

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

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GREGORY KALBERER,

Index No. 900003/2020

Plaintiff,

v.

**VERIFIED COMPLAINT**

THE ROMAN CATHOLIC DIOCESE OF  
ROCKVILLE CENTRE; BRIAN J. BRINKER, an  
individual; and DOES 1-20.

Defendants.

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Plaintiff GREGORY KALBERER, by and through the undersigned counsel, complaining of Defendants upon information and belief, alleges as follows:

**JURISDICTION AND VENUE**

1. This Court has personal jurisdiction over the Defendants pursuant to Section 301 and 302 of the CPLR because the Defendants committed tortious acts within the State of New York. This complaint arises from the sexual abuse of Plaintiff Gregory John Kalberer by Fr. Brian Brinker during the years 1993 – 1997 when Plaintiff was approximately 10 to 14 years of age. This sexual abuse occurred while Plaintiff was an altar boy at Sacred Heart Church in Merrick, New York, and consisted of fondling of buttocks and genitals, and forced masturbation.

2. Venue is proper because the Defendant Diocese of Rockville Centre has its principal place of business in Nassau County.

3. The provisions of Section 1602 of the CPLR do not apply to the within action including nondelegable duty and/or the doctrine of *respondeat superior*.

4. Plaintiff brings this suit within the extended time period as provided for in Section

208 of the Civil Practice Law.

5. Jurisdiction is proper because this Complaint seeks monetary damages in excess of \$25,000.00, exclusive of interest, costs, and attorney's fees.

### **PARTIES**

6. Plaintiff Gregory Kalberer is an adult resident of the State of New York and is otherwise *sui juris*.

7. Defendant Diocese of Rockville Centre is a Roman Catholic Diocese and is an unincorporated non-profit business entity licensed to and doing business in the State of New York with a principal place of business at 50 N. Park Ave., Rockville Centre, New York, 11571.

8. Fr. Brian J. Brinker is an ordained Roman Catholic priest employed by, and an agent of, Defendant Diocese of Rockville Centre. Upon information and belief, Fr. Brinker's last known address is 2 Indian Head Rd., Commack, New York, 11725.

9. From 1989 to present, Fr. Brinker has served in numerous assignments for Defendant Diocese of Rockville Centre, including an assignment at St. James Church in Seaford, New York, from 1989-1993 prior to serving at Sacred Heart Church in North Merrick, New York, from approximately 1993 to 1998.

10. At all times material, Fr. Brian J. Brinker remained under the direct supervision, employ, and control of Defendant Diocese of Rockville Centre as a priest and employee of Sacred Heart Church.

11. Plaintiff is presently unable to ascertain the identities and capacities of Defendants DOES 1-20 and, therefore, has named said Doe Defendants fictitiously; said Doe Defendants are in some manner presently unknown to Plaintiff, responsible for the injuries and damages described herein and/or are related to the named Defendants and are the agents, representatives, subsidiaries,

parent companies, employers, employees, partners, limited partners, joint venturers, insurers and/or independent contractors of the named Defendants and/or had duties of reasonable care to Plaintiff and the breach of one or more of the foregoing duties caused the injuries and damages described herein. Plaintiff will name said Doe Defendants when their identities and capacities are determined.

### **STATEMENT OF FACTS**

12. In 1993, when Plaintiff was approximately ten years old, he became an altar boy for Sacred Heart Roman Catholic Church in North Merrick, New York.

13. Fr. Brinker joined the Sacred Heart Roman Catholic Church just after Plaintiff became an altar boy. Fr. Brinker served as a priest at Sacred Heart from approximately 1993 to 1998. In this role, Fr. Brinker had a position of power over altar boys and a special relationship whereby he could direct the altar boys to serve him as he pleased, as the teachings of the Church are to trust and obey a priest, and to serve the priest in the administration of his duties.

14. Shortly after his arrival at Sacred Heart, while Plaintiff and the other altar boys were getting ready to serve Mass in the Sacristy at Sacred Heart, Fr. Brinker began what seemed to be innocent touching, rubbing Plaintiff on the shoulders and back. Over time, Fr. Brinker became bolder, touching Plaintiff on his stomach, buttocks, and groin.

15. On other occasions, Fr. Brinker would drop something on the floor and ask Plaintiff to pick it up. Fr. Brinker would stand behind Plaintiff and while Plaintiff was bending over to pick up what Fr. Brinker dropped, Fr. Brinker would fondle Plaintiff's buttocks and groin.

16. There were times when Fr. Brinker would isolate Plaintiff alone in the Sacristy after Mass. On these occasions, Fr. Brinker would expose his penis to Plaintiff and ask Plaintiff to touch him; even though Plaintiff resisted, often Fr. Brinker would grab Plaintiff's arm forcing

Plaintiff to masturbate him. Fr. Brinker attempted several times to convince Plaintiff to show Fr. Brinker his penis, but Plaintiff refused.

17. The specific number of incidents where Fr. Brinker abused Plaintiff is unknown because these incidents occurred on an almost weekly basis or seemingly whenever Fr. Brinker had the opportunity during the times he and Plaintiff served mass together. The sexual assaults were regular, systematic and pervasive over a period of almost four years while Plaintiff was an altar boy.

18. The abuse finally ceased when Plaintiff was 14 years old. At that time, Plaintiff's parents divorced, prompting the Church to ask Plaintiff's mother to stop attending services at Sacred Heart.

19. As a direct result of Fr. Brian J. Brinker's sexual abuse of Plaintiff, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, suicidal ideation, humiliation, and psychological injuries, was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling, all to Plaintiff's damage in excess of the jurisdiction of all lower courts.

#### **FIRST CAUSE OF ACTION**

#### **NEGLIGENCE/GROSS NEGLIGENCE AGAINST DEFENDANT DIOCESE OF ROCKVILLE CENTRE**

20. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

21. Plaintiff was raised as a devout Roman Catholic, regularly celebrated mass, received the sacraments, and participated in church-related activities. Plaintiff, therefore,

developed great admiration, trust, reverence, and respect for Defendant Diocese of Rockville Centre and its agents.

22. Defendant Diocese of Rockville Centre held Fr. Brian J. Brinker out as a qualified Roman Catholic priest and undertook the religious instruction and spiritual and emotional guidance of Plaintiff. Defendants and their agents exercised a direct role over Plaintiff. Accordingly, Plaintiff placed trust in Defendants, so that Fr. Brinker and Defendant Diocese of Rockville Centre's agents gained superiority and influence over him. Defendants entered into a special relationship with Plaintiff and his family

23. By holding Fr. Brinker out as safe to work with children, and by undertaking the custody, supervision of and/or care of the minor Plaintiff, Defendant Diocese of Rockville Centre entered into a special relationship with Plaintiff. Because Plaintiff was a minor, and because Defendant undertook the care and guidance of the then vulnerable Plaintiff, Defendant held a position of empowerment over him.

24. Defendant Diocese of Rockville Centre, by holding itself out as able to provide a safe environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented Plaintiff from effectively protecting himself. Defendant thus entered into a special relationship with Plaintiff.

25. By holding itself out as a safe, moral and trusted institution to Plaintiff's parents, Defendant induced Plaintiff's parents to entrust their child to Defendant and thereby deprived him of the protection of his family.

26. At all times material, Fr. Brian J. Brinker's sexual abuse of Plaintiff was foreseeable. The problem of clergy sexual abuse of minors is well documented throughout the history of the Roman Catholic Church. As far back as 1051, St. Peter Damian wrote in the *Book*

of Gomorrah that clergy who defiled boys should be dismissed from holy orders. (*Book of Gomorrah*, Ch. 6) Later, St. Peter Damian wrote in his *Rule of the Monastery of Compludo* about the punishment for "A cleric or monk who seduces youths or young boys" being public flogging, loss of tonsure and six months in jail, among other punishment. In 1143 or 1144, a professor at the University of Bologna named Gratian, known the "Father of the Science of Canon Law," in his work the *Decretum*, identified the sexual sin by a priest that he called *stuprum pueri*, which is the sexual use of boys by an adult male.

27. In 1961, the Vatican issued an instruction on the training of candidates for the priesthood, based upon the 1917 Code of Canon Law, stating:

Advancement to religious vows and ordination should be barred to those who are afflicted with evil tendencies to homosexuality or pederasty, since for them the common life and priestly ministry would constitute serious dangers.

28. The Catholic Church's knowledge that Catholic clergy were sexually abusing minors continued through the Middle Ages and into recent history. In 1962, Pope John XXIII approved the publication *De Modo Procedendi in Causis Solicitationis*, a special procedural law addressing solicitations of sex in the confessional. This document contained instructions prohibiting clergy from having sex with minors under the age of sixteen. This document was distributed to every bishop and major religious superior in the world. It was to be kept by them with the deepest secrecy. This document reflected the Catholic Church's insistence on maintaining the highest degree of secrecy regarding the worst sexual crimes perpetrated by clergy.

29. In 1947, a priest named Fr. Gerald Fitzgerald founded a religious order for priests called the Servants of the Paracletes. This religious order was founded to assist and treat Catholic clergy who experienced mental health problems. By 1952, Fr. Fitzgerald wrote that he had already treated a handful of priests who had sexually abused minors. By 1963, the Paracletes were treating so many sexually abusive clergy that they developed a shorthand code, "Code 3," to describe the

offense. By 1966, the Paracletes began specializing in the treatment of pedophile Catholic clergy.

30. As early as 1971, the issue of sexual misconduct by clergy was being discussed in the Commonwealth of Massachusetts. Bishop Bernard Flanagan, Bishop of Worcester (Massachusetts) testified that, as early as February of 1971, there had been discussions about sexual misconduct among priests. According to Bishop Flanagan, "I think by 1971 I had heard of other cases of this type [sic] sexual misconduct and I knew that they were taking place in other dioceses too."

31. That same year, Dr. Conrad Baars and Dr. Anna Terruwe presented a scholarly paper titled "The Role of the Church in the Causation, Treatment and Prevention of the Crisis in the Priesthood" to the 1971 Synod of Bishops at the Vatican and to the U.S. Conference of Catholic Bishops about psychiatric problems in Catholic clergy and how psychosexual immaturity manifested itself in heterosexual and homosexual activity.

32. In 1985, the public prosecution of a priest in Lafayette, Louisiana led to the creation of the 100-page document titled "The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner" by Fr. Thomas Doyle, F. Ray Mouton, and Fr./Dr. Michael Peterson. This document was distributed to every Catholic Bishop and religious order ordinary in the United States. A substantial portion of this document describes how significant the sexual abuse of children by Catholic clergy had become.

33. In 1990, psychologist and priest A.W. Richard Sipe published a study involving 1,500 priests that concluded that six (6) percent of priests were sexually involved with minors.

34. At all times material, Fr. Brian J. Brinker was employed by Defendant Diocese of Rockville Centre at Sacred Heart Roman Catholic Church in North Merrick, New York.

35. At all times material, Fr. Brian J. Brinker remained under the direct supervision,

employ, and control of Defendant Diocese of Rockville Centre.

36. Defendant Diocese of Rockville Centre allowed Fr. Brian J. Brinker to have unsupervised and unlimited access to minor children at Sacred Heart Roman Catholic Church in North Merrick, New York.

37. Upon information and belief, before Plaintiff was sexually abused by Fr. Brian J. Brinker, Defendant had actual or constructive knowledge of material facts regarding Fr. Brian J. Brinker's sexual misconduct, impulses, and behavior.

38. Despite clear indications of danger, Defendant took no steps to discover the specific nature of Fr. Brian J. Brinker's problems or to determine whether he was fit to work with children or to protect children from him, thereby increasing the likelihood that Plaintiff would be harmed.

39. Defendant Diocese of Rockville Centre owed Plaintiff a duty of reasonable care because it assumed duties owed to Plaintiff and had superior knowledge about the risk that Fr. Brian J. Brinker posed to Plaintiff, the risk of abuse in general in its programs, and/or the risks that its facilities posed to minor children. Defendant Diocese of Rockville Centre had the duty to protect the moral purity of Plaintiff and other Roman Catholic children within the Diocese of Rockville Centre.

40. Defendants owed Plaintiff a duty of reasonable care because Defendants assumed that duty and because they solicited youth and parents for participation in their youth programs.

41. Defendants owed Plaintiff a duty of reasonable care because they undertook the custody of minor children, including Plaintiff.

42. Defendants owed Plaintiff a duty of reasonable care because they promoted its facilities and programs as being safe for children.

43. Defendant Diocese of Rockville Centre owed Plaintiff a duty of reasonable care



because it held out its agents, including Fr. Brian J. Brinker, as safe to work with children.

44. Defendant Diocese of Rockville Centre owed Plaintiff a duty of reasonable care because it encouraged parents and children to spend time with its agents and/or encouraged its agents, including Fr. Brian J. Brinker, to spend time with, interact with, and recruit children as altar boys.

45. Defendants had a duty to Plaintiff to protect him from harm because Defendants' actions created a foreseeable risk of harm to Plaintiff.

46. Defendant Diocese of Rockville Centre breached its duties by exposing Plaintiff to priests whom Defendant knew or should have known were pedophiles and/or dangerous to children.

47. Defendant Diocese of Rockville Centre breached its duties by recruiting, hiring, and maintaining Fr. Brian J. Brinker in a position of authority over children.

48. Defendant Diocese of Rockville Centre breached its duties by exposing Fr. Brian J. Brinker to children.

49. Defendant Diocese of Rockville Centre breached its duties by leaving Fr. Brian J. Brinker alone with children unsupervised.

50. Defendant Diocese of Rockville Centre breached its duties by inducing Plaintiff and his parents to entrust Plaintiff to Fr. Brian J. Brinker.

51. Defendant Diocese of Rockville Centre breached its duties by failing to follow policies and procedures designed to prevent child sex abuse and/or failing to implement sufficient policies and procedures to prevent child sex abuse.

52. Defendant Diocese of Rockville Centre breached its duties by failing to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working.

53. Defendant Diocese of Rockville Centre breached its duties by failing to adequately inform families and children of the known risks of child sex abuse within the Diocese of Rockville Centre.

54. Defendant Diocese of Rockville Centre breached its duties by holding out its employees and agents, including Fr. Brian J. Brinker, as safe and wholesome for children to be with.

55. Defendant Diocese of Rockville Centre breached its duties by failing to investigate risks of child molestation.

56. Defendant Diocese of Rockville Centre breached its duties by failing to have any outside agency test its safety procedures.

57. Defendant Diocese of Rockville Centre breached its duties by failing to protect the children in its programs from child sex abuse; failing to adhere to the applicable standard of care for child safety.

58. Defendant Diocese of Rockville Centre breached its duties by failing to investigate the amount and type of information necessary to represent the institutions, programs, and leaders and people as safe.

59. Defendant Diocese of Rockville Centre breached its duties by failing to respond to and/or investigate information of improper conduct of employees or agents with children, including Fr. Brian J. Brinker.

60. Defendant Diocese of Rockville Centre breached its duties by failing to properly

train its employees to identify signs of child molestation by fellow employees.

61. Defendant Diocese of Rockville Centre breached its duty to use ordinary care in determining whether its facilities were safe and/or to determine whether it had sufficient information to represent its facilities as safe.

62. Defendant Diocese of Rockville Centre breached its duty of care by maintaining Fr. Brian J. Brinker at its facilities.

63. Defendant Diocese of Rockville Centre breached its duty of care by maintaining a dangerous condition on the premises of its facilities (i.e., a priest Defendant knew or should have known posed a risk of pedophile harm to children).

64. Defendant Diocese of Rockville Centre breached its duty of care by holding out its facilities as a safe and moral place for children, which it was not.

65. Defendant Diocese of Rockville Centre breached its duty of care by failing to have sufficient policies and procedures to prevent abuse at its facilities.

66. Defendant Diocese of Rockville Centre breached its duty of care by failing to investigate risks at its facilities.

67. Defendant Diocese of Rockville Centre breached its duty of care by failing to properly train the workers at its facilities; failing to have any outside agency test its safety procedures.

68. Defendant Diocese of Rockville Centre breached its duties to Plaintiff by holding out clergy members, including Fr. Brian J. Brinker, as safe, moral, and trustworthy people and by failing to warn Plaintiff and his family of the risk that Fr. Brian J. Brinker posed and the known risks of child sexual abuse by clerics in general.

69. Defendant Diocese of Rockville Centre also failed to warn Plaintiff about any of

the knowledge that Defendant had about child sex abuse perpetrated by clergy or Fr. Brian J. Brinker.

70. Defendant Diocese of Rockville Centre breached its duties to Plaintiff by failing to report Fr. Brian J. Brinker's abuse of children to the police and law enforcement.

71. Defendant Diocese of Rockville Centre knew or should have known that some of the leaders and people working at Catholic institutions within the Diocese of Rockville Centre were not safe for children.

72. Defendant Diocese of Rockville Centre knew or should have known that it did not have sufficient information about whether or not its leaders and people working at Catholic institutions within the Diocese of Rockville Centre were safe to be around children.

73. Defendant Diocese of Rockville Centre knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within the Diocese of Rockville Centre.

74. Defendant Diocese of Rockville Centre knew or should have known that it did not have sufficient information about whether or not there was a risk of child sex abuse for children participating in Catholic programs and activities within the Diocese of Rockville Centre.

75. Defendant Diocese of Rockville Centre knew or should have known that it had other agents who had sexually molested children.

76. Defendant Diocese of Rockville Centre knew or should have known that child molesters have a high rate of recidivism.

77. Defendant Diocese of Rockville Centre knew or should have known that there was a specific danger of child sex abuse for children participating in Defendant's youth programs.

78. Defendant Diocese of Rockville Centre held its leaders and agents out as people of

high morals, as possessing immense power, teaching families to obey these leaders and agents, teaching families and children to respect and revere these leaders and agents, soliciting youth and families to its programs, recruiting youth and families, and holding out the people that worked in the programs as safe for children/youth.

79. Defendant Diocese of Rockville Centre made negligent representations to Plaintiff and his family during each and every year of his minority. Plaintiff and/or his family relied upon these representations, which resulted in Plaintiff being put in a vulnerable situation with Fr. Brian J. Brinker who harmed him.

80. At all times material, Defendant Diocese of Rockville Centre controlled the premises where Fr. Brian J. Brinker performed as a priest.

81. At all times material, Defendant Diocese of Rockville Centre had the power to terminate the employment of Fr. Brian J. Brinker.

82. As a direct result of Defendants' negligence, gross negligence, breached duties, sexual abuse, sexual exploitation, and Defendants' conduct, Plaintiff has suffered and will continue to suffer the severe injuries and damages described herein.

83. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages, and for punitive damages, together with costs.

## **SECOND CAUSE OF ACTION**

### **NEGLIGENT HIRING/RETENTION/SUPERVISION/DIRECTION AGAINST DEFENDANT DIOCESE OF ROCKVILLE CENTRE**

84. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

85. At all times material, Defendant Diocese of Rockville Centre, by and through its agents, managers, employees, and directors, owed a duty to Plaintiff to use reasonable care to

protect his safety, care, well-being, and health while he was under the custody or in the presence of Defendant. These duties encompassed the use of reasonable care in the retention and supervision of Fr. Brian J. Brinker and otherwise providing a safe environment for children.

86. Prior to the sexual misconduct perpetrated by Fr. Brian J. Brinker upon Plaintiff, Defendant Diocese of Rockville Centre knew, or in the exercise of reasonable care, should have known, of the general problem of Catholic clergy engaging in sexual misconduct with children who were in Diocese of Rockville Centre and Sacred Heart Church.

87. Prior to sexual misconduct perpetrated by Fr. Brian J. Brinker upon Plaintiff, Defendant Diocese of Rockville Centre knew, or in the exercise of reasonable care, should have known, that Fr. Brian J. Brinker was unfit for the duties assigned to him, that he did not exhibit appropriate behavior with children, and otherwise posed a risk of perpetrating unwanted sexual contact upon children.

88. Given actual or constructive knowledge of Fr. Brian J. Brinker's dangerous propensities specifically, Defendant Diocese of Rockville Centre had a duty to act reasonably in all decisions relating to his supervision and retention as an employee.

89. Defendant Diocese of Rockville Centre failed to exercise reasonable care in one or more of its decisions to supervise and retain Fr. Brian J. Brinker and therefore exposed Plaintiff to an unreasonable risk of harm.

90. Defendant Diocese of Rockville Centre affirmed and ratified Fr. Brian J. Brinker's misconduct with Plaintiff. Given the actual and constructive knowledge of the likelihood that Fr. Brian J. Brinker, and/or other clergy would engage children in unwanted sexual contact, the unwanted sexual contact of Plaintiff was reasonably foreseeable to Defendant.

91. Defendant Diocese of Rockville Centre and its agents had superior knowledge of

the likelihood that Fr. Brian J. Brinker would engage in unwanted sexual conduct with clients that he encountered in his position as priest and had a duty to take precautions to lessen the risk that Plaintiff would be the victim of unwanted sexual contact.

92. At all relevant times, Defendant Diocese of Rockville Centre's acts and omissions created an environment that fostered unwanted sexual contact and exploitation against the people it had a duty to protect, including Plaintiff.

93. At all relevant times, Defendant Diocese of Rockville Centre had inadequate policies and procedures to protect children entrusted to its care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

94. As a direct and proximate result of the negligence of Defendant Diocese of Rockville Centre, Plaintiff has suffered and will continue to suffer the severe injuries and damages described herein.

95. By reason of the foregoing, Defendant Diocese of Rockville Centre is liable to Plaintiff for compensatory damages, and for punitive damages, together with costs.

### **THIRD CAUSE OF ACTION**

#### ***RESPONDEAT SUPERIOR/VICARIOUS LIABILITY AGAINST DEFENDANT DIOCESE OF ROCKVILLE CENTRE***

96. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

97. At times material, Fr. Brian J. Brinker was on duty as a priest 24 hours per day, seven days per week.

98. At all times material, Fr. Brian J. Brinker remained under the direct supervision, employ, and control of Defendant Diocese of Rockville Centre.

99. At all times material, Defendant Diocese of Rockville Centre had the right to

control the means and manner of Fr. Brian J. Brinker's performance.

100. At all times material, upon information and belief, Defendant Diocese of Rockville Centre paid Fr. Brian J. Brinker's salaries and paid for their health insurance and other benefits.

101. At all times material, Defendant Diocese of Rockville Centre furnished an office and other materials; supplies, and tools required for Fr. Brian J. Brinker to perform in his position as a priest.

102. At all times material, Defendant Diocese of Rockville Centre controlled the premises where Fr. Brian J. Brinker performed as a priest.

103. At all times material, Defendant Diocese of Rockville Centre had the power to terminate the employment of Fr. Brian J. Brinker.

104. Defendant Diocese of Rockville Centre created a master-servant relationship with Fr. Brian J. Brinker, employing him to interact with and supervise children participating in programs at Sacred Heart Church.

105. The unwanted contact by Fr. Brian J. Brinker upon Plaintiff occurred during regular working hours and at the place of his employment while performing duties as a priest on behalf of his employer.

106. The sexual contact by Fr. Brian J. Brinker occurred in the course and scope of his employment with Defendant Diocese of Rockville Centre.

107. The sexual contact by Fr. Brian J. Brinker was generally foreseeable to Defendant Diocese of Rockville Centre.

108. The sexual contact by Fr. Brian J. Brinker was closely connected to what he was employed to do as a priest, and/or was otherwise naturally incidental to his job duties.

109. Fr. Brian J. Brinker's conduct was motivated, at least in part, by a desire to serve



his employer's business and spiritual interests or otherwise meet the objectives of his employment, however misguided.

110. Alternatively, Fr. Brian J. Brinker's conduct constituted an authorized, minor deviation from his employment that was authorized and/or ratified by Defendant Diocese of Rockville Centre.

111. As a direct and proximate result of Fr. Brian J. Brinker's conduct, Plaintiff has suffered and will continue to suffer the severe injuries and damages described herein.

112. By reason of the foregoing, Defendant Diocese of Rockville Centre is liable to Plaintiff for compensatory damages, and for punitive damages, together with costs.

#### **FOURTH CAUSE OF ACTION**

##### **PREMISES LIABILITY AGAINST DEFENDANT DIOCESE OF ROCKVILLE CENTRE**

113. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

114. Plaintiff was an invitee of Defendant Diocese of Rockville Centre when Fr. Brian J. Brinker engaged him in unwanted sexual contact.

115. Defendant Diocese of Rockville Centre owed Plaintiff a duty to protect him from dangerous conditions on its premises that it knew about, or in the exercise of reasonable care could have discovered.

116. Defendant Diocese of Rockville Centre owed Plaintiff a duty to provide a reasonably safe environment where he would be free from the threat of unwanted sexual contact while on its premises.

117. Defendant Diocese of Rockville Centre owed Plaintiff a duty to take reasonable precautions to ensure his safety while on its premises.

118. Prior to the sexual misconduct perpetrated by Fr. Brian J. Brinker upon Plaintiff,

Defendant Diocese of Rockville Centre knew, or in the exercise of reasonable care, should have known, of the general problem of priests and other clergy engaging in sexual misconduct with children.

119. Prior to the sexual misconduct perpetrated by Fr. Brian J. Brinker upon Plaintiff, Defendant Diocese of Rockville Centre knew, or in the exercise of reasonable care, should have known, that Fr. Brian J. Brinker was unfit for the intimate duties assigned to him, that he did not exhibit appropriate behavior with children, and otherwise posed a risk of perpetrating unwanted sexual contact upon children.

120. Defendant Diocese of Rockville Centre breached the duty owed to Plaintiff by failing to make the premises reasonably safe for Plaintiff despite what it knew or should have known about the existence of a potential threat of harm to Plaintiff on its premises.

121. Defendant Diocese of Rockville Centre breached the duty it owed to Plaintiff by failing to warn Plaintiff of the dangers and risks involved in participating in programs at Sacred Heart Church given its superior knowledge of the potential risk of harm to Plaintiff.

122. At all relevant times, Defendant Diocese of Rockville Centre had inadequate policies and procedures to protect children entrusted to its care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

123. As a direct and proximate result of the negligence of Defendant Diocese of Rockville Centre, Plaintiff has suffered and will continue to suffer the severe injuries and damages described herein.

124. By reason of the foregoing, Defendant Diocese of Rockville Centre is liable to Plaintiff for compensatory damages, and for punitive damages, together with costs.

**FIFTH CAUSE OF ACTION****BREACH OF FIDUCIARY DUTY AGAINST DEFENDANTS**

125. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

126. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants. This relationship is based on the entrustment of Plaintiff to Defendants for his care and supervision while he was a minor child. This entrustment of Plaintiff to Defendants required Defendants to assume a fiduciary relationship and to act in the best interest of Plaintiff as well as to protect him while he was a minor and vulnerable child.

127. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

128. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interest of Plaintiff.

129. By holding Fr. Brian J. Brinker out as safe to work with children, and by undertaking the custody, supervision of and/or care of the minor Plaintiff, Defendant Diocese of Rockville Centre entered into a fiduciary relationship with Plaintiff. As a result of Plaintiff being a minor, and by Defendant Diocese of Rockville Centre undertaking the care and guidance of the then vulnerable Plaintiff, Defendant Diocese of Rockville Centre held a position of empowerment over Plaintiff.

130. By undertaking the custody, supervision of and/or care of the minor Plaintiff, Defendant Father Brian J. Brinker entered into a fiduciary relationship with Plaintiff. As a result of Plaintiff being a minor, and by his undertaking the care and guidance of the then vulnerable Plaintiff, Defendant Father Brian J. Brinker held a position of empowerment over Plaintiff.

131. Defendant Diocese of Rockville Centre, by holding itself out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented Plaintiff from effectively protecting himself, and Defendant Diocese of Rockville Centre thus entered into a fiduciary relationship with Plaintiff.

132. By holding itself out as a safe, moral, and trusted institution to Plaintiff's parents, Defendant Diocese of Rockville Centre induced Plaintiff's parents to entrust their child to them and thereby deprived Plaintiff of the protection of his family.

133. Defendants breached their fiduciary duties to Plaintiff.

134. At all times material hereto, Defendants' actions and/or inactions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

135. As a direct result of said conduct, Plaintiff has suffered the injuries and damages described herein.

136. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages and for punitive damages together with interests and costs.

### **SIXTH CAUSE OF ACTION**

#### **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST DEFENDANTS**

137. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

138. As described above, the actions of Defendants, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

139. Defendants' actions endangered Plaintiff's safety and caused him to fear for his own safety.

140. As a direct and proximate result of Defendants' actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

141. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**SEVENTH CAUSE OF ACTION**

**BREACH OF DUTY *IN LOCO PARENTIS* AGAINST DEFENDANTS**

142. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

143. While he was a minor, Plaintiff was entrusted by his parents to the control of Defendants for the purposes of *inter alia* providing Plaintiff with appropriate guidance and opportunity to enjoy educational, youth, spiritual and recreational activities under reasonable adult supervision. During the times that Plaintiff was an altar boy at Sacred Heart Church, he was under the supervision and control of Defendants. Defendants owed a duty to children entrusted to them, including Plaintiff, to act *in loco parentis* and to prevent foreseeable injuries.

144. Defendants breached their duty to act *in loco parentis*.

145. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

146. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

147. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**EIGHTH CAUSE OF ACTION****BREACH OF STATUTORY DUTY TO REPORT ABUSE UNDER SOC. SERV. LAW §§ 413, 420  
AGAINST DIOCESE OF ROCKVILLE CENTRE**

148. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

149. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendant Diocese of Rockville Centre had a statutorily imposed duty to report reasonable suspicion of abuse of children in its care.

150. Defendant Diocese of Rockville Centre breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Fr. Brian J. Brinker of children within its care.

151. As a direct and/or indirect result of said conduct, Plaintiff has suffered injuries and damages described herein.

152. By reason of the foregoing, Defendant Diocese of Rockville Centre is liable to Plaintiff for compensatory damages and for punitive damages together with interest and costs.

WHEREFORE Plaintiff demands judgments against 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;

E. Awarding such other and further relief as to this Court may seem just and proper.

Dated: February 19, 2020

Respectfully Submitted



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Craig K. Vernon  
JAMES, VERNON AND WEEKS, P.A.  
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**ATTORNEY VERIFICATION**

**CRAIG K. VERNON**, an attorney duly admitted to practice before the Courts of this State, affirms under penalty of perjury that I am counsel for the Plaintiff herein and have read the foregoing **VERIFIED COMPLAINT** and know the contents thereof; the same is true to my own knowledge, except as to the matters therein to be alleged on information and belief, and as to those matters I believe them to be true. That the source of my information and knowledge are discussions with the client, investigations and records in the file.

The reason that this verification is made by me and not by Plaintiff is to protect the identity of the Plaintiff under The New York Civil Rights Law.

Dated: February 19, 2020



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CRAIG K. VERNON