

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

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N.S.,

Plaintiff,

COMPLAINT

-against-

FRANCISCAN FRIARS-HOLY
NAME PROVINCE, AND
FRANCISCAN SISTERS OF THE
POOR,

Index No. _____

Defendant.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, N.S., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when he was a minor, was sexually assaulted by Father Declan Bailey, a Friar and serial pedophile of the Franciscan Friars of Brooklyn.

Parties, Jurisdiction and Venue

1. Plaintiff N.S. is a citizen and resident of the State of New Jersey.
2. Defendant, Franciscan Friars – Holy Name Province (hereafter, the “Franciscan Friars”), is a religious institution and organization with principal offices located at 129 West 31st St., 2nd Fl, New York, NY 10001-3403. The Franciscan Friars oversee a region it refers to as a “province” which covers the Eastern United States, ranging from as far north as New Jersey to as

far south as Florida, including the following states: Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, the Carolinas, Georgia and Florida. The Franciscan Friars is based in New York City. The Franciscan Friars are a citizen and resident of the State of New York.

3. Defendant, Franciscan Sisters of the Poor (hereafter “Franciscan Sisters”), are a Catholic order with a principal place of business in Brooklyn, New York. The Franciscan Sisters operated St. Anthony Community Hospital in Warwick, New York where the alleged acts of sexual assault took place.

4. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

5. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

6. Venue of this action lies in New York County as the Defendant has its principal place of business in New York County.

Father Declan’s Sexual Assaults of Plaintiff

7. Father Declan was an ordained Franciscan priest.

8. In approximately 1984, when N.S. was approximately four years old, Father Declan was reassigned by the Franciscan Friars to serve as the priest at the Chaplaincy at St. Anthony Community Hospital in Warwick, New York.

9. During the time that Father Declan was assigned to the Chaplaincy at St. Anthony Community Hospital, he would drive from Warwick to West Milford, where N.S. lived, on a regular basis to pick up N.S. and bring him to the hospital and chapel. They would spend the day together in Warwick. Father Declan would often pick up N.S. from his school, Our Lady Queen

of Peace, where Father Declan was well known and was allowed to take N.S. without restriction. He would refer to N.S. as his “grandson.”

10. On these trips, Father Declan sexually abused N.S. on multiple occasions at the St. Anthony Hospital facility and chapel. The acts additionally occurred in Father Declan’s residence which was located on the St. Anthony premises. The acts of sexual abuse included, but were not limited to, the fondling of N.S.’s penis, oral sex and anal rape.

NOTICE – FORESEEABILITY

11. At all relevant times, the Defendants knew or, in the exercise of reasonable care, should have known that Father Declan had a propensity for the conduct which caused injury to the Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

12. At all relevant times, it was reasonably foreseeable to Defendants that Father Declan would commit acts of child sexual abuse or assault on a child.

13. Upon information and belief, prior to the sexual assault of Plaintiff, the Franciscan Friars on at least one occasion transferred Father Declan to a different parish as a result of accusations that Father Declan committed acts of sexual abuse.

The Franciscan Friars’ Concealment of Acts of Sexual Abuse by Priests

14. The Franciscan Friars belongs to the Order of Franciscan Minors (“OFM”). The OFM belongs to the Catholic faith and is under Holy See authority. The Franciscan Friars’ leadership consists of the Provincial Administration, including a Provincial Minister, a Provincial Vicar, a Provincial Secretary and Provincial Councilors. The Provincial Minister, at all relevant times knew that Franciscan clergy, under his supervision and control, were grooming and sexually molesting children with whom the Friars would have contact in their ministry and pastoral functions. At all relevant times, the Provincial Minister knew that this was a widespread,

ubiquitous and systemic problem in the Franciscan Friars, involving many Friars and numerous victims.

15. Despite receiving credible allegations of child sexual abuse against clergy, the Franciscan Friars acted to conceal these allegations in an effort to avoid scandal and accountability.

16. This concealment was in accordance with a policy of the Franciscan Friars, as agent, and the Holy See, as principal. In 1922, the Holy See released a confidential document to officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents to use when a cleric abused children using the confessional. This document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

17. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as "*Crimen Sollicitationis*"). The heading of the document states, "From the Supreme and Holy Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite,'" and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an "instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail." *Crimen Sollicitationis* at paragraph 24.

18. The 1962 document reinforced that the Holy See and its agents to whom the documents was directed had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

19. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

20. Fr. Fitzgerald's reports were kept secret under the Holy See's standing policy to avoid scandal at all costs. Its recommendation was ignored, however, and instead the Holy See made a choice to return known offending clergy to active duty. At this point, it is clear that the Holy See and its agents, including the Franciscan Friars, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

21. The Holy See's policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Friars from consequence. Through this policy and others, the Holy See and its agents, including the Franciscan Friars, knowingly allowed, permitted and encouraged child sex abuse by the members of the Franciscans Friars.

22. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move offending Friars to other locations once they have been determined to be "delinquent." In response to allegations, the document mandates that supplementary penalties include: "As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain

place.” *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

23. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including the Provincial Minister of the Franciscan Friars, in 1988 and 2001.

24. The policies and practices of the Franciscan Friars designed to conceal sexual abuse by clergy and protect it from scandal and liability included the following:

- (a) transfer and reassignment of clergy known or suspected to abuse minors to deflect attention from reports or allegations of child sexual abuse;
- (b) concealing from parishioners and even other clergy that a friar reassigned to their parish posed a danger of sexual abuse to children;
- (c) failing to alert parishioners from the Friar’s prior assignments that their children were exposed to a known or suspected child molester;
- (d) failing to report sexual abuse to criminal authorities; and
- (e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.

25. Upon information and belief, the Franciscan Friars' transfers and reassignments of Father Declan were pursuant to this policy and practice designed to conceal sexual abuse of clergy and protect the Franciscan Friars from scandal.

26. Indeed, the policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See and Franciscan Friars believed it to be perceived as a perquisite, which it condoned and used to its advantage in controlling priests.

27. Plaintiff was in a zone of foreseeable harm as a child engaged in Catholic activities in close proximity to or with Catholic clergy.

28. The Franciscan Friars was in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of its priests to sexually abuse children.

29. At all relevant times, while the Franciscan Friars had special and unique knowledge of the risk of child sexual abuse by its priests, such priests who would prey on children who were outside the reasonable contemplation of the Catholic community and families who trusted priests to have access to their children.

30. Plaintiff had no opportunity to protect himself against a danger that was solely within the knowledge of the Franciscan Friars.

31. The Franciscan Friars knew a significant percentage of clergy were using their status and position to identify, recruit, groom and sexually assault vulnerable children.

32. All children engaging in Catholic activities at religious organizations operated by the Franciscan Friars were in this manner placed at risk of child sexual abuse.

Duty

33. At all material times, the Franciscan Friars was in a special relationship with Plaintiff as a catholic faithful with whom one of its ordained priests would have contacts in the

course of engaging in Catholic activities. Based on this special relationship, the Franciscan Friars owed Plaintiff a duty of reasonable care to protect him from foreseeable harm.

34. The Franciscan Friars and Father Declan were in a special relationship of employer – employee, in which the Franciscan Friars owed a duty to control the acts and conduct of Father Declan to prevent foreseeable harm.

35. The Franciscan Friars owed a duty to exercise reasonable care in hiring, retention and supervision of Father Declan.

36. The Franciscan Friars owed a duty in transferring or assigning Father Declan when it knew or should have known that he posed a danger to children in his duties and role as a Catholic Friar.

37. The Franciscan Friars owed a duty to exercise reasonable care in the hiring, retention and supervision of Father Declan.

38. At all material times, Defendant Franciscan Sisters owed Plaintiff as a minor visiting its facilities a duty to exercise to reasonable care in order to prevent foreseeable harms.

Breach

39. Defendants breached their duties by (i) hiring Father Declan as a priest when they knew or should have known of his sexual proclivities for children; (ii) at all relevant times, retaining and failing to adequately supervise Father Declan as an active priest; and (iii) granting and maintaining Father Declan faculties as priest without making any warning or notice of his perverse sexual proclivities to the Catholic faithful who would have contacts with Father Declan.

40. At all relevant times, Defendants had inadequate policies and procedures to protect children who would encounter their priests in the course of their duties.

41. Defendants concealed their knowledge that priests were unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by its priests.

42. Defendants failed to warn Catholic families that their children were at risk of sexual abuse by priests.

Nature of Conduct Alleged

43. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

44. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendant acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Father Declan, to retain Father Declan in ministry with unfettered access to children.

COUNT I **NEGLIGENCE** *(Against all Defendants)*

45. Plaintiff N.S. repeats and realleges Paragraphs 1 through 44 above.

46. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries,

shame, humiliation and the inability to lead a normal life.

47. Defendants' acts and conduct shows a reckless or willful disregard for the safety and well-being of N.S. and other children.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
October 24, 2019

Respectfully submitted,

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