

defendants had prior actual knowledge that he was a child molester and that they owed a duty of care to protect plaintiff from him.

I. THE PARTIES

2. Plaintiff Commander Kenneth J. Whitwell, is currently a resident of Stafford, Virginia where he serves as an officer and Flight Surgeon in the United States Navy. He is a citizen of the State of Florida. While attending defendant Archmere Academy for high school, plaintiff resided in Glen Mills, Pennsylvania. He was the victim of 33 months of childhood sexual abuse, molestation and rape by defendant Smith when he was a minor, from the ages of 14-17.

3. Defendant Archmere Academy, Inc. (“Archmere”) is a Delaware corporation (file # 0315606), organized under Title 8 of the Delaware General Corporation Law and not Title 27. It is authorized to do business and it is doing business in the State of Delaware as a private religious high school located in Claymont, Delaware doing business as Archmere Academy. It is sued in its corporate capacity and as both master and/or agent of the other institutional, corporate and individual defendants. Its registered agent is YCST Services, LLC, 1000 West Street, Brandywine Bldg., 17th Floor, Wilmington, DE 19801.

4. Archmere was responsible for hiring and supervising defendant Smith who was at all times its employee and agent.

5. Defendant Premonstratensian Fathers, Inc. (“National Norbertines”) is a Wisconsin corporation (entity I.D. # 6P10170), organized under the laws of the State of Wisconsin. This corporate defendant is a religious order of priests, also known the Canons Regular of Prémontré, the Norbertines, or the White Canons, which credits itself with being responsible for the advent of Western Civilization. It is sued in its corporate capacity and as both master and/or agent of the other institutional, corporate and individual defendants. Its principal office is located at 1016 N.

Broadway, De Pere, Wisconsin, 54115-2697. Its registered agent is Mr. John P. Kastenholtz, at the same address.

6. The National Norbertines were responsible for hiring and supervising defendant Smith who was at all times its employee and agent.

7. The Norbertine Fathers of Delaware, Inc., (“Delaware Norbertines”) is a Delaware corporation (file # 2695296), organized under Title 8 of the Delaware General Corporation Law and not Title 27. It is sued in its corporate capacity and as both master and/or agent of the other institutional, corporate and individual defendants. Its registered agent is The Norbertine Fathers of Delaware, Inc., 1269 Bayview Road, Middletown, Delaware, 19709. It presently operates the Immaculate Conception Priory at this same address.

8. At all times relevant hereto, the Delaware Norbertines or its predecessors owned, operated, staffed and otherwise controlled Archmere and Archmere Academy.

9. The Delaware Norbertines were responsible for hiring and supervising defendant Smith who was at all times its employee and agent.

10. The Norbertine Fathers, Inc. (“Pennsylvania Norbertines”) is a Pennsylvania corporation (entity # 252644), organized under the laws of the Commonwealth of Pennsylvania. It is sued in its corporate capacity and as both master and/or agent of the other institutional, corporate and individual defendants. Its principal office is located at 220 S. Valley Road, Paoli, PA 19301. On information and belief, it serves as its own registered agent at this same address.

11. At all times relevant hereto, the Pennsylvania Norbertines or its predecessors owned, operated, staffed and otherwise controlled Archmere and Archmere Academy.

12. The Pennsylvania Norbertines were responsible for hiring and supervising defendant Smith who was at all times its employee and agent.

13. The Pennsylvania Norbertines presently own, operate, staff and otherwise control defendant Archmere and Archmere Academy.

14. Prior to the mid 1990's, Archmere and Archmere Academy were owned, operated, staffed and otherwise controlled by the National Norbertines' Daylesford Abbey in Paoli, Pennsylvania.

15. In the mid 1990's, after the events at issue in this case, the Daylesford Abbey split into two separate, independent and autonomous Priors. The first became defendant Pennsylvania Norbertines, which is still located in Paoli, PA. The second became defendant Delaware Norbertines, presently located in Middletown, DE.

16. At all relevant times hereto, the Norbertine defendants² were responsible for the management and control of its schools, including Archmere Academy, and were responsible for employing priests, staff and other agents to operate those schools.

17. Defendant Rev. Edward J. Smith ("Smith") is a Roman Catholic priest, current member of both the Delaware Norbertines and the National Norbertines and a former member of the Pennsylvania Norbertines. From 1982 through about 1989, he taught, worked and lived at Archmere Academy. From 1982 through the present he also has served as a priest within the Diocese of Wilmington. He is presently in his late 50s or early 60s in age. His present address is Immaculate Conception Priory, 1269 Bayview Road, Middletown, DE 19709, although he is known to spend time at his late mother's home in South Philadelphia at 1631 South Marston Street, Philadelphia, PA 19145-1205. He is a citizen of Delaware and is sued in his official and individual capacities.

² The term "Norbertine defendants" or "Norbertines" collectively refers to defendants the National Norbertines, the Delaware Norbertines, the Pennsylvania Norbertines and Archmere.

18. Defendant Smith has already been civilly adjudicated to have sexually abused and molested plaintiff during two ski trips to Vermont in February/March 1984 and 1985. The U.S. District Court for the District of Delaware entered judgment against him for his actions on January 31st and April 10th, 2007. See Whitwell v. Smith, C.A.No. 05-796-SLR (D.Del.) at D.I. 26, 55. Accordingly, as to defendant Smith alone, this lawsuit only is for those incidents of sexual abuse which occurred outside the State of Vermont.

19. Defendant Catholic Diocese of Wilmington, Inc. (“Diocese”) is a Delaware corporation (file # 0787107) organized under Title 8 of the Delaware General Corporation Law, and not Title 27. It is authorized to do business and is doing business in the State of Delaware as a Roman Catholic religious enterprise. It serves as its own registered agent at 1626 N. Union St., Wilmington, DE 19806.

20. Diocese was responsible at all times for licensing defendant Smith to perform priestly functions. Without the explicit authorization and sanction of Diocese, he could not have performed priestly functions of spiritual and personal counseling, the conduct of religious services, days of spiritual recollection, and the administration of Roman Catholic sacraments.

21. Defendant Rev. Michael A. Saltarelli (“Saltarelli”) is currently employed as the Roman Catholic Bishop of the Diocese. He is sued only in his official capacity as agent or alter ego of the Diocese for purposes of collecting a money judgment against the Diocese, should its assets be titled in his name. He is a citizen of Delaware.

22. Throughout the facts alleged herein, the Norbertines and Diocese had actual or constructive knowledge of prior criminal conduct by defendant Smith where he sexually abused young boys. This conduct culminated in 1980 and occurred in the Philadelphia, Pennsylvania vicinity, at places like St. John Neumann High School in South Philadelphia.

23. These defendants also had actual or constructive knowledge of the childhood sexual abuse Smith committed upon plaintiff from ages 14 to 17 during the years 1982 to 1985.

24. Smith's misconduct also was authorized, sanctioned, ratified, acquiesced in or approved by the Norbertines and Diocese. All his actions were taken within the scope of his authority and for the benefit of the Norbertines and Diocese during the normal course of his routine and regular job duties.

II. FACTS GIVING RISE TO THE ACTION

A. Institutional Knowledge of Clergy Sexual Abuse Leading to the Underlying Gross Negligence

25. As was recently admitted under oath by Monseigneur Thomas Cini, the Vicar General for Administration of the Diocese, the Diocese, the Roman Catholic Church, and by implication the Norbertines, have been aware of the serious problem of clergy sexual abuse of children since at least the early 1800s.

26. In 1917 section 1395 of Canon Law was formally enacted for all Roman Catholic priests and it punished clergy sexual abuse of children.

27. The current codification of Canon Law enacted in the 1980s reenacted this prohibition and carried forth this duty to protect children.

28. The Norbertines, Diocese and the Roman Catholic Church have been aware of the serious problem of clergy sexual abuse of children throughout their history, and even long before the early 1800s.

29. Canon law records, dating back to the 4th century, reveal a consistent pattern of attempts by Church leadership to deal effectively with clergy sexual abuse.

30. In the era when regional conferences of bishops met to enact legislation, there is

regular mention of laws and canons which were enacted to punish clerics whose offenses were the sexual abuse of youths.

31. Between the 15th and 17th centuries, Roman Catholic Church courts would often put a child abuser on trial, defrock him and turn him over to the civil authorities for prosecution and punishment, including death.

32. There is evidence that in monasteries in the medieval period, clerics who sexually abused children were inflicted with severe physical punishments amounting to imprisonment and life-long restriction and monitoring, even after a sentence of strict confinement had been served.

33. In the 11th century, a book entitled “Book of Gomorrah” was written by Cardinal, and later St. Peter Damian, which was devoted entirely to exposing and providing suggested remedies for clergy sexual abuse.

34. The Roman Catholic Church made other attempts at curbing the sexual abuse of children, including specific canons or laws, regulating and disciplining abusers, which were enacted at synods or gatherings of bishops.

35. The Pope also acknowledged the clergy sexual abuse problem in public documents such as “Horrendum est” (August, 1568), which declared that priests who sexually abused children were to be deprived of all sources of income, degraded or evicted from the clerical state, and turned over to secular authorities for additional punishment.

B. Institutional Secrecy Regarding Clergy Sexual Abuse Leading to the Underlying Gross Negligence.

36. However, the Norbertines, Diocese, and the Roman Catholic Church changed course and for at least the last 60 years have handled reports of clergy sexual abuse with extreme secrecy.

37. The Norbertines, Diocese and Roman Catholic Church authorities often use tactics

with victims and their families to coerce or intimidate them from disclosing the abuse or filing a lawsuit.

38. Norbertines, Diocese, and Roman Catholic Church authorities often transfer perpetrators from one assignment to another, without telling the incoming assignment of the priest's past history of child abuse.

39. Secrecy also was enabled by the fact that child abuse victims are often afraid that by saying anything negative about a priest they are sinning and will be punished by God.

40. When they are molested, victims are told the abusive sexual act is God's will for them and God has chosen their priest to initiate them into secrets of sexual love. Smith regularly incorporated religion into his sexual abuse and used his position as a priest as a means to force himself on minor children, including plaintiff. For example, sometimes he would sexually abuse and molest plaintiff while purportedly praying or engaging in spiritual discussions which was part of his job duties as a priest.

41. In 1962 the Vatican also issued a secret document - *Crimen Sollicitationis* - which outlined the rules to be followed in the Church's processing of cases where priests were accused of solicitation of sex in the confessional. Title V of this document governs other clergy sexual crimes such as having sex with a minor and bestiality. This document included regulations that placed everyone who dealt with such cases under the Secret of the Holy Office, the highest degree of Vatican secrecy. Violation of the promise to keep knowledge of such a case secret resulted in automatic ex-communication, which could only be absolved by the Pope. This document remained in force until 2001 and is an example of the extreme secrecy surrounding clergy sexual abuse followed by the Norbertines, Diocese, and the Roman Catholic Church.

42. Records regarding clergy sexual abuse of children are also kept top secret.

43. Canon Law (cc.486-488) states that every Diocese must maintain a secret archive in which the instruments and writings pertaining to the spiritual and temporal affairs of the Diocese are kept.

44. Religious communities such as the Norbertines also are required to keep such records and observe similar requirements.

45. There is also a secret archive in every Diocese and religious community where more sensitive materials are kept. (cc.489-490). It is in this secret archive that information regarding sexual misconduct of Smith and other clergy are housed. Such documents held in the secret archive are only available to the bishop and the chancellor or the head of the religious community.

46. The long history of child sexual abuse by priests since the 4th Century and recent efforts at secrecy about such abuse prove that at all times the Norbertines and Diocese were on notice of the threat of injury to children from its clergy such as Smith.

C. Breach of Duty Underlying the Intentional and Gross Negligence Tort Claims

47. From 1980 forward and throughout his tenure in Delaware, the Norbertines and Diocese had actual and constructive knowledge that Smith was sexually molesting young male children, such as plaintiff, and continued to allow him to serve as a priest for a generation.

48. The Norbertines and Diocese knew Smith was sexually abusing young boys in Pennsylvania, Delaware, New Jersey, Vermont and Wisconsin.

49. The Norbertines and Diocese had a duty, arising from the licensing and employment of Smith to operate as a priest, teacher and campus minister, to ensure that he did not sexually molest young male children when he operated in any of those roles in homes, hospitals, parishes, schools and churches, including Archmere Academy.

50. The Norbertines and Diocese had a duty arising from the special relationship that

existed with plaintiff's parents and other parents of young, innocent, vulnerable children who attended Archmere Academy, as well as attended their other churches and schools in the Diocese and throughout the world. This special relationship arose because of the high degree of vulnerability of the children entrusted to their care. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, the Norbertines and Diocese had a duty to establish measures of protection not necessary for persons who are older and better able to safeguard themselves. Such measures included, *inter alia*, prohibiting unsupervised contact between a child and an employee or agent, conducting background checks and not knowingly putting a child molester into a room full of vulnerable children, and other reasonable measures.

51. The Norbertines and Diocese also had a duty, arising from their actual knowledge that Smith was a child molester and pedophile, to ensure that he was not in a position to molest young male minors or any other children. They also had a duty to use reasonable care to protect and supervise the children in their care, and plaintiff.

52. As was recently admitted under oath by the Vicar General for Administration of the Diocese, from at least 1970 through 1986 the Diocese took no steps to prevent priests from sexually abusing minor children.

53. Similarly, at that time the Diocese took no steps to detect whether priests were sexually abusing minor children.

54. During that same time the Norbertines took no steps to prevent priests from sexually abusing minor children.

55. Similarly, at that time the Norbertines took no steps to detect whether priests were sexually abusing minor children.

56. From 1950 through 1986 neither the Diocese nor the Norbertines required their

priests to undergo training, during their seminary education prior to becoming a licensed and ordained priest, which was designed to detect or prevent sexual abuse of children.

57. Prior to licensing Smith to operate as a priest at Archmere Academy, the Diocese did not require the Norbertines to report his prior known abuse of children.

58. The Diocese and Norbertines refused to supervise Smith and make them aware of whether he was spending unsupervised time with minor children.

59. In breach of all these duties, Smith repeatedly sexually molested young male children, including plaintiff.

60. Smith raped, abused and molested plaintiff at least 234 times.

61. Many acts occurred on the grounds of Archmere Academy.

62. Smith's Norbertine supervisors witnessed Smith furnish plaintiff alcohol during Norbertine "happy hours" at Archmere Academy.

63. They drank with Smith and plaintiff who was an underage minor.

64. One even watched a pornographic movie with Smith and plaintiff.

65. They saw plaintiff leave Smith's bedroom late at night after being raped by Smith.

66. Smith intentionally and without plaintiff's consent caused plaintiff repeatedly to be in fear of immediate harmful or offensive physical contacts by Smith.

67. Smith intentionally and without plaintiff's consent repeatedly made unpermitted physical contact with plaintiff in a harmful and offensive way. These contacts would offend an ordinary person's reasonable sense of personal dignity, and it repeatedly offended plaintiff.

D. Agency

68. At all times relevant hereto Smith was a priest employed by the Norbertines and Diocese to operate in their homes, hospitals, parishes, schools and churches. Without Roman

Catholic Church, Diocesan, and Norbertine approval he could perform no sacerdotal functions or function as a priest in any manner whatsoever.

69. Smith was at all times a licensed priest of the Norbertines and Diocese which were responsible for employing, licensing, and supervising him.

70. At all times and in all matters relevant hereto, the Norbertines and Diocese were the principals of their agent Smith. The Norbertines and Diocese manifested an intention that Smith become their agent and act on their behalf. Smith was empowered by the Norbertines and Diocese to perform duties and functions undertaken on behalf of the Norbertines and Diocese. Smith accepted and consented to serve and act on their behalf as their agent. Smith consented to be subject to Diocese and the Norbertine's control.

71. The Norbertines and Diocese gave Smith the power to act on their behalf and to produce changes in legal relations by performing or not performing legal acts. They conferred upon Smith the authority (express, implied, apparent or inherent) to affect legal relations by performing acts in accordance with their manifestations of consent. At all times, Smith acted within the scope of that consent.

72. All acts, if any, initially done outside the scope of that consent were ratified, affirmed, adopted, acquiesced in, and not repudiated by the Norbertines and Diocese. Such acts were enabled by the agency relationship.

73. Smith's actions were of the kind the Norbertines and Diocese expected him to perform. His conduct was not unexpected by the Norbertines and Diocese. His actions occurred substantially within the authorized time and space limits placed upon him by the Norbertines and Diocese. Smith was actuated at least in part by a purpose to serve the Norbertines and Diocese.

74. All of Smith's contacts with plaintiff were made pursuant to his routine and regular

job duties.

E. Fiduciary Relationships

75. Fiduciary relationships existed between plaintiff and his parents on the one hand, and Smith, the Norbertines and Diocese on the other. These relationships are characterized by the highest degree of trust, confidence, good faith, honesty and candor, as well as a prohibition against self-dealing.

76. Similar or identical to the fiduciary relationships that characterize the lawyer-client, doctor-patient and clergyman-church member relationships, such special relationships also existed in this case between plaintiff and his parents (who were members of the Roman Catholic Church and religion and faithful adherents to its doctrines, rituals, hierarchical organization and precepts) and Smith, the Norbertines and Diocese.

77. This special fiduciary relationship was formed due to defendants' positions of the highest trust and spiritual authority in the Roman Catholic religion to which plaintiff and his parents were adherents. It was formed when plaintiff and plaintiff's parents placed trust in the faithful integrity of defendants and their agents as religious authorities and leaders.

78. This special fiduciary relationship also was formed due to the actions of plaintiff's parents entrusting plaintiff to defendants' care in both church and school settings.

79. As a result of placing this trust, defendants gained influence, superiority and assumed religious control and responsibility over plaintiff and plaintiff's parents. Defendants assumed a duty to act for or give advice to these parents regarding matters falling within the scope of the relationship.

80. Such a special fiduciary relationship also was formed through the giving of regular sums of money by plaintiff's parents, through participation in religious rituals and celebrations and

through organizational membership.

F. Plaintiff's Background

81. Plaintiff was born on March 1, 1968 in Norristown, Pennsylvania. He was raised, first in Wilmington, Delaware and then in Glenn Mills, Pennsylvania. He is presently 39 years old.

82. Plaintiff was raised in a devout Roman Catholic family. He attended Roman Catholic elementary and high school. He regularly attended Mass and received the sacraments of that Church. He participated in many Church related activities. He was an altar boy for several years as well.

83 Plaintiff grew up in a large, active family with four brothers. He is the second oldest of the siblings.

84. He attended elementary school at St. Edmond's Academy. Following graduation, he began his freshman year at Archmere in September 1982. While at Archmere, he played soccer, basketball and tennis. He graduated from Archmere in June 1986.

85. Following high school, plaintiff graduated *magna cum laude* in 1990 from Villanova University, in Villanova, Pennsylvania, majoring in Biology, Chemistry and Mathematics. He then obtained his Optometry degree, *with distinction*, in 1994 from Pacific University College of Optometry.

86. Plaintiff then joined the United States Navy where he has honorably served since 1994.

87. He has attained the rank of Commander and earned his Navy Wings of Gold as well as his Silver Wings.

88. Plaintiff has served as a Naval pilot and as a flight surgeon.

89. He is presently a Naval Medical Officer and a designated Naval Aerospace

Optometrist serving as a health care administrator in Quantico, Virginia.

90. Plaintiff's military assignments in the U.S. Navy include the Naval submarine Base in Groton, Connecticut; the Naval Recruiting District in New York City; Aberdeen Proving Ground, in Aberdeen, Maryland; the Naval Air Station, in Pensacola, Florida; and presently the Marine Corps Base, in Quantico, Virginia, where he has been stationed since May 2005.

91. Plaintiff is the recipient of the Meritorious Service Medal, the Navy Commendation Medal (three times), the Army Commendation Medal, the Navy Achievement Medal (three times), the Army Achievement Medal, and the military Outstanding Volunteer medal.

G. Smith's Earlier Sexual Crimes

92. Because of sexual misconduct, sometime in 1980 Smith was removed by his religious superiors in the Norbertines as the principal of the South Philadelphia, Pennsylvania high school named St. John Neumann. Previously he had served as the dean of student life there.

93. The media on May 21, 2002 reported that Smith was twice accused of sexually molesting a 13 year old student there in 1979, in Smith's faculty dormitory and in a school conference room.

94. Smith also reportedly sexually abused two other young boys at that time.

95. His religious superiors then hid Smith in Maryland for two years until things quieted down. He retained all his priestly powers while he was hidden in Maryland.

96. Next Smith was transferred to Archmere in 1982 where he exercised full powers as a priest, campus minister and teacher of religion and English.

H. Further Reckless and Gross Breach of Duty

97. The Norbertines and Diocese's retention of Smith, who they knew or should have known was a threat to children, constituted an intentional failure to perform a manifest duty in

reckless disregard of the consequences to all foreseeable victims of Smith, including plaintiff.

98. The Norbertines and Diocese's retention of Smith, who they knew or should have known was a threat to children, evidenced a conscious disregard for the safety of those children, including plaintiff.

99. The Norbertines and Diocese's failure to warn their students, parents and parishioners of the danger posed by Smith constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences to all foreseeable victims of Smith, including plaintiff.

100. The Norbertines and Diocese's failure to warn their students, parents and parishioners of the danger posed by Smith evidenced a conscious disregard for the safety of those children, including plaintiff.

101. The Norbertines and Diocese's failure to use reasonable care to protect and supervise the children under their care constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences to all foreseeable victims of Smith, including plaintiff.

102. The Norbertines and Diocese's failure to use reasonable care to protect and supervise the children under their care evidenced a conscious disregard for the safety of those children, including plaintiff.

103. The Norbertines and Diocese's failure to use reasonable care to properly supervise Smith constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences to all foreseeable victims of Smith, including plaintiff.

104. The Norbertines and Diocese's failure to use reasonable care to properly supervise Smith evidenced a conscious disregard for the safety of children within their care, including plaintiff.

I. Smith's Sexual Crimes Against Plaintiff

1. The Grooming Process

105. During his high school years, plaintiff was a shy, awkward, insecure and socially introverted boy.

106. During his freshman year in the fall of 1982, plaintiff met defendant Smith who was his religion teacher, and who also was beginning his first year at Archmere.

107. Smith was plaintiff's English Literature teacher during his sophomore year.

108. During plaintiff's junior and senior years, Smith was the Campus Minister.

109. As a licensed priest, teacher and campus minister, Smith was a person of great influence and persuasion. He was revered as an authority figure and as a purported holy man.

110. Despite being a priest, Smith lived the lavish lifestyle of a person who was independently wealthy. He bragged to plaintiff and plaintiff's family about his wealth, explaining that his father died at a young age, leaving large sums of money in such a way that Smith could access it whenever he wished. He offered to pay for plaintiff's college education.

111. Smith regularly flashed large amounts of money and paid for everything in cash. He owned his own private automobile, a silver Mercury Cougar, among others, which he let plaintiff drive repeatedly, even though he was only 14 years of age.

112. Smith did not dress as a typical priest. Although he wore the priestly collar, he did not wear the normal black clothing that other priests at Archmere wore. Instead, he dressed extravagantly, wearing very bright and colorful \$200 ski sweaters with expensive Italian shoes. He wore gold chains and an expensive gold watch with diamond dust covering. He drenched himself in Polo cologne.

113. Smith was very charismatic and was viewed by the students at Archmere as the

young, hip, cool priest who everyone wanted to hang out with. He knew all of the latest dances and spoke the same “language” as the students at the school.

114. While plaintiff was a student in his religion class, Smith began taking an interest in plaintiff and paying special attention to him. He began building plaintiff up in the eyes of his peers. Smith regularly asked plaintiff to come to his office during free periods to help him with assorted things, such as moving boxes or setting up chairs for a school assembly.

115. Eventually however, Smith began asking plaintiff to stay after school hours to help him with things, both at the school and at the priory where the priests lived, on the campus grounds.

116. Although initially these activities involved plaintiff and other young boys, soon it became just plaintiff being asked to help.

117. Afterwards, Smith would offer to take plaintiff to dinner as a token of his appreciation and would drive him home.

118. As a result, Smith soon met plaintiff’s family and engaged them.

119. The family was honored that a priest and teacher licensed and employed by defendants was coming into their home.

120. Smith frequented plaintiff’s parents’ home as part of his job duties where he deceitfully befriended plaintiff’s parents and won their trust and confidence, becoming a personal spiritual advisor. In doing so, Smith was acting within the scope of his job duties as a priest and teacher which require, *inter alia*, that he “visit families, sharing especially in the cares, anxieties, and griefs of the faithful,” and “work so that spouses and parents are supported in fulfilling their proper duties.” (Canon 529 § 1).

121. Thereafter, Smith was found at plaintiff’s home on a regular basis, two or three

times a week, either by bringing plaintiff home from school or showing up of his own accord. He also attended family events, such as barbecues and weddings.

122. At the time, plaintiff's parents were having marital trouble and after joining plaintiff and his family for dinner, Smith would stay at the house until late at night, counseling plaintiff's mother on her marital troubles, which was part of his job duties as a priest.

123. On Saturday nights, Smith would say mass in the family home.

124. As he spent more and more time with the family, Smith was eventually asked to baptize and marry members of plaintiff's family, which also was part of his job duties as a priest.

125. Smith began to buy gifts for plaintiff and his family, such as professional football jerseys, sweatpants and other clothing. Soon thereafter, Smith began to buy more expensive gifts for plaintiff. He bought plaintiff thousands of dollars of stereo equipment, ski equipment and even a snowmobile. He even tried to buy plaintiff a car when he turned 16, but plaintiff's mother would not allow it.

2. The Sexual Abuse Begins

126. Beginning in December 1982, when plaintiff was fourteen years old, Smith began a course of unpermitted, harmful, and offensive sexual contact upon plaintiff.

127. On numerous occasions between 1982-1985, Smith engaged in non-consensual sexual conduct with the plaintiff, then a minor, at various locations, at least 234 times.

128. The abuse began in December 1982 when Smith had plaintiff come to his bedroom at the priory to help him wrap 30-60 expensive figurines called Hummels, to give as Christmas presents to his friends.

129. While wrapping presents in Smith's room, Smith came up behind plaintiff, reached around and grabbed his crotch. Plaintiff froze when this happened. Smith asked plaintiff whether

he had a hard-on yet. As he spoke, he reached into plaintiff's pants and began rubbing plaintiff's genitals until he ejaculated.

130. Plaintiff immediately began to shake and tremble out of fear and fright.

131. Plaintiff often had this reaction to the sexual abuse by Smith.

132. Smith then stepped back and began to counsel plaintiff which was part of his job duties as a priest and teacher.

133. Smith explained that plaintiff had not done anything wrong and that what had just happened was normal.

134. Smith explained that God wanted this to happen, that God had chosen plaintiff for this, that plaintiff was lucky and fortunate to be chosen to receive God's love, and that this is how God expresses his love to individuals, through God's messenger, the priest.

135. Smith explained that because of plaintiff's shyness, plaintiff had been left behind in his sexual development. He explained that all of plaintiff's other classmates knew about this and that if plaintiff said anything, he would be greatly embarrassed by being the only person to not know about these things.

136. The sexual abuse continued thereafter. As time passed, the abuse evolved and included the following: sexual molestation; Smith masturbating plaintiff; plaintiff masturbating Smith; Smith watching plaintiff masturbate, plaintiff watching Smith masturbate; Smith performing oral sex on plaintiff; plaintiff being forced to perform oral sex on Smith; and Smith anally raping plaintiff.

137. As part of his job duties as a priest, Smith regularly incorporated God and religion into his sexual abuse of plaintiff and also incorporated priestly counseling into the abuse, explaining that this is how God expresses his love and other similar explanations. Whenever

plaintiff tried to resist Smith, Smith would explain these and other things as a means of overcoming plaintiff's resistance.

138. Smith sexually abused, molested and raped plaintiff at multiple locations in Delaware, Pennsylvania, New Jersey, Vermont and Wisconsin.

139. In Delaware, Smith regularly took plaintiff to the priory on Archmere Academy grounds where the priests lived. There, Smith gave plaintiff alcohol. Smith's favorite drinks were taqueray and tonic as well as frozen Pina Coladas during the summers.

140. At the priory, Smith and plaintiff would drink with many of the priests who lived and worked there, including Father Collins, Father Mullins, Father Bagnato, Father Logan and others.

141. These drinking sessions took place both in the common room but also in Smith's private room with the four aforementioned priests present.

142. Even priests who were not active participants in the drinking sessions regularly saw plaintiff being sent into the common room where the alcohol was kept to retrieve bottles of beer and wine for the other priests.

143. No one at the priory ever raised a question about plaintiff drinking with priests at the priory. This included plaintiff's English teacher, guidance counselor and class counselor, all of whom regularly either drank with plaintiff, saw him drinking or saw him retrieving large amounts of alcohol for other priests.

144. Most of these drinking sessions took place on Friday or Saturday evenings. As a result, plaintiff often stayed at the priory anywhere from 10:00 p.m. to 1:00 a.m. in the morning.

145. Smith also regularly showed pornography to plaintiff in his room at the priory as a means of facilitating the sexual abuse.

146. On one occasion during his freshman year, Smith and Father Collins, the Dean of

Students at Archmere, watched a sexually explicit HBO special involving nude women in Smith's room with plaintiff.

147. During the course of the nearly three years of abuse, plaintiff ran into every priest who lived at the priory during these late weekend hours.

148. For example, on one occasion when plaintiff was 14 years old, plaintiff was leaving Smith's bedroom at 11:30 p.m. on a Friday night and ran into Father McLaughlin, the Archmere Headmaster. Archmere Headmaster McLaughlin never questioned why this 14 year old boy was at the priory with Smith at 11:30 p.m. on a Friday night, nor did he ever call plaintiff's mother.

149. When plaintiff's mother raised concerns about her son being out so late at night, Smith would assure her that everything was fine. He explained that plaintiff was with a priest who was keeping him safe, out of trouble and away from all of the troublemakers in plaintiff's class.

150. In Pennsylvania, Smith also took plaintiff drinking at bars and homes of Smith's friends in South Philadelphia.

151. Oftentimes, Smith would then drive plaintiff back to the priory at Archmere and sexually abuse him there.

152. Other times, Smith would take plaintiff to Smith's mother's home in South Philadelphia and sexually abuse him there.

153. Smith also would take plaintiff on ski trips to the Poconos and sexually abuse him there.

154. Smith also would sexually abuse plaintiff while driving plaintiff back to his house from Archmere. Smith would pull his car up along a dark side street near plaintiff's mother's house and remove plaintiff's pants and sexually abuse him. Smith always kept a stack of towels in

his back seat for such occasions.

155. Smith also regularly sexually abused plaintiff at the Jersey shore during the summers at the beach houses which Smith and his fellow priests rented in Avalon, Stone Harbor, Wildwood and other locations in New Jersey. While at these houses, plaintiff had to sleep in the same bed with Smith where he was sexually abused. None of the other priests ever questioned this.

156. The abuse also occurred while staying at the homes of Smith's friends at the Jersey shore or in motels there.

157. The first time Smith anally raped plaintiff occurred while staying in a garage apartment at the home of one of Smith's friends at the Jersey shore. There, after a night of drinking, Smith retired to bed with plaintiff, removed plaintiff's pants, rolled him onto his stomach and brutally anally raped plaintiff. When he was finished, Smith said to plaintiff, "that's what it's like to be fucked."

158. When forced to sleep in the same bed as Smith, plaintiff would regularly curl up in the fetal position and tremble at the far corner of the bed in an effort to get as far away from Smith as possible, but to no avail. Other times, as Smith inched closer and closer, so close that plaintiff would be teetering on the edge of the bed, plaintiff would get up and walk around to the other empty side of the bed, only to again be followed by Smith.

159. Smith also sexually abused plaintiff during ski trips to Killington, Vermont in February/March 1984 and 1985. As stated above, the U.S. District Court for the District of Delaware has previously entered judgment against Smith for this Vermont sexual abuse.

160. Smith also sexually abused plaintiff while taking him on a four day college visit to St. Norbertine College in De Pere, Wisconsin. There, Smith entered plaintiff's room and sexually abused him during the nights.

3. The Sexual Abuse Ends

161. This long course of sexual abuse, molestation and rape continued for 33 months, finally ending in September 1985 at the beginning of plaintiff's senior year. At the time, plaintiff was in Ocean City, New Jersey with his three brothers when Smith suddenly showed up. Smith demanded that plaintiff go with him to Wildwood. Plaintiff told Smith no. Smith began to yell and scream at plaintiff in the middle of an Ocean City street, but plaintiff was able to muster up the courage to turn his back and walk away.

4. Nineteen Years Later, Plaintiff Confronts the Norbertines and Smith Admits His Crimes

162. Nineteen years later, in November 2004, following the urging of his military psychiatrist, and upon concluding that as a father, an officer and a man he could not in good conscience allow Smith to continue in his ways, plaintiff decided to face his nightmarish past and confront the Norbertines.

163. Plaintiff then traveled to Archmere and met with several Archmere officials, including the Headmaster and the Dean of Students, Father Collins.

164. At this meeting, plaintiff confronted them with the long history of abuse and events described above.

165. These Archmere officials and priests blew plaintiff off, telling him that Smith did not work there anymore and so was not their problem.

166. Plaintiff then traveled to the Immaculate Conception Priory in Middletown, Delaware, where Smith lived, to confront Father Bagnato, the religious Superior of the Delaware Norbertines.

167. While waiting to meet with Bagnato, plaintiff was given a tour of the facility by a

retired priest who informed him that the Delaware Norbertines were in the process of building a retreat center at the Priory for school-aged children.

168. Plaintiff then sat down in the waiting room, awaiting Bagnato.

169. While sitting there, plaintiff smelled the familiar odor of overpowering Polo cologne. He looked up and was faced with defendant Smith staring him up and down.

170. Smith began speaking to him but eventually pulled in close to him and whispered, “so we’re okay with what happened between you and I, right? We’re okay with that, right? That was all right?”

171. Plaintiff forcefully responded, “absolutely not. I’m not okay with that. I’m not okay.”

172. Plaintiff then met with Father Bagnato for approximately 45 minutes and confronted him with the long history of abuse and events described above.

173. During the meeting, Father Bagnato leaned in to plaintiff and said: “well, I know Eddie. Eddie has a problem, but he’s getting treatment for it.”

174. Bagnato then left the room for 20-30 minutes and returned with Smith.

175. Smith then stated to plaintiff, without looking him in the eye, “I’m sorry for what I did to you. I didn’t mean for any of that sexual stuff to happen, but I love you. And, you know, I lost an awful lot, too, when this relationship ended.”

176. Smith also told plaintiff that he was receiving treatment.

J. Causation

177. The willful, intentional, wanton, and reckless actions of the defendants were the proximate cause of separate and distinct immediate and long term injuries and conditions which plaintiff suffered. The actions of each defendant played a determinative role in these injuries. The

gross negligence of the Norbertines and Diocese was a substantial or motivating factor in causing plaintiff's injuries.

K. Injuries

178. Because of the childhood sexual abuse plaintiff suffered at the hands of Smith, after high school plaintiff always had struggles in forming successful relationships with women. For example, plaintiff struggled with severe lack of confidence and self esteem issues.

179. Plaintiff's separate and distinct immediate and long term injuries and conditions, which were the result of childhood sexual abuse, include, but are not limited to, the above mentioned injuries and also sexual dysfunction, lack of intimacy, guilt, emotional pain, fear, fright, shame, humiliation, anger, loss of enjoyment of life, embarrassment, and other temporary or permanent personal injury, as well as lost earnings, pension and benefits and loss of earnings capacity.

COUNT I (Assault and Battery)

180. Plaintiff repeats and realleges paragraphs 1- 179 set forth above.

181. The acts of Smith toward plaintiff are crimes in Delaware under, *inter alia*, 11 Del. C. §§ 615, 769, and 778. They also constituted civil assault and battery. These intentional torts occurred during the normal course of his routine and regular employment duties. Under agency principles his employers, the Norbertines and Diocese, are legally responsible for these torts.

182. The actions of Smith, the Norbertines and Diocese were willful, wanton or oppressive and merit an award of punitive damages.

183. Plaintiff's right be free of assault and battery has been denied under the common law of the State of Delaware and the Act.

COUNT II (Negligence)

184. Plaintiff repeats and realleges paragraphs 1- 183 set forth above.

185. Defendant Smith owed a duty of care to the plaintiff under the circumstances then existing.

186. Defendant Smith breached his duty by sexually abusing plaintiff for 33 months.

187. As a direct and proximate result of defendant's negligence, plaintiff has been injured.

188. The actions of Smith were willful, wanton or oppressive and merit an award of punitive damages.

189. Plaintiff's right be free of negligence has been denied under the common law of the State of Delaware and the Act.

COUNT III (Gross Negligence)

190. Plaintiff repeats and realleges paragraphs 1- 189 set forth above.

191. Defendants the Norbertines and Diocese owed a duty of care to the plaintiff under the circumstances then existing.

192. Defendants the Norbertines and Diocese intentionally, willfully, wantonly, recklessly, and with gross negligence breached their duty to the plaintiff by, for example, retaining and not supervising Smith, failing to warn plaintiff, and failing to protect the plaintiff from the foreseeable criminal acts of Smith when they knew or should have known that Smith posed a danger to plaintiff. They also breached other duties set out above in paragraphs 47-67 and 97-104.

193. The Norbertines and Diocese's breach of duty constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences to all foreseeable victims of Smith, including plaintiff.

194. Defendants the Norbertines and Diocese evidenced a conscious disregard for the risk of harm to the foreseeable victims of Smith, all children at Archmere, in the Diocese, and

elsewhere, including plaintiff.

195. As a direct and proximate result of the defendants' gross negligence and intentional, willful, wanton, and reckless acts, plaintiff has been injured.

196. The actions of the Norbertines and Diocese were willful, wanton or oppressive and merit an award of punitive damages.

197. Plaintiff's right be free of gross negligence by the Norbertines and Diocese has been denied under the common law of the State of Delaware and the Act.

COUNT IV (Breach of Fiduciary Duty)

198. Plaintiff repeats and realleges paragraphs 1- 197 set forth above.

199. Defendants Smith, the Norbertines and Diocese owed various fiduciary duties to plaintiff.

200. Defendants Smith, the Norbertines and Diocese grossly breached those fiduciary duties by their "I don't care" reckless behavior and conscious disregard of foreseeable harm to plaintiff.

201. As a direct and proximate result of Smith, the Norbertines and Diocese's breach of fiduciary duties, plaintiff has been injured.

202. The actions of the defendants Smith, the Norbertines and Diocese were willful, wanton or oppressive and merit an award of punitive damages.

203. Plaintiff's rights have been denied under the common law of the State of Delaware and the Act.

COUNT V (Fraud)

204. Plaintiff repeats and realleges paragraphs 1- 203 set forth above.

205. The Norbertines and Diocese, by licensing and employing Smith, falsely represented

to the plaintiff that Smith was a religious authority, a leader of integrity and worthy of plaintiff's trust, and not a danger to children.

206. The Norbertines and Diocese knew that representation was false, or it was made with reckless indifference to the truth.

207. The representation was made with an intent to induce the plaintiff to engage with and associate with Smith, by, *inter alia*, attending classes taught by him, going to the priory, taking trips and spending time with him.

208. Plaintiff's engagement and association with Smith were done in justifiable reliance upon the representation.

209. As a direct and proximate result of defendants' false representations, plaintiff was injured.

210. The actions of Smith, the Norbertines and Diocese were willful, wanton or oppressive and merit an award of punitive damages.

211. Plaintiff's rights have been denied under the common law of the State of Delaware and the Act.

COUNT VI (Breach of Contract / Breach of Implied Covenant of Good Faith and Fair Dealing)

212. Plaintiff repeats and realleges paragraphs 1- 211 set forth above.

213. Each school year, a contract was formed between plaintiff's parents and the Norbertines when plaintiff's parents agreed to send him to attend Archmere Academy to receive his high school education. Plaintiff's parents agreed to pay the Norbertines tuition and in consideration, the Norbertines agreed to educate plaintiff.

214. At the end of each school year, a new contract was formed for the next year.

215. One of the implied terms of these contracts was to keep plaintiff safe.

216. Another of the implied terms was that the Norbertines and its employees, priests, teachers, campus ministers and agents would not allow plaintiff to be sexually molested, abused and raped by teachers and priests at the school.

217. Another of the implied terms was that if teachers or priests at Archmere Academy observed plaintiff drinking alcohol with a priest, watching pornography with a priest or being sexually abused by a priest, they would immediately step in and stop such blatantly inappropriate conduct.

218. Defendants and their priests, teachers, employees and agents breached these duties.

219. Plaintiff has endured a lifetime of injuries as a result of this breach.

220. Plaintiff was a third party beneficiary of this contract. Both plaintiff's parents and defendants intended this contract to be for plaintiff's benefit and intended to confer third party beneficiary status upon him. Both plaintiff's parents and defendants intended that plaintiff have enforceable rights under this contract.

221. Additional contracts were formed between defendant Smith and plaintiff's parents when Smith traveled with plaintiff or gave him rides to Delaware, New Jersey, Pennsylvania, Vermont and Wisconsin. Plaintiff's parents agreed to allow Smith the pleasure of plaintiff's company in consideration for Smith's agreement to take care of plaintiff, keep him safe, take him skiing, take him to the beach and take him to visit schools.

222. One of the express and implied terms of these contracts was to keep plaintiff safe.

223. Another of the implied terms was that Smith would not sexually molest, abuse or rape plaintiff.

224. Defendant Smith breached these duties.

225. Plaintiff has endured a lifetime of injuries as a result of this breach.

226. Plaintiff was a third party beneficiary of this contract. Both plaintiff's parents and defendant Smith intended this contract to be for plaintiff's benefit and intended to confer third party beneficiary status upon him. Both plaintiff's parents and defendant Smith intended that plaintiff have enforceable rights under this contract.

227. Defendants injured plaintiff when they breached all of the above contracts and also breached the covenant of good faith and fair dealing. Plaintiff's rights have been denied under the common law of the State of Delaware and the Act.

COUNT VII (Conspiracy)

228. Plaintiff repeats and realleges paragraphs 1-227 set forth above.

229. Defendants conspired with Smith and agreed not to punish him for sexually abusing numerous children.

230. Defendants conspired with Smith to enable him to continue sexually abusing children into the future.

231. Defendants conspired with Smith to coverup his history of sexually abusing young children.

232. Defendants conspired with Smith to hide and actively suppress and intentionally misrepresent his sexual abuse of children and to induce plaintiff, and others, to engage and associate with Smith.

233. Defendants made a calculated business decision that it would be less costly to cover-up Smith's long history of sexual abuse and continually to move him to new locations than to deal with the ramifications of stopping and exposing his sexual abuse of children.

234. Defendants conspired to hide the known threat of sexual abuse by their priests of

young children. This was done to keep this known threat out the public eye and to keep public awareness of it hidden. For example, with knowledge that they were sexual predators, the Diocese chose to move the following Diocesan priests around over the years rather than defrock them, report them to the civil authorities or warn the general public about them:

1. Edward B. Carley
2. Eugene F. Clarahan
3. Francis P. Cornley
4. Francis G. DeLuca
5. Douglas W. Dempster
6. Henry J. Dreyer
7. Edward F. Dudzinski
8. Richard F. Gardiner
9. William E. Irwin
10. John A. Lind
11. Leonard J. Mackiewicz
12. Kenneth J. Martin
13. Joseph A. McGovern
14. Walter D. Power
15. Francis J. Rogers
16. John A. Sarro
17. Carmen D. Vignola
18. Charles W. Wiggins
19. Paul Calamari

20. Gerald C. Smit

235. Similarly, with knowledge that they were sexual predators, defendants Delaware Norbertines, Pennsylvania Norbertines, National Norbertines and Archmere chose to move the following Norbertine priests around over the years rather than defrock them, report them to the civil authorities or warn the general public about them:

1. Defendant Edward J. Smith
2. F. Brendan Smyth
3. James Stein
4. Angelo J. Feldkamp
5. Alberto Fernando
6. David J. Lawlor
7. Timothy Mullen

236. Defendants' actions placed plaintiff in the reasonably foreseeable danger of being sexually abused by a known child molester who had sexually abused young children.

237. As a direct and proximate result of defendants' conspiracy, plaintiff was injured.

238. The actions of defendants were willful, wanton or oppressive and merit an award of punitive damages.

239. Plaintiff's rights have been denied under the common law of the State of Delaware and the Act.

COUNT VIII (Aiding and Abetting)

240. Plaintiff repeats and realleges paragraphs 1-239 set forth above.

241. As a direct and proximate result of defendants' aiding and abetting Smith, plaintiff was injured.

242. The actions of defendants were willful, wanton or oppressive and merit an award of punitive damages.

243. Plaintiff's rights have been denied under the common law of the State of Delaware and the Act.

Wherefore, Plaintiff prays that the Court:

- (a) Enter judgment against the defendants, jointly and severally.
- (b) Enter a judgment against the defendants, jointly and severally, for compensatory and punitive damages.
- (c) Enter a judgment against defendants, jointly and severally, for costs and pre and post judgment interest.
- (d) Require such other and further relief as the Court deems just and proper under the circumstances.

THE NEUBERGER FIRM, P.A.

/s/ Thomas S. Neuberger

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