed], and fondl[ed]” the girls even though the women had not used these terms. The sisters specifically alleged that while *Fr. G* swam with them, he had “pick[ed] them up in the water and touch[ed] their buttocks or their breasts.” When Cunningham interviewed *Fr. G* about these accusations, *Fr. G* denied any wrongdoing.

266. In an August 1998 letter, *Fr. G* wrote to Bishop Mansell to inquire about his prospects for a pastorate. His letter highlights his positive work and claims that previous complaints against him were found to lack merit. Mansell replied that “[*Fr. G* was] fully aware of the past difficulties which necessitate[d] . . . moving most cautiously.” One year later, in another letter to Mansell, *Fr. G* continued to defend his record with children and even claimed that the St. Luke Institute had concluded that it was unnecessary to restrict his ministry with female minors.²⁸ In November 1999, Mansell appointed *Fr. G* pastor.

Defendants’ Violations of Sexual Abuse Policies and Secular Fiduciary Duties

267. In April 2003, less than a year after the *Charter*’s adoption, Complainant 1 sent a letter to Bishop Mansell, alleging inappropriate behavior by *Fr. G* and requesting an inquiry into *Fr. G*’s behavior with young girls.²⁹ *Fr. G*’s file does not contain any decrees opening or closing a diocesan investigation into Complainant 1’s claims. The Diocesan Corporation failed to conduct an independent investigation into Complainant 1’s allegations pursuant to the *Charter* and the *Essential Norms*.

268. In November 2005, Complainant 2 filed a complaint with the Diocesan Corporation, alleging that in 1983, when she was eleven years old, *Fr. G* had approached her in class, walked to her seat, and “slid his finger behind her back and into her underwear.” Auxiliary

²⁸ The Attorney General has not been able to verify this assertion.

²⁹ The actual letter from Complainant 1 is missing from *Fr. G*’s file. This allegation is based on a 2015 document entitled *Rev. G: Case Development – Synthesis*.

Bishop Grosz interviewed *Fr. G*, who denied these allegations.

269. Between October 1 and 5, 2006, *Fr. G* submitted to a mental health assessment at Southdown. A month later, in a letter to Auxiliary Bishop Grosz, *Fr. G* discussed the assessment and its related written report. In response, by letter dated November 8, 2006, Grosz acknowledged receipt of *Fr. G*'s letter and thanked him "for [his] willingness to go to The Southdown Institute for a recent assessment in accord with the wishes of the [DRB]." No record of the DRB's wishes or the DRB's deliberation that preceded its request appear in *Fr. G*'s file. The Diocesan Corporation failed to reasonably document the DRB's assessment.

270. On October 10, 2006, Chancellor Paul Litwin issued a letter of good standing so that *Fr. G* could perform an out-of-state baptism. The letter certifies that: (a) "[w]e have never received any information that would cause us to restrict [*Fr. G*'s] ministry in any way"; (b) "[t]o the best of my knowledge, there have never been any reports of improprieties on [*Fr. G*'s] part"; and (c) "there is nothing to our knowledge in [*Fr. G*'s] background that would restrict any ministry with minors." In an undated note attached to the file copy of this letter, Litwin's successor, Chancellor Regina Murphy wrote: "This letter was written after: 8 reported incidents of sexually inappropriate behavior with female children [and p]sychological evaluations at both St. Luke Institute 1991 and Southdown 2006."

271. The DRB met to consider *Fr. G* in November 2006. In a memo to the file, Auxiliary Bishop Grosz, based on his conversation with a diocesan attorney, recorded the substance of the DRB's purported recommendations. Grosz's memo states that the DRB agreed that: (a) "[*Fr. G*] will follow the recommendations of [an unidentified] report not to be alone around children" and (b) "[t]he [DRB would] ask[] for permission of Father [*G*] to have only . . . [the] psychologist on the [DRB] to [sic] review the assessment made by the Southdown

Institute.” Grosz’s memo concludes that *Fr. G* agreed to the DRB’s requests and recommendations. Grosz’s secondhand report of the DRB’s action does not reasonably document the DRB’s review and recommendations.

272. In early March 2007, a diocesan attorney documented his recent meeting with the DRB member, who had been authorized to review *Fr. G*’s Southdown assessment:

[The DRB member] believes that Fr. [G] should continue to follow the recommendations made by the evaluators. More specifically, because of the perception that his behavior is sometimes inappropriate, Fr. [G] should have an adult present whenever he is with a young person. [The DRB member] believes that it is sufficient simply to confirm with Fr. [G] that he is following the recommendation. That view is consistent with what the [DRB] recommended—that is, letting Fr. [G] “self-enforce” the evaluators’ recommendations.

After this meeting, Auxiliary Bishop Grosz “encouraged Father [G] to contact [him] every couple months to ‘check in.’” There is no record that the Diocesan Corporation implemented any further restrictions on or monitoring of *Fr. G*.

273. Over eight years later, *Fr. G* remained in ministry and, on or about October 19, 2015, a deacon notified the Diocesan Corporation that: (a) families had left *Fr. G*’s parish because of *Fr. G*’s behavior and (b) in one alleged, recent incident, *Fr. G*, “instead of reaching to talk to [Complainant 3,] a female child[,] . . . pulled her into ‘his crotch area.’” On October 21, 2015, three years after Bishop Malone’s installation, Auxiliary Bishop Grosz met with Fr. Zilliox—at Malone’s request—to review the deacon’s information and the “file of complaints” against *Fr. G*. Diocesan documents record that “Zilliox expressed grave concern regarding the ‘track record’ of incidents of inappropriate behavior and boundary issues.”

274. On October 22, 2015, Bishop Malone, Auxiliary Bishop Grosz, and Fr. Zilliox met to discuss *Fr. G*. According to Grosz’s summary of the meeting:

Bishop Grosz informed all present that he spent 4 hours the night before processing the entire file of complaints about Father [G] and inappropriate

behavior. . . .

Bishop Grosz indicated that he is very concerned, as is Father Zilliox . . . , that in the entire file there are 8 incidents actually reported to the Diocese relative to inappropriate behavior on the part of Father [G].

Malone then placed *Fr. G* on administrative leave.

275. On October 23, 2015, Complainant 4's father spoke with Auxiliary Bishop Grosz and alleged that since June 2014, *Fr. G* had engaged in inappropriate behavior with his seven-year-old daughter, such as allowing her to straddle his lap and rubbing her shoulders.

276. On October 28, 2015, Bishop Malone issued a written decree, opening an internal investigation into the October 19, 2015 complaint that he described as allegations of the sexual abuse of a minor.

277. On October 30, 2015, in response to *Fr. G's* appeal of his administrative leave, Bishop Malone affirmed his decision and emphasized that recent complaints led Malone to uncover that the Diocesan Corporation had previously failed to conduct internal investigations required by the *Essential Norms*:

This latest allegation led me to review your file only to discover that other issues and incidents had occurred over the course of your priesthood, with no previous investigations and no appropriate resolutions of the issues according to the norms adopted and confirmed in . . . the Particular Law in the Conference of Bishops' Essential Norms of 2003/ revised in 2006

Therefore, based on the current complaint and the fact that no previous formal investigation has ever been conducted or concluded; [sic] I am compelled to consider these current complaints and allegations as a furtherance of the case moving forward.

278. By letter dated November 2, 2015, Bishop Malone appointed an investigator and requested that the investigator submit a written report to the DRB within ninety days. The letter also notes that Malone received the DRB's recommendation that information "at least seems to be true" that *Fr. G* had possibly engaged in sexual misconduct with Complainant 4 and other

young girls. Other than this reference, *Fr. G's* file does not contain documentation reflecting this specific recommendation by the DRB.

279. Four months later, in March 2016, a diocesan attorney sent a two-sentence memo regarding *Fr. G* to his law partner: "At the [DRB] meeting, we discussed the fact that [the investigator] is investigating this and will get back to us soon. We also discussed that in the future we should consider giving investigators a deadline for completing the investigation." The Diocesan Corporation failed to reasonably document the DRB's assessment through this internal law-firm memo or in other documents.

280. In June 2016, Bishop Malone asked the investigator to also investigate the 1994 complaints by the two sisters.

281. In July 2016, the investigator completed his written report that recounted his interviews of the two sisters, Complainant 3's father, Complainant 4's parents, *Fr. G*, and three character witnesses for *Fr. G*. The report concludes that the families of Complainants 3 and 4 were "being honest and truthful in the complaints."

282. In September 2016, Bishop Malone issued a written decree closing the internal investigation of *Fr. G's* conduct and referring him to the CDF. The decree notes that Malone called a special meeting of the DRB in August 2016. *Fr. G's* file lacks any formal record of this special meeting.

283. Despite the September 2016 decree referring *Fr. G* to the CDF, Bishop Malone did not actually make the referral until July 2017. In the referral, Malone maintained that *Fr. G's* conduct had constituted the sexual abuse of minors. Malone also proposed, based on the DRB's unanimous vote, that *Fr. G* be sentenced to a life of prayer and penance. *Fr. G's* file lacks any formal record of this unanimous vote.

284. In August 2017, the CDF responded and directed Bishop Malone to initiate a canonical trial for *Fr. G*. The trial had not been completed as of December 2019.

285. The Diocesan Corporation did not include *Fr. G* on its March 2018 public list of priests “who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.”

286. On June 11, 2018, a news outlet ran a story on *Fr. G*'s removal from ministry in 2015. The article claims that parishioners had not been told the basis for *Fr. G*'s removal. According to the article, “[Bishop] Malone [told the newspaper that *Fr. G*] was removed from his parish assignment because ‘there is a sensitive investigation going on’[;] . . . that the results of the investigation have been sent to officials at the Vatican in Rome[; and that he was] awaiting guidance from the Vatican on how to proceed.”

287. On June 28, 2018, the Diocesan Corporation released the following public statement:

On June 27, [2018,] the [DRB] met and received the report of [an] Investigator . . . who was asked to investigate recent allegations of abuse against three (3) priests of the Diocese of Buffalo. Previously, the [DRB] has reviewed the report of an investigation conducted by [another investigator], regarding allegations made against Rev. [G].

As a result of these reports and the recommendations of the [DRB], Bishop Richard J. Malone has made the following determinations:

Allegations against . . . Rev. [V] and Rev. [G] have been substantiated and they will remain on administrative leave while the results of the Diocesan investigation are reviewed by the [CDF], who will make the final determination.

These June 2018 statements falsely implied that the Diocesan Corporation was awaiting a determination from the CDF regarding *Fr. G*. In fact, ten months earlier, in August 2017, the CDF had directed the Diocesan Corporation to conduct a trial of *Fr. G*'s alleged misconduct.

288. In November 2018, the Diocesan Corporation belatedly added *Fr. G* to its March

2018 list of priests “who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.”

289. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to conduct internal investigations into allegations that *Fr. G* had sexually abused minors; failing to seek or, alternatively, reasonably document the DRB’s assessment of sexual abuse allegations against *Fr. G*; and failing to refer or timely refer *Fr. G* to the CDF. Instead, it prepared false or misleading business records; made false or misleading statements regarding its response to allegations against *Fr. G*; and disregarded the risk that *Fr. G* could sexually abuse minors. The Diocesan Corporation’s actions concealed *Fr. G*’s conduct from the public and placed its beneficiaries at risk.

Fr. H

290. *Fr. H* was ordained in 1985.³⁰ As early as 1993, when the Diocese removed *Fr. H* from ministry, the Diocesan Corporation was on notice of a substantial likelihood that *Fr. H* had sexually abused minors. Years later, instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to sufficiently conduct internal investigations into allegations that *Fr. H* had sexually abused minors; failed to seek or, alternatively, reasonably document the DRB’s assessment of sexual abuse allegations against *Fr. H*; and failed to refer *Fr. H* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) allowing *Fr. H*—after his removal from ministry—to hold a position on site at a parish; (b) preparing false or misleading records to

³⁰ Unless otherwise noted, the allegations against *Fr. H* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. H* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

establish a purported, legitimate basis for his retirement and eligibility for associated benefits; (c) providing these benefits and other compensation to *Fr. H* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (d) failing to reasonably monitor *Fr. H*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

291. Prior to the adoption of the *Charter* and the *Essential Norms*, the Diocesan Corporation received at least two complaints alleging that *Fr. H* had sexually abused minors. Records show that during this period, the Diocese assigned *Fr. H* to parishes until it removed him from ministry in 1993.

292. In February 1987, Bishop Head received a letter from the Apostolic Administrator of a Pennsylvania diocese. The letter encloses a diary kept by Complainant 1 and explained that Complainant 1 had met *Fr. H* at least twice during a family trip to Buffalo. The diary recounts alleged sexual acts between Complainant 1, a minor at the time, and *Fr. H*.

293. In March 1987, a diocesan priest prepared a report to Bishop Head regarding the priest's investigation into *Fr. H*'s conduct. The report concludes that "it would seem that the incidents did indeed happen." The "incidents" referred to *Fr. H* exposing himself to Complainant 1 and pulling down Complainant 1's pants to touch the minor's genitals.

294. Complainant 1 wrote to the Diocesan Corporation on August 4, 1987, and requested a meeting to discuss his "problems" with *Fr. H*. On August 19, 1987, Auxiliary Bishop Trautman prepared a memo to the file regarding his meeting with Complainant 1. According to the memo, Trautman told the teen that *Fr. H* had emphatically denied the allegations. The memo also describes Complainant 1 as a liar and a "very sick person" but concludes, without elaborating, that "[t]here was still definite imprudence."

295. In November 1992, Vicar General Cunningham documented a meeting with Complainant 2 regarding his allegations against *Fr. H*. The documentation indicates that Complainant 2 alleged that *Fr. H* had urged him to “get naked” and “touched” him to “help” him ejaculate. The documentation also indicates that alcohol and oral sex were involved. The document does not disclose Complainant 2’s age at the time of the alleged conduct but estimates that the abuse occurred when he was about nineteen or twenty years old. Cunningham’s memo, which does not identify the priest by name, is contained in *Fr. H*’s file.

296. In February 1993, Complainant 2 met with Vicar General Cunningham and asked whether *Fr. H* had admitted the allegations. In Cunningham’s memo of this meeting, he documented his response to Complainant 2 that “[*Fr. H*] had different perceptions of what took place, but that the accusations were serious enough to ensure that [*Fr. H*] would receive counseling.”

297. On March 4, 1993, Auxiliary Bishop Grosz drafted a memo to Bishop Head, providing a detailed plan for announcing *Fr. H*’s exit from his parish. The plan emphasized non-disclosure of the true circumstances surrounding *Fr. H*’s departure:

1) [The pastor] . . . will note that Bishop Head has informed Father [*H*] that his term of assignment of five years at [the parish] has been completed. Thus, in accord with Diocesan policy Father [*H*] would be receiving a new assignment.

...

3) Bishop Grosz advised both Father [*H*] and [the pastor] to be very prudent in their response to questions presented to them by parishioners. Bishop Grosz advised that no details of the arrangements for Father [*H*]’s period of time off or his future assignment be presented to anyone. The less said, the better.

...

5) . . . [The pastor] . . . seemed to intimate that he has concluded that there is more of a problem with Father [*H*] than merely burn-out. Bishop Grosz has not revealed any confidential information to [the pastor].

6) Bishop Grosz advised Father [H] not to use the word “sabbatical” in referring to his “time-off” between his departure from [the] parish and his time of re-assignment by Bishop Head. . . . [T]hat term is a technical term, which would imply that if [sic] priests knew that Father [H] was taking a sabbatical, they would begin to ask questions.

298. On information and belief, the Diocesan Corporation publicly announced that *Fr. H* was leaving his parish in March 1993 because his five-year term of service had expired.

299. On March 4, 1993, Vicar General Cunningham directed the Diocesan Corporation’s Payroll Department to place *Fr. H* on the “salary list” and to cover *Fr. H*’s benefits “as for any other priest ‘sick and on leave.’”

300. In September 1994, the Diocesan Corporation agreed to pay *Fr. H* a monthly sum and to continue covering his health, dental, and car insurance.

301. On August 2, 1995, Vicar General Cunningham advised *Fr. H* that Bishop Mansell agreed with the St. Luke Institute’s recommendation that Mansell remove *Fr. H* from ministry for three years.

302. A handwritten note on Vicar General Cunningham’s stationary, contained in *Fr. H*’s file and dated August 11, 1995, states: “Bishop—3 instances (1) 14 yr old-[Complainant 1] (2) 19 yr old-[Complainant 2] (3) Priest of another diocese.” The note also states: “Priest Status: on leave—3 yr period working on own—no public ministry.”

303. In January 1996, Auxiliary Bishop Grosz met with Complainant 2. They discussed Complainant 2’s interest in the priesthood and his “negative relationship” with a priest; Grosz’s memo documenting the meeting does not identify the priest. With respect to the “negative relationship,” Grosz asked Complainant 2 if he could forgive “Fr. X.”

304. On or about September 8, 1998, *Fr. H* sent a letter to Bishop Mansell, requesting that Mansell clarify *Fr. H*’s status, including his ministry restrictions. The letter states that if

Mansell did not respond, *Fr. H* would seek relief from the Vatican.

305. On or about September 17, 1998, Bishop Mansell wrote to the Vatican in anticipation of *Fr. H*'s contact. Mansell's letter discusses three incidents: (a) "an inappropriate relationship with a fourteen year old" followed by counseling for *Fr. H*; (b) "inappropriate sexual activity" with an eighteen-year-old man; and (c) "an inappropriate relationship with a priest of another diocese." Mansell concluded that "[n]o bishop, once the facts are known, would risk the possibility of Father [*H*] hurting another individual."

306. On or about December 9, 1998, the Vatican acknowledged receipt of Bishop Mansell's letter and noted that "[a]s in all similar cases, it is always well to have the advice of a canonist well versed in procedural law to ensure avoidance of possible pitfalls along the way."

307. Although internal diocesan records imply that *Fr. H* remained removed from ministry, he continued to work in the Diocesan Corporation after 2002.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

308. In March 2002, Vicar General Cunningham recorded a complaint that *Fr. H* was wearing clerical garb and introducing himself as a priest. Cunningham's memo notes that "[*Fr. H*] is currently doing work at [a] Parish." Bishop Mansell directed Cunningham to inquire into the complaint, citing the "many times" he had warned *Fr. H* "not to dress like a priest or have people refer to him as 'Father.'"

309. In May 2002, Vicar General Cunningham met with *Fr. H* and told him "that he would not be able to resume ministry and that he should not wear a collar or introduce himself as 'Father.'" Cunningham acknowledged during the meeting that the "Diocese continue[d] to support [*Fr. H*] and cover his health insurance," but Cunningham warned that this support could not continue indefinitely. Cunningham's memo also states that "[a]t the present time, [*Fr. H*] is

working as an organist at [a worship site] and refurbishing statues at [a parish].”

310. In June 2002, less than two weeks after the adoption of the *Charter*, Vicar General Cunningham memorialized a call from Complainant 3 regarding *Fr. H*'s alleged inappropriate sexual behavior before 1993. No details of the alleged behavior or Complainant 3's age at the time of the alleged behavior are included in the memo.

311. On July 11, 2002, Vicar General Cunningham met with *Fr. H* to discuss Complainant 3's allegations. *Fr. H* indicated that he had met Complainant 3 when the Complainant was fourteen years old. *Fr. H* denied touching Complainant 3. The Diocesan Corporation failed to sufficiently investigate Complainant 3's allegations pursuant to the *Charter* and the *Essential Norms*.

312. During the July 11, 2002 meeting, Vicar General Cunningham cited the *Charter* to reiterate *Fr. H*'s restrictions, explaining that “in light of the Bishops' Charter in Dallas, [(a)] that there was no possibility that he would ever return to a form of public ministry; [(b)] that he should not identify himself as a priest; and [(c)] that he should not be wearing clerical garb.” *Fr. H* responded that “since [their] last meeting, he was no longer wearing clerical garb or identifying himself as a priest.”

313. On or about October 20, 2003, Complainant 2 informed the Diocesan Corporation that he met *Fr. H* at age seventeen. Complainant 2 alleged that one night, while he was “out of it,” he realized that *Fr. H* was performing oral sex on him. Complainant 2 also suggested that this incident contributed to his suicide attempt. The Diocesan Corporation failed to adequately investigate Complainant 2's allegations.

314. *Fr. H* continued to work at a diocesan worship site or parish. The Diocesan Corporation was on notice of complaints that *Fr. H* failed to comply with the Diocesan

Corporation's directives not to publicly present himself as a priest. The Diocesan Corporation also received reports that *Fr. H* wore clerical garb and maintained an art studio at the worship site and allowed others to refer to him as "Father."

315. On June 4, 2004, Auxiliary Bishop Grosz memorialized a meeting with *Fr. H* of the same day. In the meeting, Grosz decided that *Fr. H* would continue to work in and receive compensation from the Diocesan Corporation. He rejected *Fr. H's* suggestion that such work was inconsistent with the *Charter*:

[*Fr. H*] questioned Bishop Grosz as to whether or not in light of the present "safe environment" situation, he might leave his position as organist at [the worship site] and perhaps move his studio to another place. That would mean he would need some additional compensation.

After some discussion, Bishop Grosz and [*Fr. H*] agreed to the present [sic]: [*Fr. H*] would continue with his present employment, that is, serving as organist at [the site] as well as to continue his work in his art studio.

If a problem arises relative to the above employment, [*Fr. H*] will then apply to the Diocese for greater financial compensation from the Diocese, which compensation would be similar to the compensation of a "retired priest."

316. On June 18, 2004, Auxiliary Bishop Grosz and *Fr. H* again discussed issues related to compensation. Grosz informed *Fr. H* that if he obtained a full-time job, he would forfeit his diocesan salary and benefits. Grosz also told *Fr. H* that he would receive a diocesan pension in the future. In a memo summarizing the conversation, Grosz shed light on the Diocesan Corporation's rationale for compensating and retiring priests accused of sexual abuse:

[*Fr. H*] was concerned that if, perhaps, he would no longer have specific employment, would he be able to move into the area of being considered "retired" as a priest. Bishop Grosz indicated that he did not foresee that happening, simply because the instances in which [*Fr. H*] was involved were not of a public nature. Of course, [*Fr. H*] is only 46 at the time. The retirement benefits would be for individuals who would be older as well as, perhaps, part of a public scandal situation.

[*Fr. H*] does not envision himself seeking laicization. The incidents in which he

was involved are not of a public nature.

Bishop Grosz encouraged [*Fr. H*] to continue his work in his studio at [a worship site], as well as to serve as organist at [the site].

. . . Bishop Grosz encouraged [*Fr. H*] to exercise extreme prudence in regard to all of his words and actions. [*Fr. H*] was very open to doing that, as he has been doing.

317. Further internal diocesan documents reflect concern that *Fr. H*'s work in the Diocesan Corporation was not appropriate in light of the sexual abuse allegations and the mandates of the *Charter*. Yet at the same time, the Diocesan Corporation sought to preserve *Fr. H*'s access to continued compensation and benefits. On February 28, 2008, Bishop Kmiec decided that the Diocesan Corporation would terminate *Fr. H* but provide him with "full benefits as a retired priest."

318. On March 3, 2008, Vicar General Slubecky wrote in an internal memo that he had met with *Fr. H* on that date and that *Fr. H* "understood that . . . the new policies initiated by the Catholic Conference warranted his separation as an organist for [the worship site] and renting art space."

319. In a letter to *Fr. H* dated the same day, Vicar General Slubecky notified *Fr. H* that "[w]e *recently* learned that you are serving as the organist at [the worship site]." (emphasis added). The letter terminated *Fr. H* pursuant to the *Charter* and diocesan policy because "a single incident of inappropriate conduct precludes further service."

320. In a separate letter to *Fr. H* dated March 3, 2008, copying Bishop Kmiec and others, Vicar General Slubecky confirmed *Fr. H*'s retirement benefit of \$1,450 per month (\$865 benefit and \$585 for room and board) in addition to the Diocesan Corporation's coverage of *Fr. H*'s health, dental, and car insurance.

321. Internal diocesan records maintained to record a priest's status reflect that *Fr. H*

retired on March 3, 2008. These records falsely state that *Fr. H* retired, when, in fact, the Diocesan Corporation removed him from a worship site because it believed that he had sexually abused a minor.

322. Among other things, the absence of documentation indicating the Diocesan Corporation's regular supervision of *Fr. H*, shows that the Diocesan Corporation failed to reasonably monitor him.

323. In March 2018, the Diocesan Corporation publicly identified *Fr. H* on a list of "diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor." After this disclosure, the Diocesan Corporation received two complaints alleging that between 1986 and 1993, *Fr. H* had sexually abused two minors.

324. In about September 2019, the Diocesan Corporation, in a disclosure on its website, indicated that it would refer *Fr. H* to the CDF, confirming that Bishop Malone had not done so as of that time. No documents reflecting a referral to the CDF were produced in response to the Attorney General's subpoena.

325. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to sufficiently conduct internal investigations into allegations that *Fr. H* had sexually abused minors; failing to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. H*; and failing to refer *Fr. H* to the CDF. Instead, it prepared false or misleading business records; failed to reasonably monitor *Fr. H*; and disregarded the risk that *Fr. H* could sexually abuse minors. The Diocesan Corporation's actions concealed *Fr. H*'s conduct from the public and placed its beneficiaries at risk.

Fr. I

326. *Fr. I*, ordained in 1976, served in ministry until his removal in 1994.³¹ His file records serious concerns about *Fr. I* albeit without any description of the conduct prior to his removal and mental health treatment. The Diocesan Corporation recorded receiving complaints about *Fr. I* in 2005 and 2018. But instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation failed to conduct an internal investigation into allegations that *Fr. I* had sexually abused a minor; failed to seek the DRB's assessment of sexual abuse allegations against *Fr. I*; and failed to refer *Fr. I* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) providing him benefits and other compensation even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him and (b) failing to reasonably monitor *Fr. I*, exposing itself and minors to unnecessary risks.

Pre-2002 Concerns

327. Between *Fr. I*'s ordination and his removal in 1994, he served in parish ministry and was appointed pastor in 1991.

328. In about May 1979, teachers from a parish school met with Vicar General Trautman and Assistant Chancellor Cunningham to discuss their "serious concerns" and "anxieties." *Fr. I*'s file lacks any further information about the teachers' "concerns" or "anxieties." After the meeting, the teachers sent a letter, thanking the Diocese for its time. The letter does not identify *Fr. I* as a subject of the meeting but is contained within his file and "[*Fr. I*]" was handwritten at the top of the letter.

³¹ Unless otherwise noted, the allegations against *Fr. I* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. I* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

329. In 1982 the Diocesan Corporation's Superintendent of Schools drafted a memo to Vicar General Trautman, which states: "I have included with this memo the latest 'documents' in the on-going crisis in the parish. As you can see by the anonymous letter, nothing has changed and, in fact, has probably become worse." On the memo, Trautman handwrote "I destroyed" next to the Superintendent's reference to the anonymous letter. The memo does not reference *Fr. I* but is contained in his file.

330. Twelve years later, on or about February 1, 1994, Vicar General Cunningham spoke with a parishioner about *Fr. I*. In a memo documenting the call, Cunningham "assured [the parishioner] that we would look into the matter which was brought to our attention and see Father received any professional help he needed." On or about February 24, 1994, Cunningham arranged for *Fr. I* to visit the St. Luke Institute for an evaluation.

331. On May 3, 1994, Vicar General Cunningham sent *Fr. I* the following proposed statement for *Fr. I*'s resignation:

For some weeks, I have considered taking some time away from priestly responsibilities for the purpose of personal vocational discernment. I have discussed this matter with Bishop Head, and he has accepted my proposal. Therefore, I am resigning as pastor effective May 22, 1994.

My plans are to be out of the diocese for a period of several months.

Fr. I communicated this statement to his parish.

332. A diocesan form reflects that in May 1994, *Fr. I* temporarily left active ministry because of "[m]atters of conscience and discipline—primarily financial." Based on information in *Fr. I*'s file, "financial" may have referred to *Fr. I*'s alleged gambling. Decades later, the Diocesan Corporation, in a public document titled *Diocesan Priests with Substantiated Allegations of Abuse of a Minor*, would disclose that it removed *Fr. I* from ministry in 1994.

333. On or about May 26, 1994, *Fr. I* began receiving mental health treatment at the

St. Luke Institute in Maryland. In May 1995, *Fr. I* and Vicar General Cunningham spoke by phone. *Fr. I* told Cunningham that he would remain in the Washington, D.C. area to work and receive treatment from the St. Luke Institute. Cunningham refused to pay *Fr. I* his full salary because “[*Fr. I*] was expected to get a job and to support himself.” Cunningham agreed, however, to pay *Fr. I* a monthly sum and provide him with health and car insurance.

334. In February 1996, *Fr. I* updated Vicar General Cunningham on his mental health treatment, including his counseling for “sexual addiction and other related items.”

335. In March 1996, Vicar General Cunningham sent *Fr. I* funds to assist with the payment of car insurance, noting that “[a]s we have discussed previously, it is important to make yourself self-sufficient through the employment opportunities which you have.”

336. In October 1997, Bishop Mansell and *Fr. I* discussed *Fr. I*'s status as a priest and his finances. Mansell rejected *Fr. I*'s request to return to active ministry because of the reports in *Fr. I*'s file; Mansell did not elaborate on the “reports.”

337. The diocesan form, which records *Fr. I*'s temporary removal from ministry, also reflects that *Fr. I* permanently left active ministry in 1997 because of “[m]atters of conscience and discipline—primarily financial.”

338. In August 1998, Vicar General Cunningham responded to an Employment Verification questionnaire for *Fr. I*. Cunningham confirmed *Fr. I*'s reason for leaving the Diocesan Corporation as “burned out.” Cunningham rated *Fr. I* as “average” in all areas, which included overall performance; relationship with supervisor and peers; and dependability. In response to whether Cunningham would re-hire *Fr. I*, Cunningham selected “no,” adding “[n]ot at this time.”

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

339. In August 2005, Complainant 1 wrote to the Diocesan Corporation to allege that, beginning in 1978, when he was twelve years old, *Fr. I* gave him drugs and alcohol; repeatedly raped him for about three years; and threatened him with death if he disclosed the abuse. The Complainant also reported that he had attempted suicide on several occasions and had developed addictions to drugs and alcohol as well as other serious psychiatric difficulties. In response to Complainant 1's letter, Bishop Kmiec apologized, offered counseling, and represented that *Fr. I* had left ministry in the mid-1990s. The Diocesan Corporation failed to otherwise investigate Complainant 1's allegations.

340. The Diocesan Corporation appears to have continued to provide some benefits to *Fr. I* until at least June 2006, when a diocesan memo confirmed that the Diocesan Corporation would be immediately cancelling his health and dental insurance.

341. Among other things, the absence of documentation indicating that the Diocesan Corporation regularly supervised *Fr. I* shows that the Diocesan Corporation failed to reasonably monitor him.

342. In March 2018, the Diocesan Corporation publicly identified *Fr. I* on a list of "diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor." After this disclosure, the Diocesan Corporation received two more claims that *Fr. I* had allegedly sexually abused minors in 1976 and 1982.

343. In about November 2019, the Diocesan Corporation, in a disclosure on its website, indicated that it would refer *Fr. I* to the CDF, confirming that Bishop Malone had not done so as of that time. No documents reflecting a referral to the CDF were produced in response to the Attorney General's subpoena.

344. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to conduct an internal investigation into allegations that *Fr. I* had sexually abused a minor; failing to seek the DRB's assessment of sexual abuse allegations against *Fr. I*; and failing to refer *Fr. I* to the CDF. The Diocesan Corporation also failed to reasonably monitor *Fr. I*. The Diocesan Corporation's actions concealed *Fr. I*'s conduct from the public and placed its beneficiaries at risk.

Fr. J

345. *Fr. J* was ordained in 1979.³² *Fr. J*'s file records concerns about his conduct early in his tenure, but not until March 2004, did the Diocesan Corporation record receiving complaints of his alleged sexual abuse of minors. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to sufficiently conduct an internal investigation into allegations that *Fr. J* had sexually abused a minor; failed to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. J*; and failed to refer or timely refer *Fr. J* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) preparing false or misleading records to establish a purported, legitimate basis for *Fr. J*'s retirement and eligibility for associated benefits; (b) providing these benefits and other compensation to *Fr. J* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (c) failing to reasonably monitor *Fr. J*, exposing itself and minors to unnecessary risks.

³² Unless otherwise noted, the allegations against *Fr. J* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. J* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

Pre-2002 Concerns

346. Prior to his suspension in 2007, *Fr. J* served in parish ministry. In October 1986, he received a performance evaluation of his parish work. Among other things, the evaluation documents that *Fr. J* engaged in “strange behavior,” including “decid[ing] that school officials were interfering” when he was asked to cease ““rough house”” with children.

347. In February 1988, the Diocesan Corporation received information that during one of *Fr. J*'s homilies, he recounted that he had been walking in the woods with his gun and began to cry because the Church had no use for him. He also said that he sympathized with those driven out of the Church, such as the divorced, homosexuals, and those who had abortions. *Fr. J* remained at this parish until his suspension in 2007.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

348. On or about March 1, 2004, Complainant 1's mother filed a complaint with the Diocesan Corporation, alleging that in 1975 *Fr. J* had taken her son, a minor at the time, to a movie and fondled him. The mother also alleged that she had confronted *Fr. J*, who did not deny the accusation. Diocesan records suggest that Complainant 1 did not provide a statement to the Diocesan Corporation at this time.

349. On or about March 12, 2004, Diocesan Administrator Cunningham asked Msgr. Jerome Williams, Coordinator of the Priests' Personnel Board, to meet with *Fr. J*. Two days later, Williams prepared a memo documenting his March 12 meeting with *Fr. J*. The memo states that *Fr. J* denied the mother's allegations and concludes that “[*Fr. J*] has a reputation as a very matter of fact, straight-forward person, almost to a fault. From our conversation, I have no reason to doubt his honesty.”

350. In August 2004, the DRB met and purportedly reviewed Complainant 1's case. A

document summarizing the DRB's review of the mother's allegation states that: (a) the mother's accusation was *Fr. J's* first complaint; (b) *Fr. J* denied the allegation; (c) the mother originally claimed that the abuse had occurred in 1975 but then later revised the approximate date to 1978 or 1979; (d) *Fr. J* was not ordained or assigned to the relevant parish until 1979; (e) the movie referenced by the mother was not released until 1980; and (f) the Diocesan Corporation's Victim Assistance Coordinator was directed to contact Complainant 1 for further investigation. This information about the DRB is contained in a portion of an incomplete memo sent to Auxiliary Bishop Grosz from diocesan attorneys.

351. Two years later, on September 14, 2006, Complainant 1's parents met and submitted another complaint to Auxiliary Bishop Grosz. According to Grosz's memo of the meeting, the parents recounted that in about 1978, *Fr. J* had taken their son to a movie. While in *Fr. J's* car, *Fr. J* touched the boy's genitals and tried to kiss the boy until he pushed *Fr. J* away, saying "[m]y mom told me about this." Also on September 14, 2006, Complainant 1 came forward and alleged that *Fr. J* had sexually abused him in 1980. The Diocesan Corporation failed to conduct a full, independent investigation into Complainant 1's allegations.

352. On September 27, 2006, Auxiliary Bishop Grosz met with *Fr. J* and questioned him about Complainant 1's allegations. *Fr. J* denied the allegations.

353. That same day, Bishop Kmiec placed *Fr. J* on administrative leave. In a memo of the same date, Auxiliary Bishop Grosz notes his "hope[] that the next meeting of the [DRB] would be scheduled soon, so that the entire matter could be addressed at that particular meeting, as soon as possible."

354. In October 2006, Auxiliary Bishop Grosz called *Fr. J*. Grosz's notes of the call read: "He refuses to go for an assessment. He spoke about early retirement. I said 'no.'"

355. In a November 2, 2006 memo to the file, Auxiliary Bishop Grosz memorialized a Msgr. Wall's recent disclosure to Grosz that, "several years ago," Bishop Mansell had asked Wall to meet with Fr. [J] to discuss an allegation that "[Fr. J had] inappropriately touched a young person." Grosz's memo also records that *Fr. J* "indicated [to Wall] that he had merely put his hand on the leg of a young person." Grosz's memo does not reflect (a) the approximate date of the meeting between Wall and *Fr. J*; (b) the identity of the "young person"; (c) the approximate age of the young person; (d) any action taken in response to the meeting; or (e) the nature of *Fr. J*'s touching.

356. On November 2, 2006, Auxiliary Bishop Grosz called *Fr. J* and informed him that the next DRB meeting would occur on November 17, 2006. Grosz also told him that "he wanted to have the meeting scheduled as soon as possible, so that this matter could be quickly resolved and Father [J] could move on." Grosz asked *Fr. J* about his previous conversation with Msgr. Wall. *Fr. J* confirmed the substance of his conversation with Wall but stated that he could not recall whether the "young person" was Complainant 1.

357. On November 22, 2006, a diocesan attorney advised Auxiliary Bishop Grosz that at the DRB's November 17, 2006 meeting, the DRB had purportedly determined that: (a) *Fr. J* was required to submit to a mental health assessment; (b) if *Fr. J* agreed to the assessment, the DRB would re-review the matter; and (c) if *Fr. J* objected to the assessment, then the DRB would recommend his removal from ministry. Grosz recorded these DRB recommendations and determinations in a memo to the file.

358. Notes within *Fr. J*'s file indicate that he still refused to undergo an assessment as of December 2006.

359. On March 30, 2007, Bishop Kmiec issued a Decree of Suspension to *Fr. J*

pursuant to the *Essential Norms*. The Decree of Suspension revoked *Fr. J*'s faculties and prohibited him from publicly celebrating Mass, administering the sacraments, wearing clerical garb, or publicly presenting himself as a priest. *Fr. J*'s file lacks any indication that the Diocesan Corporation publicly disclosed this decree.

360. Internal diocesan documents maintained to record a priest's status reflect *Fr. J* retired on April 1, 2007, when he was about sixty-two years old. These documents falsely imply that *Fr. J* resigned in the ordinary course when, in fact, the Diocesan Corporation had suspended and retired him from ministry because of sexual abuse allegations.

361. On or about April 24, 2007, Bishop Kmiec and *Fr. J* discussed *Fr. J*'s retirement benefits. The same day, Kmiec memorialized *Fr. J*'s benefits in a letter, which stated that he would receive \$1,000 per month (consisting of \$400 for room and board as well as \$600 for retirement) and health, dental, and car insurance.

362. Auxiliary Bishop Grosz admitted during his testimony to the Attorney General that he could not effectively monitor *Fr. J* because *Fr. J* did not return his calls: "I tried and attempted to contact [*Fr. J*]. And if he doesn't contact me, what can I do." When asked whether he could have taken other steps to reach *Fr. J*, Grosz testified: "I would need to look into that." The Diocesan Corporation failed to reasonably monitor *Fr. J*.

363. In March 2018, the Diocesan Corporation publicly identified *Fr. J* on a list of "diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor." In the months following this disclosure, the Diocesan Corporation received two more complaints alleging that *Fr. J* had sexually abused two minors between 1979 and 1986.

364. In about September 2019, the Diocesan Corporation, in a disclosure on its

website, indicated that it had referred *Fr. J* to the CDF; however, referral documents were not produced to the Attorney General.

365. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to sufficiently conduct an internal investigation into allegations that *Fr. J* had sexually abused a minor; failing to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. J*; and failing to refer or timely refer *Fr. J* to the CDF. Instead, it prepared false or misleading business records and failed to reasonably monitor *Fr. J*. The Diocesan Corporation's actions concealed *Fr. J*'s conduct from the public and placed its beneficiaries at risk.

Fr. K

366. *Fr. K* was ordained in 1974.³³ In 2004, he was arrested for and pled guilty to possession of child pornography. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to seek or, alternatively, reasonably document the DRB's assessment of *Fr. K* and failed to refer or timely refer *Fr. K* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) disregarding the risk of sexual abuse by urging and allowing *Fr. K* to do volunteer work; (b) providing benefits and other compensation to *Fr. K* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (c) failing to reasonably monitor *Fr. K*, exposing itself and minors to unnecessary risks.

³³ Unless otherwise noted, the allegations against *Fr. K* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. K* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

367. *Fr. K* began his parish ministry in October 1974. He served in three different parishes and the diocesan tribunal between 1974 and 2004.

368. On February 26, 2004, while *Fr. K* served as the Administrator of two parishes, the Diocesan Corporation announced his arrest for child pornography and removed him from ministry. The *Associated Press* reported that at *Fr. K*'s rectory, federal agents recovered about 100 pornographic images, including images of “naked children [and] prepubescent children engaging in oral sex with adult males.” That same day, Diocesan Administrator Cunningham suspended *Fr. K* pursuant to the *Essential Norms*. The related Decree of Suspension revoked *Fr. K*'s faculties and prohibited him from publicly saying Mass, administering the sacraments, dressing in clerical garb, or publicly presenting himself as a priest.

369. In March 2004, *Fr. K* retained an attorney to defend him in his criminal case; the Diocesan Corporation agreed to pay his attorneys' fees. At about the same time, *Fr. K* began receiving mental health treatment at the St. Luke Institute.

370. In June 2004, *Fr. K* pled guilty to possessing child pornography.

371. In October 2004, the St. Luke Institute discharged *Fr. K*.

372. In February 2005, Auxiliary Bishop Grosz submitted a letter to the judge in *Fr. K*'s criminal case. Grosz asked the judge to consider a sentence that did not involve jail time. The letter also notes that Grosz knew *Fr. K* for thirty-seven years, since the two attended the seminary together, and that “[*Fr. K* had] served God and the Roman Catholic Church as a fine and upstanding priest.”

373. In March 2005, *Fr. K* was sentenced to thirty-seven months imprisonment and two years of supervised release. The court also ordered that, during *Fr. K*'s supervised release,

he would receive alcohol treatment and be prohibited from drinking alcohol.

374. In June 2006, *Fr. K* wrote to Auxiliary Bishop Grosz from prison to ask about two items. He asked whether the Diocesan Corporation would assist him in locating a residence after his release. And he inquired about his clerical status. In about April 2007, Grosz forwarded *Fr. K*'s questions to Bishop Kmiec, who sent them to diocesan attorneys. The attorneys purportedly prepared recommendations for the DRB but the recommendations are not found in *Fr. K*'s file.

375. In May 2007, Auxiliary Bishop Grosz confirmed to *Fr. K* that, after his release, *Fr. K* would be (a) assisted by the Diocesan Corporation in his search for a residence; (b) classified as an inactive priest on permanent leave but not retired; (c) offered compensation for his living expenses; (d) eligible for benefits, including a pension; and (e) entitled to health and dental insurance as well as a retreat allowance. This letter, contained within *Fr. K*'s file, is unsigned but appears to have been sent to *Fr. K*.

376. On December 14, 2007, Fr. James Croglio, a diocesan counselor, drafted a memo to Vice Chancellor LiPuma. The memo summarizes Croglio's call with the St. Luke Institute:

[A St. Luke official] said that the [CDF] sees child internet pornography and child abuse in the same light. Therefore, the Dallas Charter "kicks in" and options are few.

St. Luke's does have a "halfway house" specifically for priests coming out of prison. . . . [The official] said that guys coming out of prison have been dehumanized and sometimes need a place for healing. It is usually a three month stay. It helps the guys transition . . . sometimes for laicization, sometimes to seek options for other jobs. (This would be my recommendation.)

Another option would be for [*Fr. K*] to continue to live in a "home"; e.g., retirement, nursing, etc. The Diocese would contract a "safety plan" with him in an effort to guide and protect both the Diocese and [*Fr. K*].

[The official] did say that many Dioceses make a "settlement" (financial) with priests who are in [*Fr. K*]'s situation. . . .

377. On or about December 26, 2007, *Fr. K* was released from prison. After his

release, from time to time, he would meet with a support group and, separately, with Auxiliary Bishop Grosz for “accountability meetings.”

378. Internal diocesan documents maintained to record a priest’s status reflect that *Fr. K* retired on January 9, 2008. At the time, the Diocesan Corporation considered *Fr. K*’s retirement benefits as (a) \$1,450 (\$865 as a retirement benefit and \$585 for room and board) and (b) health, dental, and car insurance.

379. In a January 2009 call, *Fr. K* told Auxiliary Bishop Grosz, among other things, that he was a Level 1 Sex Offender and had not gambled since March 2008.

380. In August 2009, Auxiliary Bishop Grosz drafted a memo documenting issues discussed during *Fr. K*’s support-group meeting. Those issues included the potential for *Fr. K*’s work as a volunteer or in a secular position:

Grosz noted that [*Fr. K*] would need to exercise extreme prudence relative to such a position, in light of the fact that his name and his reputation have been part of public records. In any case, [*Fr. K*] indicated in his job application, he would have to indicate that he did prison time for a felony. Bishop Grosz cautioned that perhaps it would be best for [*Fr. K*] to “lay low” in light of the fact that he is still receiving his compensation and benefits from the Diocese. Should he receive some kind of employment, that might jeopardize his compensation from the Diocese. . . .

There was some discussion about serving as a volunteer somewhere. [*Fr. K*] indicated that will still involve a revelation that he is a felon and a level one relative to the level of sex offenders.

381. In March 2010, Auxiliary Bishop Grosz sent *Fr. K* a note regarding *Fr. K*’s report from the St. Luke Institute. The note expresses concern about *Fr. K*’s “high risk areas”:

I would ask you to prayerfully re-read and reflect upon the first paragraph on page 5 of that report relative to the “High Risk Areas of Alcohol, Gambling, and Computer Use”. . . . I pray that the Holy Spirit will continue to give you the strength to address adequately and prudently the high risk areas as mentioned in the report.

Although this note is unsigned, it appears to have been sent to *Fr. K*.

382. On April 7, 2010, Auxiliary Bishop Grosz prepared a memo to document *Fr. K*'s support-group meeting of the same day. At the meeting, the group discussed *Fr. K*'s presence in parishes and some objection by at least one parish. *Fr. K* also expressed a desire to drink alcohol and gamble in moderation because his probation had ended in December 2009.

383. On April 12, 2010, Auxiliary Bishop Grosz memorialized his warning to *Fr. K* about the effects of any conditional drinking or gambling:

. . . Grosz once more expressed . . . his disappointment with the attitude of [*Fr. K*] that [*Fr. K*] feels he can still experiment with alcohol and gambling and find that as appropriate behavior. . . .

Bishop Grosz once more reiterated the precarious condition of [*Fr. K*] relative to his desire to “play games” relative to consumption of alcohol and his ability to gamble. Bishop Grosz noted the precarious situation relative to his relationship with the diocese. Bishop Grosz noted that should [*Fr. K*] continue this inappropriate behavior, there is a possibility of considering him as a candidate for laicization. That would mean that [*Fr. K*] would no longer be part of the Diocese of Buffalo and would be out on his own completely.

384. In May 2010, Auxiliary Bishop Grosz prepared a memo to the file regarding Msgr. Popadick's verbal report of a recent support-group meeting for *Fr. K*. At the meeting, *Fr. K* agreed to refrain from drinking any alcohol and to not maintain a computer in his home. *Fr. K* also expressed a willingness to volunteer, for example, by driving a parishioner to Mass on Sundays. In his verbal report, Popadick told Grosz that *Fr. K* could also volunteer at a mission. And, according to the memo, the mission welcomed *Fr. K*'s service and “[n]o one would need to know that [*Fr. K*] was a priest.”

385. In December 2010, Auxiliary Bishop Grosz memorialized certain items discussed at *Fr. K*'s support group. Those items included opportunities for *Fr. K* to volunteer and socialize with other priests. During the meeting, Grosz informed the group that *Fr. K* could volunteer at a mission, a parish food pantry, or a nonprofit affiliated with the Diocesan Corporation.

386. In June 2011, Auxiliary Bishop Grosz and *Fr. K* discussed the potential for *Fr. K* to volunteer at two nonprofits. *Fr. K*, however, was concerned that a background check would serve as an obstacle to this work.

387. In June 2012, *Fr. K* told Auxiliary Bishop Grosz that he intended to ask his attorney if he could be removed from the sex-offender list. In a memo summarizing this conversation, Grosz acknowledged “[t]hat would mean that [*Fr. K*] could be totally free, for example, to live in a Priest Retirement Home which might be near a school.”

388. In a July 2012 meeting with Auxiliary Bishop Grosz, *Fr. K* advised that his “ministry” consisted of driving retired priests to their doctors and socializing with priests at the Sheehan and O’Hare Residences.

389. In April 2013, Auxiliary Bishop Grosz contacted the USCCB—at Bishop Malone’s instruction—for guidance to assist Malone in determining whether to allow *Fr. K* to participate in a Mass with his seminary classmates for their fortieth-year anniversary of ordination. After Grosz provided a USCCB official with *Fr. K*’s “background,” the official noted that it was “important to be consistent relative to the implementation of the Charter.” Grosz and the official decided that “it would be inopportune to give permission for Father [*K*] to concelebrate Mass with his classmates.”

390. On or about May 2, 2013, Bishop Malone sent a letter to *Fr. K* that addressed two of *Fr. K*’s requests. First, Malone rejected *Fr. K*’s request to reside in the Sheehan Residence, implying that a Buffalo ordinance prohibited this move because the residence is near a Catholic school. Second, Malone explained that he could not permit *Fr. K* to participate in a Mass celebrating his and his classmates’ ordination anniversary because of the *Charter*’s provisions and other counsel received by the Diocesan Corporation.

391. In June 2014, Auxiliary Bishop Grosz met with *Fr. K* for an “accountability meeting.” In Grosz’s summary of the meeting, he documented, among other things, *Fr. K*’s recent gambling to which Grosz did not object:

How do you feel today?

[*Fr. K*] responded with a 9 because he has been going to the casino two times monthly, which is what his support group decided (as Bishop Grosz previously asked [*Fr. K*] to do). [*Fr. K*] also consulted with Fr. Croglia, who noted it would be good for [*Fr. K*] to go to the casino for relaxation and entertainment. Bishop Grosz concurred with the recommendations of Fr. Croglia and [*Fr. K*]’s support group. Bishop Grosz also cautioned [*Fr. K*] to be sure he will not become addicted to gambling.

392. Two years later, Auxiliary Bishop Grosz memorialized another “accountability meeting,” noting that “[a]fter six months, Father [*K*] finally called Bishop Grosz to schedule an appointment for his monthly Chancery accountability meeting which took place [today].” Grosz advised *Fr. K* that “upon reviewing several of the reports from St. Luke Institute . . . nowhere in any of the reports was there any idea of Father returning to drinking alcohol, going to a casino, or having a computer in his home.” *Fr. K* noted that his support group had not met for about six months and “Grosz encouraged Father [*K*] to convene the group as soon as possible and keep on a regular schedule for those meetings [because t]he support group meetings are important for [*Fr. K*] and his recovery.” *Fr. K*’s file lacks any records explaining Grosz’s change in approach to *Fr. K*’s gambling. Among other things, the absence of these records along with evidence which indicates that the Diocesan Corporation did not regularly supervise *Fr. K* for periods of time, show that the Diocesan Corporation failed to reasonably monitor him.

393. In March 2018, the Diocesan Corporation publicly identified *Fr. K* on a list of “diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.”

394. In about September 2019, seven years after Bishop Malone's installation, the Diocesan Corporation, in a disclosure on its website, indicated that it had referred *Fr. K* to the CDF. Referral documents were not produced to the Attorney General.

395. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to seek or, alternatively, reasonably document the DRB's assessment of *Fr. K* and failing to refer or timely refer *Fr. K* to the CDF. Instead, it failed to reasonably monitor *Fr. K*, a registered sex offender, and disregarded the risk that *Fr. K* could sexually abuse a minor. The Diocesan Corporation's actions placed its beneficiaries at risk.

Fr. L

396. *Fr. L* was ordained in 1978, served in a parish shortly thereafter, and then transferred to a Florida diocese in 1983.³⁴ Documents in *Fr. L*'s file show that, while in Florida, he voluntarily left the priesthood for about sixteen years, from 1986 to 2002. When he returned to ministry in Florida, two sexual abuse complaints were made against him. The complaints involved Buffalo minors or concerned his conduct at the time he served as a priest in the Buffalo Diocese. After *Fr. L*'s resignation in 2003, the Diocesan Corporation received an additional complaint related to his conduct during his tenure in the Buffalo Diocese. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation failed to sufficiently conduct internal investigations into allegations that *Fr. L* had sexually abused minors; failed to seek the DRB's assessment of sexual abuse allegations against *Fr. L*; and failed to refer *Fr. L* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by failing to reasonably

³⁴ Unless otherwise noted, the allegations against *Fr. L* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. L* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

monitor *Fr. L*, exposing itself and minors to unnecessary risks.

Pre-2002 Concerns

397. In May 1983, *Fr. L* asked Bishop Head for permission to transfer to the Diocese of St. Petersburg, Florida, to be closer to his family. Head granted this request, and in November 1983, *Fr. L* transferred to a parish in Florida.

398. In December 1985, *Fr. L* informed Bishop Head that he had left his Florida assignment because the St. Petersburg Diocese had made him “angry and bitter.” *Fr. L* thus asked Head for a one-year leave of absence to “evaluate what [he] should do [and to sort out his] many conflicting feelings.” *Fr. L* later explained to Head that he needed the leave, in part, because of disagreements he had with Church doctrine. Head never formally granted *Fr. L*’s request for a leave.

399. According to the St. Petersburg Diocese, for the next sixteen years *Fr. L* left ministry and worked for a state agency dedicated to child services.

Defendants’ Violations of Sexual Abuse Policies and Secular Fiduciary Duties

400. In early 2002, *Fr. L* approached the St. Petersburg Diocese about resuming his ministry. On information and belief, *Fr. L* remained incardinated in the Buffalo Diocese, which meant that the Buffalo Diocese retained authority over his clerical status. Bishop Robert N. Lynch of the St. Petersburg Diocese sent Bishop Mansell a letter in March 2002, seeking Mansell’s consent to *Fr. L*’s return to ministry. Mansell did not object.

401. In April 2002, the St. Petersburg Diocese assigned *Fr. L* to a Florida parish.

402. In June 2003, Complainant 1 filed a complaint with the St. Petersburg Diocese, alleging that in 1983, when he was thirteen years old and a Buffalo resident, *Fr. L* had returned to Buffalo and traveled with Complainant 1 and Complainant 1’s brother to Florida for a

vacation. Complainant 1 later told investigators from the St. Petersburg Diocese that *Fr. L* had taken him and his brother to tourist attractions and that at night, *Fr. L* had shared a bed with Complainant 1. Complainant 1 also told investigators that on the last day of the trip, he told *Fr. L* he did not want to leave. In response, *Fr. L* allegedly hugged Complainant 1, removed his underwear, and performed oral sex on the boy.

403. In July 2003, the St. Petersburg Diocese notified the Diocesan Corporation of Complainant 1's claim. The Diocesan Corporation was also advised that *Fr. L* had denied the allegations. The Diocesan Corporation failed to sufficiently investigate Complainant 1's allegations pursuant to the *Charter* and the *Essential Norms*.

404. In August 2003, the St. Petersburg Diocese notified Bishop Mansell that it would place *Fr. L* on voluntary leave until the case was resolved.

405. Complainant 1's legal claims against the St. Petersburg Diocese, the Diocesan Corporation, and *Fr. L* were settled and included a monetary contribution from the Diocesan Corporation.

406. In October 2003, the Diocesan Corporation received another complaint of sexual abuse against *Fr. L*. Complainant 2 alleged, among other things, that in the late 1970s when he was about age thirteen, *Fr. L* engaged in oral sex with him. The Complainant also alleged that *Fr. L* had pushed him onto a bed in the rectory and touched and kissed him. *Fr. L*'s file does not contain any decrees opening or closing a diocesan investigation into Complainant 2's claims. The Diocesan Corporation failed to sufficiently investigate Complainant 2's allegations pursuant to the *Charter* and the *Essential Norms*.

407. On October 28, 2003, *Fr. L* resigned from the St. Petersburg Diocese. In a letter accepting his resignation and copying Bishop Mansell, Bishop Lynch told *Fr. L* that due to his

resignation, his priestly faculties were revoked, and he was prohibited from publicly holding himself out as a priest or celebrating Mass.

408. In November 2003, the Diocesan Corporation received an anonymous complaint against *Fr. L*. The complaint alleges that in the late 1970s, when the complainant was in the eighth grade, *Fr. L* and another priest took him to a cabin and attempted to persuade the boy to walk, swim, and eat in the nude. The Diocesan Corporation failed to conduct a sufficient, independent investigation of this allegation pursuant to the *Charter* and the *Essential Norms*.

409. Among other things, the absence of documentation indicating that the Diocesan Corporation regularly supervised *Fr. L* shows that the Diocesan Corporation failed to reasonably monitor him.

410. In March 2018, the Diocesan Corporation publicly identified *Fr. L* on a list of “diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.”

411. A year later, in a March 2019 letter, counsel for the Diocesan Corporation advised the Attorney General that it had begun the process of referring *Fr. L* to the CDF.

412. In about September 2019, the Diocesan Corporation, in a disclosure on its website, publicized additional information about *Fr. L* and other priests identified in its March 2018 list. The information identifies various priests who would be referred to the CDF. *Fr. L* is not identified as a priest the Diocesan Corporation intends to refer to the CDF.

413. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to sufficiently conduct internal investigations into allegations that *Fr. L* had sexually abused minors; failing to seek the DRB’s assessment of sexual abuse allegations against *Fr. L*; and failing to refer *Fr. L* to the CDF. The Diocesan Corporation also failed to reasonably

monitor *Fr. L.* The Diocesan Corporation's actions concealed *Fr. L.*'s conduct from the public and placed its beneficiaries at risk.

Fr. M

414. *Fr. M* was ordained in 1952.³⁵ In 2003 and 2004, the Diocesan Corporation received three complaints that *Fr. M* had sexually abused minors. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to sufficiently conduct internal investigations into allegations that *Fr. M* had sexually abused a minor; failed to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. M*; and failed to refer *Fr. M* to the CDF. Further, the Diocesan Corporation engaged in other misconduct by (a) misleading beneficiaries; (b) preparing false or misleading records to establish a purported, legitimate basis for *Fr. M*'s retirement and eligibility for associated benefits; (c) providing these benefits and other compensation to *Fr. M* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (d) failing to reasonably monitor *Fr. M*, exposing itself and minors to unnecessary risks.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

415. *Fr. M* served in schools and parishes and held the position of pastor from 1971 to 2004.

416. In December 2003, Complainant 1 filed a complaint with the Diocesan Corporation, alleging that in the 1960s, *Fr. M* had molested her when she was between six and

³⁵ Unless otherwise noted, the allegations against *Fr. M* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. M* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

nine years old. *Fr. M's* file does not contain any decrees opening or closing a diocesan investigation into Complainant 1's claims. The Diocesan Corporation failed to sufficiently investigate Complainant 1's allegations pursuant to the *Charter* and the *Essential Norms*.

417. In January 2004, Diocesan Administrator Cunningham met with *Fr. M* to discuss Complainant 1's allegations. Cunningham's memo summarizing the meeting highlights that Complainant 1 acknowledged that her allegations concerning events that occurred forty years earlier were "the result of 'sketchy memories.'" The memo only includes a few sentences documenting statements related to the alleged abuse. The memo states that *Fr. M* represented that he did not recall ever inappropriately touching a child and that Cunningham would present this matter to the DRB. *Fr. M's* file lacks any other evidence of a presentation to the DRB.

418. On or about March 1, 2004, the Diocesan Corporation received Complainant 2's complaint. Complainant 2 alleged that in the 1950s, when she was about seven years old, *Fr. M* had laid on his back, had her sit on his face, and licked her genitals. *Fr. M's* file does not contain any decrees opening or closing a diocesan investigation into Complainant 2's claims. The Diocesan Corporation failed to sufficiently investigate Complainant 2's allegations pursuant to the *Charter* and the *Essential Norms*.

419. On or about March 3, 2004, Complainant 3 filed a complaint with the Diocesan Corporation, alleging that in the 1960s, when she was about six or seven years old, *Fr. M* had placed her in his lap, rubbed himself against her, kissed her, and forced her to kiss him. Complainant 3 told the Diocesan Corporation that she had confronted *Fr. M*, and he did not deny the abuse. *Fr. M's* file does not contain any decrees opening or closing a diocesan investigation into Complainant 3's claims. The Diocesan Corporation failed to sufficiently investigate Complainant 3's allegations pursuant to the *Charter* and the *Essential Norms*.

420. On March 22, 2004, *Fr. M* submitted his letter of resignation to Diocesan Administrator Cunningham. The letter states that *Fr. M* served as a priest for fifty-two years and that he was two years past the mandatory retirement age. The letter concludes that “[as a result, *Fr. M* felt he had] earned the right to retire from [his] present office of pastor.”

421. By letter dated, March 25, 2004, Diocesan Administrator Cunningham accepted *Fr. M*'s resignation:

During your fifty-two years of priestly service, you have led many to the Lord, and for that I am truly grateful. The Masses you have celebrated and the sacraments you have bestowed have brought God's saving grace to countless individuals. In their name, I offer thanks to you and wish you well as you begin this new phase of your life.

I trust that God will give you many years in which you can enjoy health and happiness with family and friends.

422. Diocesan documents maintained to record a priest's status reflect that *Fr. M* retired on March 31, 2004. These documents misleadingly indicate that he retired in the ordinary course, when, in fact, the Diocese suspended him from ministry as a result of sexual abuse allegations.

423. Contrary to the documents representing *Fr. M* as “retired,” on April 11, 2004, Diocesan Administrator Cunningham issued a Decree of Suspension to *Fr. M*. The decree states that, in accordance with the *Essential Norms*, *Fr. M*'s faculties are revoked, and he is prohibited from publicly celebrating Mass or holding himself out as a priest. *Fr. M*'s file lacks any indication that the Diocesan Corporation publicly disclosed this decree.

424. On April 13, 2004, Diocesan Administrator Cunningham prepared a five-sentence memo regarding his April 12, 2004 meeting with *Fr. M* “to discuss [*Fr. M*'s] present situation and the information [the Diocesan Corporation] had.” According to that memo, Cunningham told *Fr. M* that the Diocesan Corporation had recently received three complaints against *Fr. M*

and that “[*Fr. M*] is considered now a retired priest of the diocese and will receive all benefits which a retired priest receives.”

425. In July 2004, Complainant 4 filed a complaint with the Diocesan Corporation, alleging that in the 1950s, when she was in grammar school, she recalled playing with *Fr. M*, receiving an injury in the pelvic area, and feeling pain in the genitals. *Fr. M*’s file does not contain any decrees opening or closing a diocesan investigation into Complainant 4’s claims. The Diocesan Corporation failed to sufficiently investigate Complainant 4’s allegations pursuant to the *Charter* and the *Essential Norms*.

426. On August 16, 2004, Auxiliary Bishop Grosz prepared a memo to the file regarding his meeting with *Fr. M*. The memo purports to document the DRB’s recommendations regarding *Fr. M*: “Grosz indicated that . . . in light of the past occurrences in which Father [*M*] was involved, the [DRB] felt that he should be suspended” and “go for some type of counseling.” Grosz’s memo also records that *Fr. M* scheduled an appointment with a diocesan counselor “following his actions of sexual misconduct in the past.”

427. Further, in the August 16, 2004 meeting, *Fr. M* asked whether his suspension could be lifted in the future, and Grosz indicated that, because of the *Charter*, reinstatement was unlikely. Grosz also told *Fr. M* that he “is a priest forever” and that *Fr. M*’s ministry would “now take[] a different form,” including “a kind of ‘monastic’ ministry within the Church.” Grosz reminded *Fr. M* about his ministry restrictions and reviewed the “wonderful encounters” they had shared, including *Fr. M*’s fortieth and fiftieth anniversaries of ordination.

428. On or before March 8, 2005, Auxiliary Bishop Grosz received information that *Fr. M* had visited a parish. On or about March 9, 2005, Grosz “encouraged Father [*M*] to stay away from the parish totally - - not even to attend any of the particular functions.” In a memo

summarizing this conversation, Grosz wrote that *Fr. M* “accepted that advice.” Grosz then sent a letter to *Fr. M*, “thank[ing him] so much for [the] clarification relative to information which has reached certain individuals that [he had] been functioning as a priest.” The letter states that *Fr. M* “know[s] that [he] cannot function in any capacity as a priest, that [he] will stay away from any of the parishes where [he has] served as priest, and that [he] will not be part of any parish activities in those parishes where [he has] served.” Grosz concluded the letter by expressing his “concern[] about [*Fr. M*’s] good name, as well as [his] conscientious application of the restrictions placed upon [*Fr. M*] by [his] suspension.”

429. On or about April 13, 2005, a parishioner contacted the Diocesan Corporation to ask why *Fr. M* could not attend a parish celebration. Auxiliary Bishop Grosz called *Fr. M* to discuss the parishioner’s inquiry and documented his conversation with *Fr. M*:

Bishop Grosz informed Father [*M*] that Bishop Grosz had heard Father [*M*] indicated [sic] by several parishioners . . . that Bishop Grosz ordered Father [*M*] to stay away from the parish. While that is true, Bishop Grosz indicated that Father [*M*] must be most prudent in handling his present situation. Otherwise, he will be in a situation of revealing the reason why he was in retirement.

Father [*M*] indicated he wanted to be very sensitive to his present situation.

[*Fr. M* and Grosz] agreed that Father [*M*] would indicate to his inquirers that he is a retired priest of the diocese of Buffalo and that he needs to take time to take care of his ailing sister.

430. During the April 13, 2005 telephone conversation, *Fr. M* also admitted that he had invited parishioners to attend Mass in his home. Auxiliary Bishop Grosz advised *Fr. M* that he was only permitted to say Mass privately.

431. On April 14, 2005, Auxiliary Bishop Grosz called the parishioner who had inquired about *Fr. M*. Grosz told the parishioner that “[*Fr. M*] wanted Bishop Grosz to communicate to [the parishioner] that in his time of retirement, he needs to take care of his ailing

sister.” The Attorney General confronted Grosz with these misleading statements:

Q: . . . [Y]ou told [parishioners *Fr. M*] was retired and that he needed to care for his ailing sister?

A: Which is what he told me to say.

Q: In retrospect do you think that’s misleading?

A: I said what he asked me to say.

...

Q: Was that inaccurate?

A: No because that’s what he told me he wanted me to say.

Q: But is that why he was in retirement?

A: Not to take care of his ailing sister, but that was part of his responsibility now in retirement.

...

Q: . . . In retrospect would you tell [the parishioner] the same thing?

A: I don’t know.

432. During Auxiliary Bishop Grosz’s April 14, 2005 call with the parishioner, the parishioner observed that *Fr. M* would not be attending any parish functions. In response, “Grosz indicated that it is important for Father [*M*] to allow the new pastor and [d]eacon . . . to get settled in the parish, as well as develop their own relationship with the people now that Father [*M*] is no longer pastor of the parish.”

433. Five years later, by letter dated December 1, 2010, Grosz wrote to *Fr. M*, explaining that he had been unable to contact *Fr. M* for the “past several months” because *Fr. M*’s voicemail was full. Grosz requested that *Fr. M* contact him at *Fr. M*’s convenience so they “[could] have a continued contact with each other and [Grosz’s] solicitude for [*Fr. M*] and for

[*Fr. M's*] well-being as a priest in the Diocese.” Grosz did not meet with *Fr. M* in person during this same period. Among other things, this failure to supervise, in addition to the absence of documentation indicating that the Diocesan Corporation regularly supervised *Fr. M*, shows that the Diocesan Corporation failed to reasonably monitor him.

434. On December 6, 2010, Auxiliary Bishop Grosz and *Fr. M* spoke by phone. *Fr. M* asked Grosz whether his suspension could be lifted, and Grosz responded that “in light of the present environment regarding the Charter . . . , it would not be opportune to drop the suspension at the present time.” With respect to *Fr. M's* mental health treatment, *Fr. M* told Grosz that “he had gone for counseling at the time various instances took place [and that h]e has never gone for residential treatment.” Grosz “welcome[d *Fr. M*] to participate in the Advent and Lent Penance Services for Priests, as well as the June Priest Convocation, and other Presbyteral meetings of the Diocese.”

435. In March 2018, the Diocesan Corporation publicly identified *Fr. M* on a list of “diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.” After this publication, the Diocesan Corporation received at least three more complaints alleging that *Fr. M* had sexually abused or inappropriately touched minors in the 1960s and 1970s.

436. *Fr. M* died in March 2019.

437. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to sufficiently conduct internal investigations into allegations that *Fr. M* had sexually abused minors; failing to seek the DRB’s assessment of sexual abuse allegations against *Fr. M*; and failing to refer *Fr. M* to the CDF. Instead, it made false or misleading statements to its beneficiaries; prepared false or misleading business records; and failed to reasonably monitor

Fr. M. The Diocesan Corporation's actions concealed *Fr. M.*'s conduct from the public and placed its beneficiaries at risk.

Fr. N

438. *Fr. N* was ordained in 1954.³⁶ In June 2003, the Diocesan Corporation received a complaint that *Fr. N* had sexually abused a minor. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to resign. The Diocesan Corporation also failed to seek the DRB's assessment of sexual abuse allegations against *Fr. N* and failed to refer *Fr. N* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) creating false or misleading records to establish a purported, legitimate basis for *Fr. N*'s retirement and eligibility for associated benefits and (b) failing to reasonably monitor *Fr. N*, exposing itself and minors to unnecessary risks.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

439. Prior to 2002, *Fr. N* served in schools and parish ministry. In June 2003, Complainant 1 filed a report with local law enforcement. He alleged that in 1964, *Fr. N* had fondled him when he was fourteen years old. Complainant 1 was advised that the statute of limitations had expired, but the police report was forwarded to Vicar General Cunningham apparently because of Complainant 1's concern that *Fr. N* remained in ministry.

440. On July 1, 2003, Vicar General Cunningham interviewed *Fr. N*, who denied the allegations.

441. On July 9, 2003, Complainant 1 called Vicar General Cunningham to (a) attest to

³⁶ Unless otherwise noted, the allegations against *Fr. N* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. N* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

his claims; (b) advise that he had located two classmates, who claimed that *Fr. N* had engaged in inappropriate activity; and (c) confirm that *Fr. N* was not currently interacting with minors.

442. On July 17, 2003, Vicar General Cunningham called two priests, who had lived and worked with *Fr. N*. Neither of them reported any misconduct by *Fr. N*.

443. On July 17, 2003, Vicar General Cunningham met again with *Fr. N* and prepared a four-sentence memo regarding their meeting. The memo documents *Fr. N*'s statements that he did not recall Complainant 1's particular incident. The memo also records *Fr. N*'s decision to resign and retire. The next day, *Fr. N* sought Bishop Mansell's permission to resign as pastor and retire "due to an accumulation of health problems, and approaching [sic] the mandatory age for retirement." Mansell approved the resignation and retirement.

444. Internal diocesan documents prepared to record a priest's status reflect that *Fr. N* retired on July 21, 2003. These documents are misleading because, as the Diocesan Corporation finally acknowledged years later in a public document entitled *Diocesan Priests with Substantiated Allegations of Abuse of a Minor*, the Diocese removed *Fr. N* from ministry in 2003.

445. On August 4, 2003, Complainant 1 called Vicar General Cunningham with several questions. The next day, Cunningham documented the questions including the following: "I do not know what you think of my credibility, but I have two other classmates who would indicate that similar activity happened." Cunningham answered that "we believe [your] credibility" and "that we did think [you] had credibility."

446. *Fr. N*'s file contains an August 2003 printout of Internet postings by alleged victims of clergy abuse. One posting alleges that *Fr. N* sexually abused minors. The Diocesan Corporation also failed to conduct an independent investigation of the allegations against *Fr. N*

pursuant to the *Charter* and the *Essential Norms*.

447. Among other things, the absence of documentation indicating that the Diocesan Corporation regularly supervised *Fr. N* shows that the Diocesan Corporation failed to reasonably monitor him.

448. *Fr. N* died in 2011.

449. In March 2018, the Diocesan Corporation publicly identified *Fr. N* on a list of “diocesan priests who were removed from ministry, were retired, . . . left ministry after allegations of sexual abuse of a minor[, or were] . . . deceased priests with more than one allegation.”

450. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to seek the DRB’s assessment of sexual abuse allegations against *Fr. N* and failing to refer *Fr. N* to the CDF. Instead, it prepared false or misleading business records and failed to reasonably monitor *Fr. N*. The Diocesan Corporation’s actions concealed *Fr. N*’s conduct from the public and placed its beneficiaries at risk.

Fr. O

451. *Fr. O* was ordained in 1971.³⁷ His file contains a complaint of sexual abuse received by the Diocesan Corporation in 1995, which was treated as alleged abuse of an adult victim despite repeated, reasonably reliable representations that the alleged victim was a minor. This complaint remained pending after the passage of the *Charter* and the *Essential Norms*. Instead of applying these policies, the Diocesan Corporation failed to sufficiently conduct a

³⁷ Unless otherwise noted, the allegations against *Fr. O* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. O* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

timely investigation of the allegations; failed to seek or, alternatively, reasonably document the DRB's assessment of allegations against *Fr. O*; and failed to refer *Fr. O* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) disregarding the risk of sexual abuse and preparing false or misleading records when it wrote to another diocese to approve *Fr. O*'s out-of-state ministry; (b) misleading beneficiaries by publicly claiming that the Complainant's age at the time of the alleged abuse was unclear or in dispute; (c) providing benefits and other compensation to *Fr. O* even though laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (d) failing to reasonably monitor *Fr. O*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

452. Between *Fr. O*'s ordination and 1995, he was generally assigned to parishes and promoted to pastor in 1984, a position he held until the Complainant submitted her complaint of sexual abuse in 1995.

453. In March 1995, the Complainant's attorney wrote to the Diocesan Corporation to allege that *Fr. O* had (a) befriended the Complainant in 1990; (b) "developed [this friendship] into a relationship . . . at a time when [she] was only fifteen years of age"; (c) made sexual advances on her when she was fifteen or sixteen years old; (d) performed oral sex on her; and (e) had sex with her "for several years."

454. Shortly after the lawyer's letter, Vicar General Cunningham memorialized his meeting with a diocesan attorney and *Fr. O*. Cunningham's memo reflects that the attorney did not question *Fr. O* about the complaint after advising *Fr. O* to retain his own counsel. According to the memo, *Fr. O* offered that the Complainant was born in 1968. If the alleged abuse occurred in 1990, the Complainant would have been about twenty-two years old at the time of the abuse.

455. The Diocesan Corporation received additional information in May 1995 indicating that the Complainant was a minor at the time of the alleged abuse. A diocesan attorney copied Vicar General Cunningham on a May 1995 memo documenting the attorney's conversation with the Complainant's lawyer. The memo summarizes a discussion regarding the Complainant's age at the time of the alleged abuse:

[The Complainant's lawyer] said that the sexual abuse started in the summer of 1984, when [the Complainant] was approximately 15 or 16 years of age. He also said that the sexual abuse included intercourse at that age. He said that it occurred on a regular basis, two or three times per week, until 1991.

456. Vicar General Cunningham arranged for *Fr. O* to go to the St. Luke Institute in April 1995. In July 1995, based, in part, on information from the St. Luke Institute, Cunningham recommended to Bishop Mansell that *Fr. O* resign his pastorate. Cunningham urged *Fr. O* to "take a period of time for spiritual renewal." *Fr. O* submitted his resignation in early August 1995, and Mansell accepted the resignation days later "with the understanding that [*Fr. O* would] be going on a sabbatical for spiritual renewal."

457. *Fr. O*'s file contains an August 8, 1995 newspaper article that reported on his resignation. According to the article, the Diocesan Corporation announced that it had granted *Fr. O* a three-month sabbatical. In a statement to the newspaper, the diocesan spokesperson maintained that he did not know the basis for *Fr. O*'s sabbatical but that sabbaticals were generally granted for spiritual reflections or educational programs. Similarly, in a letter to a parishioner regarding *Fr. O*'s resignation, Bishop Mansell "ask[ed] God to bless Father [*O*] as he begins his sabbatical."

458. Following *Fr. O*'s resignation, discussions between the Diocesan Corporation and the Complainant continued. The Diocesan Corporation asked the Complainant's lawyer to resolve any discrepancy regarding the timing of *Fr. O*'s alleged abuse. The lawyer replied in an

August 8, 1995 letter:

[The Complainant] was first approached by Father [O] in the summer of 1984 between the time [the Complainant] was fifteen and sixteen years old and, during the summer of 1984, he began to perform oral sex upon [the Complainant]. In the fall of 1985 . . . Father [O] was having both oral sex and intercourse with [the Complainant] on a regular basis

459. The Complainant and the Diocesan Corporation engaged in brief settlement negotiations in September 1995. At that time, the Complainant's lawyer threatened to sue the Diocesan Corporation because its attorneys had not returned his calls. This threat led to a discussion of the monetary terms of a potential settlement. A diocesan attorney's summary of the conversation stated: "[the Complainant's lawyer] said he thought the fact that [she] was a minor at the time of the first alleged acts was an important factor." No agreement was reached, and no further steps were taken to resolve the question of the Complainant's age at the time of the alleged abuse.

460. In July 1997, Bishop Mansell and *Fr. O* met and discussed *Fr. O*'s request to return to ministry. Mansell rejected the request but outlined a plan for the future:

I told him about the difficulty registered in the evaluation by St. Luke Institute and the obstacle that the evaluation places in the way of an assignment to active ministry. I said therefore it would be necessary for him to return to St. Luke Institute for another evaluation. If their [sic] evaluation is favorable, I indicated that he should then go on a 2-week retreat and then we would look to possibilities for reinstatement to active ministry.

461. In April 1999, the St. Luke Institute sent its assessment to Vicar General Cunningham.³⁸ On May 12, 1999, Cunningham and *Fr. O* met to discuss *Fr. O*'s status in light of the assessment. *Fr. O* explained that he planned to object to the Institute's findings and he suggested that he submit to yet another assessment by a different doctor. Cunningham rejected

³⁸ The content of the St. Luke Institute's assessment of *Fr. O* was withheld by the Diocesan Corporation on privilege grounds.

this proposal, reasoning that the Institute had already provided three previous evaluations:

I reminded him that we had had 3 evaluations at St. Luke Institute. Given the recommendations, it would be impossible for the Bishop to give him an assignment at this time. . . . I did tell him I thought it was important that he move on and get the help needed; it is almost 4 years that he has not been able to have an assignment and he was too young not to be working.

462. Between May and August 1999, the Diocesan Corporation and *Fr. O* had ongoing communications about his submission to another mental health evaluation, this time by Southdown. The Diocesan Corporation explained to *Fr. O* that before Southdown could conduct an evaluation, Southdown needed the St. Luke Institute's evaluations. *Fr. O* objected to this request and asked for "an independent evaluation without the information from St. Luke." Ultimately, Southdown assessed *Fr. O* and provided recommendations to the Diocesan Corporation. The documents in *Fr. O*'s file do not indicate whether the priest agreed to share his medical records from the St. Luke Institute with Southdown.

463. On May 30, 2000, Vicar General Cunningham sent a memo to Bishop Mansell that reported on Cunningham's conversation with *Fr. O*. Per the memo, Cunningham instructed *Fr. O* that he would have to satisfy Southdown's conditions before returning to ministry. Cunningham's memo also suggests that, with Southdown's help, *Fr. O* found a doctor in Rochester for treatment.

464. After further discussions between the Diocese and *Fr. O* about his request to return to ministry, the Diocese agreed to his return subject to certain conditions, including that *Fr. O*: (a) receive spiritual direction; (b) attend group therapy; and (c) submit to the monitoring of his progress for eighteen to twenty-four months through regular meetings with his therapist and pastor.

465. In July 2000, Bishop Mansell assigned *Fr. O* to a parish.

466. In October 2001, Bishop Mansell met with *Fr. O* and his pastor. In the summary of this meeting, Mansell documented that *Fr. O* was not being treated by the doctor in Rochester and “that it was very important that he participate in those sessions on a regular basis.”

Defendants’ Violations of Sexual Abuse Policies and Secular Fiduciary Duties

467. After the *Charter’s* adoption in June 2002, the Diocesan Corporation failed to conduct an independent investigation into the Complainant’s pending allegations pursuant to the *Charter* and the *Essential Norms*. *Fr. O* remained in active ministry.

468. In June 2004, Auxiliary Bishop Grosz contacted *Fr. O’s* local psychologist for her view on whether the Diocese should promote *Fr. O* to pastor; *Fr. O’s* file lacks any evidence that this psychologist was associated with Southdown or the St. Luke Institute. According to Grosz’s memo of the call, the psychologist: (a) reported that there was “a heterosexual relationship which has now been addressed” and that *Fr. O’s* “situation as such could be described as ‘totally safe’” and (b) promised to send Grosz an attestation that “she saw no reason where [sic] he could not be appointed as pastor.”

469. In October 2004, Auxiliary Bishop Grosz, acting as the Diocesan Administrator, appointed *Fr. O* as the Administrator of a parish.

470. In May 2005, several months after Bishop Kmiec’s installation, Kmiec appointed *Fr. O* pastor.

471. In September 2006, Chancellor Litwin issued a good-standing letter for *Fr. O* to perform an out-of-state wedding. Litwin affirmed that: (a) “[w]e have never received any information that would cause us to restrict his ministry in any way” and (b) “there is nothing to our knowledge in his background that would restrict any ministry with minors.”

472. In September 2014, Bishop Malone accepted *Fr. O’s* request to retire.

473. On information and belief, after *Fr. O* retired, he continued to publicly celebrate Mass and performed other priestly functions. Such ministry would have been prohibited if the Diocesan Corporation had investigated and substantiated the Complainant's allegations.

474. In March 2018, when the Diocesan Corporation issued a public list of priests "who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor," the Diocesan Corporation did not identify *Fr. O*.

475. In April 2018, the Complainant filed another complaint with the Diocesan Corporation, alleging that: (a) beginning in 1984, when she was fifteen years old, *Fr. O* had sexually abused her, including oral sex and intercourse at least five or seven times a week and (b) *Fr. O* had assaulted her when she threatened to report the relationship.

476. In May 2018, a news outlet reported that the Diocese had kept *Fr. O* in ministry after receiving allegations in 1995 that he had sexually abused a minor. *Fr. O* gave at least two interviews for the story. In the first interview, he denied having any sexual contact with the accuser. In the second interview, however, *Fr. O* purportedly admitted to having sex with the accuser but maintained that she was an adult at the time.

477. When the article was e-mailed to Bishop Malone, he immediately replied to those on the e-mail chain: "My understanding is that this was judged not to be a Charter (minor) case years ago. If I thought it had been, [*Fr. O*] would have been on the [Diocesan Corporation's] list [of credibly accused priests]." One of the diocesan attorneys involved in the Diocesan Corporation's 1995 communications with the Complainant's lawyer supported Malone's view: "I think that's correct. . . . I believe the information available was that [the Complainant] was over 18." *Fr. O*'s file lacks any documents reflecting a judgment by the Diocesan Corporation that the Complainant was an adult at the time of the alleged abuse.

478. The day after the article's release, Bishop Malone issued written decrees that placed *Fr. O* on administrative leave and opened an internal investigation into the allegations. Shortly thereafter, Auxiliary Bishop Grosz then memorialized his interview of *Fr. O*. According to the memo, *Fr. O* denied the allegations, except he claimed that he had had sexual relations with the Complainant and that at times, she had made sexual advances on him. *Fr. O* told Grosz that on one occasion, when the Complainant was about twenty years old, she had grabbed his genitals and the two had sex. Grosz's memo concludes that diocesan attorneys would prepare documents for the DRB and the DRB would issue a recommendation. *Fr. O*'s file does not contain the attorneys' documents or the DRB's recommendation.

479. Before July 30, 2018, the Pope's ambassador to the United States forwarded complaints regarding the Complainant's allegations to the Diocesan Corporation. In response, Bishop Malone explained the Diocesan Corporation's investigations into the Complainant's claims:

From my review of the file in this matter, . . . [in March 1995,] the attorney for the diocese contacted [the Complainant's lawyer] to discuss the claim. [Her lawyer] gave contradictory information about when the relationship between his client and Fr. [O] began. At one point he claimed that the relationship began when his client was only 15 and at another point said that it began in 1990 (when his client would have been 21 or 22).

The [complaint] criticizes the actions of the current Bishop of the Diocese of Syracuse, Robert J. Cunningham, who was the Chancellor of the Diocese of Buffalo back in 1995. In fact, at the time, Fr. [O] vehemently denied many of the allegations, including the claim that the affair began when [the Complainant] was a teenager. After meeting with Fr. [O], then-Chancellor Cunningham required him to resign his position and undergo psychiatric treatment at St. Luke Institute. .

..

After I received a letter from [the Complainant] earlier this year, I decided to reopen the investigation of this matter. . . .

480. In November 2018, the Diocesan Corporation updated its list of priests with

substantiated claims of sexual abuse of a minor but again did not include *Fr. O* on the updated list. Bishop Malone was asked about *Fr. O* during an interview and at a press conference, and he repeatedly claimed there was a “difference of opinion” regarding the Complainant’s status as a minor. At the press conference, Bishop Malone engaged in the following exchange:

Q: You have said here that you have never protected any priest accused of abusing a minor. Why did you leave Fr. [O] in ministry for more than five years despite an allegation of statutory rape when the victim was sixteen-years old? . . .

A: . . . [I]n this particular case I learned later . . . there was even a difference of opinion, if I’m not incorrect . . . about the age of the individual. [Malone then asked a diocesan representative to comment] . . .

A: [Diocesan representative:] I think it’s important to have some initial factual background about this particular case. . . . [I]n 1995, the correspondence from her attorney said that essentially Fr. [O] befriended his client in 1990 is what one of the letters said. So we went and looked at it, and she was born in 1968, so that made her twenty-one or twenty-two, so there was contradictory information. Several people reached out from the Chancery . . . to the attorney to get some additional information. It remained contradictory and what happened I think back in 1995, as best I can put together, is that it was treated as a case of adult abuse and at that time, it was done, what was done throughout the country, is that Fr. [O] was sent to be evaluated by no less than three to five institutions where he would be out of service for five years until finally he came back and after being evaluated, this was by Bishop Mansell, he was placed back into service because the evaluators told him that it was 100% safe to put him back into service.

Despite the Diocesan Corporation’s claims to the Pope’s ambassador and the public that the Complainant provided contradictory information regarding her age at the time of the alleged abuse, records in *Fr. O*’s file demonstrate that her attorney repeatedly confirmed that the complaint alleged that she was a minor at the time of the alleged abuse. Thus, the complaint should have been subject to the strict requirements of the *Charter* and the *Essential Norms*.

481. On December 12, 2018, Bishop Malone issued a written decree that closed the Diocesan Corporation’s internal investigation of *Fr. O* and referred him to the CDF.

482. On December 14, 2018, Auxiliary Bishop Grosz met with *Fr. O* to advise him that DRB had met and “concluded that the allegation against Father [O] was substantiated” and that Bishop Malone would accept the DRB’s recommendation to refer *Fr. O* to the CDF. *Fr. O*’s file does not contain the DRB’s written conclusion. Grosz’s memo of the December 14 meeting also notes: “[*Fr. O*] concluded by indicating he will continue to fight relative to this particular case.”

483. Three months later, a diocesan investigator submitted a written report to diocesan attorneys. The report found that the Complainant was credible based on (a) the investigator’s training and experience as a former prosecutor of sex crimes; (b) his interview of the Complainant; (c) the Complainant’s 1995 complaint to the Diocesan Corporation; (d) a 2018 letter from the Complainant’s father to Bishop Malone, which corroborated the Complainant’s claim that she had reported the abuse before 2018; and (e) *Fr. O*’s alleged admissions that corroborated some of the Complainant’s assertions, including that he and the Complainant had had sexual intercourse several times. All of this information was available or likely could have been obtained at the time of the complaint or in 2002, when the *Essential Norms* expressly required an internal investigation.

484. Among other things, the absence of documentation in *Fr. O*’s file indicating that the Diocesan Corporation regularly supervised him shows that the Diocesan Corporation failed to reasonably monitor him.

485. In about November 2019, the Diocesan Corporation, in a disclosure on its website, indicated that it would refer *Fr. O* to the CDF, confirming that Bishop Malone had not done so prior to that time.

486. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential*

Norms by failing to conduct a timely, independent and sufficient investigation into allegations that *Fr. O* had sexually abused a minor; failing to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. O*; and failing to refer *Fr. O* to the CDF. Instead, it made false or misleading statements to its beneficiaries; prepared false or misleading business records; failed to reasonably monitor *Fr. O*; and disregarded the risk that *Fr. O* could sexually abuse minors. The Diocesan Corporation's actions concealed *Fr. O*'s conduct from the public and placed its beneficiaries at risk.

Fr. P

487. *Fr. P* was ordained in 1980.³⁹ As early as 1994, the Diocesan Corporation was on notice of a substantial likelihood of *Fr. P*'s sexual misconduct with minors. Years later, instead of following the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to seek the DRB's assessment of sexual abuse allegations against *Fr. P* and failed to refer or timely refer *Fr. P* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) making false or misleading statements to beneficiaries by, among other things, suggesting in 2003 that *Fr. P* had not been removed from ministry for sexual misconduct; (b) creating false or misleading records to establish a purported, legitimate basis for *Fr. P*'s retirement and eligibility for related benefits; (c) providing these benefits and other compensation to *Fr. P* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (d) failing to reasonably monitor *Fr. P*, exposing itself and minors to unnecessary risks.

³⁹ Unless otherwise noted, the allegations against *Fr. P* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. P* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

488. Between *Fr. P*'s ordination and the adoption of the *Charter* and the *Essential Norms* in 2002, the Diocesan Corporation received at least two complaints against him for alleged inappropriate behavior with minors. During this period, *Fr. P* was assigned to parish ministry and ultimately promoted to pastor in 2000.

489. In September 1991, Vice Chancellor Robert Zapfel received an anonymous complaint, alleging that *Fr. P* had sexually abused a minor. The complaint was filed by Complainant 1's mother and claimed that in 1989, *Fr. P* took Complainant 1, then fifteen years old, on a trip and masturbated in front of the Complainant. The mother also reported that she had been in a sexual relationship with *Fr. P*. In a memo to Vicar General Cunningham, Zapfel observed that the mother "did not seem to be in any way vengeful toward [*Fr. P*], in fact, she said that she 'did not want to hurt him.'" Zapfel wrote that he had "no real reason to doubt the woman's honesty." Even so, Zapfel recommended taking no action because the mother asked that she remain anonymous.

490. Two years later, in November 1993, Complainant 1's mother contacted the Diocesan Corporation again and this time consented to the release of her identity. In a memo by Vicar General Cunningham, which documented his conversations with Complainant 1 and his mother, Cunningham wrote that the Complainant alleged that when he was thirteen years old, *Fr. P* had taken him and a friend to a cabin, where he had exposed himself to the boys. Cunningham's memo concludes: "[In 1990], [Complainant 1] and his brother were also in the cabin. The brother had gone to bed; . . . The priest asked the [Complainant] if [he] knew . . . how to use [condoms]." Additionally, handwritten notes on Cunningham's memo state: "Priest masturbated in front of kid; put condom on. . . . Priest says 'Don't tell anyone'—but then priest

told mother & said he would get counseling.” Handwritten notes in *Fr. P*’s file from November 1993 state: “Priest acknowledged misconduct” and “arrangements made for St. Luke 1/30/94.”

491. On January 25, 1994, Complainant 1’s mother wrote to Vicar General Cunningham, expressing her concern that *Fr. P* continued to supervise children:

I was very upset and confused at the fact that [*Fr. P*] is still in charge of the CYO and altar boys I really believed that after speaking with you and having confirmation made on his part that, at minimum, he would be removed from working with youth. I surely hope that I am not being pacified.

On the same day, Cunningham sent *Fr. P* a confirmation of his upcoming treatment at the St. Luke Institute.

492. In an April 1995 memo, a diocesan lawyer memorialized his phone call with a law enforcement official about additional allegations against *Fr. P*:

The allegation is that approximately seven years ago, . . . [*Fr. P*] masturbated in front of a thirteen-year old, who is now twenty years old. . . .

According to [the law enforcement official], the parents spoke to Msgr. Cunningham and he said he would take care of the case but don’t tell the Police because of the bad image for the Church. Msgr. Cunningham said this is ridiculous—that he never said any such thing.

The diocesan attorney copied Vicar General Cunningham on the memo.

493. *Fr. P* served as a pastor between 2000 and 2003, when he resigned.

Defendants’ Violations of Sexual Abuse Policies and Secular Fiduciary Duties

494. The Diocesan Corporation did not conduct an independent investigation into the allegations above pursuant to the *Charter* and the *Essential Norms*.

495. About a year after the *Charter*’s adoption, *Fr. P* resigned in August 2003. On the day of his resignation, Bishop Mansell issued a Decree of Suspension, revoking *Fr. P*’s faculties pursuant to the *Essential Norms*. The decree also prohibited *Fr. P* from publicly saying Mass, wearing clerical garb, or publicly holding himself out as a priest. *Fr. P*’s file lacks any

indication that the Diocesan Corporation publicly disclosed this decree. *Fr. P* announced his resignation in a letter to parishioners:

Earlier today . . . I met with Bishop Henry Mansell and Monsignor Robert Cunningham in the Bishop's office. Considering my limited physical abilities, the fact that I am now eligible to collect Social Security, as well as other factors it was determined that I am to be considered a retired priest of the Diocese effective immediately.

496. Diocesan records maintained to reflect a priest's status falsely state that *Fr. P* retired on September 1, 2003, when he was about sixty-two years old.

497. In September 2003, an anonymous letter regarding *Fr. P's* retirement was distributed to parishioners:

Please be advised that [*Fr. P*] . . . was recently removed along with several other priests in the Diocese because of past sexual offenses with school children. . . . For those of us who had children at [the s]chool, we were in shock when Father [*P*] was transferred so quickly. Now we know why Parents, if you find your child was abused by Father [*P*] please go to the Police not the Diocese they will cover it up.

498. The pastor of the parish defended *Fr. P* in a letter to parents:

[The anonymous] letter has made very damaging, false accusations against *Fr. P* while he was parochial vicar here

Let me clarify 3 points:

- 1) *Fr. P* has retired from the priesthood.
- 2) Msgr. Robert Cunningham, The [sic] Vicar General for the Diocese has informed me that NO ALLEGATIONS of sexual abuse were ever made to the Chancery against *Fr. P* while he was stationed [here].
- 3) Parochial Vicars have a term of 5 years. *Fr. P* stayed beyond his term to lovingly care for Msgr. . . . as he was dying. After Msgr.[']s . . . death, *Fr. P* was ready to move to his next assignment. I was Pastor at that time and there was never a hint of any abuse as the reason for his transfer.

If anyone has any knowledge of who wrote this letter, or if you actually saw the person or persons who delivered it, please contact [law enforcement].

499. Shortly after Bishop Kmiec's installation, *Fr. P* sent him a letter in December

2004, thanking the bishop for the invitation to the Christmas luncheon for senior priests because it made *Fr. P* “feel much less separated from [the] Diocese.” At the outset of the letter, *Fr. P* introduced himself as “one of your ‘unassignable priests.’”

500. Among other things, the absence of documentation indicating that the Diocesan Corporation regularly supervised *Fr. P* shows that the Diocesan Corporation failed to reasonably monitor him.

501. In March 2018, the Diocesan Corporation included *Fr. P* on a public list of “diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.” After this disclosure, the Diocesan Corporation received another complaint alleging that between 1983 and 1986, *Fr. P* had sexually abused a minor.

502. In about September 2019, the Diocesan Corporation, in a disclosure on its website, indicated that it had referred *Fr. P* to the CDF; however, the Diocesan Corporation did not produce referral documents to the Attorney General.

503. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to seek the DRB’s assessment of sexual abuse allegations against *Fr. P* and failing to refer or timely refer *Fr. P* to the CDF. Instead, it made false or misleading statements to its beneficiaries; prepared false or misleading business records; and failed to reasonably monitor *Fr. P*. The Diocesan Corporation’s actions concealed *Fr. P*’s conduct from the public and placed its beneficiaries at risk.

Fr. Q

504. *Fr. Q* was ordained in 1969.⁴⁰ As early as 1999, the Diocesan Corporation was on

⁴⁰ Unless otherwise noted, the allegations against *Fr. Q* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. Q* have not been independently investigated by the Attorney General and are recited only to establish the information provided

notice of a substantial likelihood that *Fr. Q* had engaged in sexual misconduct with minors and young adults. Years later, instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation placed *Fr. Q* on medical leave. The Diocesan Corporation also failed to sufficiently conduct internal investigations into allegations that *Fr. Q* had sexually abused minors; failed to seek the DRB's assessment of sexual abuse allegations against *Fr. Q*; and failed to refer *Fr. Q* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) disregarding the risk of sexual abuse by allowing *Fr. Q* to remain in ministry; (b) providing benefits and other compensation to *Fr. Q* even though laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (c) failing to reasonably monitor *Fr. Q*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

505. Prior to the adoption of the *Charter* and the *Essential Norms* in 2002, the Diocesan Corporation received at least four complaints against *Fr. Q* for alleged inappropriate behavior with or sexual abuse of nine minors or adults. During this period, *Fr. Q* served in the military as well as multiple parishes; he was promoted to pastor in 1992.

506. In September 1992, Vicar General Cunningham learned of alleged “disturbing” behavior by *Fr. Q* toward Complainant 1 and at least three other “young high school girls” who worked in a rectory. *Fr. Q* was accused of hugging Complainant 1 and the three girls, “sometimes for a prolonged period of time.” Between September 16 and 21, 1992, Cunningham tried unsuccessfully to contact Complainant 1’s parents. *Fr. Q*’s file does not contain any documentation of the Diocesan Corporation’s attempts to contact the parents of the three other girls.

to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

507. On September 21, 1992, Vicar General Cunningham met with *Fr. Q*, who denied any wrongdoing. In Cunningham's summary of this meeting, he described *Fr. Q* as "genuinely remorseful" for "what [*Fr. Q*] thought was the misperception of some people." Still, Cunningham memorialized an explicit warning to *Fr. Q*: "I spoke with [*Fr. Q*] about the impropriety of a 50-year old man hugging a 16-year old girl on a regular basis and asked him to cease immediately from doing that."

508. On September 23, 1992, Vicar General Cunningham spoke with Complainant 1's mother. Cunningham apologized for any "unpleasantness" caused by *Fr. Q*. The mother alleged that, in addition to the hugging, *Fr. Q* had kissed her daughter on the shoulder and the face. In a memo documenting his conversation with the mother, Cunningham concluded that, because he had already met with *Fr. Q*, "[no] further action [was] needed at this time." Bishop Head wrote on the memo, in part, that "the 'kissing incidents[:] any further [illegible] like this & we will move him immediately."

509. In November 1993, a teacher at *Fr. Q*'s parish met with Vice Chancellor Zapfel to report that: (a) a co-worker had told her that *Fr. Q* had "'molested'" the co-worker's daughter and (b) in a separate incident, after an unidentified "girl" had been informed that she would be prohibited from making Confirmation, the girl remarked that "she would appeal directly to Father [*Q*], who had been giving her money[,] . . . 'loves her' [and] would do anything for her"; the girl would later be identified as Complainant 2. In Zapfel's memo documenting these allegations for Vicar General Cunningham, Zapfel reported that he did not doubt the teacher.

510. In December 1993, Complainant 3 alerted Vice Chancellor Zapfel to *Fr. Q*'s alleged inappropriate behavior. She recounted that in about 1983, she had sought counseling from *Fr. Q* after she was raped at age twenty-two. She alleged that, "because [*Fr. Q* knew] this

part of her background, he seem[ed] to take certain liberties with her,” for example, within the last three to four years, *Fr. Q* had (a) “rubbed up against her in a ‘sexual way’”; (b) “exposed himself to her”; (c) told her she was in his dreams; and (d) engaged in similar conduct with one of her sisters. In a memo for Vicar General Cunningham, Zapfel recorded that he had no reason to doubt Complainant 3, who served with *Fr. Q* in the military.

511. On December 28, 1993, Vicar General Cunningham drafted a memo summarizing his meeting with *Fr. Q* of the same day. In that meeting, *Fr. Q* denied Complainant 3’s allegations and the allegations related to Complainant 2. Cunningham warned *Fr. Q* that “apparently some of his actions are perceived to be inappropriate, and he had to be on guard,” noting that “there might be some need for counseling.”

512. On May 19, 1994, Vicar General Cunningham memorialized certain events regarding *Fr. Q*’s priestly service in the military:

[*Fr. Q*] called me this morning after speaking with . . . the [military]. Certain accusations have been made against Father [*Q*]. Father [*Q*] absolutely denies the accusations, but has admitted to them and claims to be going to the Diocesan Counseling Center to address them. I said, “Why did you admit them, if they did not happen?”. He indicated that he admitted them because the woman who is bringing the charges is vitriolic, and this is the only way he could be sure of his safety.

513. Four days later, Vicar General Cunningham prepared a memo regarding his meeting with *Fr. Q* of the same day. The memo indicates that the military was or would be investigating Complainant 3’s allegations against *Fr. Q*; diocesan records did not document the allegations Complainant 3 made to the military. According to the memo, *Fr. Q* retracted his May 19 statements to Cunningham: “Contrary to what Father [*Q*] told me [recently] when he was extremely upset, he told me that he has not admitted to any inappropriate behavior.”

514. On July 14, 1994, Vicar General Cunningham prepared a memo regarding *Fr. Q*,

which states, in its entirety: “[The military] called today to tell me that Father [Q] had admitted the incident that we had discussed. He will most likely resign from the [military] in lieu of any adverse action. He has 20 years of service in the [military] and will be taking retirement from that position.” Bishop Head made the following handwritten notes on Cunningham’s memo: “He should resign as soon as possible for his own sake & possible future action by others.”

There is no documentation in *Fr. Q*’s file indicating that the Diocesan Corporation took any steps to investigate the allegations. *Fr. Q* continued to serve in parish ministry.

515. In September 1999, Vice Chancellor Litwin drafted a memo to Vicar General Cunningham regarding another complainant, Complainant 4. Complainant 4, who was twenty years old and cared for *Fr. Q*’s parents at their home, claimed that in recent months, *Fr. Q*, while in his underwear, would “rub against her and attempt affection (kiss on the neck)” and that on a recent occasion, he had approached her “with only an undershirt (no bottoms).”

516. In October 1999, Vicar General Cunningham prepared a perfunctory six-sentence memo documenting his meeting with *Fr. Q* about Complainant 4. The memo states that *Fr. Q* indicated that she had dressed inappropriately, and he had “asked [her] not to come back.”

Defendants’ Violations of Sexual Abuse Policies and Secular Fiduciary Duties

517. After the *Charter*’s adoption in 2002, the Diocesan Corporation failed to sufficiently investigate *Fr. Q*’s sexual misconduct with minors.

518. On October 28, 2002, Vicar General Cunningham met with *Fr. Q* to discuss *Fr. Q*’s parish. According to a memo documenting the meeting, they discussed the parish’s financial difficulties, and “[Cunningham] did suggest since [*Fr. Q*] has been pastor there for 10 1/2 years it may be time to consider a change in administration.”

519. In July 2004, *Fr. Q* asked the Priests’ Personnel Board if he could be relieved as

pastor to make way “for a new pastor and new ideas.” An evaluator from the board recommended that the board grant *Fr. Q*’s request because of an apparent medical issue. In September 2004, Auxiliary Bishop Grosz, acting as the Diocesan Administrator, accepted *Fr. Q*’s resignation as pastor and urged him to apply for another pastorate.

520. On October 21, 2004, Auxiliary Bishop Grosz met with *Fr. Q*. Grosz told *Fr. Q* that he was surprised *Fr. Q* had not applied for a pastorate, and *Fr. Q* explained his physical health issues. During the meeting, Grosz suggested that *Fr. Q* seek counseling, in part, because of the stress of his health issues, but *Fr. Q* maintained that counseling was unnecessary. Because of *Fr. Q*’s medical issues, Grosz approved several weeks off for *Fr. Q*.

521. Internal diocesan documents maintained to record a priest’s status reflect that *Fr. Q* was placed on medical leave on November 1, 2004.

522. On November 22, 2004, *Fr. Q* informed Auxiliary Bishop Grosz that he was willing to return to ministry, especially as a pastor. Grosz responded that *Fr. Q* could not return without his doctor’s approval and suggested that, in the first instance, *Fr. Q* return to ministry as a weekend-assistant.

523. In a September 2006 memo, Auxiliary Bishop Grosz advised the Diocesan Corporation’s Finance Department that “Father [*Q*] will continue to assist in parishes and institutions of our diocese, even though his hours of ministry are restricted due to medical concerns.” Grosz continued that, as a result, “[*Fr. Q*] will continue to receive his ministry allowance as is the present arrangement.”

524. Since 2004, *Fr. Q* received \$27,650 annually while on sick leave, according to a December 2009 analysis by the Diocesan Corporation’s Finance Department for Auxiliary Bishop Grosz. At about the time of this analysis, *Fr. Q* told Grosz that he had been celebrating

weekly Mass at a home for seniors.

525. In January 2010, *Fr. Q* and Auxiliary Bishop Grosz met to discuss, among other things, *Fr. Q*'s compensation and ministry. *Fr. Q* advised that he had continued to celebrate weekly Mass at a home for seniors, and Grosz approved *Fr. Q*'s search for two or three nursing homes where *Fr. Q* could minister. Grosz also allowed *Fr. Q* to continue to receive compensation and benefits as a priest on sick leave.

526. In September 2012, one month after Bishop Malone's installation, Auxiliary Bishop Grosz drafted a memo of his call with *Fr. Q*. At the outset, the memo notes "that it had been some time since Bishop Grosz contacted Fr. [Q]." This admission and the absence of documentation in *Fr. Q*'s file indicating that the Diocesan Corporation regularly supervised him shows that the Diocesan Corporation failed to reasonably monitor *Fr. Q*. Grosz's memo also records that *Fr. Q* continued to celebrate Mass at a home for seniors and a health care facility.

527. *Fr. Q*'s file contains the following anonymous and undated handwritten note: "Bishop [:] I met with Fr. [Q]. He was fine with retiring. It's effective June 1st and all necessary departments have been notified." By letter dated June 5, 2013, *Fr. Q* sought approval from Bishop Malone to retire and, in his retirement, to continue to celebrate Mass at the home for seniors. Malone approved *Fr. Q*'s retirement and acknowledged *Fr. Q*'s offer to continue to celebrate Mass.

528. In early March 2018, the Diocesan Corporation announced a settlement fund for victims of clergy sex abuse. A few days later, Complainant 5 filed a complaint with the Diocesan Corporation, alleging that in about 1980, when she was a minor and pregnant, *Fr. Q* had sexually abused her. On March 17, 2018, Auxiliary Bishop Grosz memorialized his phone call with *Fr. Q* of the same day. During the call, Grosz confronted *Fr. Q* with Complainant 5's

allegations and the two engaged in the following exchange:

. . . Father indicated that he would never ever really hurt [Complainant 5].

Bishop Grosz then asked if, indeed, according to [Complainant 5], he remembers grabbing her and holding her tightly. Father [Q] responded yes to each of those. Relative to “sticking his tongue down her throat,” Father stated: “I don’t remember that at all.” Relative to the point that she indicated she could feel his erection while he was squeezing her, Father [Q] stated: “I was very close to her.” In addition, Father stated: “I really am sorry. I did not intend to upset her.”

Fr. Q also told Grosz that, “on his own,” he had sought counseling at the Diocesan Counseling Center “to address the concerns which were expressed to him.” Further, in his March 17, 2018 memo, Grosz also documented *Fr. Q*’s question and Grosz’s answer about the Diocesan Corporation’s upcoming public disclosure of priests with substantiated cases of sexual abuse: “[*Fr. Q*] asked if his name will appear on the list of priests who abused minors. Bishop Grosz noted that it is not.”

529. On March 20, 2018, the Diocesan Corporation did not include *Fr. Q*’s name in its public list of “diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.”

530. *Fr. Q* died on March 29, 2018.

531. In November 2018, the Diocesan Corporation added *Fr. Q* to its March 2018 public list.

532. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to sufficiently conduct internal investigations into allegations that *Fr. Q* had sexually abused minors; failing to seek the DRB’s assessment of sexual abuse allegations against *Fr. Q*; and failing to refer *Fr. Q* to the CDF. Instead, it failed to reasonably monitor *Fr. Q* and disregarded the risk that *Fr. Q* could sexually abuse minors or young adults. The Diocesan Corporation’s actions concealed *Fr. Q*’s conduct from the public and placed its beneficiaries at

risk.

Fr. R

533. *Fr. R* was ordained in 1965.⁴¹ As early as 1978, the Diocesan Corporation was on notice of a substantial likelihood that *Fr. R* had sexually abused minors. Years later, instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to sufficiently conduct investigations into allegations that *Fr. R* had sexually abused minors; failed to seek the DRB's assessment of sexual abuse allegations against *Fr. R*; and failed to refer *Fr. R* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) disregarding the risk of sexual abuse; (b) making false or misleading statements to its beneficiaries; (c) preparing false or misleading records to establish a purported, legitimate basis for *Fr. R*'s retirement and eligibility for associated benefits; (d) providing these benefits and other compensation to *Fr. R* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (e) failing to reasonably monitor *Fr. R*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

534. *Fr. R* served in parish ministry until 1988 when he began serving as a chaplain at medical facilities. Prior to 2002, the Diocesan Corporation received at least four complaints against him for alleged sexual abuse.

535. *Fr. R*'s file contains an undated, one-page, typed note from a parish to a "Msgr. McLaughlin"; Bernard McLaughlin served as an auxiliary bishop in the Diocese between 1969

⁴¹ Unless otherwise noted, the allegations against *Fr. R* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. R* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

and 1988. The one-page note begins: “The following is the information you asked me to obtain.”

The “information” consists of two brief paragraphs preceded by the following introductory points:

Date: Sunday, July 7, 1968.
Time: approximately 10:15 P.M.
Place: Twin Drive-in Theater
Names: [Complainant 1] . . . age 14
 [Complainant 1’s friend] . . . age 16

536. The first paragraph of the undated, one-page, typed note states: “On a previous occasion, [Complainant 2], age 15 was involved. I could not contact him for the actual facts because he is away with his family on vacation, but the word going around is that the same actions took place.”

537. The second paragraph of the typed note states: “Enclosed is the factual detail written by [Complainant 1] and his father.” Immediately following the typed note, *Fr. R*’s file contains an undated handwritten letter, drafted by Complainant 1, that begins: “On July 7th, *Fr. R* invited [my friend] and me to go to [a] Raceway.” Complainant 1, fourteen years old at the time, went on to allege that *Fr. R* had provided alcohol to him and another minor and took them to a drive-in theater. Complainant 1 further alleged that at the drive-in, *Fr. R* had kissed and rubbed him; put his hand between the teen’s legs; and opened the teen’s pants.

538. In December 1978, Vicar General Trautman prepared a memo to the file, which reported that a few days earlier, *Fr. R* had gone out with Complainant 3, a minor at the time, provided him with beer, took him back to a cabin where *Fr. R* gave him more alcohol, and then allegedly engaged in sexual misconduct:

[At the cabin, *Fr. R*] then made a homosexual advance towards the boy. A homosexual action was committed. The young man immediately responded, ‘Leave me alone’. . . . I talked to [*Fr. R*] about the incident described in this confidential memo. He admitted his guilt and said this was the first time in over

six years that this problem has occurred. [Fr. R] has had a difficulty of this nature in the past. He has been to the Monsignor Carr Clinic for treatment of a similar difficulty years ago.

539. Sixteen years later, in 1994, diocesan attorneys learned from a reporter about allegations that Fr. R had attempted inappropriate sexual conduct with two children in 1968. Vicar General Cunningham met with Fr. R to discuss the allegation. In his memo documenting this meeting, Cunningham recorded that “[a]pparently something did happen in 1968, and Father [R] was transferred from [his] Parish.” Cunningham also wrote that “[Fr. R] assured me that nothing at all has happened since his return from Southdown and that the past six years have been the best years of his life as a priest.”

540. In October 1997, Vicar General Cunningham drafted a memo regarding allegations made by Complainant 4 to a parish. According to the memo, the Complainant and the parish discussed “inappropriate action” by a priest in about 1977. Subsequently, Cunningham discussed the matter with the “priest in question,” who recalled that in mid-1978, he had in fact traveled to a property with three teenagers. The memo recounts that “[a]t that time there was some alcohol abuse and other inappropriate activity.” The memo, contained in Fr. R’s file, does not identify the following: Fr. R or any priest as the accused; Complainant 4’s age at the time of the abuse; or any details of the “inappropriate activity.”

Defendants’ Violations of Sexual Abuse Policies and Secular Fiduciary Duties

541. In December 2002, within months of the Charter’s adoption, Bishop Mansell recommended Fr. R for recertification by the National Association of Catholic Chaplains.

542. On August 20, 2003, Vicar General Cunningham prepared a brief memo about his meeting with Fr. R of the same day: “I met today with Father [R] and discussed with him historical concerns. In light of our discussions, Father [R] submitted his resignation from priestly

ministry and was suspended. He will receive the benefits of a retired priest of the Diocese, including health and automobile insurance.”

543. On August 20, 2003, pursuant to the *Essential Norms*, Bishop Mansell issued a Decree of Suspension to *Fr. R*. The decree revoked *Fr. R*'s faculties and barred him from publicly officiating Mass, administering the sacraments, wearing clerical attire, and holding himself out as a priest. *Fr. R*'s file lacks any indication that the Diocesan Corporation publicly disclosed this decree.

544. Internal diocesan documents maintained to record a priest's status falsely reflect that *Fr. R* retired on August 31, 2003, when he actually was removed from ministry for sexual abuse allegations.

545. Complaints continued after *Fr. R*'s retirement. In June 2008, Complainant 5 filed a complaint with the Diocesan Corporation, alleging that in 1963, *Fr. R* had sexually abused him when he was thirteen or fourteen years old. Complainant 5 also alleged that *Fr. R* had sexually abused his brother. *Fr. R*'s file does not contain any decrees opening or closing a diocesan investigation into Complainant 5's claims. The Diocesan Corporation failed to sufficiently investigate Complainant 5's allegations pursuant to the *Charter* and the *Essential Norms*.

546. In June 2010, Complainant 6 filed a complaint with the Diocesan Corporation, alleging that between 1965 and 1966, *Fr. R* had raped him when he was approximately sixteen or seventeen years old. *Fr. R*'s file does not contain any decrees opening or closing a diocesan investigation into Complainant 6's claims. The Diocesan Corporation failed to sufficiently investigate Complainant 6's allegations pursuant to the *Charter* and the *Essential Norms*.

547. In a memo to Auxiliary Bishop Grosz regarding Complainant 6, diocesan attorneys dedicated one sentence to the DRB: “This matter was reported to the [DRB] for a final

time on December 9, 2010.” *Fr. R*’s file does not contain this report to the DRB.

548. In about August 2012, less than two weeks after Bishop Malone’s installation, the Diocesan Corporation received Complainant 7’s allegations that between 1966 and 1969, when he was a candidate for a religious order, he was sexually abused by three priests, including *Fr. R*. The next month, Auxiliary Bishop Grosz called *Fr. R* to discuss Complainant 7’s allegations. Grosz confronted *Fr. R* with the allegations and documented *Fr. R*’s purported admission: “[*Fr. R*] noted that he would say ‘It is true.’ He indicated as far as the incident as reported, it was only one incident which took place”

549. In May 2017, Complainant 8 filed a complaint with the Diocesan Corporation, alleging that in approximately 1979 or 1980, *Fr. R* groped him when he was fourteen or fifteen years old. The Complainant also asserted that *Fr. R* had molested his friend. *Fr. R*’s file does not contain any decrees opening or closing a diocesan investigation into Complainant 8’s claims. The Diocesan Corporation failed to sufficiently investigate Complainant 8’s allegations pursuant to the *Charter* and the *Essential Norms*.

550. In February 2018, a media outlet reported that *Fr. R* purportedly admitted to its reporter that he had sexually abused probably dozens of minors in the 1970s and 1980s.

551. On March 2, 2018, Bishop Malone sent a letter to parishioners about *Fr. R*. The letter states that “[*Fr. R*] was removed from ministry in 2003.” Within a few weeks of Malone’s letter, the Diocesan Corporation publicly identified *Fr. R* on a list of “diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.” After these events, the Diocesan Corporation received at least seven other complaints alleging that *Fr. R* had sexually abused minors between 1966 and 1982.

552. Among other things, the lack of documentation in *Fr. R*’s file indicating that the

Diocesan Corporation regularly supervised him shows that it failed to reasonably monitor *Fr. R*.

553. In about November 2019, the Diocesan Corporation, in a disclosure on its website, indicated that it would refer *Fr. R* to the CDF, confirming that Bishop Malone had not done so prior to that time.

554. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to sufficiently conduct investigations into allegations that *Fr. R* had sexually abused minors; failing to seek the DRB's assessment of sexual abuse allegations against *Fr. R*; and failing to refer *Fr. R* to the CDF. Instead, it made false or misleading statements to its beneficiaries; prepared false or misleading business records; failed to reasonably monitor *Fr. R*; and disregarded the risk that *Fr. R* could sexually abuse minors. The Diocesan Corporation's actions concealed *Fr. R*'s conduct from the public and placed its beneficiaries at risk.

Fr. S

555. *Fr. S* was ordained in 1966.⁴² As early as 1986, the Diocesan Corporation was on notice of a substantial likelihood that *Fr. S* had sexually abused a minor. Years later, instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to refer *Fr. S* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) failing to maintain any record of *Fr. S*'s alleged sexual abuse of a minor; (b) disregarding the risk of sexual abuse; (c) making false statements to its beneficiaries by allowing *Fr. S* to publicly announce that his resignation was due to health issues; (d) preparing false records to establish a purported, legitimate basis for *Fr.*

⁴² Unless otherwise noted, the allegations against *Fr. S* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. S* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

S's retirement and eligibility for associated benefits; (e) providing these benefits and other compensation to *Fr. S* even though laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (f) failing to reasonably monitor *Fr. S*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

556. Between 1967 and May 1985, *Fr. S* was assigned to parish ministry and appointed pastor in 1983. Records indicate that the Diocesan Corporation likely received information that *Fr. S* had committed sexual abuse before he resigned in 1985. A complainant's attorney recently alleged to the media that *Fr. S* had abused his client in 1983.

557. In May 1985, *Fr. S* submitted a resignation letter to Auxiliary Bishop Trautman, "requesting time for a Sabbatical for prayer, study and consultation, so that [he] might be a more effective priest." In a handwritten note by Trautman, attached to the file copy of this letter, Trautman wrote: "I asked [*Fr. S*] to word resignation letter in this fashion. [*Fr. S*] will go to Southdown on June 8 for an assessment."

558. In a recent interview with the media about his appearance on a diocesan list of priests accused of sexual abuse, *Fr. S* purportedly stated that when he had "crossed the line" and "d[one] something [he] shouldn't have done," he "got [help]" and spent seven months at Southdown. Diocesan records confirm that *Fr. S* received mental health treatment from about August 1985 to January 1986. In an August 1985 letter from *Fr. S* to the Diocesan Corporation, he discussed his treatment at Southdown, including his "sex therapy."

559. In March 1986, *Fr. S* was appointed chaplain at a hospital and at a nursing or retirement home as well as weekend-assistant at a parish where he resided. The Diocesan Corporation advised him that it would review these assignments in three months and compensate

Fr. S on a monthly basis, commensurate with a pastor's salary.

560. Vicar General Cunningham drafted two memos on July 2, 1991. The first, to the file, documented *Fr. S*'s treatment at Southdown and the destruction of the related records:

[*Fr. S*] was treated and assessed at Southdown ending the week of June 19, 1985. At that time, residential treatment was recommended for him in order that he might modify disfunctional [sic] personality problems. Residential treatment at Southdown was strongly suggested.

In accordance with regulations, the assessment report was destroyed after one year.

The Attorney General has yet to find any evidence of these "regulations." The second memo, to Bishop Head, appeared to relay a purported recommendation from Southdown regarding *Fr. S*'s return to ministry:

When [*Fr. S*] left Southdown, a letter dated February 25, 1986, recommended to the diocese that "it will be helpful for him to work through a period of rehabilitation in which he will not be alone, but after proving his reliability to the diocese should once again be placed in a position of parish responsibility."

The final letter, therefore, did not indicate he could not be placed in a position of parish responsibility.

561. In January 1992, *Fr. S* returned to parish ministry.

562. In August 1999, *Fr. S* wrote to Bishop Mansell to request a pastorate. After this request, *Fr. S* submitted to another Southdown evaluation. On January 6, 2000, Vicar General Cunningham drafted a memo that summarized his call with Southdown of the same day. Southdown advised that it: (a) had observed favorable changes in the "priest currently undergoing an evaluation" and (b) recommended *Fr. S* for a pastorate with only a "year-to-year commitment." Southdown recommended a pastorate for *Fr. S* if he agreed to, among other things, contact his diocesan counselor on a monthly basis and regularly meet with a supervisor and, separately, meet with other priests "so that he [would] not go far afield emotionally." Based

on all of this information, Cunningham recommended *Fr. S* for a pastorate and suggested that if Mansell could meet *Fr. S* on January 10, 2000, the appointment could be effective by January 15. On January 10, Mansell appointed *Fr. S* pastor for a six-year term. *Fr. S*'s file lacks records documenting the Diocesan Corporation's adherence to Southdown's recommendations or the Diocesan Corporation's regular supervision of *Fr. S*.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

563. Less than four months after the *Charter* was adopted, *Fr. S* submitted his resignation to Bishop Mansell because of purported health issues: "[T]he increasing stress related pressures has [sic] made it necessary to ask for a medical leave of absence without any responsibilities, so I might care for my mental, emotion [sic] and physical health needs."

564. On information and belief, in October 2002, *Fr. S* publicly announced the following resignation to parishioners:

I would like you to know that I have asked the Bishop to accept my resignation as Pastor . . . and to grant me a medical Health [sic] leave of absence where I will be relieved of all my priestly responsibilities for the present time.

This decision has come after months of prayer, reflection and professional help. As my mental, emotional and physical health has begun to be affected, I know it is best for myself and for you to go the way I have chosen.

565. Diocesan records maintained to record a priest's status reflect that *Fr. S* was placed on medical leave on October 31, 2002, and then later retired on September 1, 2003. These documents and *Fr. S*'s statements were false because they indicated that *Fr. S* took a medical leave and retired in the ordinary course when, in fact, the Diocesan Corporation had removed *Fr. S* from ministry because of sexual abuse allegations.

566. Auxiliary Bishop Grosz prepared a memo in September 2004 regarding his meeting with *Fr. S*. The memo notes at the outset that "[*Fr. S*] informed Bishop Grosz about his

‘change in ministry,’” but the memo does not elaborate on the “change.” According to the memo, *Fr. S* confirmed his understanding that he was a retired priest but stated that the Diocesan Corporation had not sent him written confirmation about his status. Grosz indicated that he would check *Fr. S*’s file. The memo concludes with Grosz outlining certain restrictions placed on *Fr. S*:

Grosz assured him that he continues to be a priest of the Diocese of Buffalo. However, while he must refrain from celebrating public Mass or sacraments, wearing the collar, or being called “father,” he still should celebrate Mass daily as well as pray the Liturgy of the Hours. He is taking on a kind of “monastic” vocation at the present time.

567. By letter dated September 23, 2004, Auxiliary Bishop Grosz notified *Fr. S* that he had reviewed *Fr. S*’s file and uncovered an official notice from Vicar General Cunningham confirming the date of *Fr. S*’s retirement.

568. In May 2006, *Fr. S* sent an announcement of his forty-year anniversary of ordination to his family and friends. The announcement notes that he would be celebrating his anniversary at a Mass with his immediate family. *Fr. S* signed the announcement “Father [S].” Bishop Kmiec received the announcement and, in response, sent *Fr. S* a congratulatory letter, wishing *Fr. S* “an abundance of God’s graces as [he] celebrate[d] 40 years of priestly ministry.” *Fr. S*’s file lacks any record of the Diocesan Corporation’s attempts to stop *Fr. S* from celebrating Mass or publicly holding himself out as a priest.

569. In January 2007, *Fr. S* sent an announcement about his mother’s death to his friends and invited priests to concelebrate the funeral with him. *Fr. S* wrote the letter on diocesan letterhead, which identified the sender as “Rev. [S].” Bishop Kmiec received the announcement and replied with a letter expressing his condolences.

570. Among other things, the lack of documents in *Fr. S*’s file indicating that the Diocesan Corporation regularly supervised him shows that the Diocesan Corporation failed to

reasonably monitor *Fr. S*.

571. In March 2018, the Diocesan Corporation publicly identified *Fr. S* on a list of priests “who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.” *Fr. S*’s file contains no information showing the basis for this disclosure. A few days later, a news outlet reported on the list and *Fr. S*’s appearance on that disclosure. According to the story, *Fr. S* purportedly made the following admissions: “[Years ago] I went to the bishop and I told him I believed I crossed the line. I said I needed help and I got it’ ‘I just did something I shouldn’t have done.’” *Fr. S* then stated that the Diocese had removed him from ministry in 2002 because of the *Charter*.

572. In about September 2019, in a disclosure on its website, the Diocesan Corporation indicated that it would refer *Fr. S* to the CDF, confirming that Bishop Malone had not done so prior to that time. No referral documents were produced to the Attorney General.

573. The Diocesan Corporation violated the *Charter* and the *Essential Norms* by failing to refer *Fr. S* to the CDF. Instead, it failed to maintain any record of *Fr. S*’s sexual abuse of a minor; allowed *Fr. S* to make false or misleading statements to its beneficiaries; prepared false or misleading business records; failed to reasonably monitor *Fr. S*; and disregarded the risk that *Fr. S* could sexually abuse minors. The Diocesan Corporation’s actions concealed *Fr. S*’s conduct from the public and placed its beneficiaries at risk.

Fr. T

574. *Fr. T* was ordained in 1960.⁴³ In 1995, the Diocesan Corporation received a

⁴³ Unless otherwise noted, the allegations against *Fr. T* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. T* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

complaint that *Fr. T* had sexually abused five siblings. *Fr. T*'s file shows that the complaint was never resolved, but the Diocesan Corporation placed him on sick leave in 1995, allowed him to retire in 1998, and suspended him in 2004. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation failed to conduct an internal investigation into allegations that *Fr. T* had committed sexual abuse; failed to seek the DRB's assessment of sexual abuse allegations against *Fr. T*; and failed to refer *Fr. T* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) providing benefits and other compensation to *Fr. T* even though laicization would have relieved the Diocesan Corporation of its duty to financially support him and (b) failing to reasonably monitor *Fr. T*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

575. *Fr. T* served in parish ministry until 1995. Prior to 2002, *Fr. T*'s file contains one complaint of sexual abuse. In a February 1995 memo from Vice Chancellor Zapfel to Bishop Head and Vicar General Cunningham, Zapfel documented that another priest reported that in about 1984, *Fr. T* had sexually abused five siblings from the same family. The reporting priest agreed to relay to his sources that the Diocesan Corporation would investigate if a firsthand witness came forward. No documents in *Fr. T*'s file show that any investigation occurred.

576. In September 1995, Vice Chancellor Zapfel tried to arrange for *Fr. T* to go to the St. Luke Institute, but *Fr. T* may not have visited the Institute at that time; two months later, Vicar General Cunningham informed *Fr. T* that the Institute still had no availability. There is no other documentation of *Fr. T* receiving treatment at this time.

577. Between October 1995 and early 1998, *Fr. T* was on sick leave. On information and belief, because of sexual abuse allegations against *Fr. T*, the Diocese imposed ministry

restrictions on him, requiring him to seek permission to officiate Masses.

578. In July 1996, during his sick leave, *Fr. T* sought permission from Vicar General Cunningham to officiate a Mass for about seventy adults and teenagers traveling to a workcamp through Buffalo with *Fr. T*'s relatives. In his written request to Cunningham, *Fr. T* highlighted that “[t]here are no parish Masses that fit their schedule” and that “[i]t will be a private, non-parochial liturgy.” Cunningham approved the request with the “understanding that this is for a small group.”

579. In August 1996, Vicar General Cunningham approved *Fr. T*'s request to concelebrate a parish-anniversary Mass led by Bishop Mansell.

580. Vicar General Cunningham met with *Fr. T* in January 1998 to discuss *Fr. T*'s “present status.” According to a memo summarizing the meeting, both agreed that, because of *Fr. T*'s physical health, *Fr. T* would retire with a full pension and the opportunity to return to ministry if his health improved. Bishop Mansell approved the retirement and internal diocesan documents prepared to record a priest's status reflect that *Fr. T* retired on January 1, 1998.

581. Diocesan records confirm that *Fr. T* continued to publicly present himself as a priest and to officiate Masses during his retirement. In July 2001, on diocesan letterhead, *Fr. T* faxed his mother's death announcement to other priests and signed the announcement “Rev. [T].”

582. In about September 2001, *Fr. T* visited the St. Luke Institute to participate in its “program.” In October 2001, writing from the St. Luke Institute, *Fr. T* sought guidance from Bishop Mansell about his ministry restrictions: “A question has arisen as to whether I can be the main celebrant at the community Mass. I was advised to write you for clarification as to what restrictions I am under.” Mansell approved the request.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

583. After the *Charter* was adopted in June 2002, there is no indication that the Diocesan Corporation took steps to investigate the 1995 complaint as it was required to do.

584. In August 2003, Bishop Mansell allowed *Fr. T* to concelebrate a funeral Mass.

585. On September 2, 2004, the Diocesan Corporation issued a Reception of Decree, signed by Auxiliary Bishop Grosz and Vice Chancellor LiPuma. In this decree, *Fr. T* attested to receiving a Decree of Suspension, which revoked his faculties and prohibited him from holding himself out as a priest. *Fr. T*'s file does not contain the referenced Decree of Suspension, the basis for the suspension, or any indication that the Diocesan Corporation publicly disclosed this decree.

586. Among other things, the absence of documentation in *Fr. T*'s file indicating that the Diocesan Corporation regularly supervised him shows that the Diocesan Corporation failed to reasonably monitor him.

587. *Fr. T* died in October 2013.

588. On March 13, 2018, in a brief memo from a diocesan staff member to the Diocesan Corporation's Victim Assistance Coordinator, Auxiliary Bishop Grosz, and a diocesan attorney, the staff member summarized that a caller to a diocesan hotline reported that: (a) in the late 1970s, a parent had related to the caller that *Fr. T* had sexually abused his, the parent's, son; (b) the parent and *Fr. T* had led a youth organization together; and (c) *Fr. T* had been transferred after the abuse. On March 20, 2018, the Diocesan Corporation identified *Fr. T* on a list of "diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor[, or . . . were] deceased priests with more than one allegation made against them." Shortly thereafter, Grosz typed the following note onto the March 13, 2018

memo: “Third hand report . . . Since not a first hand report, decision to place in the Chancery file of Fr. [T] as a reference.” The Diocesan Corporation failed to conduct an investigation as required by the *Charter* and the *Essential Norms*. Indeed, the Diocesan Corporation has publicly stated that it does in fact inquire into allegations, which are not considered firsthand.

589. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to conduct internal investigations into allegations that Fr. T had sexually abused minors; failing to seek the DRB’s assessment of sexual abuse allegations against Fr. T; and failing to refer Fr. T to the CDF. The Diocesan Corporation also failed to reasonably monitor Fr. T. The Diocesan Corporation’s actions concealed Fr. T’s conduct from the public and placed its beneficiaries at risk.

Fr. U

590. Fr. U was ordained in May 2000. His file contains a complaint of sexual abuse, which was submitted to the Diocesan Corporation in 2012. In 2013, Bishop Malone designated Fr. U as an unassignable priest. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation failed to sufficiently conduct a timely investigation into allegations that Fr. U had committed sexual abuse; failed to seek or, alternatively, reasonably document the DRB’s assessment of sexual abuse allegations against Fr. U; and failed to refer Fr. U to the CDF. Further, the Diocesan Corporation engaged in other misconduct by (a) providing benefits and other compensation to Fr. U even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him and (b) failing to reasonably monitor Fr. U, exposing itself and minors to unnecessary risks.

Defendants’ Violations of Sexual Abuse Policies and Secular Fiduciary Duties

591. Between Fr. U’s ordination and the time his faculties were revoked in 2013, Fr. U

served in parish ministry. In 2006 *Fr. U* was referred to mental health treatment for anger issues. In July 2008, *Fr. U*'s pastor sent an evaluation of *Fr. U* to the Priests' Personnel Board and Bishop Kmiec; the evaluation described *Fr. U*'s negative performance and personality issues. *Fr. U* was removed from the parish in September 2008 and later re-assigned to another parish.

592. On or about April 19, 2012, *Fr. U*'s pastor asked *Fr. U* to leave the parish. Three days later, on or about April 22, 2012, *Fr. U* began receiving mental health treatment.

593. In about June 2012, *Fr. U* attended a youth retreat in Georgia.

594. In October 2012, in a meeting with Bishop Malone, *Fr. U* agreed to submit to a mental health evaluation at Southdown.

595. In about December 2012, *Fr. U* applied to become a member of a religious order. On December 6, 2012, approximately three weeks after the Diocesan Corporation had received his latest assessment from Southdown, *Fr. U* notified the Diocesan Corporation that the religious order had requested a letter of good standing as well as Bishop Malone's recommendation. Later the same day, Malone asked Vice Chancellor LiPuma to draft an e-mail to the religious order, which "indicat[es] that there are some concerns, but that [*Fr. U*] is in good standing and [may] . . . enter[] into discernment with the [religious order]." In his request to LiPuma, Malone stated that "[he did] not want to indicate those concerns in an email." On December 8, 2012, the religious order advised *Fr. U* that it would not proceed with his application.

596. Notes in *Fr. U*'s file state that diocesan attorneys reported on him to the DRB in December 2012. The notes also indicate that "[the DRB] noted that there were no legal issues and suggested the possibility of an evaluation, treatment and counseling." *Fr. U*'s file does not contain the report to the DRB, any documentation by the DRB memorializing its conclusion that there were "no legal issues," or information showing why diocesan attorneys had reported *Fr. U*

to the DRB in the first instance.

597. On or about February 8, 2013, a friend of Complainant 1 wrote to Bishop Malone to alert Malone that a young adult intended to spend the night at *Fr. U*'s rectory while visiting the Buffalo area. In the letter, the Complainant's friend explained that she was advising Malone of the visit because *Fr. U* had allegedly sexually abused Complainant 1 during the Complainant's own stay at the rectory. The Complainant's friend claimed that these allegations had been raised in the fall of 2012 and that many in the Diocesan Corporation and the State of Georgia were aware of the allegations. A week later, Malone responded, observing that he agreed that the upcoming visit by the young adult would be imprudent. Malone also represented that he had prohibited *Fr. U* from accepting the visit from the young adult.

598. On or about February 21, 2013, Complainant 1's friend again wrote to Bishop Malone to criticize his handling of *Fr. U*. In the letter, the friend explained that she had forged a friendship with *Fr. U* at a youth retreat in Georgia. She further stated that in July 2012, she had concluded that the allegations by Complainant 1 against *Fr. U* were true and reported *Fr. U* to the youth retreat. Additionally, the letter alleged that: (a) Malone and *Fr. U*'s last parish were "covering up" the sexual abuse of the Complainant; (b) *Fr. U* had been removed from all of his previous parishes; (c) before *Fr. U* sexually abused the Complainant, on several occasions, *Fr. U* had attempted to spend the night at a hotel with the Complainant; and (d) *Fr. U*'s intense anger, psychological disorders, and sexual abuse of the Complainant demonstrated that *Fr. U* is dangerous.

599. On March 6, 2013, a diocesan attorney interviewed the Complainant's friend. In the interview, the friend stated that another person had told her that in May 2012, when the Complainant was twenty years old, the Complainant and *Fr. U* got drunk and *Fr. U* attempted to

rape the Complainant.

600. On March 22, 2013, a diocesan attorney interviewed the Complainant. The Complainant alleged that: (a) he and *Fr. U* had known each other since the Complainant attended grammar school; (b) *Fr. U* had served as the Complainant's spiritual director when the Complainant was a young adult; and (c) in May 2012, at *Fr. U*'s rectory, when the Complainant was twenty-one years old, *Fr. U* and the Complainant got drunk and the Complainant decided to spend the night at the rectory. The Complainant further alleged that *Fr. U* entered the Complainant's guest bed, brushed up against the Complainant, and offered to perform sexual acts on the Complainant.

601. On May 1, 2013, Bishop Malone met with *Fr. U* to discuss "the events of the past six years, and most especially the events that have occurred in May 2012 and thereafter regarding boundary issues." On May 22, 2013, Malone issued a written decree that: (a) revoked *Fr. U*'s faculties and (b) prohibited *Fr. U* from publicly celebrating Mass, administering the sacraments, dressing in clerical attire, or publicly presenting himself as a priest. Malone stated in his decree that, "having been convinced of the veracity of the accounts given to me by well-intentioned individuals, I, in consultation with others, have determined that you are unassignable as a priest of the Diocese of Buffalo."

602. In September 2013, *Fr. U*'s canon law adviser wrote to Bishop Malone to deny allegations made against *Fr. U* and argue that Malone's permanent suspension by decree violated Church law. Eight months later, in May 2014, Malone responded:

I have determined that Fr. [*U*] is unassignable for ministry in the Diocese of Buffalo. . . .

Fr. [*U*] has had a significant history of difficulties in ministry involving two keys issues: anger management and, more recently, respect for boundaries, including sexual boundaries. . . .

[H]e was involved in a sexual boundary violation and was prevented from a potential second indiscretion because of our proactive response to information we had received. My decision was based on a wide variety of input from various sources, including counseling reports and *advice* from the [DRB] . . .

. . . He also is no longer welcome to minister at [a youth retreat] in [Georgia]—where he had been involved in several young peoples’ retreats—because of the above mentioned boundary violation. (emphasis added).

Fr. U’s file does not contain the DRB’s “advice.”

603. Over a year later, on or about March 24, 2015, *Fr. U* advised Bishop Malone that:

(a) a religious organization had invited him to live and work with it and (b) another diocese, aware of his suspension, would accept an application from him. In May 2015, the religious organization asked Malone if *Fr. U* could involve himself with the organization and whether Malone would attest to *Fr. U*’s character. In June, Malone replied that “[he could not] in good conscience recommend [*Fr. U*] for ministry in [an out-of-state] Diocese or elsewhere.”

604. On or about July 24, 2015, *Fr. U*’s canon law adviser asserted that Bishop Malone had permanently suspended *Fr. U*, an impermissible penalty; the adviser requested Church due process for *Fr. U*. The adviser also noted that the Diocese had requested that *Fr. U* seek voluntary laicization; *Fr. U*’s file does not contain this request.

605. In response to the adviser’s July 24 letter, on September 10, 2015, Bishop Malone issued a written decree opening an internal investigation. The decree recounts that Malone received a complaint over two years ago, in February 2013, alleging that *Fr. U* had sexually abused a minor through grooming. In a written decree dated September 11, 2015, Malone: (a) revoked *Fr. U*’s suspension and (b) replaced it with a penal precept “in order to preclude any further scandal arising from the allegations of sexual misconduct with a minor through the process of ‘grooming’ . . . and in order to provide adequately for the safety of children and other minors.” The precept prohibited *Fr. U* from publicly ministering; publicly presenting himself as

a priest; and associating with minors without the supervision of an adult.

606. In response to Bishop Malone's decrees, in November 2015, *Fr. U*'s canon law adviser requested a canonical trial and objected to Malone's position that the allegations against *Fr. U* involved a minor. In written decrees dated December 17, 2015, Malone reaffirmed his decision to open an internal investigation under the *Essential Norms*. The decrees also explained the nature of the Complainant and *Fr. U*'s relationship:

As a result of the relationship, it has been recommended by others, including our [DRB], that this case likely involved the process of "grooming," which explains my reasons for considering this to be a grave and reserved delict moving forward, even though the individual in question was over the age of eighteen.

Fr. U's file does not include the DRB's recommendation.

607. By written decree dated December 17, 2015, Bishop Malone appointed an investigator to conduct the internal investigation. The decree required that, within ninety days, the investigator prepare a written and oral report for the DRB and that the report and the DRB's recommendation be sent to Malone; *Fr. U*'s file does not contain the report. Like the decrees to *Fr. U* above, the decree appointing the investigator outlined Malone's basis to assert that the complaint included allegations against a minor:

Having received the recommendation of the [DRB] that information at least seems to be true that Reverend [*U*] engaged in sexual abuse with [the Complainant] who was a young adult and twenty years of age at the time of the incident, I along with others on our [DRB] and the complainant . . . have considered the actions of *Fr. [U]* to constitute the abuse of a minor by means of a process of "grooming," which appears to have taken place over the course of five to ten years.

608. In May 2017, *Fr. U* changed his address to a residence in South Carolina.

609. Among other things, the absence of documentation in *Fr. U*'s file indicating that the Diocesan Corporation regularly supervised him shows that the Diocesan Corporation failed to reasonably monitor him.

610. In March 2018, the Diocesan Corporation did not include *Fr. U* on a public list of “diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.”

611. In a June 2018 letter to Bishop Malone, *Fr. U* noted that he had participated in his nephew’s funeral and asked permission to baptize his niece. An unsigned response within *Fr. U*’s file suggests that Malone rejected this request. Auxiliary Bishop Grosz, who was generally responsible for monitoring unassignable priests, testified that he did not know who had the responsibility to monitor *Fr. U* or ensure that *Fr. U* did not engage in public ministry.

612. In November 2018, the Diocesan Corporation did not identify *Fr. U* on a supplemental, public list of priests with substantiated claims of sexual abuse of a minor. Yet four months later, in March 2019, the Diocesan Corporation advised the Attorney General that it had begun the process of referring *Fr. U* to the CDF. No referral documents were provided to the Attorney General. Despite this representation, the Diocesan Corporation omitted *Fr. U* from its 2019 public disclosures of priests who Bishop Malone intended to refer to the CDF.

613. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to sufficiently conduct a timely investigation into allegations that *Fr. U* had committed sexual abuse; failing to seek or, alternatively, reasonably document the DRB’s assessment of sexual abuse allegations against *Fr. U*; and failing to refer *Fr. U* to the CDF. The Diocesan Corporation also failed to reasonably monitor *Fr. U*. The Diocesan Corporation’s actions concealed *Fr. U*’s conduct from the public and placed its beneficiaries at risk.

Fr. V

614. *Fr. V* was ordained in 1971.⁴⁴ As early as 2004, the Diocesan Corporation was on

⁴⁴ Unless otherwise noted, the allegations against *Fr. V* are generally based on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. V* have not

notice of a substantial likelihood that *Fr. V* had sexually abused a vulnerable adult. In 2011, the Diocesan Corporation received a complaint alleging that *Fr. V* had groomed a minor. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation failed to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. V* and failed to refer *Fr. V* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) disregarding the risk of sexual abuse and preparing false records when it approved *Fr. V*'s out-of-state ministry; (b) making false statements to its beneficiaries about why *Fr. V* left his ministry; (c) providing benefits and other compensation to *Fr. V* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (d) failing to reasonably monitor *Fr. V*, exposing itself and minors to unnecessary risks.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

615. *Fr. V* served in a variety of assignments, including in parishes and educational institutions. He was appointed pastor in 1991 and held this position until 2008.

616. In about the spring of 2004, Complainant 1, a seminarian, notified diocesan officials, including Diocesan Administrator Cunningham, that *Fr. V* had sexually abused him in about late 2003, when the Complainant was an adult. *Fr. V*'s file contains a three-sentence March 2004 memo from Cunningham to the file:

I met with [sic] today with Father [V] to discuss with him certain concerns that had been brought to my attention within the past few days. The concerns centered around what might be perceived to be harassment and also a violation of appropriate boundaries.

Father [V] understood the seriousness of this concern and is currently receiving counseling assistance to address these issues.

been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

This memo failed to sufficiently document Complainant 1's allegations.

617. *Fr. V's* file contains an April 2004 memo regarding a meeting between Complainant 1, Vice Chancellor LiPuma, and another diocesan official. The memo records that the Diocesan Corporation assured Complainant 1 that *Fr. V* was receiving counseling, noting that “[Complainant 1] wants to make sure that what happened to him will not happen to anyone else.” The Diocesan Corporation also assured Complainant 1 that “[it] would not assign another seminarian to Father [V]” and that “[*Fr. V* would] be told to stop any further contact with [Complainant 1].”

618. In April 2004, Diocesan Administrator Cunningham prepared a four-sentence memo regarding another meeting he had with *Fr. V* related to Complainant 1's allegations. The memo notes they “discussed again [*Fr. V's*] present situation and the steps that he has taken to address the legitimate concerns that had been raised.” Cunningham directed *Fr. V* to have no contact with Complainant 1.

619. On May 18, 2004, Diocesan Administrator Cunningham was appointed bishop of the Ogdensburg Diocese. The next day, Complainant 1 addressed a letter to the “Diocesan Administrator” and Vice Chancellor LiPuma, requesting “a written report about . . . [how his] case was evaluated by Bishop Cunningham that it was not consider [sic] as ‘sexual harassment.’” *Fr. V's* file contains no response to this letter.

620. On May 24, 2004, Auxiliary Bishop Grosz was elected Diocesan Administrator. Four days later, Complainant 1 met with Grosz and two other diocesan officials to discuss, in part, Complainant 1's allegations. Grosz's handwritten notes from the meeting state, in part: “Allegation: attempted sexual abuse on part of [*Fr. V*].”

621. In June 2004, *Fr. V's* diocesan counselor described Complainant 1 as the “victim”

and recognized that “Father [V] did some things that were very wrong; and these behaviors should not be minimized.”

622. During his testimony to the Attorney General, Auxiliary Bishop Grosz stated that he did not know whether the Diocesan Corporation had investigated Complainant 1’s allegations and admitted that he had not investigated Complainant 1’s allegations. Grosz also testified that he did not know what Complainant 1 had reported to Vicar General Cunningham: “All [Complainant 1] said to me was Father [V] came in and tried to get into bed with him period, that’s all [Complainant 1] told me. What [Complainant 1] had told Monsignor Cunningham, that was under Monsignor Cunningham.” Grosz further maintained in his testimony that he had never discussed Complainant 1’s case with Cunningham.

623. Auxiliary Bishop Grosz also testified that he had directed *Fr. V* to counseling “[b]ecause of the inappropriate action on his part of going into this room.” When asked why he had referred *Fr. V* to counseling without an investigation into the allegations, Grosz testified that he “felt that was the most prudent thing to do and to act on it taking [Complainant 1] at his word.”

624. Although Bishop Malone and Auxiliary Bishop Grosz never investigated Complainant 1’s allegations, in his testimony to the Attorney General, Malone acknowledged that he was informed that Grosz had allegedly threatened Complainant 1, a seminarian, with rejection from the priesthood if Complainant 1 continued to make allegations against *Fr. V*. Malone testified that he did not know of any diocesan investigation into Grosz’s alleged threats.

625. Despite the complaints against *Fr. V*, Bishop Kmiec issued letters of good standing for *Fr. V*, so that *Fr. V* could minister on cruise ships between 2005 and 2007. During this period, *Fr. V* remained in ministry in the Diocese.

626. In June 2007, Bishop Kmiec issued a letter of good standing for *Fr. V* to allow him to participate in an out-of-state conference or event, which may have involved minors. The letter states, in part, that: (a) “[w]e have never received any information that would cause us to restrict [*Fr. V*’s] ministry in any way”; (b) “[t]o the best of my knowledge, there have never been any reports of improprieties on his part”; and (c) “there is nothing to our knowledge in [*Fr. V*’s] background that would restrict any ministry with minors.” Kmiec sent a similar letter to an out-of-state diocese in 2010.

627. Bishop Kmiec issued letters of good standing for *Fr. V*, so he could minister on cruise ships between 2007 and 2013.

628. In July 2010, Bishop Kmiec appointed *Fr. V* pastor.

629. In November 2011, a school official from *Fr. V*’s parish complained to Auxiliary Bishop Grosz that *Fr. V*: (a) had sent inappropriate online messages to Complainant 2, a minor; (b) had ignored her warning about the inappropriateness of these messages; (c) appeared depressed and was apparently drinking alcohol; and (d) may have mental health issues, noting his “[breaking] down and cr[ying] on the pulpit.” On December 6, 2011, *Fr. V* met with Bishop Kmiec, Grosz, and Vicar General Slubecky. In that meeting, Kmiec removed *Fr. V* from ministry and directed him to undergo a mental health assessment at Southdown for several reasons, including his “imprudent action” with Complainant 2, alcoholism, and depression. In a memo memorializing the meeting, Grosz described the purpose of the assessment as an evaluation to assist *Fr. V* in understanding his issues and “to get information to Bishop Kmiec relative to future ministry for Father [*V*].”

630. On or about December 6, 2011, Auxiliary Bishop Grosz and *Fr. V* prepared the following public announcement regarding *Fr. V*’s removal from ministry: “In consultation with

Bishop Kmiec, Father [V] will be taking a medical leave. Father [V] requests your prayers for his good health and assures you of his prayers as well.” Kmiec approved this announcement. The Diocesan Corporation declined to provide details to the public about the departure, asserting privacy protections.

631. Internal diocesan records of a priest’s status reflect that *Fr. V* went on medical leave on December 7, 2011. On or about January 2, 2012, *Fr. V* was sent to Southdown. On or about January 4, 2012, *Fr. V* discharged himself from Southdown before Southdown could complete its mental health assessment of *Fr. V*. Bishop Kmiec met with *Fr. V* in February 2012. In that meeting, *Fr. V* refused to resign his pastorate or complete the Southdown assessment. Kmiec maintained that unless *Fr. V* completed a mental health evaluation, he would not receive another assignment.

632. In about March 2012, *Fr. V* retained a canon law adviser to represent him before the Diocese with respect to his clerical status. The adviser wrote to Bishop Kmiec to request information regarding *Fr. V*’s case and status. The adviser maintained that false allegations had been leveled against *Fr. V*. In response, Kmiec advised that he decided that *Fr. V* had not violated the *Charter*: “[T]he matter being investigated has not been determined to be a violation of the Charter The alleged behaviors and correspondence that are being investigated in this case require a pastoral response” Kmiec indicated his desire for *Fr. V* to seek counseling because “[i]t was evident . . . that Fr. [V] has emotional issues and needs help in dealing with boundary issues.” Kmiec also conceded that although he had not issued any written decrees, he and *Fr. V* had agreed on *Fr. V*’s removal from ministry until the resolution of this matter.

633. In April 2012, the school official, who had submitted the complaint on behalf of Complainant 2, e-mailed the Diocesan Corporation to express her dismay at the Diocesan

Corporation's response: "[*Fr. V*] is a predator and a groomer of young children. Something needs to be done." Two days later, Bishop Kmiec informed *Fr. V* that "the only way that he could possibly be reassigned to another parish" is if he resigned his pastorate and completed a mental health evaluation. *Fr. V* agreed to the evaluation but not the resignation. So Kmiec decided that if *Fr. V* did not resign after the evaluation, he would begin the canonical process of removing *Fr. V* from his pastorate. However, shortly thereafter, in May 2012, Kmiec resigned, and Bishop Malone was named as his replacement.

634. In July 2012, *Fr. V* wrote to Bishop Malone. *Fr. V* explained that for the last four months, he had been residing at the St. John Vianney Center, a mental health facility. He requested permission to attend Malone's installation and discuss his stay at the St. John Vianney Center with Malone.

635. In an August 2012 e-mail from *Fr. V* to the Diocesan Corporation, *Fr. V* discussed his stay at the St. John Vianney Center and his future at the Diocese, noting that "[he was] really looking forward to being returned to ministry and [his] good name and reputation restored."

636. At some time before September 18, 2012, the school official wrote Bishop Malone. She identified herself and summarized the allegations against *Fr. V*. She ended her letter with pointed comments: "If a teacher would have been grooming children and had inappropriate relations with a minor, they [sic] would have been fired and lost their [sic] license to teach. Why is it this man is not only still the pastor . . . , but also still wearing a collar?" After the receipt of this letter, Malone requested *Fr. V*'s resignation as pastor and, by letter dated September 20, 2012, Malone accepted the resignation.

637. In October 2012, *Fr. V* sent Bishop Malone a letter stating that the Priests'

Personnel Board, the school official, and a teacher who had reported *Fr. V* to Child Protective Services were all untrustworthy. The letter claims that a member of the Board and the school official betrayed him. In conclusion, the letter asserts that *Fr. V* had not yet been vindicated.

638. In November 2012, Bishop Malone appointed *Fr. V* as a chaplain in a nursing home.

639. In December 2012, the St. John Vianney Center indicated that *Fr. V* had not followed its recommendations since his discharge in August. *Fr. V*'s file does not evidence any resolution of this concern, showing that the Diocesan Corporation failed to reasonably monitor him.

640. In February 2013, Bishop Malone issued a letter of good standing for *Fr. V* so that *Fr. V* could minister on cruise ships in 2013 and 2014.

641. In March 2013, the school official advised Bishop Malone that *Fr. V* had heard confessions at a youth conference. The school official questioned whether *Fr. V* should have attended given “[his] background of stalking and grooming young people.” In his response to the official, Malone, describing *Fr. V*'s grooming as “certain allegations,” wrote that *Fr. V*'s conduct had not violated the *Charter*. Malone also stated that the matter had been presented to the DRB and that, after consultation with the DRB, he had assigned *Fr. V* to a “lower profile position.” *Fr. V*'s file does not contain the presentation to the DRB. Moreover, Malone testified that the Diocesan Corporation had not approved *Fr. V*'s attendance at the conference and that the Diocesan Corporation had only learned of *Fr. V*'s attendance after-the-fact. Malone also testified that if *Fr. V* had requested permission to attend the conference, he would have rejected the request because of *Fr. V*'s “contact” with Complainant 2. *Fr. V*'s participation in the youth conference shows that the Diocesan Corporation failed to reasonably monitor him.

642. On or about October 7, 2013, Bishop Malone sent a letter to the Archdiocese of Santa Fe in New Mexico. The letter advised that, within a few days, *Fr. V* would be officiating a memorial Mass in the archdiocese. The letter disclosed that “Fr. [V] does enjoy the faculties of the Diocese of Buffalo, however, because of a boundary issue with a minor—not judged to be a violation of the Dallas Charter, he underwent counseling and therapy.” Malone testified that “[he] thought it was important to be open with the archbishop . . . that a priest with that history was coming there.”

643. In about October 2013, *Fr. V* was serving in a Buffalo health care facility managed by a religious order. On or about October 14, 2013, the religious order notified Bishop Malone and Auxiliary Bishop Grosz about allegations that *Fr. V* had (a) inappropriately touched and made inappropriate statements to a nineteen-year-old employee and (b) inappropriately touched a twenty-five-year-old member of the religious order. When asked if the Diocesan Corporation investigated these two complaints, Malone testified that Grosz had “looked into this”; Grosz testified that he did not know whether the Diocesan Corporation had investigated these complaints.

644. In addition to his work at the health care facility, in about October 2013, *Fr. V* was also serving in a hospital. On or about October 15, 2013, the Diocese Corporation’s Director of the Hospital Apostolate relayed a complaint to the Diocesan Corporation from *Fr. V*’s hospital. According to the complaint, a thirty-year-old patient in the emergency room asserted that *Fr. V*, while smelling like alcohol, had inappropriately touched him. On October 23, 2013, the Director called Auxiliary Bishop Grosz to report on the allegations made against *Fr. V*, and Grosz documented their conversation in a memo. Grosz’s memo does not state whether *Fr. V* admitted or denied the alleged misconduct. The memo notes the Director’s view

that the patient suffered from a neurological disorder, which could have impaired his ability to properly interpret his encounter with *Fr. V*. Yet the Director stated that *Fr. V* required additional training before continuing at the hospital. Having received no further complaint from the patient, Grosz recorded that the “matter is considered settled.”

645. Bishop Malone testified that he did not know whether the Diocesan Corporation had investigated the hospital complaint. Auxiliary Bishop Grosz testified that he did not investigate the complaint.

646. On October 24, 2013, Bishop Malone asked Auxiliary Bishop Grosz to direct the religious order to terminate *Fr. V* from its health care facility. Grosz communicated this direction to a supervisor at the religious order, who responded that

it is important to “nip this in the bud,” in light of the fact that the young employee, as well as his mother, are both aware of the inappropriate behavior of Father [V] and would not want word of that behavior or that complaint to be passed among the employees.

On October 25, 2013, the religious order advised Malone that it had terminated *Fr. V* because of his “inappropriate conduct with employees.”

647. On or about November 1, 2013, Bishop Malone met with *Fr. V*, who agreed to seek mental health treatment at the St. John Vianney Center. Two days later, *Fr. V* e-mailed Malone: “I am done. Just get rid of me. Destroy me. I tried my best. I will not subject myself to that torture and abuse again.” Malone marked the e-mail as urgent, forwarded it to a diocesan counselor, and asked the counselor to contact *Fr. V* as soon as possible, noting that “[*Fr. V*’s] response shows the depth and gravity of [*Fr. V*’s] issues.” On November 3, 2013, Malone advised his senior staff that if *Fr. V* refused to seek treatment at the St. John Vianney Center, he would designate *Fr. V* as an “unassignable priest[.]”

648. On November 15, 2013, *Fr. V* wrote a letter to Bishop Malone, explaining that his

decision to refuse to return to a mental health facility was based, in part, on his physical health. *Fr. V* then defended his touching of the member of the religious order at the health care facility. Finally, the letter alleges that the Diocese violated *Fr. V*'s due process and canonical rights and that he was considering publishing a book regarding his experiences with the Diocese. On November 21, 2013, *Fr. V* apologized to Malone for the November 15 letter and offered to follow any request from the Diocese that would restore him to ministry. In response, Malone proposed that they meet to discuss after December. In the interim, Malone restricted *Fr. V*'s ministry through a verbal order: "While I will not issue a decree, I would ask you to honor the 'gentleman's agreement' we talked about when last we met, and refrain from public celebrations of the liturgy . . . and from wearing clerical attire."

649. In March 2014, Bishop Malone wrote to *Fr. V* to ask that they meet to discuss next steps. In that letter, Malone expressed that "[his] intention was and is to help you resume active ministry" but that "[t]here are . . . some serious issues that continue to be of concern."

650. On May 1, 2014 at 2:17 a.m., *Fr. V* e-mailed Bishop Malone:

I cannot live like this any longer. . . .

This is one of my countless sleepless nights. Hundreds. One of my childhood friends died of cancer today and is being buried this weekend. . . . We grew up together and I am prohibited from being part of his funeral. This is so unjust, criminal, and it is sinful. . . .

...

I know it means nothing to you. As my priest friends say to me, "he has no heart."

Malone forwarded the e-mail to his senior staff, adding: "I am exasperated. What do we do?"

651. In August 2014, *Fr. V* sought the intervention of Pope Francis. In a letter to the Pope, *Fr. V* claimed that he had served as a priest for over forty-years without incident until he

was removed from ministry for ending a text message to a minor (Complainant 2) with “love you.” *Fr. V* maintained that he had been sending these messages as encouragement because of the child’s issues at home. *Fr. V* continued that the Diocese had re-assigned him to ministry after he had spent four months receiving mental health treatment. Referring to only one of the allegations stemming from his conduct at the health care facility, *Fr. V* explained that that assignment had now been terminated because he hugged a person.

652. In March 2015, *Fr. V* reported to Bishop Malone that he had been regularly meeting with a therapist and that his canon law adviser had maintained that only active ministry would clear *Fr. V*’s reputation.

653. In a May 2015 letter, Bishop Malone approved *Fr. V*’s request to serve as a sacramental minister and to engage in ministry on an as-needed basis. In his testimony to the Attorney General, Malone justified this decision by asserting that he lacked the canonical grounds to restrict *Fr. V* from ministry.

654. In September 2015, Bishop Malone issued a letter of good standing for *Fr. V* to Cardinal Donald Wuerl of the Archdiocese of Washington, D.C. This letter allowed *Fr. V* to celebrate Mass in the District of Columbia and attend a Joint Session of Congress. There was no mention of *Fr. V*’s history in the letter, which attested that: (a) “[*Fr. V*] is a person of good moral character and reputation”; (b) “I know nothing which would in any way limit or disqualify him from this ministry”; and (c) “I am unaware of anything in his background which would render him unsuitable to work with minor children.” In testimony to the Attorney General, Malone admitted that those statements were inaccurate. In October 2015, Malone issued a similar letter of good standing for *Fr. V* so that he could minister on cruise ships in 2016; the letter did not mention *Fr. V*’s history.

655. In November 2015, the CDF sent Bishop Malone a copy of *Fr. V*'s August 2014 letter to the Pope and requested a summary of the case. In December 2015, Malone responded to the CDF by reporting that: (a) after an investigation, including a review by the DRB, *Fr. V* was removed as pastor because he had groomed a minor; (b) *Fr. V* had discharged himself from a mental health facility before completing an assessment to “address[] his obvious issues of ‘grooming,’ ‘boundaries,’ heavy drinking, and depression”; (c) *Fr. V* was dismissed from his position at a health care facility after two complaints of inappropriate touching; (d) a hospital had terminated *Fr. V* because of allegations of inappropriate behavior; and (e) “[a] seminarian noted that Father [V] seemed to ‘groom’ him to get his affection [and o]ne night the seminarian recounted an incident where Father [V] came to his room, came into his bed, and began to touch his genitalia.” Malone also advised the CDF that he had restored *Fr. V*'s faculties because *Fr. V* had submitted to counseling. Malone testified that as of the date of this response, he agreed with the DRB that grooming did not constitute sexual abuse under the *Charter*.⁴⁵

656. Anonymous handwritten notes in *Fr. V*'s file state: “[Bishop Malone’s December 2015] response to CDF [and] summary of case certainly indicate[] a longstanding pattern that is scandalous and could lead to sexual abuse of adult or minor if not removed from ministry.” In his testimony to the Attorney General, Auxiliary Bishop Grosz agreed with the conclusion in these notes.

657. In 2016 and 2017 Bishop Malone issued letters of good standing for *Fr. V* so that *Fr. V* could minister on cruise ships in 2017 and 2018. In support of these letters, Malone attested that: (a) “[*Fr. V*] is a person of good moral character and reputation”; (b) “I know nothing which would in any way limit or disqualify him from this ministry”; (c) “I am unaware

⁴⁵ At the same time, the little available evidence about the DRB’s assessments shows that the DRB concluded that another priest’s grooming of a minor did constitute sexual abuse. See *supra* ¶¶ 605-07.

of anything in his background which would render him unsuitable to work with minor children”; and (d) “I am unaware of any physical or mental health issues which would affect his ability to carry out the full ministry onboard.” Malone admitted in his testimony to the Attorney General that these assertions were inaccurate.

658. On March 20, 2018, the Diocesan Corporation did not identify *Fr. V* on a public list of “diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.” On March 26, 2018, Complainant 3 filed a complaint with the Diocesan Corporation, alleging that, in about 1973, when he was in the eighth grade and on an overnight school trip, *Fr. V* got into his bed and touched his genitalia.

659. In April 2018, Bishop Malone issued a written decree opening the Diocesan Corporation’s internal investigation into Complainant 3’s allegations. Malone also issued a written decree that placed *Fr. V* on administrative leave and barred him from, among other things, contacting minors or engaging in public ministry. The decree also prohibited *Fr. V* from wearing clerical attire until the Diocesan Corporation completed its investigation and the DRB issued its recommendations.

660. In May 2018, *Fr. V* served as a priest on a cruise. During the cruise a passenger on the ship googled *Fr. V* and learned of his suspension. As a result, the cruise notified the Diocesan Corporation that it was removing *Fr. V* from the ship.

661. On June 27, 2018, the Diocesan Corporation or its agents recorded three actions concerning *Fr. V*. First, a diocesan investigator issued a written report that found Complainant 3’s allegations to be credible. Second, according to a memo by Auxiliary Bishop Grosz to the file, the DRB met and “Bishop Malone . . . accepted the decision that there is semblance of truth relative to the allegation against Father [V]”; *Fr. V*’s file lacks a record of this meeting prepared

by the DRB. Third, Malone issued a written decree documenting the completion of the Diocesan Corporation's internal investigation and referring the investigator's report and the matter to the CDF.

662. In November 2018, the Diocesan Corporation added *Fr. V* to its list of priests with "substantiated claims of sexual abuse of a minor."

663. In about September 2019, in a disclosure on its website, the Diocesan Corporation indicated that it would refer *Fr. V* to the CDF, confirming that—despite the June 2018 decree referring *Fr. V* to the CDF—Bishop Malone had not done so as of September 2019.

664. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to seek or, alternatively, reasonably document the DRB's assessments of sexual abuse allegations against *Fr. V* and failing to refer *Fr. V* to the CDF. Instead, it failed to sufficiently document the allegations made by Complainant 1 against *Fr. V*; made false or misleading statements to its beneficiaries; prepared false or misleading business records; failed to reasonably monitor *Fr. V*; and disregarded the risk that *Fr. V* could sexually abuse minors or adults. The Diocesan Corporation's actions concealed *Fr. V*'s conduct from the public and placed its beneficiaries at risk.

Fr. W

665. *Fr. W* was ordained in 1970.⁴⁶ As early as 1993, the Diocesan Corporation was on notice of a substantial likelihood that *Fr. W* had sexually abused a minor yet allowed him to retire and leave ministry. Years later, instead of applying the *Charter* and the *Essential Norms*,

⁴⁶ Unless otherwise noted, the allegations against *Fr. W* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. W* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

the Diocesan Corporation failed to conduct internal investigations into allegations that *Fr. W* had sexually abused minors; failed to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. W*; and failed to refer *Fr. W* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) failing to maintain any record of *Fr. W*'s alleged sexual abuse of a minor and (b) failing to reasonably monitor *Fr. W*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

666. After his ordination, *Fr. W* generally served in parish ministry. Before 2002, his file lacks any complaints of sexual abuse. But other documentation in the file and public information evidences that the Diocesan Corporation was on notice of a substantial likelihood that he had sexually abused at least one minor before 2002.

667. In June 1989, *Fr. W*, a pastor at the time, submitted his resignation to Bishop Head. In his resignation letter, *Fr. W*—without explaining the context for his letter—also surrendered his faculties and requested an indefinite leave of absence to “[possibly] reconsider [his] call to the priesthood.” Further, *Fr. W* expressed his anger at Head, in part, because of Head’s “lecture” about the seriousness of an unidentified “issue,” which led *Fr. W* to seek counseling. At about this time, *Fr. W* disclosed to his parishioners that he was taking an indefinite leave of absence because of “burn[] out.”

668. Auxiliary Bishop Trautman drafted a response for Bishop Head to *Fr. W*'s resignation letter. Trautman's proposed response appears to commend *Fr. W* for his admission to some form of misconduct: “You have humbly admitted that personal behavioral mistakes have been made. I believe that therapy available at Southdown or St. Luke's will greatly assist you and can enable you to resume your ministry with joy and peace.”

669. In December 1989, Southdown advised Auxiliary Bishop Trautman that *Fr. W* had begun receiving mental health treatment at its facility. Internal diocesan records indicate that *Fr. W* completed his treatment at Southdown in May 1990.

670. A few months later, in October 1990, *Fr. W* returned to ministry as a pastor. He later was appointed pastor of another parish in February 1993.

671. On information and belief, in about the summer of 1993, Complainant 1 filed a complaint with the Diocesan Corporation, alleging that, beginning in 1971, when he was a child, *Fr. W* had sexually abused him. This complaint is not contained in *Fr. W*'s file.

672. In July 1993, Vicar General Cunningham informed *Fr. W* that Bishop Head had placed *Fr. W* on administrative leave and revoked his faculties. In August 1993, *Fr. W* resigned his pastorate and simultaneously announced his retirement to Head. The Diocesan Corporation's current, public list of *Diocesan Priests with Substantiated Allegations of Abuse of a Minor* represents that *Fr. W* was removed from ministry in 1993.

673. In October 1993, Bishop Head alerted *Fr. W* to public inquiries about his status: "[T]he Buffalo News has also asked questions about a number of men, including you. The response we gave indicated that you had resigned and did not intend to resume priestly ministry for personal reasons and that confidentiality would dictate that we say nothing else."

674. In August 1993, Bishop Head urged *Fr. W* to seek his own laicization. There is no evidence in *Fr. W*'s file that the Diocese further pursued this recommendation.

675. On information and belief, after *Fr. W* resigned, he moved to Alaska.

676. On information and belief, in about 1994, the Diocesan Corporation resolved a dispute with Complainant 1 regarding his legal claims against the Diocesan Corporation.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

677. After the *Charter* was adopted in June 2002, there is no evidence in *Fr. W's* file that the Diocesan Corporation began an independent investigation into the allegations that *Fr. W* had sexually abused Complainant 1.

678. In June 2011, writing from Hawaii, *Fr. W* asked Auxiliary Bishop Grosz to inquire about *Fr. W's* eligibility for a pension from the Diocesan Corporation. Bishop Kmiec dismissed *Fr. W's* request: "Due to the circumstances under which you separated from the Diocese of Buffalo, you are not eligible for pension benefits from the Diocese of Buffalo. Be assured of my prayers for you in your retirement years in Hawaii."

679. In March 2012, Complainant 2 filed a complaint with the Diocesan Corporation, alleging that in about 1978 or 1979, *Fr. W* had groomed and repeatedly sexually abused him, when he was fifteen or sixteen years old. *Fr. W's* file does not contain any decrees opening or closing a diocesan investigation into Complainant 2's claims. The Diocesan Corporation failed to investigate Complainant 2's allegations pursuant to the *Charter* and the *Essential Norms*.

680. In June 2012, Complainant 3 filed a complaint with the Diocesan Corporation, alleging that in 1971, when he was twelve or thirteen years old, *Fr. W* took him to his bedroom in the rectory, undressed him, and touched his genitals until he defended himself. The Complainant also alleged that when he was seventeen or eighteen years old, *Fr. W* fondled him. *Fr. W's* file does not contain any decrees opening or closing a diocesan investigation into Complainant 3's claims. The Diocesan Corporation failed to investigate Complainant 3's allegations pursuant to the *Charter* and the *Essential Norms*.

681. After 2012, Complainant 4 filed a lawsuit against the Diocesan Corporation and others, alleging that *Fr. W* had sexually abused him between 1979 and 1982, when he was a

minor.

682. In about mid-2015, Auxiliary Bishop Grosz attempted to locate *Fr. W*, in part, by inquiring with priests of the Diocese. One priest knew *Fr. W*'s address but would not reveal it, demonstrating the Diocesan Corporation's failure to reasonably monitor *Fr. W*. Grosz did receive information that *Fr. W* currently lived in New York State.

683. *Fr. W*'s file contains a draft document entitled *Pastoral Attempts by Bishop Malone To Have Cleric Desist from His Contumacy and from His Voluntary and Illicit Absence from Ministry Regarding the Matter of Rev. W*. This document, dated September 13, 2015, states, among other things, that:

- 1) In 1994, Most Reverend Edward D. Head, Bishop of Buffalo and Rev. [W] met to discuss his decision to resign from his parish and permanently resign from priestly ministry. . . . In a letter dated (Date), Rev. [W] . . . reaffirmed his intention to leave the priesthood.
- 2) Since leaving his priestly ministry in (date), the cleric last had contact with the Diocese of Buffalo in (date). There had been no further contact with the Diocese of Buffalo by the cleric concerning his status as a cleric.
...
- 4) It is apparent that the cleric (does / does not) desire to voluntarily petition for a return to the lay state with a dispensation from the obligations of holy order including the obligation of celibacy, to participate in this process or respond to the petition.

Fr. W's file does not contain a finalized version of this document.

684. *Fr. W*'s file contains an unsigned *Declaration of Cleric's Irreversible Abandonment of Ministry Regarding the Matter of Rev. W*. The document, dated December 7, 2015, states in part that:

I, the Most Reverend Richard J. Malone, Bishop of Buffalo, aware that back in 1994 it was agreed upon between my predecessor, Most Reverend Edward D. Head and Reverend [W]; that Reverend [W] would seek voluntary laicization from the priesthood

However, that never occurred, and as a result, the Diocese of Buffalo is still the diocese of incardination of Reverend [W]. . . .

The cleric, Reverend [W], had persisted and continues to persist in the voluntary and illicit absence from ministry and has persisted in his abandonment of ministry for a period of more than five consecutive years.

. . .

Wherefore, as of today, December 7, 2015, I formally and [sic] asking you to begin the process of voluntary laicization. You have brought truly grave scandal to not only the priesthood and your brother priests, but also to . . . the Diocese of Buffalo.

Fr. W's file does not contain a final version of this document.

685. In March 2016, a diocesan attorney prepared a memo to his file, purporting to summarize DRB business regarding Complainants 2 and 4:

At the [DRB] meeting, we decided that [the Victim Assistance Coordinator] will continue to work with [Complainant 2] and provide support. At this time, the Board was not inclined to recommend that the Diocese provide him with the lump sum payment that he is seeking, especially because he seems to keep changing his plans about how he will support himself. . . .

The memo also documents the Diocesan Corporation's decision "not to draft a letter for Bishop Malone to send to *Fr. [W]* seeking a voluntary dismissal from the clerical state at this time, especially in light of the ongoing litigation ([Complainant 4])." *Fr. W's* file lacks any record of this DRB meeting prepared by the DRB.

686. On information and belief, in about June 2016, the Diocesan Corporation resolved a dispute with Complainant 4 regarding his legal claims.

687. In March 2018, the Diocesan Corporation publicly identified *Fr. W* on a list of "diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor." After this disclosure, the Diocesan Corporation received at least two complaints alleging that, between 1966 and 1971, *Fr. W* had sexually abused minors.

688. *Fr. W*'s file includes an unsigned Decree of Suspension. The decree, dated June 26, 2018, revokes *Fr. W*'s faculties based, in part, on an investigation which found that *Fr. W* had sexually abused minors. *Fr. W*'s file does not contain a signed version of the decree nor a report of investigation.

689. *Fr. W*'s file contains an unsigned letter from Bishop Malone to the CDF dated June 26, 2018, in which Malone related that: (a) an investigation had found that *Fr. W* had sexually abused minors; (b) *Fr. W* had not responded to Malone's December 2015 suggestion that *Fr. W* seek laicization; and (c) *Fr. W* was leading a life of prayer and penance, thus, no further action was needed. *Fr. W*'s file does not include a finalized version of this letter.

690. In a letter to Bishop Malone, a diocesan attorney recounted that during a meeting of the DRB in December 2018, Malone, based on the DRB's recommendation, had directed the attorney to attempt to settle Complainant 2's claims against the Diocesan Corporation. In January 2019, the Diocesan Corporation entered into a settlement agreement with Complainant 2. The agreement notes that Complainant 2's allegations had been investigated and presented to the DRB. *Fr. W*'s files does not contain this presentation to the DRB.

691. In about November 2019, the Diocesan Corporation, in a disclosure on its website, indicated that it would refer *Fr. W* to the CDF, confirming that Bishop Malone had not done so as of that time.

692. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to conduct internal investigations into allegations that *Fr. W* had sexually abused minors; failing to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. W*; and failing to refer *Fr. W* to the CDF. Instead, it failed to maintain any record of *Fr. W*'s sexual abuse of a minor and failed to reasonably monitor *Fr. W*.

The Diocesan Corporation's actions concealed *Fr. W's* conduct from the public and placed its beneficiaries at risk.

Fr. X

693. *Fr. X* was ordained in 1974.⁴⁷ As early as 1988, the Diocesan Corporation was on notice of a substantial likelihood that *Fr. X* had sexually abused a minor. Years later, instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed *Fr. X* to resign his pastorate. The Diocesan Corporation also failed to conduct an internal investigation into allegations that *Fr. X* had sexually abused a minor; failed to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. X*; and failed to refer or timely refer *Fr. X* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) failing to maintain any record of *Fr. X's* sexual abuse of a minor; (b) creating false or misleading records to establish a purported, legitimate basis for *Fr. X's* resignation and eligibility for associated benefits; (c) providing these benefits and other compensation to *Fr. X* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (d) failing to reasonably monitor *Fr. X*, exposing itself and minors to unnecessary risks.

Pre-2002 Concerns

694. From 1976 to February 1988, documents indicate that *Fr. X* drank in excess and was referred to Guest House, a treatment facility for alcoholism in Minnesota.

695. In about 1987, the limited available record indicates that *Fr. X* was involved in an

⁴⁷ Unless otherwise noted, the allegations against *Fr. X* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. X* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

incident concerning alleged sexual abuse.

696. On April 18, 1988, *Fr. X* sought mental health treatment from the St. Luke Institute in Maryland. While *Fr. X* attended this counseling, Vicar General Cunningham reported to Bishop Head that *Fr. X*'s then-pastor "really believes that Father [X] should not return to [the parish]." On April 29, 1988, *Fr. X*'s pastor asked Cunningham if *Fr. X* could be transferred from the parish's payroll to the Diocesan Corporation's payroll. Cunningham advised the bishop of this request and noted that the transfer could alert *Fr. X* that he would not be returning to his parish. The bishop asked to discuss the request with the St. Luke Institute before formally deciding. On May 3, 1988, Cunningham sent a memo to staff directing that *Fr. X* be transferred to the Diocesan Corporation's payroll because *Fr. X* was on sick leave.

697. The St. Luke Institute discharged *Fr. X* in about October 1988, and he was assigned to a parish.

698. In October 1992, Vicar General Cunningham memorialized a meeting with *Fr. X* to discuss "recent information" brought to Cunningham's attention. In his memo, Cunningham described an incident that had occurred two months earlier while *Fr. X*'s pastor vacationed. At that time, two guests visited *Fr. X* in the rectory, and *Fr. X* "broke[] his sobriety which resulted in some inappropriate behavior." According to the memo, *Fr. X* indicated that he had discussed the incident at the St. Luke Institute. Cunningham urged *Fr. X* to take his medication and avoid alcohol: "I cautioned him that I was concerned about his not taking his medicine and his drinking which resulted in inappropriate behavior."

699. In April 1993, Msgr. Popadick prepared a memo to Bishop Head to report a concern from *Fr. X*'s pastor that *Fr. X* "ha[d] broken his sobriety and [was] once again drinking." Handwritten notes on the copy of Popadick's memo appear to relate to a call with the

pastor and state, in part: “Aug. 92,” “youth worker,” and “[Vicar General Cunningham] was told.” Further, in a separate set of handwritten notes from May 1993 and attached to Popadick’s memo, an unidentified writer states:

Spent ½ hour with [Fr. X] . . . he clearly admitted to his . . . 2 slips from sobriety including the incident with the youth worker in Aug 92. I was very impressed with his manner + his openness — I told him about [a local psychologist] + gave him her number.

700. In July 1995, Vicar General Cunningham requested a meeting with Fr. X to discuss potential, future assignments. They agreed that before Fr. X could be appointed pastor, he would submit to another mental health assessment by the St. Luke Institute. Cunningham’s summary of the meeting notes that Fr. X sought counseling from a local psychologist on a monthly basis.

701. In 2001, Bishop Mansell appointed Fr. X pastor.

Defendants’ Violations of Sexual Abuse Policies and Secular Fiduciary Duties

702. After the *Charter* was adopted, the Diocesan Corporation failed to investigate or, alternatively, document its investigation of at least one complaint of sexual abuse against Fr. X, which the Diocesan Corporation must have received before 2002.

703. On August 20, 2003, Fr. X signed a Reception of Decree of Suspension, which confirmed that the bishop revoked his priestly faculties and prohibited him from publicly celebrating Mass, celebrating the sacraments, and presenting himself as a priest. Fr. X’s file does not contain the Decree of Suspension or any indication that the Diocesan Corporation publicly disclosed this decree.

704. Internal diocesan records, maintained to record a priest’s status, reflect that Fr. X resigned on August 20, 2003. These documents do not indicate that the Diocese removed Fr. X from ministry because of sexual abuse allegations.

705. On or about August 25, 2003, *Fr. X* publicly announced his removal to the parish: “Because of an incident that happened 16 years ago, Bishop Mansell had no choice but to remove me from ministry. By the time you read this I will be gone.”

706. In August 2007, Complainant 1 filed a complaint with the Diocesan Corporation, alleging that *Fr. X* had engaged in sexual activity with him for about nine years, between 1989 and 1998. According to the Complainant, the relationship began when he was nineteen years old and sought counseling from *Fr. X* after the death of his father. The Complainant further alleged that *Fr. X* had massaged and fondled him and that he had attempted to push *Fr. X* off of him on several occasions. The Complainant ultimately ended the relationship. *Fr. X*'s file does not contain any documentary evidence that the Diocesan Corporation investigated the Complainant's allegations.

707. In a memo to Auxiliary Bishop Grosz, copied to a diocesan attorney, the Diocesan Corporation's Victim Assistance Coordinator explained why she believed the Diocesan Corporation should assist the Complainant even though he was not a minor at the time of the alleged sexual activity:

Please note that [the Complainant] was not a minor at the time that this abuse occurred and therefore I do not believe that this is an ‘official’ Charter report. However, because [the Complainant] was 19 years [sic] and very vulnerable because of his father's recent death at the point when [*Fr. X*] began to groom him for this sexual relationship, I am recommending that the Diocese support his healing process. I will facilitate his linking with a therapist unless I hear from you otherwise.

708. In handwritten notes to the Victim Assistance Coordinator's memo, Auxiliary Bishop Grosz wrote: “Phone Sept. 9, 2008: [diocesan attorney] noted [Victim Assistance Coordinator] indicated [the Complainant] is in counseling. Case closed.”

709. Among other things, the lack of documentation in *Fr. X*'s file indicating that the

Diocesan Corporation regularly supervised him shows that the Diocesan Corporation failed to reasonably monitor him.

710. In March 2018, the Diocesan Corporation publicly identified *Fr. X* on a list of “diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor.”

711. *Fr. X* died in June 2019.

712. In September 2019, the Diocesan Corporation, in a disclosure on its website, indicated that *Fr. X* had been referred to the CDF; however, referral documents were not produced to the Attorney General.

713. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to conduct an internal investigation into allegations that *Fr. X* had sexually abused a minor; failing to seek or, alternatively, reasonably document the DRB’s assessment of sexual abuse allegations against *Fr. X*; and failing to refer or timely refer *Fr. X* to the CDF. Instead, it failed to maintain any record of *Fr. X*’s sexual abuse of a minor; prepared false or misleading business records; and failed to reasonably monitor *Fr. X*. The Diocesan Corporation’s actions concealed *Fr. X*’s conduct from the public and placed its beneficiaries at risk.

Fr. Y

714. *Fr. Y* was ordained in 1973. By approximately 2017 the Diocesan Corporation was on notice of a substantial likelihood that *Fr. Y* had acted inappropriately with young adults. While the *Charter* and the *Essential Norms* do not apply to adults, the documents in *Fr. Y*’s file show that the Diocesan Corporation sought, but failed to reasonably document, the DRB’s assessments of allegations of sexual misconduct against *Fr. Y*. The Diocesan Corporation also

engaged in other improper conduct by (a) failing to reasonably document allegations that *Fr. Y* had sexually abused a minor; (b) failing to sufficiently investigate allegations that *Fr. Y* had sexually abused an adult; (c) disregarding the risk of sexual abuse; (d) preparing false or misleading records when it wrote to another diocese to approve *Fr. Y*'s out-of-state ministry; and (e) failing to reasonably monitor *Fr. Y*, exposing itself and others to unnecessary risks.

Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties

715. *Fr. Y* had various assignments during his tenure, including serving in parish ministry from 1973 until he resigned his pastorate in 2018.

716. In April 2017, Complainant 1 filed a complaint with the Diocesan Corporation. The Complainant explained that he had known *Fr. Y* since childhood and alleged that *Fr. Y* greets him with a kiss on the neck; the complaint did not state when the kissing began. While reporting this complaint, the Complainant asked the Diocesan Corporation for advice on how to stop *Fr. Y*'s kisses. The Complainant stated that in 2013, when he was about twenty-five years old, he had agreed to go with *Fr. Y* to a movie and dinner because he needed spiritual counseling. According to the Complainant, during the previews, *Fr. Y* laughed and kept his hand on the Complainant's "inner right thigh" until the Complainant protested.

717. Shortly after the complaint was filed, Auxiliary Bishop Grosz met with *Fr. Y* to discuss Complainant 1's allegations. Grosz's written summary of the meeting documents *Fr. Y*'s purported admissions: "[*Fr. Y*] indicated that all that [the Complainant] stated is true" and that the alleged touching "as expressed by [the Complainant] was accurate [because] Father [*Y*] noted that he may have hit [the Complainant's] leg a few times and stopped when [the Complainant] stated 'stop touching me.'" Grosz's summary notes that he provided *Fr. Y* with a document entitled *Types of Sexual Harassment* and that Grosz instructed that physical harassment "includes

‘unwanted touching of body or clothing, holding, grabbing, patting, hugging, kissing.’” *Fr. Y* agreed to seek counseling through the Diocesan Counseling Center. Grosz later prepared a one-sentence postscript to his summary: “I reviewed the case with [a diocesan attorney], who noted the case is considered closed.”

718. In July 2017, Complainant 2 filed a complaint, alleging two incidents involving *Fr. Y* in 2008 or 2009, when Complainant 2 was about nineteen years old. In the first incident, *Fr. Y* invited the Complainant to the rectory, and the Complainant expected counseling. Instead, the Complainant alleged that during dinner, *Fr. Y* began kissing him and grabbed the Complainant’s genital area. The Complainant ceased contact with *Fr. Y* for several months but later agreed to meet again at a casino. In the second incident, *Fr. Y* convinced the Complainant to visit his hotel room. In the room, *Fr. Y* allegedly began massaging and kissing the Complainant and “then pushed him onto a chair,” after which the Complainant left the room. Complainant 2 also alleged that two of his friends had claimed to have experienced the same type of conduct from *Fr. Y*. The Diocesan Corporation failed to sufficiently investigate Complainant 2’s allegations.

719. On August 16, 2017, Auxiliary Bishop Grosz contacted *Fr. Y* to discuss Complainant 2’s allegations. Grosz recorded in his written summary of this conversation that, with respect to the first incident, *Fr. Y* said that he “probably would have kissed the individual on the neck and the cheek, which is something he would do with an individual with whom he was familiar”; *Fr. Y* told Grosz that he “[didn’t] remember” grabbing Complainant 2’s genital area. In the incident in the hotel room, *Fr. Y* told Grosz that “[he did] not remember reaching over to [Complainant 2’s] crotch’ or doing what [Complainant 2] stated.”

720. On August 16, 2017, Bishop Malone issued a letter of good standing for *Fr. Y* to

an out-of-state diocese so that *Fr. Y* could minister at a conference. In the letter, Malone stated that: (a) he was “unaware of anything in [*Fr. Y*]’s background which would render him unsuitable to work with minor children”; (b) “[he] know[s] nothing which would in any way limit or disqualify [*Fr. Y*] from this ministry; and (c) “[*Fr. Y*] is a person of good moral character and reputation.”

721. One month later, in mid-September 2017, *Fr. Y* updated Auxiliary Bishop Grosz regarding “where things are at the moment.” In his letter, *Fr. Y* wrote that he “pray[ed] for [Complainant 2] everyday [sic] for any pain I caused him” and noted that “any pastoral changes at [his parish] would be sensitive . . . as parish is number 2 in diocese for contributions to [the Diocesan Corporation’s capital campaign], 2 or 3rd in assessments, and 7th in Catholic Charities.”

722. At the end of September 2017, Auxiliary Bishop Grosz prepared a memo regarding *Fr. Y*’s counseling:

[A]t Senior Staff Meeting, Bishop Malone informed Bishop Grosz that the case relative to Father [*Y*] was recently discussed by the members of the [DRB], with the recommendation that Father [*Y*] would go for [a mental health] assessment. Bishop Malone indicated it would be good for Father Jim Croglio, first of all, to meet with Father [*Y*].

A day after this memo, Grosz prepared a one-sentence postscript on the memo: “Per [a diocesan attorney], case closed.”

723. On September 28, 2017, *Fr. Y* advised Auxiliary Bishop Grosz that he would begin meeting with Fr. Croglio shortly and that he was considering retirement: “I will [possibly] announce retirement from parish [after June 3]. I have been thinking about this for awhile. . . . After New Year’s I’ll give it more thought and talk to Bishop Malone about specifics.”

724. On information and belief, on January 1, 2018, *Fr. Y* advised Bishop Malone that

he would request retirement from active ministry on November 1, 2018, so that he could leave on a “high” note. On information and belief, Malone granted the request to retire.

725. In February 2018, an anonymous complainant reported that in 2009, *Fr. Y* had drunk alcohol with the anonymous complainant’s friend and attempted to unzip the friend’s pants; the complaint did not disclose the friend’s age at the time of the incident.

726. On May 28, 2018, Complainant 1 e-mailed Bishop Malone to express “great pain” over the Diocesan Corporation’s response to his 2017 complaint. About two days later, Malone met with the Complainant and advised him that: (a) the DRB had considered the case; (b) the *Charter* did not apply because the Complainant was not a minor; and (c) it was decided that an “assessment” was unnecessary, but *Fr. Y* had agreed to “observe boundaries.” *Fr. Y*’s file does not contain any written decisions or recommendations prepared by the DRB.

727. On June 3, 2018, Bishop Malone met with *Fr. Y*. According to Malone’s handwritten notes of that meeting, *Fr. Y* “totally downplay[ed] any evil intent” and “claim[ed] that his hand was on [Complainant 1]’s thigh only momentarily.” The notes state that Malone would re-submit Complainant 1’s case to the DRB on June 27, 2018, and “reiterated to Fr. [Y] that even though he saw Fr. Croglio at the Counseling Center to address these issues, and Fr. Croglio seemed to think he came to an awareness of the inappropriateness of what has been alleged, the [DRB] still wanted him to go for an assessment.”

728. On the morning of July 5, 2018, an investigative reporter sought comment from the Diocesan Corporation about accusations that it had covered up alleged sexual misconduct by *Fr. Y*. In the afternoon, Bishop Malone directed Auxiliary Bishop Grosz to remind *Fr. Y* “that we still want him to go for an assessment.” Five days later, Grosz told Fr. Croglio that “it is imperative to get Fr. [Y] to South down [sic] as soon a [sic] possible for an assessment.”

729. On August 24, 2018, Complainant 3 filed a complaint about *Fr. Y* with Auxiliary Bishop Grosz. In his written summary of his meeting with Complainant 3, Grosz documented that: (a) “on several occasions [Complainant 3] was really concerned because she saw Father [Y] with many teens, ages 17-18, and other young men at the [rectory], wearing speedos and sunbathing in the yard”; (b) “[*Fr. Y*] seemed to have an interest in [her son], whom [*Fr. Y*] would invite to his house even when [the child] was age 3 [and . . .] as her son grew and Father invited her son over to the rectory, [Complainant 3] would not let her son go to be with [*Fr. Y*]”; (c) “on occasion she would see Father [Y] alone with a young man on the porch, both of whom were drinking”; (d) “[she] indicated that she knew the name of a young man, who is now 25, who was seen very often with Father [Y] when the young man was a minor”; and (e) “she [recently asked her son] to tell the truth . . . if perhaps there would have been a negative relationship between himself and Father [Y, and in response, the son’s] face was blank and he left the house.”

Grosz’s summary of Complainant 3’s allegations did not recount any alleged sexual abuse by *Fr. Y*. Grosz interviewed *Fr. Y* about these accusations, and *Fr. Y* did not admit to any sexual abuse or misconduct.

730. On August 25, 2018, Bishop Malone, Auxiliary Bishop Grosz, and others met with the Diocesan Corporation’s Human Resources Director, who stated that her husband had information related to “some inappropriate behavior on the part of Father [Y].” No specific allegations of the “inappropriate behavior” were documented.

731. On August 27, 2018, Bishop Malone issued written decrees, placing *Fr. Y* on administrative leave and opening an internal investigation into allegations made on August 24, 2018, that *Fr. Y* had sexually abused a minor. Again, the Diocesan Corporation’s documentation did not state that *Fr. Y* had allegedly sexually abused a minor. *Fr. Y* resigned his pastorate the

same day.

732. In May 2019, a news outlet reported that the Diocesan Corporation had found that an allegation of sexual abuse of a minor against *Fr. Y* was not substantiated. *Fr. Y*'s file lacks any documents showing this finding.

733. Among other things, the absence of documentation in *Fr. Y*'s file indicating that the Diocesan Corporation regularly supervised him shows that the Diocesan Corporation failed to reasonably monitor him.

734. The Diocesan Corporation violated the *Charter* and the *Essential Norms* by failing to reasonably document the DRB's assessment of sexual misconduct allegations against *Fr. Y*. Instead, it failed to reasonably document allegations that *Fr. Y* had sexually abused a minor; failed to sufficiently investigate allegations that *Fr. Y* had sexually abused an adult; prepared false or misleading business records; failed to reasonably monitor *Fr. Y*; and disregarded the risk that *Fr. Y* could sexually abuse another person. The Diocesan Corporation's actions concealed *Fr. Y*'s conduct from the public and placed its beneficiaries at risk.

VI. Causes of Action

FIRST CAUSE OF ACTION

Secure the Proper Administration of a Charitable Organization (EPTL § 8-1.4) (Against the Diocesan Corporation)

735. The Attorney General repeats and re-alleges the preceding paragraphs, as though fully set forth herein.

736. Under section 8-1.4(a) of the EPTL, a trustee is defined as "any individual, group of individuals, executor, trustee, corporation or other legal entity holding and administering property for charitable purposes, whether pursuant to any will, trust, other instrument or agreement, court appointment, or otherwise pursuant to law, over which the attorney general has

enforcement or supervisory powers.”

737. The Diocesan Corporation is a trustee under section 8-1.4 of the EPTL.

738. Under section 8-1.4(m) of the EPTL, the Attorney General may commence a proceeding “to secure the proper administration of any trust, corporation or other relationship to which this section applies.”

739. The Diocesan Corporation, acting through its fiduciaries, trustees, officers, *de facto* directors and officers, employees, staff, or agents, failed to properly administer its affairs because, among other things, it:

(a) failed to comply with material provisions of the *Charter*, the *Essential Norms*, or the *Diocesan Policies and Procedures*, namely, the requirements that it (i) conduct or, alternatively, sufficiently conduct timely and independent internal investigations into allegations that priests had sexually abused minors; (ii) seek or, alternatively, reasonably document the DRB’s assessments of allegations that priests had sexually abused minors; and (iii) refer or, alternatively, timely refer priests accused of the sexual abuse of minors to the CDF;

(b) failed to reasonably document allegations that priests had sexually abused minors or adults;

(c) failed to sufficiently investigate allegations that certain priests had sexually abused adults;

(d) failed to inquire into the Diocesan Corporation’s failures to adhere to its material policies and procedures and to attempt, in good faith, to develop remedial measures to avoid these failures in the future;

(e) failed to reasonably monitor priests accused of sexually abusing minors or

adults;

(f) disregarded the risks that certain priests could sexually abuse minors or adults;

(g) prepared false or misleading business records related to priests accused of sexually abusing minors or adults;

(h) made false or misleading statements to the public and its beneficiaries regarding the status of priests accused of sexually abusing minors or adults;

(i) failed to provide appropriate or additional training to diocesan officials, who violated the *Charter*, the *Essential Norms*, the *Diocesan Policies and Procedures*, or applicable standards of care;

(j) misled the public and its beneficiaries about its adherence to its policies and practices governing the response to allegations that priests had sexually abused minors; and

(k) improperly administered its assets or funds by, for example, providing compensation and benefits to certain priests accused of the sexual abuse of minors.

740. The Diocesan Corporation was harmed through its improper administration because, among other things, it: (a) exposed beneficiaries to unnecessary risks of sexual abuse; (b) provided improper compensation and benefits to priests accused of sexually abusing minors; and (c) suffered damages from its failure to follow the *Charter* and the *Essential Norms*.

741. Because of the above acts and omissions, the Diocesan Corporation and its assets were improperly administered under section 8-1.4 of the EPTL. Therefore, to secure the proper administration of the Diocesan Corporation, the Attorney General seeks injunctive relief, including the appointment of an independent compliance auditor as detailed in the Prayer for Relief.

SECOND CAUSE OF ACTION
Enjoin Unauthorized Activities (N-PCL § 112(a)(1))
(Against the Diocesan Corporation)

742. The Attorney General repeats and re-alleges the preceding paragraphs, as though fully set forth herein.

743. Section 112(a)(1) of the N-PCL authorizes the Attorney General to commence an action against a corporation “to restrain it from carrying on unauthorized activities.” The Diocesan Corporation is subject to the RCL and relevant provisions of the N-PCL, including section 112(a)(1). Pursuant to section 2-a of the RCL, the RCL applies to corporations, like the Diocesan Corporation, which were created by special acts.

744. Pursuant to section 2-b(1) of the RCL, the N-PCL, with certain exceptions not relevant here, applies to every corporation that is also subject to the RCL.

745. The Diocesan Corporation, acting through its fiduciaries, trustees, *de facto* directors and officers, employees, staff, and agents, engaged in unauthorized activities by, among other things:

(a) failing to comply with material provisions of the *Charter*, the *Essential Norms*, or the *Diocesan Policies and Procedures*, namely, the requirements that it (i) conduct or, alternatively, sufficiently conduct timely and independent internal investigations into allegations that priests had sexually abused minors; (ii) seek or, alternatively, reasonably document the DRB’s assessments of allegations that priests had sexually abused minors; and (iii) refer or, alternatively, timely refer priests accused of the sexual abuse of minors to the CDF;

(b) failing to reasonably document allegations that priests had sexually abused minors or adults;

(c) failing to sufficiently investigate allegations that certain priests had sexually

abused adults;

(d) failing to inquire into the Diocesan Corporation's failures to adhere to its material policies and procedures and to attempt, in good faith, to develop remedial measures to avoid these failures in the future;

(e) failing to reasonably monitor priests accused of sexually abusing minors or adults;

(f) disregarding the risks that certain priests could sexually abuse minors or adults;

(g) preparing false or misleading business records related to priests accused of sexually abusing minors or adults;

(h) making false or misleading statements to the public and its beneficiaries regarding the status of priests accused of sexually abusing minors or adults;

(i) failing to provide appropriate or additional training to diocesan officials, who violated the *Charter*, the *Essential Norms*, the *Diocesan Policies and Procedures*, or applicable standards of care;

(j) misleading the public and its beneficiaries about its adherence to its policies and practices governing the response to allegations that priests had sexually abused minors; and

(k) improperly administering its assets or funds by, for example, providing compensation and benefits to certain priests accused of the sexual abuse of minors.

746. The Diocesan Corporation was harmed by its unauthorized activities because, among other things, it: (a) exposed beneficiaries to unnecessary risks of sexual abuse; (b) provided improper compensation and benefits to priests accused of sexually abusing minors; and

(c) suffered damages from its failure to follow the *Charter* and the *Essential Norms*.

747. Based on the above acts and omissions, the Diocesan Corporation violated section 112(a)(1) of the N-PCL. Therefore, the Attorney General seeks injunctive relief, including the appointment of an independent compliance auditor as detailed in the Prayer for Relief and/or a temporary and permanent restraining order under New York law and section 112(b)(3) of the N-PCL.

THIRD CAUSE OF ACTION
Breach of Fiduciary Duties (N-PCL §§ 717, 720)
(Against Bishop Malone and Auxiliary Bishop Grosz)

748. The Attorney General repeats and re-alleges the preceding paragraphs, as though fully set forth herein.

749. Bishop Malone and Auxiliary Bishop Grosz were fiduciaries, trustees, or *de facto* directors or officers of the Diocesan Corporation and, as such, owed fiduciary duties to the Diocesan Corporation pursuant to section 717 of the N-PCL and New York law.

750. The Diocesan Corporation is subject to the RCL and relevant provisions of the N-PCL. Pursuant to section 2-a of the RCL, the RCL applies to corporations, like the Diocesan Corporation, which were created by special acts. Pursuant to section 2-b(1) of the RCL, the N-PCL, with certain exceptions not relevant here, applies to every corporation that is also subject to the RCL.

751. Bishop Malone and Auxiliary Bishop Grosz failed to discharge their duties as fiduciaries, trustees, or *de facto* directors and officers in good faith and with the required degree of care, skill, prudence, diligence, and undivided loyalty because they, among other things:

(a) failed to comply with material provisions of the *Charter*, the *Essential Norms*, or the *Diocesan Policies and Procedures*, namely, the requirements that the Diocesan Corporation: (i) conduct or, alternatively, sufficiently conduct timely and independent

internal investigations into allegations that priests had sexually abused minors; (ii) seek or, alternatively, reasonably document the DRB's assessments of allegations that priests had sexually abused minors; and (iii) refer or, alternatively, timely refer priests accused of the sexual abuse of minors to the CDF;

(b) failed to sufficiently investigate allegations that certain priests had sexually abused adults;

(c) failed to inquire into the Diocesan Corporation's failures to adhere to its material policies and procedures and to attempt, in good faith, to develop remedial measures to avoid these failures in the future;

(d) failed to reasonably monitor priests accused of sexually abusing minors or adults;

(e) disregarded the risks that certain priests could sexually abuse minors or adults;

(g) prepared false or misleading business records related to priests accused of sexually abusing minors or adults;

(h) made false or misleading statements to the public and the Diocesan Corporation's beneficiaries regarding the status of priests accused of sexually abusing minors or adults;

(i) failed to provide appropriate or additional training to diocesan officials, who violated the *Charter*, the *Essential Norms*, the *Diocesan Policies and Procedures*, or applicable standards of care;

(j) misled the public and the Diocesan Corporation's beneficiaries about the Diocesan Corporation's adherence to its policies and practices governing the response to allegations that priests had sexually abused minors; or

(k) improperly administered the Diocesan Corporation's assets or funds by, for example, providing compensation and benefits to certain priests accused of the sexual abuse of minors.

752. The Diocesan Corporation was harmed through Bishop Malone's and Auxiliary Bishop Grosz's breaches of fiduciary duties because, among other things, they caused the Diocesan Corporation to (a) expose its beneficiaries to unnecessary risks of sexual abuse; (b) provide improper compensation and benefits to priests accused of sexually abusing minors; and (c) suffer damages from its failure to follow the *Charter* and the *Essential Norms*.

753. Based on the above acts and omissions, Bishop Malone and Auxiliary Bishop Grosz breached their fiduciary duties to the Diocesan Corporation and its beneficiaries and are thus liable under sections 720(a)(1)(A) and 720(a)(1)(B) of the N-PCL for their (a) "neglect of, or failure to perform, or other violation[s] of [their] duties in the management and disposition of corporate assets" or (b) the "loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation[s] of [their] duties." Accordingly, Malone and Grosz should be enjoined from serving as a director, trustee, officer, or equivalent position of any not-for-profit or charitable organization incorporated or authorized to conduct business or solicit charitable donations in the State of New York, except that such injunction shall not bar them from serving in a ministerial, pastoral, or spiritual role.

FOURTH CAUSE OF ACTION

Failure To Properly Administer a Charitable Organization (EPTL § 8-1.4)

(Against Bishop Malone and Auxiliary Bishop Grosz)

754. The Attorney General repeats and re-alleges the preceding paragraphs, as though fully set forth herein.

755. Bishop Malone and Auxiliary Bishop Grosz were trustees of the Diocesan Corporation under section 8-1.4 of the EPTL and, as such, were responsible for the proper

administration of the Diocesan Corporation and the Diocesan Corporation's charitable assets.

756. Bishop Malone and Auxiliary Bishop Grosz failed to properly administer the Diocesan Corporation because they, among other things:

(a) failed to comply with material provisions of the *Charter*, the *Essential Norms*, or the *Diocesan Policies and Procedures*, namely, the requirements that the Diocesan Corporation: (i) conduct or, alternatively, sufficiently conduct timely and independent internal investigations into allegations that priests had sexually abused minors; (ii) seek or, alternatively, reasonably document the DRB's assessments of allegations that priests had sexually abused minors; and (iii) refer or, alternatively, timely refer priests accused of the sexual abuse of minors to the CDF;

(b) failed to sufficiently investigate allegations that certain priests had sexually abused adults;

(c) failed to inquire into the Diocesan Corporation's failures to adhere to its material policies and procedures and to attempt, in good faith, to develop remedial measures to avoid these failures in the future;

(d) failed to reasonably monitor priests accused of sexually abusing minors or adults;

(e) disregarded the risks that certain priests could sexually abuse minors or adults;

(g) prepared false or misleading business records related to priests accused of sexually abusing minors or adults;

(h) made false or misleading statements to the public and the Diocesan Corporation's beneficiaries regarding the status of priests accused of sexually abusing minors or adults;

(i) failed to provide appropriate or additional training to diocesan officials, who violated the *Charter*, the *Essential Norms*, the *Diocesan Policies and Procedures*, or applicable standards of care;

(j) misled the public and the Diocesan Corporation's beneficiaries about the Diocesan Corporation's adherence to its policies and practices governing the response to allegations that priests had sexually abused minors; or

(k) improperly administered the Diocesan Corporation's assets or funds by, for example, providing compensation and benefits to certain priests accused of the sexual abuse of minors.

757. Pursuant to the EPTL, Bishop Malone and Auxiliary Bishop Grosz owed fiduciary duties to the Diocesan Corporation and its beneficiaries and are thus liable under the EPTL for damages resulting from loss or waste of corporate assets, including improper compensation and benefits provided to priests accused of sexually abusing minors.

758. The Diocesan Corporation was harmed through Bishop Malone's and Auxiliary Bishop Grosz's improper administration of the Diocesan Corporation because, among other things, they caused the Diocesan Corporation to (a) expose its beneficiaries to unnecessary risks of sexual abuse; (b) provide improper compensation and benefits to priests accused of sexually abusing minors; and (c) suffer damages from its failure to follow the *Charter* and the *Essential Norms*.

759. Based on the above acts and omissions, Bishop Malone and Auxiliary Bishop Grosz violated section 8-1.4 of the EPTL. Accordingly, Malone and Grosz should be enjoined from serving as a director, trustee, officer, or equivalent position of any not-for-profit or charitable organization incorporated or authorized to conduct business or solicit charitable

donations in the State of New York, except that such injunction shall not bar them from serving in a ministerial, pastoral, or spiritual role.

PRAYER FOR RELIEF

Plaintiff requests judgment against the Defendants and Bishop Scharfenberger as follows:

1. Ordering the Diocesan Corporation and Bishop Scharfenberger, as Apostolic Administrator for the Diocesan Corporation, to comply with, and enjoining them from further violating: (a) their legal obligations under the EPTL, RCL, and N-PCL to ensure that the Diocesan Corporation and its charitable assets are properly administered and that the Diocesan Corporation's charitable beneficiaries are protected by, among other things, requiring the Diocesan Corporation and those that administer it to comply with the *Charter*, the *Essential Norms*, and the *Diocesan Policies and Procedures* and (b) their obligations referred to in subsection (a) of this paragraph that require the Diocesan Corporation to:
 - (i) conduct an initial inquiry into each and every pending or future allegation of sexual abuse of a minor to determine whether the allegation is manifestly false or frivolous and to issue a written determination setting forth the substance of the initial inquiry's determination;
 - (ii) except where an allegation is manifestly false or frivolous, conduct a prompt, independent investigation of the allegation and issue a written report of the substance (including process and sources of information) and findings of such independent investigation to the DRB;
 - (iii) impose written restrictions on access to minors against any cleric accused of sexually abusing minors to ensure that the cleric cannot commit abuse during the pendency of the independent investigation and to take reasonable and appropriate measures to ensure that the cleric is complying with the restrictions;
 - (iv) ensure that the DRB conducts independent assessments of allegations, including an assessment of the results of the independent investigation, to determine if the allegations are sufficiently supported to warrant a referral to the CDF;
 - (v) report the results of the DRB's assessments to the public and announce such results to the parish in which the accused priest was assigned;

- (vi) ensure that the bishop, after reviewing the DRB's assessment, makes a reasonably prompt determination of whether a referral to the CDF is required and, where it is, to make such referral promptly;
- (vii) report all disciplinary actions taken as a result of the independent investigation or any canonical trial to the public and announce such results to the parish in which the priest was assigned;
- (viii) ensure that the Diocesan Corporation reasonably monitors any priests who are disciplined or who have restrictions imposed on their ministry or their contact with minors;
- (ix) maintain written records, including decrees as required by the *Essential Norms*, of each step of the process referred to herein, including, without limitation, the initial inquiry, the independent investigation, the DRB's assessment, determinations by the bishop or his authorized designee and any communications with and within the Diocesan Corporation concerning such assessment, and the monitoring of clergy;
- (x) ensure that the Diocesan Corporation has adopted a whistleblower policy that complies with N-PCL section 715-b and that such policy is publicized and complied with;
- (xi) ensure that the Diocesan Corporation institutes and complies with all training programs required by the *Charter*, the *Essential Norms*, or the *Diocesan Policies and Procedures* and maintains adequate records of such programs; and
- (xii) ensure that the Diocesan Corporation maintains a Code of Conduct that is consistent with and reflects the requirements of the *Charter*, the *Essential Norms*, and the *Diocesan Policies and Procedures* for all clergy, employees, and volunteers that is directed to preventing sexual abuse of minors; that all clergy, employees, and volunteers are made aware of such code and agree to comply with it, as well as to report all violations of it; and that such code is publicized by the Diocesan Corporation;

2. Appointing an independent compliance auditor selected by the Diocesan Corporation, on notice to and with the approval of the Attorney General, with the necessary expertise in the administration of programs for the prevention, detection, and remediation of sexual abuse, to monitor and audit the Diocesan Corporation's compliance with the policies and

procedures set forth in paragraph 1 hereof. Such independent compliance auditor shall prepare regular reports to the Attorney General, for a period of five years, that detail the Diocesan Corporation's efforts to comply with such policies and procedures and identifies any issues that, in the independent compliance auditor's judgment, need to be addressed in order to ensure or improve compliance. The Diocesan Corporation shall cooperate with such independent compliance auditor by, among other things, providing it with all written records created and/or required to be maintained in connection with the policies and procedures referred to in paragraph 1 hereof, including records of all complaints, investigations, DRB meetings, and monitoring efforts;

3. Permanently enjoining Bishop Malone from serving as a director, trustee, officer, or equivalent position of any not-for-profit or charitable organization incorporated or authorized to conduct business or solicit charitable donations in the State of New York, except that such injunction shall not bar Malone from serving in a ministerial, pastoral, or spiritual role;

4. Permanently enjoining Auxiliary Bishop Grosz from serving as a director, trustee, officer, or equivalent position of any not-for-profit or charitable organization incorporated or authorized to conduct business or solicit charitable donations in the State of New York, except that such injunction shall not bar Grosz from serving in a ministerial, pastoral, or spiritual role;

5. Directing Bishop Malone, pursuant to section 720 of the N-PCL, to (a) account for his conduct in the failure to perform his duties in the management of the Diocesan Corporation and its assets; (b) make full restitution for the waste and misuse of charitable assets resulting from his breaches of fiduciary duties; and (c) pay damages resulting from his breaches of fiduciary duties;

6. Directing Auxiliary Bishop Grosz, pursuant to section 720 of the N-PCL, to (a)

account for his conduct in the failure to perform his duties in the management of the Diocesan Corporation and its assets; (b) make full restitution for the waste and misuse of charitable assets resulting from his breaches of fiduciary duties; and (c) pay damages resulting from his breaches of fiduciary duties;

7. Directing Bishop Malone, pursuant to the EPTL, to (a) make full restitution for the waste and misuse of charitable assets resulting from his breaches of fiduciary duties and (b) pay damages resulting from his breaches of fiduciary duties;

8. Directing Auxiliary Bishop Grosz, pursuant to the EPTL, to (a) make full restitution for the waste and misuse of charitable assets resulting from his breaches of fiduciary duties and (b) pay damages resulting from his breaches of fiduciary duties;

9. Declaring that the Diocesan Corporation: (a) was not properly administered and (b) engaged in unauthorized activities; and

10. Granting such other and further relief as is just and proper.

Dated: New York, New York
November 23, 2020

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