

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

DAVID ZABKAR,

Plaintiff,

v.

THE NEW YORK PROVINCE OF THE SOCIETY OF JESUS; U.S.A.
NORTHEAST PROVINCE OF THE JESUIT FATHERS AND
BROTHERS, a/k/a U.S.A. NORTHEAST PROVINCE; THE USA
NORTHEAST PROVINCE OF THE SOCIETY OF JESUS, INC.,
d/b/a, MCQUAID JESUIT COMMUNITY; and MCQUAID
JESUIT HIGH SCHOOL,

Defendants.

[Please see Attached Rider for Defendants' Addresses]

Index No.

SUMMONS

Date Index No. Purchased:
August 5, 2020

To the above named Defendant(s)

[Empty rectangular box for defendant address]

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.

The basis of venue is one or more Defendant resides in New York County, New York, which is located in New York County, New York.

Dated: New York, New York
August 5, 2020

SIMMONS HANLY CONROY LLC



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**SUPREME COURT OF THE STATE OF NEW YORK
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THE NEW YORK PROVINCE OF THE SOCIETY OF JESUS;
U.S.A. NORTHEAST PROVINCE OF THE JESUIT FATHERS
AND BROTHERS, a/k/a U.S.A. NORTHEAST PROVINCE;
THE USA NORTHEAST PROVINCE OF THE SOCIETY OF
JESUS, INC., d/b/a, MCQUAID JESUIT COMMUNITY; and
MCQUAID JESUIT HIGH SCHOOL,

Defendants.

Index No.

RIDER TO SUMMONS

Defendant/Counsel	Service Address
THE NEW YORK PROVINCE OF THE SOCIETY OF JESUS; U.S.A. NORTHEAST PROVINCE OF THE JESUIT FATHERS AND BROTHERS, a/k/a U.S.A. NORTHEAST PROVINCE	39 East 83rd Street, New York County, New York
THE USA NORTHEAST PROVINCE OF THE SOCIETY OF JESUS, INC., d/b/a, MCQUAID JESUIT COMMUNITY	
MCQUAID JESUIT HIGH SCHOOL	1800 South Clinton Avenue, Rochester, Monroe County, New York

SUPREME COURT OF THE STATE OF NEW YORK
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THE NEW YORK PROVINCE OF THE SOCIETY OF JESUS;
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THE USA NORTHEAST PROVINCE OF THE SOCIETY OF
JESUS, INC., d/b/a, MCQUAID JESUIT COMMUNITY; and
MCQUAID JESUIT HIGH SCHOOL,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff David Zabkar, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The New York Province of the Society of Jesus; U.S.A. Northeast Province of the Jesuit Fathers and Brothers, also known as U.S.A. Northeast Province; The USA Northeast Province of the Society of Jesus, Inc., doing business as McQuaid Jesuit Community; and McQuaid Jesuit High School, 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 the Defendants reside 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 New York 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 David Zabkar ("Plaintiff") is an individual residing in Canandaigua, Ontario County, New York.

5. Defendant The New York Province of the Society of Jesus ("NY Province") was at all relevant times a province of the religious order of the Roman Catholic Church known as the Jesuit Fathers and Brothers, also known as Societas Jesu, also known as the Society of Jesus. Defendant NY Province is a not-for-profit corporation with its principal office at 39 East 83rd Street, New York County, New York. At all relevant times, NY Province oversaw, managed, supervised, controlled, directed and operated Defendant McQuaid Jesuit High School.

6. Defendant U.S.A. Northeast Province of the Jesuit Fathers and Brothers, also known as U.S.A. Northeast Province ("Northeast Province") is a province of the religious order of the Roman Catholic Church known as the Jesuit Fathers and Brothers, also known as Societas Jesu, also known as the Society of Jesus, with its principal office at 39 East 83rd Street, New York County, New York. As the result of a corporate merger, Defendant Northeast Province is a legal successor of Defendant NY Province.

7. Defendant The USA Northeast Province of the Society of Jesus, Inc., doing business as McQuaid Jesuit Community ("McQuaid Jesuit Community") is a not-for-profit corporation with its principal office at 39 East 83rd Street, New York County, New York. As the result of a corporate merger, Defendant McQuaid Jesuit Community is a legal successor of Defendant NY Province.

8. Defendant McQuaid Jesuit High School is a Roman Catholic Jesuit high school within and under the authority of the Bishop of Rochester and is a New York domestic not-for-profit corporation with its principal office at 1800 South Clinton Avenue, Rochester, Monroe County, New York. At relevant and material times, McQuaid was operated by Defendant NY Province.

FACTS COMMON TO ALL CLAIMS

9. Plaintiff and his family were followers of the Roman Catholic faith and parishioners at Roman Catholic churches when Plaintiff was a minor child. From approximately 1967 when Plaintiff was approximately fourteen years of age, to approximately 1971 when Plaintiff was approximately eighteen years of age, Plaintiff was a student at Defendant McQuaid Jesuit High School.

10. Father Robert Voelkle, S.J. ("Father Voelkle") was ordained a Roman Catholic priest belonging to the Jesuit order in approximately 1962. From approximately 1962 to approximately 1969, Father Voelkle was assigned by Defendants NY Province and McQuaid Jesuit High School to work as a teacher and counselor at Defendant McQuaid Jesuit High School. Father Voelkle died in approximately 2016.

11. Through his positions at, within, or for Defendants NY Province and McQuaid Jesuit High School, Father Voelkle was put in direct contact with Plaintiff, a minor student at McQuaid Jesuit High School.

12. In approximately 1968 when Plaintiff was approximately fourteen years of age, Father Voelkle invited Plaintiff to accompany Father Voelkle on an overnight trip to Father Voelkle's parents' house in the area of Amherst, New York.

13. Father Voelkle used this encounter, gained through his position at McQuaid Jesuit High School which granted him access to Plaintiff when Plaintiff was approximately fourteen years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff in violation of the laws of the State of New York.

Supervisory Defendants' Responsibility for the Abuse Committed by Father Voelkle

14. At all times material hereto, Father Voelkle was under the management, supervision, employ, direction and/or control of Defendants NY Province and McQuaid Jesuit High School.

15. Through his positions at, within, or for Defendant McQuaid Jesuit High School, Father Voelkle was put in direct contact with Plaintiff.

16. Father Voelkle used his position at, within, or for Defendants NY Province and McQuaid Jesuit High School, and the implicit representations made by Defendants NY Province and McQuaid Jesuit High School about Father Voelkle's 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.

17. Defendants NY Province and McQuaid Jesuit High School had the duty to reasonably manage, supervise, control and/or direct priests, teachers, and counselors who worked at McQuaid Jesuit High School, and specifically, had a duty not to aid pedophiles such as Father Voelkle by assigning, maintaining, and/or appointing them to positions with access to minors.

18. Defendants NY Province and McQuaid Jesuit High School knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Voelkle, who sexually abused Plaintiff.

19. Defendants NY Province and McQuaid Jesuit High School had a duty to the Plaintiff to properly supervise McQuaid Jesuit High School priests, teachers, and counselors, to ensure that they did not use their positions with McQuaid Jesuit High School as a tool for grooming and assaulting vulnerable children. Defendants NY Province and McQuaid Jesuit High School knew or should have known that Father Voelkle used his positions with them to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

20. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Voelkle's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

21. As a direct result of the Defendants NY Province's and McQuaid Jesuit High School'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 Father Voelkle'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

22. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

23. Defendants NY Province and McQuaid Jesuit High School owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father Voelkle in his role as priest, seminarian, teacher, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Voelkle did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

24. Defendants NY Province and McQuaid Jesuit High School at all relevant times represented that their facilities were safe places for minors to attend or visit, and that their priests, teachers, and counselors were individuals to whom it was safe to entrust the care of minor children. Defendants NY Province and McQuaid Jesuit High School entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for him.

25. Father Voelkle sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor in violation of the laws of New York.

26. Defendants NY Province and McQuaid Jesuit High School negligently

hired, retained, directed, and supervised Father Voelkle, though they knew or should have known that Father Voelkle posed a threat of sexual abuse to minors.

27. Defendants NY Province and McQuaid Jesuit High School knew or should have known of Father Voelkle's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

28. Defendants NY Province and McQuaid Jesuit High School were negligent in failing to properly supervise Father Voelkle.

29. The sexual abuse of children by adults, including priests, teachers, and counselors, is a foreseeable result of negligence.

30. At all times material hereto, Defendants NY Province's and McQuaid Jesuit High School's actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

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

32. Liabilities of Defendant NY Province were transferred to, or assumed by, Defendants Northeast Province and McQuaid Jesuit Community. As a result, Defendants Northeast Province and McQuaid Jesuit Community are liable to the Plaintiff for the damages caused by Defendant NY Province stated in this cause of action.

33. 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

34. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

35. Defendants NY Province and McQuaid Jesuit High School knew, or were negligent in not knowing, that Father Voelkle posed a threat of sexual abuse to children.

36. The acts of Father Voelkle described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants NY Province and McQuaid Jesuit High School.

37. Defendants NY Province and McQuaid Jesuit High School owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Father Voelkle's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Voelkle's misconduct.

38. Defendants NY Province's and McQuaid Jesuit High School'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.

39. Defendants NY Province and McQuaid Jesuit High School:

- 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 adequately to supervise the activities of Father Voelkle;
- 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.

40. At all times material hereto, with regard to the allegations contained herein, Father Voelkle was under the supervision, employ, direction and/or control of Defendants NY Province and McQuaid Jesuit High School.

41. At all times material hereto, Defendants NY Province's and McQuaid

Jesuit High School'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.

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

43. Liabilities of Defendant NY Province were transferred to, or assumed by, Defendants Northeast Province and McQuaid Jesuit Community. As a result, Defendants Northeast Province and McQuaid Jesuit Community are liable to the Plaintiff for the damages caused by Defendant NY Province stated in this cause of action.

44. 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: August 5, 2020

New York, New York

Respectfully Submitted,

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