

STATE OF NEW YORK  
COURT OF CLAIMS

<p>In the Matter of the Claim of WILLIAM SZCZYGIEL,</p> <p style="text-align: center;">Claimant,</p> <p>vs.</p> <p>STATE OF NEW YORK and NEW YORK STATE OFFICE OF MENTAL HEALTH,</p> <p style="text-align: center;">Defendants.</p>
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**VERIFIED CLAIM**

Claim No.:

Claimant, WILLIAM SZCZYGIEL, by and through his undersigned attorneys, as and for his verified complaint, alleges as follows:

**NATURE OF THE ACTION**

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Claimant WILLIAM SZCZYGIEL, when he was approximately 7 years old, was sexually abused and assaulted on multiple occasions by multiple assailants, including staff members and other minor children, at Western New York Children’s Psychiatric Center (herein “Psychiatric Center”), a facility operated by Defendants State of New York and New York State Office of Mental Health (collectively herein “Defendants”).
3. Prior to Claimant’s abuse, Defendants had actual notice that minor children at the Psychiatric Center were being sexually abused by staff members and other minor children, including Claimant, and did nothing to prevent further abuse.
4. In fact, the Psychiatric Center was investigated by the Defendants shortly after Claimant was abused. The Defendants issued a report which confirmed there was a multitude of

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incidents of horrific sexual abuse occurring between minors and adult staff members at the Psychiatric Center.

5. Specifically, Defendants' report stated that the Psychiatric Center "frequently" was negligent, *inter alia*, in the following ways:

- a. "Failed to ensure thorough investigation of what happened or why it happened;"
- b. "Failed to take necessary protective steps, such as prompt and thorough medical exams for children involved in sexual activity;"
- c. "Failed to assure adequate treatment intervention or future protection for the children involved;"
- d. "Inadequate supervision of the children by staff at the facility;"
- e. "Although senior administrative and clinical staff at the facility had knowledge of this sexual activity, they took little, and often inappropriate, action to intervene to prevent the activity from recurring."
- f. Failed "to take sufficient action to protect children[.]"
- g. "Failed to report these incidents as required by state laws and regulations, thereby impairing the protections afforded to children by investigative processes of external agencies, including law enforcement and child protective agencies;" and
- h. "Failed to use these recurring incidents as vehicles for critical self-examination, correction and prevention. Instead, the facility's ineffective and incomplete responses to these incidents fostered a low level of concern about the welfare of the children and high level of tolerance for these harmful incidents than is comprehensible."

6. The Defendants' report further states, "... in this case it became evident early in the investigation that most of these serious incidents of abuse and neglect had occurred, that direct care staff had known about them, that they were duly reported to supervisors, and that they were called to the attention of the highest levels of clinical and administrative responsibility at the facility." Despite this, "virtually none of the systems designed to provide the children with adequate diagnosis, treatment, supervision or protection from harm worked."

7. In fact, Claimant reported that he was being sexually abused to the staff members of the Psychiatric Center, but no action was taken to protect Claimant. Rather, Claimant's abuse intensified after reporting it to Defendants' staff. As a result, he continued to be subjected to horrible sexual abuse while a patient of the Psychiatric Center.

8. Defendants placed Claimant in harm's way. They carelessly, negligently, and recklessly failed to protect Claimant from sexual abuse by staff members and minor children, permitted the abuse to occur, failed to supervise Claimant, their staff members, and other minor children, failed to timely investigate their misconduct, failed to train minors, parents, and adult staff about the risk of sexual abuse at their facility, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for Claimant's sexual abuse, and Claimant's consequential injuries and damages.

#### **PARTIES**

9. Claimant is an individual residing in Cass County, Iowa.

10. Claimant was born in 1980.

11. Defendant The State of New York (“NYS”), is a public entity which, which by and through the New York State Office of Children and Family Services, is authorized and is responsible for the protection, safety, and welfare of children, such as Claimant, in New York State.

12. Defendant New York State Office of Mental Health (herein “NYSMH”) is, and at all relevant times was, a governmental organization, entity, and/or municipality, which includes but is not limited to civil corporations, decision-making entities, officials, and employees, authorized to conduct business and doing business at 163 W. 125th Street, #209, New York, New York 10027.

13. At all relevant times, Defendants NYS and NYSMH are authorized and are responsible for the protection, safety, and welfare of children placed in the Psychiatric Center. Defendants NYS and NYSMH oversaw, managed, controlled, directed and operated social services and entities within New York State.

14. Defendants NYS and NYSMH are referred to herein collectively as “Defendants.”

#### **FACTUAL ALLEGATIONS**

15. Claimant repeats and re-alleges all preceding paragraphs of this Complaint.

#### **“Investigation into Allegations of Child Abuse and Neglect at Western New York Children’s Psychiatric Center” by NYS Commission on Quality of Care for the Mentally Disabled**

16. In 1989, the NYS Commission on Quality of Care for the Mentally Disabled issued a report regarding the multitude of sexual abuse and neglect allegations from children at the Psychiatric Center. The investigation was conducted over a nine-month period.

17. At first, “the Commission’s investigation efforts focused on the individual cases which had been reported to the State Central Register.” However, “[a]s additional cases were

reported, and as the individual investigations revealed evidence of more widespread concerns, the Commission's investigation activities took on a broader, more systemic character."

18. Starting in the spring of 1988, the Commission reviewed 32 separate cases of child abuse and neglect cases filed with the State during a seven-month period, March 1988 to October 1988. It also reviewed 64 instances of sexual activity or contact at the Psychiatric Center documented during a nine-month period, November 1987 to July 1988.

19. The Commission also conducted interviews of 56 children, who were current or former residents of the Psychiatric Center. The Commission also interviewed 33 staff members, including the facility director, the deputy director for quality assurance, the chief medical officer, and the facility's one-unit chief and treatment team leader.

20. The Commission's investigation found, *inter alia*, the following:

- a. "[f]or a *significant period of time*, children at Western New York Children's Psychiatric Center have engaged in sexual activities, which *were known* to senior administrative and clinical staff at the facility." (emphasis added). The sexual abuse cases involved "sexual activity among children" and "staff sexual abuse of children." Further, the Psychiatric Center was aware of the allegations of sexual abuse prior to the Commission's investigation and failed to report all of them to the State Central Register.
- b. The reported incidents of sexual abuse were severe and "involved reports of vaginal intercourse, anal intercourse, or oral sex." For example, an "eight-year-old boy reported to a unit nurse that he was threatened and intimidated into engaging in oral sex and anal intercourse with a 12-year-old boy. The younger boy claimed that the older boy performed anal intercourse with him on many occasions over several

- weeks.” Each boy had a significant history of inappropriate sexual behavior, had been involved in previous reports, all of which was known to the Psychiatric Center.
- c. Many of the incidents of sexual activity at the Psychiatric Center “appear to have occurred or persisted due to inadequate supervision of the children by staff.” The Commission’s investigation found staff had turned alarm devices off on children’s rooms, slept while on duty, or plainly failed to stop sexual activity in plain sight, which led to children being sexually abused.
- d. Some of the sexual activity at the Psychiatric Center was fostered by a sex club informally organized by children at the facility, which was known by staff members at the Psychiatric Center. The “‘club’ changed names from the ‘Toy Club’ to the ‘Kissing Club’ to the ‘Tree House Club’ to the ‘G.I. Joe Club’ to the ‘Transformer Club[.]’” Further, “[a]ccording to several children, parents, and staff, . . . children seeking or encouraged to join the ‘club’ had to first pass through an ‘initiation rite,’ which included engaging in *oral and anal sex with other children.*” (emphasis added). Shockingly, the staff members including senior staff were aware of the children’s “club” and took no action to prevent it. For example, in a nursing note dated November 7, 1987, two children (aged nine and eleven) were encouraging a third child (aged nine) to suck another child’s (aged 11) penis so he could join the club.” The nurse related this report to the facilities unit chief, two doctors, and the administrator-on-call.
- e. “Many of the children involved in the reports of sexual activity . . . had also been identified by the facility as being at particular risk of harm and, thereby, had been placed on special precautions.”

- f. "Medical attention afforded by [the Psychiatric Center] subsequent to their involvement in sexual activities was not adequate to ensure the children's well-being and further protection." Facility physicians had no special training to conduct sexual abuse related medical examinations. There was also little to no testing for sexually transmitted diseases, substantial delays before initiating medical examinations, and a lack of facility expectations for the conduct, scope, and documentation of medical exams.
- g. "Although senior facility staff were aware of the numerous incidents of sexual activity, they failed to take sufficient actions to stop the activity from occurring."
- h. The Psychiatric Center failed to assure the children involved in sexual abuse cases received "adequate inpatient treatment and discharge support services" which "contributed to further serious problems for several of these children in the community."
- i. "Senior Managers of [the Psychiatric Center], as well as the chief psychiatrist on the Children's Unit, . . . had very limited academic training or professional experience servicing children with serious emotional problems, prior to coming to work at the facility." Further, "direct care staff at the facility also indicated that they had received no training or clinical guidance in caring for children who had been victims of sexual abuse or who engaged in sexual activities with other children."
- j. The Psychiatric Center did not report allegations of abuse and neglect, including sexual abuse, to the State "despite an explicit statutory requirement that they be reported." As for the ones they did report, they failed to report them promptly and in compliance with the NYSMH's policy for reporting possible allegations of

abuse. As a result, the above “adversely affected the safety and well-being of children.”

- k. The Psychiatric Center failed to thoroughly investigate sexual abuse allegations, which contributed to its neglect “in assuring the protection of children at the facility from harm.”

#### **Claimant’s Abuse at the Psychiatric Center**

21. Claimant was admitted to the Psychiatric Center from approximately June 1988 to late May 1989.

22. During this time, when Claimant was seven to eight years old, Claimant was subjected to inappropriate, harmful, and forceful sexual contact on multiple occasions by staff members and other children at the Psychiatric Center. The sexual contact included non-consensual anal intercourse. Claimant reported the sexual abuse to a counselor at the Psychiatric Center and he was then subjected to more intense abuse including for example, being taken into a “solitary” room and held down while a large male staff member climbed on top of him and injected him in the buttocks with a syringe that made Claimant become unconscious. When Claimant awoke, he experienced pain in his anus. Additionally, Claimant’s parents were told that they could no longer visit Claimant after he reported the abuse.

23. The sexual contact Claimant was subjected to was in violation of New York Penal Law Article 130.

24. At all relevant times, Defendants had and assumed a duty to protect and supervise minor children in their custody, including Claimant, who were suspected or at risk of being sexually abused at the Psychiatric Center.

25. At all relevant times, Defendants had and assumed a duty to protect minor children in their custody, including Claimant, from sexual abuse at the Psychiatric Center.

26. At all relevant times, Defendants had and assumed a duty to timely and properly investigate allegations or a risk that a child at the Psychiatric Center was or could be sexually abused.

27. At all relevant times, Defendants had and assumed a duty to take reasonable steps to ensure that minor children, including Claimant, who were suspected or at risk of being sexually abused at the Psychiatric Center, were protected from continuing to be sexually abused.

28. At all relevant times, Defendants assumed an affirmative duty to act on behalf of Claimant.

29. At all relevant times, Defendants knew or should have known that their misconduct would likely result in grievous harm to Claimant.

30. At all relevant times, there was direct contact between the Defendants and Claimant.

31. At all relevant times, Claimant and his family justifiably relied on the Defendants affirmative undertaking to ensure Claimant was safe from sexual abuse at the Psychiatric Center.

32. Prior to and after Claimant's sexual abuse, Defendants failed to properly investigate, among other things, whether Claimant was being sexually abused at the Psychiatric Center, despite having reported being abused.

33. Defendants failed to take any reasonable steps to protect Claimant from being sexually abused at the Psychiatric Center.

34. Defendants failed to supervise their staff members and/or minors in their custody, including Claimant, and allowed abusive staff members, employees, representatives and/or agents

of Defendants and minor children to have unfettered and unsupervised access to Claimant at the Psychiatric Center.

35. Defendants knew or should have known that the abusive staff members and/or children were a danger to minors, including Claimant, before they sexually abused Claimant.

36. Defendants knew or should have known that Claimant was in danger of being sexually abused by abusive staff members, employees, representatives and/or agents of Defendants and other minor children especially after Claimant reported he was being sexually abused.

37. Defendants knew or should have known that allowing abusive staff members, employees, representatives and/or agents of Defendants and other minor children, to have unsupervised and unlimited access to Claimant, posed an unacceptable risk that Claimant would be sexually abused and suffer grave harm.

38. Defendants knew or should have known that Claimant was being sexually abused because he reported to staff members that he was "being sexually abused and having sexual intercourse with various males," while at the Psychiatric Center.

39. Prior to the time of Claimant's abuse, New York Law required Defendants to investigate and report any suspicions of child abuse and neglect, including Social Services Law §§413 and 420 and the Child Abuse Prevention Act of 1985 (Chapter 676 of 1985).

40. Prior to the time of Claimant's abuse, federal law required Defendants to investigate and report incidents of abuse and neglect of mentally ill individuals and to ensure their protection, including the Protection of Advocacy for Mentally Ill Individuals Act of 1986 (P.L. 100-509).

41. Prior to the time of Claimant's abuse, Defendants knew the abusive staff members and children had a propensity to sexually abuse minor boys.

42. Prior to the time of Claimant's abuse, Defendants were aware of the widespread issue of sexual abuse between minor children and staff, as well as minor on minor sexual abuse, at the Psychiatric Center.

43. The sexual abuse of Claimant was foreseeable.

44. Defendants had actual knowledge of Claimant's abuse because he reported it shortly after it started and they failed to take any steps to stop it.

45. Defendants owed Claimant a heightened, fiduciary duty of care to ensure that Claimant was safe from being sexually abused because (a) Claimant reported he was being sexually abused at the Psychiatric Center (b) Defendants had actual knowledge of the abusive staff members' and childrens' propensities to abuse minor boys, (c) Defendants held themselves out as having superior knowledge and responsibility to provide a safe and secure environment for children, like Claimant, and (d) Claimant was a vulnerable minor boy, suffering from mental health issues, unable to protect himself; and (e) Defendants affirmatively assumed the responsibility to adequately protect Claimant while he was in their custody.

46. Defendants not only owed Claimant a duty to protect him from harm because it was directed, authorized and empowered by the State of New York to protect the safety and welfare of children, including Claimant, but also voluntarily assumed that duty.

47. Defendants owed and assumed a duty to Claimant to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Claimant.

48. The sexual abuse of Claimant was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

49. Defendants' aforesaid negligent, grossly negligent and reckless misconduct, endangered Claimant's safety and caused him to fear for his own safety.

50. Defendants knew or disregarded the substantial probability that the abusive staff members and/or minor children would cause severe emotional distress to Claimant.

51. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Claimant and Defendants. The entrustment of Claimant to the care and supervision of the Defendants while Claimant was a vulnerable child, imposed upon this Defendants a fiduciary duty to act in the best interests of Claimant.

52. Defendants were entrusted with the well-being, care, and safety of Claimant, which Defendants had a fiduciary duty to protect.

53. By reason of the foregoing, Defendants breached their fiduciary duties to Claimant.

54. At all relevant times, Claimant was a vulnerable child entrusted to the care of Defendants and was under the supervision and control of these Defendants, such that these Defendants owed him a duty to act *in loco parentis* and to prevent foreseeable injuries.

55. By reason of the foregoing, Defendants breached their duties to act *in loco parentis*.

56. Despite Defendants' knowledge of Claimant being sexually abused at the Psychiatric Center, they failed to report the allegations as was statutorily required.

57. As a result of the foregoing, Claimant has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, psychological injuries, fear and anxiety, trauma, and post-traumatic stress disorder; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and will continue to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses for medical and psychological treatment, and was otherwise damaged in an amount that exceeds the jurisdictional limits of lower courts in this State.

58. To the extent that any Defendants pleads, or otherwise seeks to rely upon Article 16 of the New York Civil Practice Law and Rules (CPLR) to have fault apportioned to another allegedly culpable party, Claimant expressly states that Defendants' conduct falls within one or more of the subdivisions of CPLR 1602.

59. Pursuant to the Child Victims Act, a notice of claim is not a prerequisite of the filing of this action.

**FIRST CAUASE OF ACTION**

**NEGLIGENT SUPERVISON AND DIRECTION**

60. Claimant repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

61. At all relevant times, a special relationship existed between the Defendants and Claimant when Defendants assumed an affirmative duty to act on behalf of Claimant; Defendants had knowledge that inaction on their part could lead to Claimant being harmed; there was direct contact between the Defendants, their staff, agents, and representatives and Claimant, and Claimant and his family justifiably relied on the Defendants' affirmative undertaking to ensure Claimant was safe from sexual abuse at their facilities.

62. Prior to the sexual abuse of Claimant, Defendants learned that the abusers were not fit to be with or around minor boys, like Claimant.

63. Defendants, by and through their agents, servants and/or employees, became aware of the abusers' propensity to sexually abuse minor boys and of the risk to Claimant's safety.

64. Defendants negligently allowed the abusers to have access to claimant with knowledge of the abusers' propensity for the type of behavior which resulted in Claimant's injuries.

65. At all relevant times Defendants had a duty to exercise due care to protect Claimant from the risk of sexual abuse at the hands of the abusers, and to monitor and supervise Claimant and/or the abusers to ensure that the abusers did not have unsupervised access to Claimant, and to otherwise protect Claimant, who was likely to come into contact with the abusers, and/or under his influence or supervision, and to ensure that the abusers did not injure Claimant by sexual assault, contact or abuse.

66. Defendants breached their duties to Claimant in that they negligently failed to use reasonable care to protect Claimant when it allowed the abusers and Claimant to continue to interact with one another, failed to investigate whether Claimant was being sexually abused and/or at risk of sexual abuse.

67. Defendants were negligent and did not use reasonable care in their supervision and direction of the abusers and Claimant, failed to monitor their activities, failed to oversee the manner in which they carried out their activities, even though they knew the abusers posed a threat of sexual abuse to minor boys, including Claimant; negligently allowed the misconduct described above to occur and continue; failed to investigate; and failed to remove the abusers from interacting with Claimant; failed to have policies and practices in place that would have prevented the abuse of Claimant; failed to follow accepted policies and practices that would have prevented this abuse; and Defendants were otherwise negligent.

68. Claimant's abusers would not have been in a position to sexually abuse Claimant had Defendants not been negligent in the supervision and direction of the abusers and Claimant.

69. Defendants' aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Claimant.

70. As a direct and proximate result of the aforesaid misconduct, Claimant suffered grave injury, including physical, psychological and emotional injury as described above.

71. By reason of the foregoing, Defendants are liable to Claimant for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs in an amount that exceeds the jurisdiction of the lower courts of the State.

**SECOND CAUSE OF ACTION**

**NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT**

72. Claimant repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

73. Prior to the sexual abuse of Claimant, Defendants learned that the abusers had been accused of sexually molesting minor children and/or there were allegations of wide-spread sexual abuse at their facility.

74. Defendants, by and through their agents, servants and/or employees, became aware the abusers' propensity to commit sexual abuse and of the risk to Claimant's safety because Claimant reported the abuse to Defendants' staff members.

75. Defendants negligently allowed the abusers to continue to interact with Claimant and failed to take reasonable steps to protect Claimant, which resulted in Claimant's injuries.

76. Defendants were negligent and did not use reasonable care in their training, if any, of minors, including Claimant, and/or their parents about the risk of sexual abuse in Defendants' facilities, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

77. Defendants were negligent and did not use reasonable care in their training, if any, of their employees, agents and representatives about the risk of sexual abuse in Defendants' facilities, how to identify signs of sexual abuse, grooming behaviors, or sexual predators, how to safeguard children from sexual abuse in Defendants' facilities, and about the statutory duty of Defendants, their employees, agents and representatives, to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

78. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that their staff, employees, representatives and/or agents had superior knowledge as to how to protect minor children in their facilities, and that children, including Claimant, would be safe under their care.

79. Defendants knew or should have known this representation was false when it allowed the abusers to continue interacting with Claimant.

80. Defendants carelessly, negligently, and recklessly failed to have in place an appropriate policy and/or practice to protect vulnerable minors under their supervision and control from sexual abuse.

81. Defendants carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice to monitor, supervise or oversee the abusers' interactions with Claimant, in order to keep Claimant safe from sexual abuse.

82. The careless, negligent and reckless misconduct by Defendants as described herein was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children, including Claimant.

83. As a direct and proximate result of Defendants' misconduct, Claimant suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

84. By reason of the foregoing, Defendants are liable to Claimant for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs in an amount that exceeds the jurisdictional limits of lower courts in this State.

**THIRD CAUSE OF ACTION**

**PREMISES LIABILITY**

85. Claimant repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

86. At all relevant times, Defendants owned, operated, and /or controlled the premises of the Psychiatric Center, including the areas where the sexual abuse of Claimant occurred.

87. At all relevant times, Claimant was rightfully present at the aforementioned premises.

88. Defendants had a duty to see that the premises at which Claimant was rightfully present were in a reasonably safe condition for the intended use by students, like Claimant, whose presence was reasonably anticipated.

89. Defendants willfully, recklessly, and negligently failed to provide a reasonably safe premises that were free from the presence of sexual predators and/or the assault by the occupants of the premises, including the abusive staff members and minor children. Defendants thereby breached their duty of care to Claimant.

90. As a direct and proximate result of Defendants' misconduct, Claimant suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

91. By reason of the foregoing, Defendants are jointly and severally liable to Claimant for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

**FOURTH CAUSE OF ACTION**

**BREACH OF STATUTORY DUTIES TO REPORT**

92. Claimant repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

93. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, the Child Abuse Prevention Act of 1985 (Chapter 676 and 677 of the Laws of 1985), and the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (P.L. 100-509), Defendants had a statutory duty to investigate and/or report reasonable suspicion of abuse of children in their care.

94. Defendants breached their statutory duty by knowingly and/or willingly failing to report reasonable suspicion of abuse of Claimant and/or by the abusive staff members or minor children.

95. As a direct and proximate result of the abusive staff members' and minor children's sexual abuse and Defendants' misconduct, Claimant suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

96. By reason of the foregoing, Defendants are liable to Claimant for compensatory and punitive damages, in an amount that exceeds the monetary limits of all courts of lower jurisdiction, to be determined at trial, together with interest and costs.

**FIFTH CAUSE OF ACTION**

**VIOLATION OF CIVIL RIGHTS ACT, 42 U.S.C. § 1983**

97. Claimant repeats and re-alleges every allegation in this Complaint as if fully set forth herein.

98. At all relevant times Defendants acted and/or refrained from acting under color of statutes, ordinances, regulations, custom or usages of the State of New York.

99. Claimant is a citizen of the United States and person within the jurisdiction of the United States.

100. The conduct of Defendants has proximately caused the deprivation of rights, privileges or immunities possessed by Claimant which are secured by the Constitution and laws of the United States, and Claimant therefore brings this action pursuant to 42 U.S.C. § 1983.

101. Among these rights are Claimant's substantive due process rights, secured by the Fifth and Fourteenth Amendments, to be protected from bodily harm especially where, as here, that harm is deliberately and knowingly inflicted and constitutes the functional equivalent of an assault or battery, and where the actions of Defendants' staff members were so grossly and recklessly in violation of rules, regulations, common sense, and Defendants' policies and procedures.

102. The above-described conduct of the Defendants resulted in the Claimant being deprived of the following rights under the Constitutions of New York State and the United States:

- a. Freedom from assault;
- b. Freedom from battery;
- c. Freedom from statutory sexual abuse, as heretofore described;
- d. Freedom from emotional distress and imminent fear; and

e. Defendants' failure to intervene and stop the sexual abuse against Claimant despite the means and opportunity to do so.

103. The Defendants subjected the Claimant to such deprivations, either in a malicious or reckless disregard of the Claimant's rights or with deliberate indifference to those rights used guaranteed under the Fourth and Fourteenth Amendments of the United States Constitution as well as the New York State Constitution and common law.

104. Also among these rights are Claimant's rights secured by the Fifth and Fourteenth Amendments, not to be deprived of life, liberty, or property without due process of law.

105. At all relevant times, improper, illegal, and tortious conduct akin to that alleged of the abusers was foreseeable by Defendants and it must have known about their likelihood of occurring.

106. As policymakers, the Defendants failed to provide adequate training and/or supervision to their employees, staff, representatives, and/or agents to such an extent that such failure amounts to deliberate indifference to the rights of those, including Claimant, who come in contact with their employees, staff, representatives, and/or agents.

107. As a direct and proximate result of these Defendants' foregoing misconduct, Claimant suffered grave physical injury, pain and suffering, economic loss, and emotional distress including psychological and emotional injury as described herein.

108. By reason of the foregoing, Defendants are liable to Claimant for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs in an amount that exceeds the jurisdictional limits of lower courts in this State.

**WHEREFORE**, Claimant prays for judgment as follows:

- a. Awarding Claimant compensatory damages for his injuries, in an amount to be determined at trial;
- b. Awarding Claimant punitive damages for his injuries, in an amount to be determined at trial;
- c. Awarding Claimant prejudgment interest, to the extent available by law;
- d. Awarding Claimant costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.

Dated: July 19, 2021

Yours, etc.

/s/ Mke j cgn Fgtwxg  
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VERIFICATION

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

MICHAEL DERUVE, ESQ. being duly sworn, deposes and says:

1. I am an attorney who is a member of the law firm of Phillips & Paolicelli, LLP.
2. I have read the annexed VERIFIED CLAIM, and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge, is based on the facts, records and other pertinent information contained in my file.
3. The reason this verification is made by me and not by the plaintiff is because the plaintiff does not reside within the County where his attorneys maintain our offices, to wit: 747 Third Avenue, County of New York, State of New York.

Dated: July 20, 2021



Michael DeRuve

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