

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE,
Plaintiff,

v.

THE LEGION OF CHRIST INCORPORATED
and IMMACULATE CONCEPTION
APOSTOLIC SCHOOL,
Defendants

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CIVIL ACTION No:

AUGUST 17, 2017

COMPLAINT

Plaintiff, JOHN DOE, by and through his undersigned counsel, hereby files this Complaint against Defendants, THE LEGION OF CHRIST INCORPORATED and IMMACULATE CONCEPTION APOSTOLIC SCHOOL, and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff, JOHN DOE, is an adult male born in June of 1971, and who is a citizen and resident of California. Plaintiff is identified in this lawsuit by the pseudonym JOHN DOE in that this case involves facts of the utmost intimacy regarding Plaintiff’s childhood sexual abuse, and Plaintiff fears further psychological injury if his name were publicly disclosed. At all material times, the Plaintiff was a student at the Immaculate Conception Apostolic School in Center Harbor (“I.C.A.S.”), New Hampshire.

2. Defendant, THE LEGION OF CHRIST INCORPORATED, is a Connecticut corporation with its headquarters and principal place of business located in Connecticut. At all material times, THE LEGION OF CHRIST was responsible for the assignment of priests, supervision of priests, and the implementation of policies and procedures at its parishes and

Catholic schools, including policies relating to the safety of children and prevention of childhood sexual abuse.

3. Defendant, IMMACULATE CONCEPTION APOSTOLIC SCHOOL is a nonprofit corporation incorporated in New Hampshire with its headquarters and principal place of business located in New Hampshire.

4. Defendant I.C.A.S. was owned and operated by Defendant THE LEGION OF CHRIST INCORPORATED. Major decisions for I.C.A.S. were established from The Legion of Christ's headquarters in Connecticut.

5. Connecticut, as the headquarters for the Legion of Christ Incorporated, has the most significant relationship to the dispute and the parties. Connecticut is the state in which Defendant LEGION OF CHRIST INCORPORATED administers all of its subordinate programs, including the administration of the schools it owns and operates. The administration and/or supervision of I.C.A.S. by the Legion of Christ was under the direction and control of Defendant LEGION OF CHRIST INCORPORATED'S headquarters in Connecticut.

6. Defendants THE LEGION OF CHRIST INCORPORATED and IMMACULATE CONCEPTION APOSTOLIC SCHOOL hereinafter may be referred to collectively as "LEGION OF CHRIST."

7. Fernando Cutanda ("Brother Fernando") was, at all material times an adult male, resident of Center Harbor, New Hampshire, and an employee/agent of LEGION OF CHRIST assigned to I.C.A.S. He is no longer associated with The Legion of Christ and his whereabouts are unknown.

8. Venue properly lies in this District in that Defendant, THE LEGION OF CHRIST INCORPORATED, is headquartered in this District and major decisions for Defendants were made out of its Connecticut headquarters. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 in

that this matter is between citizens of different states and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

BACKGROUND

9. In approximately 1941, Marcial Maciel founded a religious order that soon thereafter became the Legionaries of Christ. In approximately 1944, Fr. Maciel was ordained as a Roman Catholic Priest by his uncle, the Bishop of Cuernavaca, Mexico.

10. Beginning at least as early as the 1950's, Fr. Maciel was engaged in the sexual molestation of children; use of drugs; and financial improprieties. Some of the children he victimized were children whom he recruited for the Legionaries of Christ and some were not, including, but not limited to Fr. Maciel's biological children whom he fathered while functioning as the leader of Defendants' organization. Fr. Maciel's actions continued throughout his life until his death in approximately 2008.

11. I.C.A.S. was a private Roman Catholic boarding school for boys in grades seven through twelve. The object for which the corporation was established was for the high school education of candidates for the clergy of the Legion. Persons associating together in order to form said corporation included Anthony Bannon, Patrick McMenammin and Brother Fernando.

SEXUAL ABUSE OF JOHN DOE

12. In 1984, JOHN DOE, who was living in California, was recruited to attend I.C.A.S. He began as a student there in the summer of 1984 at approximately 13 years old. Brother Fernando was a staff member of I.C.A.S. and a superior and supervisor of JOHN DOE at I.C.A.S.

13. Originally JOHN DOE liked Brother Fernando as he was funny, athletic and passionate about the Legion. As part of his duties, Brother Fernando would touch JOHN DOE in a supportive, guiding, non-sexual manner consistent with his role as a supervisor, mentor and

religious leader, including putting his hands on JOHN DOE's shoulders. Brother Fernando bought JOHN DOE candy, clothes, and other gifts.

14. In or about January of 1985, JOHN DOE assisted Brother Fernando with putting away Christmas decorations in the attic area. While there, Brother Fernando started rubbing JOHN DOE's shoulders and then moved his hands down, groping JOHN DOE's genitals over his clothes and grinding his body against JOHN DOE. Brother Fernando then masturbated JOHN DOE and pulled his pants down, bent him over, and anally raped him. Brother Fernando also performed oral sex on JOHN DOE and forced JOHN DOE to do the same to him.

15. Brother Fernando continued to sexually abuse JOHN DOE in the same manner approximately every two to three weeks through approximately the spring of 1988. The abuse would occur at various locations at I.C.A.S. including the attic, basement, laundry room, boiler room and a barn. Additionally, in or about the summer of 1985, Brother Fernando and a priest took JOHN DOE to Michigan to stay at a large house, and Brother Fernando sexually abused him there.

16. One night after Brother Fernando had sexually abused him, around Christmas of 1987, JOHN DOE was crying in his bunk in the dormitory as he was overwhelmed with guilt, fear and confusion, and he thought he was going to go to Hell because of his participation in Brother Fernando's sexual acts. A Brother Patrick saw him crying and inquired as why. JOHN DOE told Brother Patrick that he wanted to confess something. Father Patrick told him to go to see Father Fergus O'Carroll for confessional. Father O'Carroll was the priest in charge of I.C.A.S. at the time.

17. JOHN DOE went to Father O'Carroll for confession and disclosed to him how Brother Fernando had been sexually abusing him. Father O'Carroll's response to this disclosure

was to tell JOHN DOE to pray, “five rosaries for his sins, gave him penance and said “God will take care of things.”

18. Father O’Carroll had the authority to take corrective measures in response to information disclosed to him by John Doe.

19. A short period of time after JOHN DOE disclosed his sexual abuse by Brother Fernando to Father O’Carroll, Brother Fernando sexually abused him again in the attic in the manner previously described.

20. All of the above sexual abuse committed upon JOHN DOE was without JOHN DOE’s consent, against his will and offensive to him.

21. Upon information and belief, prior to the sexual abuse of JOHN DOE, Defendants were aware that Brother Fernando engaged in sexual activity with other minor students at I.C.A.S.

COUNT I – NEGLIGENCE

(AS TO DEFENDANT THE LEGION OF CHRIST INCORPORATED)

22. The Plaintiff readopts and realleges all of the allegations set forth in Paragraphs 1 through 21 as though fully set forth herein.

23. At all material times, Defendant THE LEGION OF CHRIST INCORPORATED owed a duty to JOHN DOE to use reasonable care to ensure JOHN DOE’s safety, care, health, and well-being.

24. Defendant’s duties encompassed using reasonable care in the retention, assignment and/or supervision of priests and supervising Brothers who would not pose a threat to the safety, care, health, and well-being of minors.

25. At all relevant times, Defendant knew or in the exercise of reasonable care should have known that Brother Fernando was unfit, dangerous, and a threat to the health, safety and welfare of JOHN DOE.

26. Further, Defendant knew of the prevalence of sexual abuse by their clergy and brotherhood and that pedophilia was a problem in the recruitment and retention of Catholic clergy

27. While John Doe attended I.C.A.S., a priest there was given notice by a child victim of sexual abuse by Brother Fernando that Brother Fernando was a sexual predator.

28. Despite knowledge of Brother Fernando's serious threat to the health, safety and welfare of minors, Defendants continued to provide Brother Fernando with unfettered access to minors, including JOHN DOE.

29. Defendant was in a special relationship with JOHN DOE of school-student, such that it owed a duty to protect JOHN DOE from foreseeable harms on school grounds and during school-related activities. In this regard Defendant was *in loco parentis* with the Defendant's students, including JOHN DOE. At all material times, Defendant owned a duty to use reasonable care to protect the safety, care, well-being and health of the minor JOHN DOE while he was under the care, custody or in the presence of the Defendant. These duties encompassed the protection and supervision of JOHN DOE, and otherwise providing a safe environment for JOHN DOE while on school premises.

30. Defendant was in a special relationship with Brother Fernando of employer and employee/agent such that it had a duty to take steps to make sure that Brother Fernando was safe before giving him access to students.

31. Defendant had a duty in hiring, retaining and supervising Brother Fernando to prevent foreseeable harm to students and prevent educator sexual misconduct.

32. Defendant had a duty to adequately train teachers and staff in protecting children from educator sexual misconduct.

33. Prior to the sexual incident, Defendant in the exercise of reasonable care should have known that Brother Fernando was dangerous and a threat to the health, safety and welfare of male students, including JOHN DOE.

34. Prior to the sexual incident, Defendant by and through its agents, servants, and employees, should have known of Brother Fernando's dangerous sexual propensities and that he was unfit to serve in any position involving contact with male students.

35. Despite Defendant's constructive knowledge of Brother Fernando's dangerous sexual propensities, as described above, Defendant breached its duty to protect JOHN DOE by allowing Brother Fernando to serve as a staff member, giving him access to male students despite such constructive knowledge of his dangerous sexual propensities, and by failing to institute any supervision of Brother Fernando's contact with male students.

36. With such actual and constructive knowledge, the Defendant provided Brother Fernando with unfettered, unsupervised access to JOHN DOE on multiple occasions, needlessly endangering his health and safety.

37. At all relevant times, Defendant had inadequate policies and procedures to protect children they were entrusted to care for and protect, including JOHN DOE.

38. Prior to the sexual incident, Defendant breached its duties by failing to protect the minor JOHN DOE from sexual assault, harassment and lewd and lascivious acts committed upon JOHN DOE while he was present on school grounds, during school hours, or during school-related activities.

39. Defendant breached these duties by failing to use reasonable care to provide a safe environment for JOHN DOE where he would be free from the unwanted sexual advances and dangerous propensities of Brother Fernando, a supervising Brother, employee and/or agent of Defendants.

40. Additionally, Defendant breached its duties by failing to establish and implement adequate policies to protect students from sexual abuse by staff.

41. Defendant breached its duties by failing to take corrective action or adequately investigate reports or allegations of sexual misconduct by Brother Fernando

42. Defendant breached its duty in hiring, retaining and supervising Brother Fernando, which placed Brother Fernando in a position to sexually assault JOHN DOE.

43. Given the constructive and actual knowledge of Defendant concerning the dangerous propensities of Brother Fernando, the sexual assault of JOHN DOE was reasonably foreseeable to Defendant.

44. As a direct and proximate result of Defendants' breach of their duties JOHN DOE was sexually abused by Brother Fernando while attending I.C.A.S.

45. As a direct and proximate result of the negligence of the Defendants, Plaintiff JOHN DOE has suffered severe psychological, emotional and physical injuries, and emotional distress arising out of the physical injuries, pain and suffering, mental anguish, inconvenience, loss of capacity for the enjoyment of life, inability to lead a normal life, shame, humiliation and regression, and lost wages and costs associated with medical/psychological care and treatment. The injuries and damages are permanent and continuing in nature and the Plaintiff will suffer such losses in the future. he school is liable, in the ways previously described and in the following ways:

COUNT II- RECKLESSNESS

(AS TO DEFENDANT THE LEGION OF CHRIST INCORPORATED)

1- 45. Paragraphs 1 through 45 of the First Count are hereby incorporated as Paragraphs 1 through 45 of this Second Count, as if fully set forth herein.

46. The Legion of Christ, acting through its administrators, agents, and employees, was consciously aware of the fact that it created a substantial risk of injury to John Doe.

47. Notwithstanding the defendant's conscious awareness of the risk to John Doe, the defendant failed to take necessary and appropriate steps to reduce or eliminate the risk.

48. Notwithstanding the defendant's conscious awareness of the risk to John Doe, the defendant took affirmative steps to exacerbate the risk and to make harm and injury to John Doe more likely.

49. The injuries suffered by John Doe were caused by the reckless or callous indifference, or the wanton misconduct, of the defendant.

COUNT III- NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
(AS TO DEFENDANT THE LEGION OF CHRIST INCORPORATED)

1- 45. Paragraphs 1 through 45 of the First Count are hereby incorporated as Paragraphs 1 through 45 of this Third Count, as if fully set forth herein

46. The defendant created an unreasonable risk of causing John Doe emotional distress

47. John Doe's distress was foreseeable.

48. The emotional distress was severe enough that it might result in illness or bodily harm.

49. The defendant's conduct was the cause of John's distress.

COUNT IV- INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
(AS TO DEFENDANT THE LEGION OF CHRIST INCORPORATED)

1-45. Paragraphs 1 through 45 of the First Count are hereby incorporated as Paragraphs 1-45 of this Fourth Count, as if fully set forth herein.

46. The Defendant intended to inflict emotional distress or it knew or should have known that emotional distress was the likely result of its conduct.

47. The defendant's conduct was extreme and outrageous.

48. The defendant's conduct was the cause of John Doe's distress.

49. The emotional distress sustained by John Doe was severe.

COUNT V– BREACH OF FIDUCIARY DUTY

(AS TO DEFENDANT THE LEGION OF CHRIST INCORPORATED)

1-45. Paragraphs 1 through 45 of the First Count are hereby incorporated as Paragraphs 1 through 45 of this Fifth Count, as if fully set forth herein.

46. A fiduciary relationship existed between the defendant and John Doe which gave rise to (a) a duty of loyalty on the part of the defendant to the plaintiff, (b) an obligation on the part of the defendant to act in the best interests of the plaintiff, and (c) an obligation on the part of the defendant to act in good faith in any manner relating to the plaintiff.

47. The Defendant advanced its own interests to the detriment of the plaintiff.

48. John Doe has sustained damages.

49. John Doe’s damages were proximately caused by the Defendant's breach of its fiduciary duty.

COUNT VI – NEGLIGENCE

(AS TO DEFENDANT IMMACULATE CONCEPTION APOSTOLIC SCHOOL)

1-21. The Plaintiff readopts and realleges all of the allegations set forth in Paragraphs 1 through 21 as though fully set forth herein.

22. At all material times, Defendant I.C.A.S. owed a duty to JOHN DOE to use reasonable care to ensure JOHN DOE’s safety, care, health, and well-being.

23. Defendant’s duties encompassed using reasonable care in the retention, assignment and/or supervision of priests and supervising Brothers who would not pose a threat to the safety, care, health, and well-being of minors.

24. At all relevant times, Defendant knew or in the exercise of reasonable care should have known that Brother Fernando was unfit, dangerous, and a threat to the health, safety and welfare of JOHN DOE.

25. Further, Defendant knew of the prevalence of sexual abuse by their clergy and brotherhood and that pedophilia was a problem in the recruitment and retention of Catholic clergy

26. While John Doe attended I.C.A.S., a priest there was given notice by a child victim of sexual abuse by Brother Fernando that Brother Fernando was a sexual predator.

27. Despite knowledge of Brother Fernando's serious threat to the health, safety and welfare of minors, Defendants continued to provide Brother Fernando with unfettered access to minors, including JOHN DOE.

28. Defendant was in a special relationship with JOHN DOE of school-student, such that it owed a duty to protect JOHN DOE from foreseeable harms on school grounds and during school-related activities. In this regard Defendant was *in loco parentis* with the Defendant's students, including JOHN DOE. At all material times, Defendant owned a duty to use reasonable care to protect the safety, care, well-being and health of the minor JOHN DOE while he was under the care, custody or in the presence of the Defendant. These duties encompassed the protection and supervision of JOHN DOE, and otherwise providing a safe environment for JOHN DOE while on school premises.

29. Defendant was in a special relationship with Brother Fernando of employer and employee/agent such that it had a duty to take steps to make sure that Brother Fernando was safe before giving him access to students.

30. Defendant had a duty in hiring, retaining and supervising Brother Fernando to prevent foreseeable harm to students and prevent educator sexual misconduct.

31. Defendant had a duty to adequately train teachers and staff in protecting children from educator sexual misconduct.

32. Prior to the sexual incident, Defendant in the exercise of reasonable care should have known that Brother Fernando was dangerous and a threat to the health, safety and welfare of male students, including JOHN DOE.

33. Prior to the sexual incident, Defendant by and through its agents, servants, and employees, should have known of Brother Fernando's dangerous sexual propensities and that he was unfit to serve in any position involving contact with male students.

34. Despite Defendant's constructive knowledge of Brother Fernando's dangerous sexual propensities, as described above, Defendant breached its duty to protect JOHN DOE by allowing Brother Fernando to serve as a staff member, giving him access to male students despite such constructive knowledge of his dangerous sexual propensities, and by failing to institute any supervision of Brother Fernando's contact with male students.

35. With such actual and constructive knowledge, the Defendant provided Brother Fernando with unfettered, unsupervised access to JOHN DOE on multiple occasions, needlessly endangering his health and safety.

36. At all relevant times, Defendant had inadequate policies and procedures to protect children they were entrusted to care for and protect, including JOHN DOE.

37. Prior to the sexual incident, Defendant breached its duties by failing to protect the minor JOHN DOE from sexual assault, harassment and lewd and lascivious acts committed upon JOHN DOE while he was present on school grounds, during school hours, or during school-related activities.

38. Defendant breached these duties by failing to use reasonable care to provide a safe environment for JOHN DOE where he would be free from the unwanted sexual advances and dangerous propensities of Brother Fernando, a supervising Brother, employee and/or agent of Defendants.

39. Additionally, Defendant breached its duties by failing to establish and implement adequate policies to protect students from sexual abuse by staff.

40. Defendant breached its duties by failing to take corrective action or adequately investigate reports or allegations of sexual misconduct by Brother Fernando

41. Defendant breached its duty in hiring, retaining and supervising Brother Fernando, which placed Brother Fernando in a position to sexually assault JOHN DOE.

42. Given the constructive and actual knowledge of Defendant concerning the dangerous propensities of Brother Fernando, the sexual assault of JOHN DOE was reasonably foreseeable to Defendant.

43. As a direct and proximate result of Defendant's breach of its duties JOHN DOE was sexually abused by Brother Fernando while attending I.C.A.S.

44. As a direct and proximate result of the negligence of Defendant, Plaintiff JOHN DOE has suffered severe psychological, emotional and physical injuries, and emotional distress arising out of the physical injuries, pain and suffering, mental anguish, inconvenience, loss of capacity for the enjoyment of life, inability to lead a normal life, shame, humiliation and regression, and lost wages and costs associated with medical/psychological care and treatment. The injuries and damages are permanent and continuing in nature and the Plaintiff will suffer such losses in the future.

COUNT VII- RECKLESSNESS

(AS TO DEFENDANT IMMACULATE CONCEPTION APOSTOLIC SCHOOL)

1- 44. Paragraphs 1 through 44 of the Sixth Count are hereby incorporated as Paragraphs 1 through 44 of this Seventh Count, as if fully set forth herein.

45. I.C.A.S., acting through its administrators, agents, and employees, was consciously aware of the fact that it created a substantial risk of injury to John Doe.

46. Notwithstanding the defendant's conscious awareness of the risk to John Doe, the defendant failed to take necessary and appropriate steps to reduce or eliminate the risk.

47. Notwithstanding the defendant's conscious awareness of the risk to John Doe, the defendant took affirmative steps to exacerbate the risk and to make harm and injury to John Doe more likely.

48. The injuries suffered by John Doe were caused by the reckless or callous indifference, or the wanton misconduct, of the defendant.

COUNT VIII– NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

(AS TO DEFENDANT IMMACULATE CONCEPTION APOSTOLIC SCHOOL)

1– 44. Paragraphs 1 through 44 of the Sixth Count are hereby incorporated as Paragraphs 1 through 44 of this Eighth Count, as if fully set forth herein

45. The defendant created an unreasonable risk of causing John Doe emotional distress

46. John Doe's distress was foreseeable.

47. The emotional distress was severe enough that it might result in illness or bodily harm.

48. The school's conduct was the cause of John's distress.

COUNT IX– INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(AS TO DEFENDANT IMMACULATE CONCEPTION APOSTOLIC SCHOOL)

1-44. Paragraphs 1 through 44 of the Sixth Count are hereby incorporated as Paragraphs 1-44 of this Ninth Count, as if fully set forth herein.

45. The Defendant intended to inflict emotional distress or it knew or should have known that emotional distress was the likely result of its conduct.

46. The school's conduct was extreme and outrageous.

47. The school's conduct was the cause of John Doe's distress.

48. The emotional distress sustained by John Doe was severe.

COUNT X– BREACH OF FIDUCIARY DUTY

(AS TO DEFENDANT IMMACULATE CONCEPTION APOSTOLIC SCHOOL)

1-44. Paragraphs 1 through 44 of the Sixth Count are hereby incorporated as Paragraphs 1 through 44 of this Tenth Count, as if fully set forth herein.

45. A fiduciary relationship existed between the defendant and John Doe which gave rise to (a) a duty of loyalty on the part of the defendant to the plaintiff, (b) an obligation on the part of the defendant to act in the best interests of the plaintiff, and (c) an obligation on the part of the defendant to act in good faith in any manner relating to the plaintiff.

46. The Defendant advanced its own interests to the detriment of the plaintiff.

47. John Doe has sustained damages.

48. John Doe's damages were proximately caused by the Defendant's breach of its fiduciary duty.

WHEREFORE, Plaintiff JOHN DOE respectfully requests that this Court enter judgment against the defendants THE LEGION OF CHRIST INCORPORATED and IMMACULATE CONCEPTION APOSTOLIC SCHOOL, and award all damages including compensatory damages and special damages, punitive damages, costs, interest, and any other relief that this Court deems just and proper.

