

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

KEVIN HEUER,

*Plaintiff,*

v.

THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE,  
NEW YORK; CONGREGATION OF THE RELIGIOUS  
BROTHERS OF THE THIRD ORDER REGULAR OF ST.  
FRANCIS, a/k/a THE FRANCISCAN BROTHERS OF  
BROOKLYN; THE FRANCISCAN BROTHERS GENERALATE;  
FRANCISCAN BROTHERS, INC.; and ST. ANTHONY’S HIGH  
SCHOOL OF SOUTH HUNTINGTON, NEW YORK,

*Defendants.*

Index No.

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Kevin Heuer, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Roman Catholic Diocese of Rockville Centre, New York; Congregation of the Religious Brothers of the Third Order Regular of St. Francis, a/k/a The Franciscan Brothers of Brooklyn; The Franciscan Brothers Generalate; Franciscan Brothers, Inc.; and St. Anthony’s High School of South Huntington, New York, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

**JURISDICTION AND VENUE**

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that each Defendant resides in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

3. Venue for this action is proper in the County of Kings pursuant to CPLR 503 in that one or more of the Defendants reside in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

### **PARTIES**

4. Plaintiff Kevin Heuer ("Plaintiff") is an individual residing in California.

5. Defendant The Roman Catholic Diocese of Rockville Centre, New York ("Diocese of Rockville Centre") is a religious corporation organized pursuant to the Religious Corporations Law, with its principal office at 50 North Park Avenue in Rockville Centre, Nassau County, New York. The Diocese of Rockville Centre is a Roman Catholic diocese. At all relevant times, the Diocese of Rockville Centre created, oversaw, managed, supervised, controlled, directed and/or operated various institutions of the Diocese of Rockville Centre, including St. Anthony's High School of South Huntington, New York. At all relevant times, the Diocese of Rockville Centre oversaw, managed, supervised, controlled, and directed religious brothers assigned to work in institutions of the Diocese.

6. Defendant Congregation of the Religious Brothers of the Third Order Regular of St. Francis, a/k/a the Franciscan Brothers of Brooklyn ("Franciscan Brothers of Brooklyn") is and was at relevant times a religious order of the Roman Catholic Church with its principal office at 133 Remsen Street in Brooklyn, Kings County, New York. At all relevant times, Franciscan Brothers of Brooklyn oversaw, managed, supervised, controlled, directed and operated St. Anthony's High School of South Huntington, New York. At all relevant times, religious brothers of Franciscan Brothers of Brooklyn were agents, managers, directors, or employees of St. Anthony's High School of South Huntington, New York.

7. Defendant The Franciscan Brothers Generalate ("Franciscan Brothers Generalate") is a New York not-for-profit corporation with its principal office at 133 Remsen Street in Brooklyn, Kings County, New York. At all relevant times, Franciscan

Brothers Generalate oversaw, managed, supervised, controlled, directed and operated Camp Alvernia of Centerport, New York, and St. Anthony's High School of South Huntington, New York.

8. Defendant Franciscan Brothers, Inc. is a New York not-for-profit corporation with its principal office at 133 Remsen Street in Brooklyn, Kings County, New York. At all relevant times, Franciscan Brothers, Inc. oversaw, managed, supervised, controlled, directed and operated Camp Alvernia of Centerport, New York, and St. Anthony's High School of South Huntington, New York.

9. Defendant St. Anthony's High School of South Huntington, New York ("St. Anthony") is an educational institution with its current principal office at 275 Wolf Hill Road, South Huntington, Suffolk County, New York. During relevant times, St. Anthony was located on St. Johnland Road in Smithtown, Suffolk County, New York. During relevant times, St. Anthony was operated by and staffed by The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, and/or Franciscan Brothers, Inc.

#### **FACTS COMMON TO ALL CLAIMS**

10. Plaintiff and his family were parishioners of the Diocese of Rockville Centre when Plaintiff was a minor child. Plaintiff attended an elementary school operated by the Diocese of Rockville Centre.

11. When Plaintiff was approximately fourteen years old, Plaintiff began attending St. Anthony as a student.

12. During the times relevant to the allegations set forth herein, Brother Noel Smith, O.S.F. ("Brother Smith") was assigned with the permission of the Diocese of Rockville Centre by Defendants The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, and/or Franciscan Brothers, Inc. to be a teacher at St. Anthony, where Plaintiff was a student. Brother Smith died in 1985.

13. Through his positions at, within, or for Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan

Brothers, Inc., and St. Anthony, Brother Smith was put in direct contact with Plaintiff, a minor child.

14. In approximately 1969 when Plaintiff was approximately fourteen years of age, Plaintiff interacted with Brother Smith in Brother Smith's capacity as a teacher at St. Anthony. Brother Smith told Plaintiff to meet privately with Brother Smith in a classroom at St. Anthony for an individual lesson.

15. Brother Smith used this encounter, gained through his position at St. Anthony which granted him access to Plaintiff when Plaintiff was approximately fifteen years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff on at least one occasion in violation of the laws of the State of New York.

16. During the times relevant to the allegations set forth herein, Brother Michael Moran, O.S.F., also known as Brother Anton Moran, O.S.F. ("Brother Moran") was assigned with the permission of the Diocese of Rockville Centre by Defendants The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, and/or Franciscan Brothers, Inc. to be a guidance counselor at St. Anthony, where Plaintiff was a student.

17. Through his positions at, within, or for Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony, Brother Moran was put in direct contact with Plaintiff, a minor child.

18. In approximately 1971 when Plaintiff was approximately sixteen years of age, Plaintiff interacted with Brother Moran in Brother Moran's capacity as an employee of St. Anthony.

19. Brother Moran used such encounters, gained through his position at St. Anthony which granted him access to Plaintiff when Plaintiff was approximately sixteen years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff on at least one occasion in violation of the laws of the State of New York.

**Defendants' Responsibility for the Abuse Committed by Brother Smith and Brother**

**Moran**

20. At all times material hereto, Brother Smith and Brother Moran were under the management, supervision, employ, direction and/or control of Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony.

21. Through their positions at, within, or for Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony, Brother Smith and Brother Moran were put in direct contact with Plaintiff.

22. Brother Smith and Brother Moran used their positions at, within, or for Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony and the implicit representations made by them about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and to sexually touch, Plaintiff.

23. Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony had the duty to reasonably manage, supervise, control and/or direct clergy who served at St. Anthony, and specifically, had a duty not to aid pedophiles such as Brother Smith and Brother Moran by assigning, maintaining, and/or appointing them to positions with access to minors.

24. Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Brother Smith and Brother Moran, who sexually abused Plaintiff.

25. Defendants The Franciscan Brothers of Brooklyn, Franciscan Brothers

Generalate, and Franciscan Brothers, Inc. had a duty to the Plaintiff to properly supervise clergy under their control to ensure that clergy did not use their positions with The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, and Franciscan Brothers, Inc. as a tool for grooming and assaulting vulnerable children. Defendants The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, and Franciscan Brothers, Inc. knew or should have known that Brother Smith and Brother Moran used their positions at St. Anthony to sexually abuse minor children, including the Plaintiff.

### **Consequences of the Abuse**

26. Plaintiff suffered personal physical and psychological injuries and damages as a result of Brother Smith's and Brother Moran's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

27. As a direct result of the Defendants Diocese of Rockville Centre's, The Franciscan Brothers of Brooklyn's, Franciscan Brothers Generalate's, Franciscan Brothers, Inc.'s, and St. Anthony's conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Brother Smith's and Brother Moran's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Negligent Hiring/Retention/Supervision/Direction**

28. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

29. Defendants Diocese of Rockville Centre, The Franciscan Brothers of

Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Brother Smith and Brother Moran in their roles as religious brother, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Brother Smith and Brother Moran did not use their assigned positions to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

30. Defendant Diocese of Rockville Centre at all relevant times represented that schools within the Diocese of Rockville Centre were safe places for minors to attend or visit, and that its priests were individuals to whom it was safe to entrust the care of minor children. Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for him.

31. Brother Smith and Brother Moran both sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor child.

32. Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony negligently hired, retained, directed, and supervised Brother Smith and Brother Moran, though they knew or should have known that Brother Smith and Brother Moran posed a threat of sexual abuse to minors.

33. Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony knew or should have known of Brother Smith's and Brother Moran's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

34. Defendants Diocese of Rockville Centre, The Franciscan Brothers of

Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony were negligent in failing to properly supervise Brother Smith and Brother Moran.

35. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

36. At all times material hereto, Defendants Diocese of Rockville Centre's, The Franciscan Brothers of Brooklyn's, Franciscan Brothers Generalate's, Franciscan Brothers, Inc.'s, and St. Anthony's actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

37. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

38. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**SECOND CAUSE OF ACTION**  
**Negligence/Gross Negligence**

39. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

40. Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony knew, or were negligent in not knowing, that Brother Smith and Brother Moran posed a threat of sexual abuse to children.

41. The acts of Brother Smith and Brother Moran described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of their respective employment, appointment, assignment, and/or agency with Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony.

42. Defendants Diocese of Rockville Centre, The Franciscan Brothers of



Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Brother Smith's and Brother Moran's sexual deviancy and the consequential damages, both prior to and/or subsequent to Brother Smith's and Brother Moran's misconduct.

43. Defendants Diocese of Rockville Centre's, The Franciscan Brothers of Brooklyn's, Franciscan Brothers Generalate's, Franciscan Brothers, Inc.'s, and St. Anthony's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

44. Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed to adequately supervise the activities of Brother Smith and Brother Moran;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

45. At all times material hereto, with regard to the allegations contained herein, Brother Smith and Brother Moran under the supervision, employ, direction and/or control of Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony.

46. At all times material hereto, Defendants Diocese of Rockville Centre's, The Franciscan Brothers of Brooklyn's, Franciscan Brothers Generalate's, Franciscan Brothers, Inc.'s, and St. Anthony's actions were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

47. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

48. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**THIRD CAUSE OF ACTION**  
**Breach of Fiduciary Duty**

49. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

50. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the agent or servant of the Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony. This entrustment of the Plaintiff to the care and supervision of the Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony, while the Plaintiff was a minor child, required the Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect him while he was a minor and vulnerable

child.

51. Pursuant to their fiduciary relationship, Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony were entrusted with the well-being, care, and safety of Plaintiff.

52. Pursuant to their fiduciary relationship, Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony assumed a duty to act in the best interests of Plaintiff.

53. Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony breached their fiduciary duty to Plaintiff.

54. At all times material hereto, the actions and/or inactions of Defendants Diocese of Rockville Centre, The Franciscan Brothers of Brooklyn, Franciscan Brothers Generalate, Franciscan Brothers, Inc., and St. Anthony were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff.

55. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

56. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;

- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: September 17, 2020  
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr.  
Paul J. Hanly, Jr.  
[phanly@simmonsfirm.com](mailto:phanly@simmonsfirm.com)  
Jayne Conroy  
[jconroy@simmonsfirm.com](mailto:jconroy@simmonsfirm.com)  
Trent B. Miracle  
[tmiracle@simmonsfirm.com](mailto:tmiracle@simmonsfirm.com)  
SIMMONS HANLY CONROY LLC  
112 Madison Avenue  
New York, NY 10016  
(212) 784-6401 Telephone  
(212) 213-5949 Facsimile

*Attorneys for Plaintiff*

Of counsel:  
Mitchell Garabedian  
[mgarabedian@garabedianlaw.com](mailto:mgarabedian@garabedianlaw.com)  
William H. Gordon  
[wgordon@garabedianlaw.com](mailto:wgordon@garabedianlaw.com)  
LAW OFFICES OF MITCHELL GARABEDIAN  
100 State Street, 6th Floor  
Boston, MA 02109  
Phone: (617) 523-6250