

HANDOUT #1

**Memorandum of Law in Opposition to
Motion for Summary Judgment
(ratification theory) (PA)**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

John Doe (a fictitious name)	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
c/o Laffey, Bucci & Kent LLP	:	CIVIL TRIAL DIVISION
1435 Walnut Street, 7 th Floor	:	
Philadelphia, PA 19102	:	JULY TERM, 2015
	:	
Plaintiff	:	No. 1077
	:	
v.	:	
	:	<u>JURY TRIAL DEMANDED</u>
Roman Catholic Archdiocese of Philadelphia,	:	
Monsignor William Lynn and	:	
Father Andrew McCormick	:	
	:	
Defendants.	:	

ORDER

AND NOW, this _____ day of _____, 2017, upon consideration of Defendant Archdiocese of Philadelphia’s Motion for Summary Judgment, and Plaintiff’s Response thereto, it is hereby **ORDERED and DECREED** that said Motion is **DENIED**.

BY THE COURT:

J.

LAFFEY, BUCCI & KENT LLP

Brian D. Kent, Esq./Jeffrey F. Laffey, Esq./Samuel I. Reich, Esq.

Identification No.: 94221/87394/315708

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PLAINTIFF’S RESPONSE IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT OF DEFENDANT ARCHDIOCESE OF PHILADELPHIA

Plaintiff, John Doe, by and through his counsel, Laffey, Bucci & Kent LLC, hereby submits his response to the Defendant, the Roman Catholic Archdiocese of Philadelphia’s (hereinafter “AOP” or “Defendant”), Motion for Summary Judgment and avers the following:

I. INTRODUCTION

As a preliminary matter, as of the date the AOP filed its Motion for Summary Judgment, Defendant, Monsignor William Lynn, at all relevant times the AOP’s agent and employee whose acts and omissions the AOP is vicariously liable for (a fact not in dispute or raised in the AOP’s Motion for Summary Judgment), had not contested the averments contained in Plaintiff’s

Complaint by way of an Answer or raised legal defenses by way of New Matter despite being served with Plaintiff's Complaint approximately **twenty-six (26) months ago, being served with Plaintiff's Second Amended Complaint approximately twenty-two months ago, being ordered by the Court to file an Answer approximately eighteen months ago, several extensions of deadlines in this case, discovery being over, Plaintiff's expert reports already being produced and the pre-trial motion period expiring.** As such, those averments are deemed admitted pursuant to Pa. R. Civ. P. 1026 for purposes of Defendant's Motion for Summary Judgment and on that basis alone, Defendant AOP's Motion for Summary Judgment should be denied.

In addition to the above, Defendant's incredible representation to the Court that there is no evidence that Defendant knew or should have known that Defendant, Father Andrew McCormick, was a danger to children and/or sexually abused other children prior to abusing Plaintiff, flies in the face of the documents they produced in this case and the statements and testimony of their own employees and witnesses. Moreover, the Defendant has spoliated much of the evidence pertaining to Father McCormick's past abuse of children, either by willful concealment and/or actual destruction of evidence and as such, they are estopped from claiming that it had no notice that McCormick posed a danger to children prior to the abuse of Plaintiff. Further, it is uncontested that the AOP *knew* that Father Andrew McCormick was sexually attracted to minor boys, particularly those with Plaintiff's physical characteristics, that other parents and fellow priests complained about McCormick's behavior with children and that McCormick was repeatedly violating safety rules pertaining to priests interaction with children, all before the abuse of Plaintiff, yet the AOP continued to expose McCormick to children and

allow him to be in charge of altar boys, including Plaintiff, at multiple parishes. In fact, Defendant, Monsignor William Lynn, testified that he was specifically directed *not* to warn parishioners about priests who were a danger to children:

Q: When a priest admitted to you that they had sexually abused a child in the past, did you let – or did you inform the parishioners of the parishes in which that priest was assigned?

THE WITNESS: Not until 2000 -- maybe '1 or 2002.

Q. Were you directed by the Archdiocese not to disseminate that information?

THE WITNESS: Yes.

Q. Who from the Archdiocese directed you to not disseminate to the parishioners that a priest had admitted to sexually abusing a child?

THE WITNESS: Bishop Cullen.

Q. Did Bishop Cullen receive his orders from Archbishop Bevilacqua?

THE WITNESS: He said he did.

Q. In terms of if a priest did not admit, meaning you interviewed them and they say I did not commit the sexual abuse that I'm alleged to have committed, would you, between 1992 and 2000, disseminate to the parishioners that, at least at a minimum, an accusation has been made?

A. No.

Q. And who directed – did someone direct you not to do that?

A. Yes.

Q. And who was that?

A. Bishop Cullen.

See deposition of Defendant, Monsignor William Lynn attached hereto as Exhibit “

Even after the AOP had confirmation that McCormick had sexually abused children and had viewed child pornography, prior to Plaintiff revealing his abuse, they awarded him by making him a pastor and allowing him to remain in active ministry, thereby ratifying his abhorrent conduct. Such an action is not only negligent, but willful, malicious and constitutes an abject indifference to the safety of children in this community. As such, as is clear from the evidence adduced in this case, Defendant AOP may be held liable for all of the claims brought by Plaintiff. In the very least, genuine issues of material fact exist such that Defendant’s Motion for Summary Judgment should be denied.

II. COUNTER STATEMENT OF FACTS

1-3. Denied as stated. Plaintiff’s Second Amended Complaint is a written document that speaks for itself. Any mischaracterizations of the underlying Amended Complaint are therefore denied. It is further denied that the portions of the Amended Complaint that are cited, which are taken out of context, fully and accurately represent the full extent of the claims brought on behalf of Plaintiff. Rather, the Amended Complaint must be read in its entirety.

By way of further answer, Plaintiff John Doe instituted this action by way of a complaint on July 10, 2015 as a result of sexual abuse he suffered at the hands of Defendant, Father

Andrew McCormick when he was a ten-year-old altar boy and student at St. John Cantius.¹ Plaintiff amended his complaint on August 26, 2015. After Defendants filed preliminary objections to Plaintiff's First Amended Complaint, Plaintiff filed his Second Amended Complaint on October 2, 2015. Plaintiff's Second Amended Complaint alleges multiple claims against Defendant, Archdiocese of Philadelphia including: Count I (Childhood Sexual Abuse and Vicarious Liability); Count II (Negligence); and Count IV (Nuisance). See a true and complete copy of Plaintiff's Second Amended Complaint attached hereto as "Exhibit A." Count IV (Nuisance) was dismissed by this Court on December 16, 2015. Plaintiff also alleges negligence against Defendants Monsignor William Lynn (hereafter "Monsignor Lynn") and the Archdiocese of Philadelphia in Count III. Id. Plaintiff has also made a claim for punitive damages as a result of Defendant AOP and Lynn's recklessly endangering the welfare of children, including Plaintiff, by knowingly exposing children to McCormick after they knew of the danger that he posed and for ratifying and rewarding McCormick by making him a pastor if it knew he had abused children and viewed child pornography.

4. Admitted.

5. Admitted

6-7. Denied. By way of further answer, Plaintiff's Second Amended Complaint is a written document that speaks for itself. Likewise, Plaintiff's deposition transcript is a written

¹ Father McCormick has not filed a Motion for Summary Judgment regarding the claims against him and in fact testified that Plaintiff is telling the truth with regards to everything that occurred between them, including on the night in question, with the exception of McCormick forcing his penis in Plaintiff's mouth. Moreover, as of the date of Defendant's filing of their Motion for Summary Judgment, Defendant, Monsignor Lynn had not contested the averments of Plaintiff's Second Amended Complaint by way of an Answer or legal defenses by way of New Matter. As such, those averments are deemed admitted by Defendant Lynn and any defenses waived pursuant to Pa. R. Civ. P. 1026, 1030, 1032 and 1045. There is a Motion for Judgment on the Pleadings pending against Monsignor Lynn in that regard. As such, Defendant Archdiocese's Motion for Summary Judgment should be denied for that reason alone.

document that speaks for itself. Any mischaracterizations of the underlying Amended Complaint and/or Plaintiff's deposition transcripts are therefore denied. It is further denied that the portions of the Amended Complaint and deposition transcripts that are cited, which are taken out of context, fully and accurately represent the full extent of the claims brought on behalf of Plaintiff. Rather, the Second Amended Complaint and the depositions transcripts must be read in the entirety.

Contrary to Defendant AOP's representations regarding Plaintiff's allegations against the AOP, Lynn and McCormick, it is undisputed that Defendant AOP knew long before the abuse of Plaintiff that Father Andrew McCormick was sexually attracted to young boys, particularly with Plaintiff's physical characteristics, capable of abusing children, including Plaintiff, and continuously and repeatedly violated safety rules pertaining to priests' interaction with children. Additionally, McCormick himself has testified that Plaintiff is telling the truth about all of his interactions with McCormick (i.e. having Plaintiff strip down in the sacristy while McCormick was present, being in McCormick's bedroom on the night in question, etc.), with the exception of the actual rape. Amazingly, as detailed below, McCormick himself has stated that he has thought about raping minor boys. Regarding McCormick's sexual attraction towards minor boys, especially those with physical characteristics similar to Plaintiff, and the AOP's knowledge of same, Father Nicholas Martino, who has known McCormick since the seminary and was one of his closest friends, testified:

Q. The question, so it's clear is, can you tell us what Father McCormick's type was when it came to minor boys?

A. Okay. I think he was attracted to kind of blonde hair, blue-eyed type of boys, that kind of thing, like a country look, if we

could say that. The kind of – maybe the way the rest of us would look at a girl and say, you know, I like red hair, I like green eyes, or whatever, or she's, you know, she's – I'm attracted to her. Maybe boys with those characteristics he would be attracted to.

See Exhibit "E" Matrino Dep. Tr. pgs. 158-159, lines 5-24, 1-2.

He was interacting more and more with these minors, with these kids. They were becoming more and more a part of his life. He was replacing his priest friends I would say at some level, with these kids. They were becoming more and more important to him. **They were fulfilling some kind of need that he had. It was clear that...there was something that needed to be...maybe somebody should have talked to him or whatever.**

Id. at p. 87.

Q: Based on the fact that Andy was around these young boys so much, **did it surprise you when you learned that [Plaintiff's] allegations were made against him?**

A: **No.**

See Father Nicholas Martino statement to Philadelphia Police attached hereto as Exhibit "G."

Martino detailed McCormick's sexual urges and the knowledge he had regarding same for years before Plaintiff was abused when McCormick was being investigated for downloading child pornography in 2004:

Martino advised **he has been concerned for years** about McCormick's involvement with adolescents. **During the period 1988-1990** [nine years before the abuse of Plaintiff], **McCormick took a couple of kids on an overnight trip to a cabin and the parents complained.** Martino stated McCormick is heavysset and **has a need to have kids around him.** Martino has discussed McCormick with his own therapist, Eric (Griffin-Shelley) and was relieved when Monsignor Bill Lynn called McCormick in to discuss a complaint. McCormick went to a therapist one or two times and told Martino he would not tell him anything. *Martino*

stated he could not conclude anything else but that McCormick has acted on his sexual urges.

Martino stated McCormick has become progressively bolder and when Martino has spoken to him, he has responded “I’m not doing anything wrong”. **He knows that another classmate, Reverend Lou Kolankiewich (phonetic), who is close to McCormick, has also been concerned with him.** A former priest named Sylvester (last name unknown), who left the priesthood possibly for reasons of sexual abuse, was also friends with McCormick and traveled on a trip to Poland with him, as did Father Paisley from Camden.

Regarding an incident with kids at a cabin [prior to the abuse of Plaintiff], Martino advised he is probably the only person who knows this; therefore, he felt that McCormick would know Martino gave this information. The investigator agreed not to question him about this. **A parishioner owned the cabin and the trip with kids occurred while McCormick was assigned during his first five years at St. Adalbert’s parish. McCormick advised him long ago that a mother called to complain but he gave no details to Marino.**

(emphasis added). *See* Martino 2004 statement to AOP investigator, Jack Rossiter, attached hereto as Exhibit “F”.

Father Joseph Zingaro, who has known Father Andrew McCormick since their days together at the seminary, also testified as to his belief that McCormick was capable of abusing children, including Plaintiff, and was a known danger to children as a result of McCormick violating safety rules pertaining to children long before the abuse of Plaintiff:

Q: All of those things taken together, **you believe that Father McCormick is capable of abusing a child; correct?**

A. **Yes.**

Q. All right. **Including the victim -- the alleged victim in this case?**

A. **Yes.**

(emphasis added). *See* deposition of Father Joseph Zingaro attached hereto as Exhibit “” at p. 156-

157.

Father Zingaro also testified about safety rules regarding priests’ interaction with children that existed since his time at the seminary, rules that McCormick continuously and repeatedly violated, *before* the abuse of Plaintiff, and how a priest that was continuously and repeatedly violating those rules, as McCormick had been since the 1980’s would, be a danger to children. In fact, Father Jan Palkowski was so concerned with Father McCormick’s behavior with children prior to the abuse of Plaintiff that he complained of same to the pastor of St. John Cantius, Bernard Witkowski, who himself had fathered a child with his assistant at St. John Cantius and as such, took no action to protect children from McCormick, including Plaintiff. *See* deposition of Jan Palkowski attached hereto as Exhibit “H.” But this Court doesn’t have to take the Father Martino or Zingaro’s word that McCormick was a danger to children and that the AOP knew of same prior to the abuse of Plaintiff. Father McCormick said as much:

Q; Did you ever think about doing anything like this [oral rape] with a minor?

A: (Nods, "No") Not a 10 year old. Maybe attracted to a teenager 16 or 17, but never act on it, that's for sure.

(emphasis added). *See* relevant portion of statement of Father McCormick dated January 22, 2015 attached hereto as Exhibit “JJ”. McCormick has received therapy over the years regarding his sexual attraction to minors at the behest of the AOP, but the AOP and McCormick both refuse to produce those records, like many records in this case. Now the AOP wants to hide behind their refusal to produce same.

Moreover, Defendant's belittling and mischaracterization of the abuse that occurred to Plaintiff like so many children in the Archdiocese is not only incorrect but misleading. Specifically, Plaintiff testified to the following concerning the abuse he suffered at the hands of McCormick:

Q. Okay. Mr. Joniec, before we took a break, we were describing the night in Father McCormick's room. And you testified that you turned around and he was standing there and that he started touching you. Explain to me what parts of your body he touched?

A. My genitals, my -- like he was like rubbing my back, my neck, my shoulders.

Q. Was that over top of your clothing?

A. At first, yeah.

Q. At first.

A. Yeah.

Q. Okay. And so while he was -- was he doing it with both hands or with one hand?

A. Well, while he was touching me, at the same time he was kind of taking off his clothes as well.

Q. And so he would have -- he had a cassock on with I think you said thirty-two buttons that --

A. Yeah.

Q. -- you counted?

A. Yeah.

Q. And how was it that the cassock got removed?

A. I don't know. He just took it off.

Q. So did he unbutton them?

A. Yeah.

Q. Did he unbutton all thirty-two buttons?

A. He may have. But I just was affixiated [sic] on the -- the buttons while he was touching me.

Q. Okay. And was he the -- you didn't you -- you didn't unbutton any of the buttons on his cassock, did you?

A. I didn't.

Q. Right. He was the one doing it?

A. Yeah.

Q. And were you doing any -- you were still standing up and he was still standing up?

A. Correct.

Q. At what point in time -- I'm sorry. He removed the cassock. What other articles of clothing did he remove?

A. Well, he was kind of helping me undress as well. But he did remove the cassock. And underneath his cassock he had like the priest uniform. So he was --

Q. And when --

A. -- removing --

Q. -- you say by priest uniform, what do you mean

by that?

A. Like the pants, the shirt.

Q. Okay. Black pants?

A. The collar. Yeah.

Q. Black shirt, collar?

A. All black. Yeah. And then, yeah, that collar. And so -- but in between all of this, there was like touching, heavy breathing. And then I remember him standing there, I was in -- he was in his -- it was a white T-shirt and I remember the blue plaid boxers. And I was standing there and -- ugh, come on.

Q. Perhaps if I break it down for you a little bit, it might be a little bit easier.

A. Okay.

Q. Okay? So when you said that he was helping you undress --

A. Uh-huh.

Q. -- right, what were you wearing?

A. I was wearing like a T-shirt and pants.

Q. And do you know if you had short pants on or long pants on?

A. They were long.

Q. All right. And I think you said it was very cold out. So do you know if you had anything on top of your T-shirt?

A. No, I just remember being really cold.

Q. Okay. Did you have -- did you wear a jacket?

A. I don't remember the jacket. Like I don't.

Q. Do you know if you had one on?

A. No, I can't say it for sure.

Q. And you don't -- do you remember anything about the T-shirt that you had on?

A. That I had on?

Q. Yeah. What type of T-shirt?

A. I don't.

Q. How about the T-shirt he had on?

A. It was white.

Q. It was a white undershirt?

A. Uh-huh.

Q. Okay. And I think you said his boxers were blue, blue plaid?

A. Yeah.

Q. Okay. How about you, what were you wearing --

A. I was just wearing --

Q. -- underneath your pants?

A. I don't even know the color of them. But I was just wearing -- they might have been just regular like boxer briefs and then just a -- like just my T-shirt. I didn't have anything like -- I didn't have like an undershirt on or anything.

Q. Were you -- while he was doing this, were you doing anything?

A. I just remember being like -- I don't think I was doing -- like I was just stand -- I just remember being really cold. Like --

Q. For instance, did he take your shirt off of you or did you take it off?

A. No, my shirt didn't come off.

Q. Your -- your shirt never came off?

A. Uh-uh.

Q. Okay. How about your pants, did he take your pants off?

A. I remember he like helped me take my pants off. But, I mean, I always kept my -- like my shirt didn't come off.

Q. Did he say anything to you?

A. No, just that heavy breathing.

Q. Did -- your shirt didn't come off. Did your underpants come off?

A. Like my underwear?

Q. Your underwear, yes.

A. They didn't -- they were like shifted and stuff like that. Like they weren't in the same place they started.

Q. But they didn't come off?

A. They weren't like -- like -- like off across the room, no.

Q. Okay. underpants?

Did -- did he touch you under the

A. A little bit, yeah.

Q. Did he -- did you touch him at all?

A. He took my hand and made me touch him.

Q. For how long of a period of time?

A. I don't know. It felt like --

Q. Seconds?

A. -- forever.

Q. Okay. But seconds?

A. It may have been.

Q. And while -- was all this taking place while the two of you were still standing?

A. Yeah.

Q. Did -- at any point, did you sit down?

A. Like with my back on the bed.

Q. So you laid backwards on the bed?

A. Uh-huh.

Q. Did he ask you to do that or did you just do that?

A. No, he moved forward.

Q. He moved forward and you --

A. Yeah. Because like I was at the foot of the bed and then, you know, like my face was right here or whatever and he was doing all the touching. So when he moved forward, I like sat down and put my back on the bed.

Q. Okay. And at that point in time he had on his boxers and his -- and his undershirt?

A. Yeah.

Q. And you had on your underpants and your under -- your --

A. Right.

Q. -- undershirt?

A. Yeah.

Q. Or your T-shirt.

A. Yeah. I'm sorry.

Q. And as I understand your testimony, I -- I think the word in the criminal trial was that he straddled you. But could you tell me physically once you were back onto the bed where his body was in relation --

A. So my --

Q. -- to yours?

A. So my hands were down on my side and his knees were on either side of like my shoulders. And then that's when he took his penis out above his boxers and tried to jam it in my mouth.

Q. Okay. And as I understand it, your -- your -- your teeth were clenched so he wasn't able to get past your teeth?

A. Right.

Q. All right. And how many times did he try to do that?

A. The first time I put my head to the side and said no. And then he tried a second time. And then after that, he -- I like looked into his eye -- I remember like --ugh, I remember like looking into his eyes and then he -- he had like these big glasses on. And I remember looking into his eyes and he looked like he was like freaked out or something. And he like -- it was that breathing again. And then he like got up and like told me to get out.

Q. Okay. All right. And all -- this happened while he was still -- while his knees or his legs were I guess along side --

A. When I --

Q. -- of --

A. -- moved, when I tried to like turn over.

Q. When you tried to turn over, was he still sitting in the same position?

A. His knees were still here. But then when --

Q. Did you --

A. -- I moved --

Q. Did you -- did you move your whole body or did you just move your head?

A. Well, I moved my head and my body.

Q. Okay. To what, to try to turn over?

A. First my head. Like when he first did it, I said no and then put my head to the side. And then he tried to do it again and then that's when I moved my body.

Q. Did -- did he apply any force?

A. With his penis -- yeah.

Q. Okay. With his -- how about with his arms or legs or his body?

A. I mean, he was a really big guy. I was a little boy. So, I mean, his whole body basically.

Q. Do you know how much you weighed at the time?

A. No.

Q. When you say he was a big guy, was he -- but he was heavy?

A. Yeah.

Q. When -- how many times did you say no?

A. Once.

Q. Once. And then he tried again?

A. Uh-huh.

Q. How many times did he try to do it?

A. Twice.

Q. Twice. And then when you resisted the second time, what did he do?

A. That's when he got up.

Q. He got up off the bed?

A. Uh-huh.

Q. And what did he do when he got up off the bed?

A. He told me to get out.

Q. And was he looking at you when he said to get out or did he turn his back?

A. He was looking at me.

Q. And then what did you do?

A. Put my clothes on, which seemed like two seconds it took me to put my clothes on, and then I left.

See depositions of Plaintiff attached hereto as “DD” at pp. 130-139.

Moreover, the abuse of Plaintiff did not stop there, as McCormick would give Plaintiff and other altar boys alcohol and at one point, McCormick made Plaintiff strip down in front of him while McCormick watched. Id. McCormick’s mental abuse after the actual physical abuse continued as well as McCormick would tell Plaintiff that being gay and masturbating was a sin. Id. Following the abuse of Plaintiff by McCormick, Plaintiff’s behavior changed drastically, turning from a fun-loving boy who was doing well in school to a troubled boy who struggled in school and was tormented so much by the abuse, he attempted suicide shortly following the abuse, his parents finding nooses in his closet to hang himself. *See* depositions of Plaintiff’s Mother and Father attached hereto as Exhibits “EE” and “FF.” During therapy sessions shortly

after the abuse, he had told his therapist that something had happened at school but could not reveal his abuse at that time. *See* Exhibit “FF” attached hereto. Instead, shortly thereafter, he did reveal that he was abused to his cousin, Maxi, who testified:

Q. So tell me about the first that Nick told you about his allegation of abuse.

A. So the first time, we were younger. I don't know the exact age. And we were sleeping at his mom's -- his mom's house, his mom and dad's house. And we were about to go to sleep and we were watching TV. And he said that he was molested.

Q. Do you recall how old you were?

A. No.

Q. Do you recall what grade you were in?

A. No.

Q. Do you recall what you were watching on TV?

A. No.

Q. What exactly did he say to

A. He said, I was molested. I knew -- I didn't know exactly what that was, but I knew it wasn't good. And I didn't ask anything back. And I just went to sleep. I actually like rolled over.

See deposition of Maxi Peterman attached hereto “GG” at pp. 25-26.

Plaintiff also revealed the abuse when he was a junior in high school at a Kairos retreat at Archbishop Ryan high school, as testified to by Dan Levan:

Q. Are you aware of Nick's allegation that forms the basis of this lawsuit?

A. Yes.

Q. And what do you know?

A. That he was molested as -- in grade school as a child -- Just a younger boy, I guess (inaudible).

BY MS. DAKESSIAN:

Q. I'm sorry, I couldn't quite hear you.

A. Yeah. It's just -- he was molested in grade school.

Q. When did you first learn of that allegation?

A. Senior year in high school when we were on our religious retreat called Kairos.

Q. Did you have a teacher or a moderator assigned to your group?

A. Teacher.

Q. Who was that?

A. I forget his name.

Q. Was it a teacher at Archbishop Ryan?

A. Yes.

See deposition testimony of Dan Levan attached hereto as Exhibit "HH" at pp. 22; 24.

Incredibly, McCormick does not dispute the fact that all of the above occurred, just that he never abused Plaintiff on the night in question:

Q: Okay. So is it fair to say that those things that [Plaintiff] testified to at the trial were truthful? The only thing he was not testifying truthfully about that evening was the abuse that you committed on him?

A. That's correct.

See McCormick deposition at pp. 326-327 attached hereto as Exhibit "II."

Hence the reason why Plaintiff was able to exactly describe the layout of McCormick's personal living quarters and bedroom. As a direct and proximate result of the forcible oral rape, Plaintiff sustained severe psychological and emotional distress, including post-traumatic stress disorder, manifested by physical ailments and complaints, including, but not limited to, sleeplessness, loss of appetite, attempted suicide and drug addiction. He continues to suffer from the effects of the abuse today.

8. Admitted.

9. Denied. Like many survivors of child sexual abuse, Plaintiff did not report the abuse at the time he was abused to the Archdiocese. However, when he was a junior or senior in high school, approximately in 2004/2005, he informed a teacher at Archbishop Ryan that he was abused. As noted above, this was substantiated by Dan Levan, fellow classmate of Plaintiff.

See Exhibit "HH."

10. Denied. By way of further answer, see Plaintiff's response to paragraphs #6-7, #22 and #34, *infra*, as well as Plaintiff's Memorandum of Law. While the evidence produced in this case post-1997 is further evidence of the Defendant's ratification of McCormick's conduct after it had concrete evidence that McCormick had abused children, as discussed in paragraphs #6-7, #22 and #34, the AOP had received numerous complaints regarding McCormick's inappropriate behavior with children, from both parents and priests, and its employees knew long before the abuse of Plaintiff that McCormick was sexually attracted to minor children, particularly with Plaintiff's physical characteristics. Defendant AOP also knew that McCormick was continuously and repeatedly violating safety rules regarding priests' interaction with

children, yet they continued to allow him to do so despite the risk. Lynn and the AOP, like so many other children before and after plaintiff, continued to expose children, including Plaintiff, to a priest it knew was a danger to children.

11-12. Denied as stated. It is admitted that Plaintiff gave a statement to Detective James Owens on December 15, 2011 and that he signed said statements. However, the exhibits cited by Defendant are written documents that speaks for themselves. These averments are poor attempts to summarize the evidence in this case. Any mischaracterizations of any of the exhibits cited are therefore denied. It is further denied that the portions of the Exhibits that are cited, which are taken out of context, fully and accurately represent the full extent of the evidence in this case. The exhibits must be read in their entirety.

13-17. Denied. These averments of Defendant AOP are a complete misrepresentation of the testimony and evidence in this case and it is specifically denied that Plaintiff said the first person he ever told about the abuse was his dad. While it is true that Plaintiff's father was the first person he informed regarding Father McCormick being the person that had abused him when he was a child, Plaintiff had confided in his cousin shortly after the abuse occurred that he was in fact abused. Moreover, he informed his father shortly after the abuse occurred during a therapy session that something had happened to him at school. Moreover, Plaintiff informed fellow classmates and a teacher at Archbishop Ryan about the abuse in 2004/2005.

18. Denied as stated. It is admitted that Andrew McCormick was charged with criminal offenses relating to the abuse of Plaintiff, however, the charges were based on the mountain of evidence that substantiated the abuse as well as the fact that McCormick was sexually attracted to young boys, had groomed many other young boys for abuse and other

allegations of abuse against him, including at least one allegation that predated the abuse of Plaintiff. By way of further answer, *See* Exhibit “K.”

19-20. Denied as stated. The criminal trials that were conducted by the Commonwealth of Pennsylvania against McCormick are a matter of public record. While there were two criminal trials conducted against McCormick, the jury deadlocked. The jury in the first trial was 11-1 to convict and 9-3 to convict the second time. McCormick did testify in the first trial but chose not to testify in the second trial.

21. Denied. Plaintiff’s deposition and trial testimony are written document that speaks for itself. This averment attempts to summarize Plaintiff’s testimony regarding civil proceedings. Any mischaracterizations of any of the exhibits cited are therefore denied. It is further denied that the portions of the exhibits that are cited, which are taken out of context, fully and accurately represent the full extent of the evidence in this case. The exhibits must be read in the entirety.

By way of further answer, this averment, like previous averments in the AOP’s Motion for Summary Judgment, has literally no bearing on whether Plaintiff has adduced record evidence to substantiate a prima facie claim against the Defendants for the claims in his Second Amended Complaint. Rather, it is a feeble attempt to discredit Plaintiff in order to misguide the Court away from the actual evidence in this case that shows that Defendant AOP exposed children, including Plaintiff, to a known predator, McCormick. However, Plaintiff’s testimony concerning any monetary recovery in this case has been consistent since day one. As substantiated by the testimony of Detective Jim Owens:

Q. Did you discuss with [Plaintiff] at any time whether he was considering or intended to file a civil lawsuit against the Archdiocese or Andrew McCormick?

A. What I know is it came up initially that, you know, they weren't int -- initially, **they weren't interested in a civil suit or money.** It -- it -- they would -- **they always said it wasn't about money to them. They wanted, you know, justice. And they wanted to prevent hi -- McCormick from being able to victimize any other children. And that's -- you know, and it wasn't until -- the first time I heard them mention a civil suit was a -- after the second trial.**

Q. -- 2015?

A. Yeah. Yeah, the second time the -- or second hung jury I should say.

Q. What do you recall about that conversation?

A. I recall I was thinking to myself, first of all, I -- we got a second hung jury, we're -- are we going to try this again. Is the family up for trying it again. And I remember at that time [Plaintiff's grandfather] saying something like, you know, we -- we tried the criminal justice system, this is what we wanted, and it's not -- it's not working for us so we're going to explore other avenues. And -- you know, and that's when he said we're going to contact a civil attorney and see what our options are outside the criminal system.

Q. Do you know if he had contacted a civil attorney prior to the criminal trial's commencement?

A. I don't remember. I don't remember if he had. Because I'm -- again, I'm trying not to confuse cases. Because I know in my other priest case that that complainant did contact one before, and I think the civil attorney told him to try to do the criminal side first and then come back to him. So I -- yeah, no.

Q. Do you recall any conversations or similarities in this case?

A. No, I -- I don't remember him ever saying that. If -- if they did, I wasn't aware of it. **Because I remember they constantly would say, you know, we're not doing this for money.** This is -- you know, they wanted justice in the criminal system. And they didn't even want him to go to prison necessarily. **[Plaintiff] made that clear. He -- [Plaintiff] was like, if he goes to prison, that's fine. I**

just want him to be found guilty and I want him to take responsibility for what he did. And that was his -- his feeling. [Plaintiff's grandfather] I think would have liked to see him sit in prison forever, but -- and some of the other family members. But [Plaintiff] -- when I spoke with [plaintiff], **he just wanted him to acknowledge what he did to him.**

See deposition of Jim Owens attached hereto as Exhibit "KK" at pp. 38-40. Consistent with Plaintiff's testimony, he has met with Ryan DiMaria, Esquire, to ensure that any money paid by the Defendants by way of a verdict or otherwise in this case is used to help survivors of childhood sexual abuse and prevent it from happening in the future, as well as set up a half-way house to help people that are dealing with addiction and substance abuse problems:

Q. What was your understanding of the purpose of that meeting?

A. Outside of that, the purpose of the meeting was to discuss a structured settlement and Plaintiff's potential options if he received a structured settlement. I'm sorry, if he received a settlement. **He was looking at doing some charitable work if he -- with the money if he did receive a settlement** and -- and that was that part of the conversation that -- that I spoke with Nick about.

Q. What kind of charitable work was he looking at?

A. **He wanted to set up some charitable vehicle so that he could help, in some way, other people avoid having to go through childhood sexual abuse or also possibly set up some halfway house for people who are struggling with addiction or be able to fund -- help fund someone's rehabilitation who had an addiction problem.**

(emphasis added). See deposition testimony of Ryan DiMaria, Esquire attached hereto as Exhibit "LL" pp. 24-25.

22. Denied. By way of further answer, see answers to # 6-7 above and #34 below.

Further, the record evidence in this case shows that Defendant had notice that McCormick was

sexually attracted to minor boys, was a danger to children and specifically, that he might in engage in sexually abusive conduct with children *before* the abuse of Plaintiff. In the very least, genuine issues of material facts exist that mandate that Defendant's Motion for Summary Judgment based on a lack of notice that Father McCormick was a danger to children before the abuse of Plaintiff must be denied.

Specifically, Father Joseph Zingaro (an employee of Defendant), who became pastor of St. John Cantius, testified regarding safety rules that exist for priests in the AOP and how McCormick was repeatedly and consistently violating them prior to the abuse of Plaintiff:

Q: Was it understood as a priest from the time that you left the seminary, that a priest was to maintain an open and trustworthy relationship with children in their interaction with children?

A. Yes.

Q. Was it -- was it understood that a priest should not be socializing with children without their parents present?

A. That was understood.

Q. Yeah. And was it understood that a priest -- or one of these safety rules that a priest should not be taking children to things like restaurants or movies or to amusement parks without their parents' expressed consent and permission?

A. Yes, I would imagine so.

Q. Sure. Did you understand it to be, one of the safety rules that you understood for priests back then, that a priest should avoid any contact that could give the appearance of an inappropriate or improper relationship?

A. Yes.

Q. Okay. Would you agree with me that during -- from the time that you left the seminary you knew that a priest should exercise the highest degree of care in all of their interaction with children?

A. Yes.

Q. Would you agree that a priest should explicitly inform a parent if they are going to be with that parent's child about the child's location, and the purpose that they are going to be with the child?

A. Yes.

Q. Do you agree that it was important for priests to maintain appropriate boundaries within their --

A: Yes.

Q. And what I mean by that is they should maintain a professional attitude with children at all times?

A. Definitely.

Q. Okay. Did you -- did you understand that -- or was there a safety rule that you understood from the time that you left the seminary, that a priest should not have any emotional or unnatural attachment to any children?

A. Yes.

Q. Did you also understand as a safety rule back from the time you left the seminary that if a priest did start to develop an emotional attachment or unnatural attachment to a child, that they should sever that relationship?

A. Yes.

Q: And maybe -- here's a better question for you: If you're going to meet with a child, would you -- would you -- was it a safety rule that you meet with the child in a public setting?

A. Yes.

Q. Okay. And if it was going to be in a private setting, would you have another adult present, if that was possible?

A. If possible, yes.

Q. Okay. And if you were going to meet with a child, would you agree with me that there was a safety rule from the time you left the seminary, that that meeting should happen on church property, if possible?

A. Yes.

Q. All right. So if there was going to be a meeting with a child, there was a safety rule that you understood that it should be on church property, if possible, in a public setting, and if it was not in a public setting on church property, then there should be another adult present, if possible?

A. Yes.

Q. Okay. And did you understand that children should not be allowed in private areas on church property?

A. Yes.

Q. And that would include the rectory and personal living quarters within the rectory?

A. Yes.

Q. The -- would that also include the basement area at Saint John Cantius?

A. Yes.

Q. Would you -- was there also a safety rule that you understood that a priest should not spend their days off with children that are not related to them, like children in the parish?

A: Yes.

Q. Was it a safety rule that a priest should not sleep in the same bedroom as a child?

A. Yes.

Q. Sure. Would -- would -- was -- did you understand that it was a safety rule for priests that they should not take children on overseas trips without parents present?

A. Yes.

Q. Sure. Was it a safety rule that a priest should not have physical contact with a child unless it was completely nonsexual and appropriate under the circumstances?

A. Yes.

Q. Okay. And that a priest should never have physical contact with a child in private?

A. Yes.

Q. Would you agree that it's -- it was a safety rule that a priest should not view pornography, including child pornography?

A. Yes.

Q. Would you agree that it was a safety rule that a priest should not be in a state of undress around any child?

A. I agree, yes.

Q. And that would include simply changing their clothes, that would be inappropriate for a priest to do in front of a child?

A. Yes.

Q: Everything we're talking about right now, you understood them to be safety rules for priests from the time you left the seminary for the protection of children; correct?

A. Yes.

Q. Understood. Maybe here's the better question: Would you agree with me that it would be -- that there was a safety rule that a priest

should not be calling a child on the phone, sending that same child letters, and giving that same child gifts –

Q. It's a bad question. I guess maybe the better -- the better question is, is it -- is it fair to say that you understood there was a safety rule from the time that you left the seminary that a priest should not be repeatedly having personal phone calls with a child unrelated to any activities having to do with the church?

A. Okay, yes.

Q. Okay. And would you agree with me that it would be -- that there was a safety rule in effect that a priest should not be sending letters or repeated letters to a child talking about things that are unrelated to any activities at the church?

A. Yes.

Q. Would any -- if a priest was violating any of those safety rules that we just talked about, would that be a warning sign that that priest may be a danger to children?

A: It could be. I'm not saying yes or no. It could be.

Q. Understood. **And I think what you told me before is that if a priest was violating multiple safety rules like the ones that we talked about, that that would give you a greater concern that they may be a danger to children?**

A. **Yes.**

Q. **And if they were repeatedly violating any of those safety rules, that that would also give you a greater concern that they were a danger to children?**

A. **Yes.**

Q. Okay. And you would agree with me that it's never appropriate to needlessly endanger a child –

A. Yes –

Q. -- correct?

A. -- yes.

Q. Here's a better question. If you had a priest who was violating several of those safety rules on a repeated basis, would you allow that priest to be around children?

A. No.

Q. Would you report that priest?

A. Yes.

Zingaro dep p. 18-35

Q. By the way, you -- you -- obviously you know Father McCormick; correct?

A. Yes.

Q. Do you know Father McCormick as someone who has violated the safety rules that we talked about?

A. I'm -- I'm under the understanding that he did.

Q. Okay. And I'm not just talking about abuse, I'm talking about any of the safety rules that we talked about for priests. Do you -- do you have an understanding that Father McCormick has violated some of those safety rules?

A. Yeah --

See Exhibit "C" at pp. 36, 38.

It is not in dispute that Father McCormick was repeatedly and continuously violating these safety rules long before the abuse of Plaintiff, that Defendant AOP knew about it and that parents and priests both complained about it. Father Zingaro confirmed that McCormick was violating these safety rules pertaining to priest's interaction with children from the time he

started at St. Adelbert's (in the 1980's) through his time at St. John Cantius, prior to and up to the time he abused Plaintiff:

“McCormick ... always had a contingent of Polish Kids around him, both at St. Adelbert's and St. John Cantius. He took boys on several trips to Poland, some in the company of [Father] Martino.”

See Exhibit “B” Zingaro Interview. Father Zingaro further testified.

Q. Let me talk to you about your first assignment at Saint John Cantius under – was that Monsignor Bydlon?

A. Monsignor Bydlon.

Q. When you were under Monsignor Bydlon in the early 1980's, were children allowed to be present in the rectory?

A. No.

Q. Okay. Were children allowed to be present in the living quarters at the rectory?

A. No.

Q. Were priests allowed to take children off of church property without their parents' knowledge or consent?

A. No.

Q. Were priest allowed to take children off of school property – or excuse me on overnight trips without their parents present?

A. No.

Q. Okay. So, if I understand you correctly, it didn't really matter whether it was Saint John Cantius or whether it was Sacred Heart or whether it was Saint Adalbert's, those were policies in effect for priests during that time frame since the time you left the seminary?

A. That's correct.

Q. Okay. And is it – is it fair to say that the reason that those policies – that there were policies for priests pertaining to their interaction with children, like the ones we talked about, were there for the protection of children at these parishes?

A. Yes.

Q. And if there was a priest that was violating some of those policies, would that cause you concern that they may be a danger to children?

A. Yes.

Q. And if there was a priest that was repeatedly violating those safety rules for children that were in effect for priests back then, would that cause you even greater concern that a priest may be a danger to children?

A. Yes.

See Exhibit “C” Zingaro Dep. Tr. pgs. 14-17, lines 12-24, 1-9, 1-4, 4-10.

Father Jan Palkowski, another employee of the Defendant, **who was assigned to St. John Cantius from 1986 until 1994 with McCormick** for part of that time, stated “McCormick always had kids in the rectory and numerous Polish Kids, who were altar servers.” He felt it was “not normal to have so many kids in the rectory. Also, McCormick made four or five trips to Poland and maybe more in the company of minors.” *See Exhibit “D” Palkowski Interview.* The boys McCormick surrounded himself with, including Plaintiff, were exactly the “type” the Defendant knew McCormick was sexually attracted to, as testified to by Father Nicholas Martino:

Q. The question, so it’s clear is, can you tell us what Father McCormick’s type was when it came to minor boys?

A. Okay. I think he was attracted to kind of blonde hair, blue-eyed type of boys, that kind of thing, like a country look, if we could say that. The kind of – maybe the way the rest of us would look at a girl and say, you know, I like red hair, I like green eyes, or whatever, or she's, you know, she's – I'm attracted to her. Maybe boys with those characteristics he would be attracted to.

See Exhibit "E" Matrino Dep. Tr. pgs. 158-159, lines 5-24, 1-2.

Q: Based on the fact that Andy was around these young boys so much, **did it surprise you when you learned that [Plaintiff's] allegations were made against him?**

A: **No.**

See Exhibit "G" Martino statement to Philadelphia Police. Martino detailed McCormick's sexual urges for children back in 2004 when McCormick was being investigated for downloading child pornography:

Martino advised he has been concerned for years about McCormick's involvement with adolescents. Martino stated McCormick is heavyset and has a need to have kids around him. Martino has discussed McCormick with his own therapist, Eric (Griffin-Shelley) and was relieved when Monsignor Bill Lynn called McCormick in to discuss a complaint McCormick went to a therapist one or two times and told Martino he would not tell him anything. **Martino stated he could not conclude anything else but that McCormick has acted on his sexual urges.**

See Martino 2004 statement to AOP investigator, Jack Rossiter, attached hereto as Exhibit "F".

Father Martino was one of McCormick's closest friends. He detailed McCormick's interactions with children and how concerning those interactions were. Martino and other employees of the Defendant AOP were so concerned they believed McCormick needed therapy. Martino told Defendant's investigator he had "been concerned for years about McCormick's involvement with adolescents." *See Exhibit "F" Martino Interview. Martino knew that,*

McCormick “had a habit of traveling with five or six boys, the oldest of whom would be in the 8th or 9th grade.” Id. Martino knew that McCormick was bringing children into his private living quarters at St. John Cantius, which was on the second floor of the rectory. Instead of stopping McCormick, contacting the parents of these children, and/or reporting the behavior to the authorities, Martino simply told McCormick, “when he [Martino] visited he [McCormick], [McCormick] could not bring the kids upstairs.” Id. Additionally, Martino and others had “privately tried to get McCormick into counseling” prior to the abuse of Plaintiff. Id.

Even the pastor at the time, Bernard Witowski, knew McCormick had these boys all over the rectory but did nothing about it. Id. Father Jan Palkowski specifically informed Pastor Witowski, whom the Defendant placed in charge of St. Cantius. Pastor Witowski did nothing to protect children thereby allowing the sexual abuse of Plaintiff to occur on Defendant’s property.

Q. (To Fr. Palkowski) Okay. So, you made a statement to the investigator that McCormick always had kids in the rectory and numerous Polish kids between 1988 and 1994; is that accurate?

A. Yes, it is.

Q. Sure. Father McCormick would take these boys that he was close with off of school and church property; correct?

A. Yes

Q. In your statement to this investigator in 2004, you stated that you felt it was not normal to have so many kids in the rectory?

A. Yes, because I – I feel not comfortable. This is – I was taught and always had this style, that this is a place where the priests are living. Priest, not for the lay persons, places of office or other

meetings room. And so it, for me, it was like something new, and I never saw it before.

Q. Okay. Did you tell anybody during your first time during your -- at Saint John Cantius, that you felt uncomfortable because --

A. Yes, I told Monsignor Witkowski, the pastor.

Q. When did you tell Monsignor Witkowski that you felt uncomfortable with kids being in the rectory all the time and being with Father McCormick?

A. I don't remember the date or -- but during the time he was pastor I told him.

Q. So my question is, when you reported to Monsignor Witkowski that you felt uncomfortable with these kids being in the rectory all the time, were the kids there -- your understanding the kids were there with Father McCormick; correct?

Q. Yes?

A. Yes.

Q. After you told Monsignor Witowski that you felt uncomfortable with kids being in the rectory, did kids continue to be in the rectory after that?

A. I would say yes.

See Exhibit "H" Palkowski Dep. Tr. pgs. 34, 38, 43-44, 46-47; lines 1-6, 1-5, 15-24, 1-17, 7-17, 13-17.

Fr. Martino recalled several boys in particular that McCormick was particularly fond of. One boy in particular, named Philip was at the rectory all of the time. McCormick even confessed to Martino that someone had complained that he was in an unhealthy relationship with

Philip. Id. McCormick was relating to and putting children on the same level as adults. Id. This is a sign of both predatory and grooming behavior, as detailed in Plaintiff's expert reports and known to Defendant AOP. What is most telling is that McCormick's own best friend, stated that he "could not conclude anything else but that McCormick has acted on his sexual urges," referring to children. Id. Additionally, Martino was surprised at how long McCormick was able to get away with his behavior and that the Defendant did not send him to therapy. Id.

Between 1988-1990, while assigned to St. Adalbert's, McCormick told Martino that he had taken a couple of kids on an overnight trip to a cabin. Upon their return, the parents complained. Id. This complaint was in writing and sent to the Defendant. McCormick even had to meet with Defendant Lynn regarding the complaint. *See* Exhibits "G" Martino Police Interview and "E" pgs. 168-171. Despite Plaintiff's requests for production of this written complaint, Defendant has failed to produce it.

Another close friend of McCormick Father Louis Kolenkiewicz "complimented" McCormick for his friendliness towards the kids at St. John Cantius. He described it as a "free for all" with 5 to 6 kids always being in the rectory with McCormick. *See* Exhibit "I" Kolenkiewicz Interview. It is unsurprising that Kolenkiewicz "complimented" how McCormick interacted with children. This is a man who on multiple occasions was placed on administrative leave by the Defendant. He had been found in 2005 to have over 12,000 pornographic photographs on a church computer, some of which appeared to depict juveniles. The Bucks County District Attorney's Office looked into criminally charging him but after a "frustrating investigation ... that was hobbled by the church's failure to preserve evidence found a decade ago and leaving local law enforcement in the dark," they were unable to proceed with criminal

charges. *See* Exhibit “J” News Article. It is also unsurprising the Defendant has placed him back in active ministry.

Defendant’s claim that they did not have notice that McCormick was a danger to children defies logic and is patently false considering the record evidence adduced in this case, their own documents and the testimony of their own employees. In fact, the defendant reprimanded McCormick for his inappropriate interactions with minor boys prior to the abuse of Plaintiff. In the 2014 criminal trial of McCormick the prosecutor specifically asked about the time in which the Plaintiff attended St. John Cantius. This was the exchange:

Q. You agree with me that [Plaintiff] was in your room with you?

A. He could have been.

Q. Sir, you are aware that there is a policy that children are not supposed to be up in your private living quarters; is that correct?

A. Not at that time.

Q. At the time, that was not the policy?

A. No, it was not.

Q. Sir, you have actually been reprimanded for having children in your private quarters before; is that correct?

A. Yes. By the Archdiocese, yes.

Q. Also after you left St. John Cantius, you were reprimanded again at St. Bede’s for having a child up in your private quarters when you were not supposed to, correct?

A. He was helping me move.

Q. Sir, were you or were you not reprimanded?

A. Yes. Okay, I was, yes.

Q. So this is not the first time or the second time; you have been told repeatedly not to have children in your private quarters, correct?

A. That is right.

Q. And yet you still did, correct?

A. Not anymore. I did.

Q. Sir, my question is –

A. Yes, okay, I did

Q. -- after being told, you still chose to bring children up to your private quarters?

A. But it wasn't for anything social. It was to carry stuff up there or to carry things down.

Q. Sir, did you or did you not after being told not to have children in your private quarters, still bring children into your private quarters?

A. Yes.

See Exhibit "K" Criminal Tr. March 5, 2014 mina script pgs. 111-113, lines 16-25, 1-25, 1-2. Just like the written complaints from McCormick's overnight trip with boys to the cabin, these reprimands by the Defendant (at least 3) have never been produced to Plaintiff. These concerns will be discussed *infra* in paragraph numbered "2".

Darek Raguza², a witness called by Defendant McCormick in his criminal case, was deposed. Mr. Raguza attended St. Adalbert's in the early 80's while McCormick was a deacon

² Mr. Raguza is currently an employee of the Defendant, Archdiocese of Philadelphia.

first and then later an assistant pastor. The testimony reveals McCormick had boys in his personal bedroom/living quarters since at least the early 1980's. When Mr. Raguza was in the 7th or 8th grade McCormick had him in the rectory, in his private living quarters, to watch movies. See Exhibit "L" Dep. Tr. Raguza pgs. 49-50, 132-133. To put this in context, McCormick was an adult man and had an 11 to 13-year-old in his private living quarters, who is unrelated to by blood or marriage. McCormick was not the only priest assigned to St. Adalbert's during this time. The other assistant pastors and/or the pastor should never have allowed this. The Defendant, through its employees, knew or should have known since the early 1980's of McCormick's attraction to minor boys and that he *might* be a danger to them.

Kathleen Viscontto, a mother of one of the children who McCormick had in appropriate contact with became very concerned about McCormick's interaction with her son. Her concerns were shared by the Defendant's employees. When interviewed by Detective James Owens and asked, "did anyone in the school or parish share your concerns", she responded:

"Yes, one teacher in particular Mrs. [Mary Ann] Cordalis. She was a teacher that advised me to get [my son] out of the school the day of the Monsignor's funeral when Father [McCormick] had asked [my son] to meet him in the basement. Another teacher was Sister Barbara. Her concern was that Father [McCormick] would come at any time of the school day and just pull boys out of the class. [My son] was one of the boys that would leave class to go serve a funeral or go to the cemetery after serving a funeral."

See Exhibit "M" Kathleen Viscontto Police Interview. Mrs. Viscontto shared her concerns with Fr. Zingaro, **who informed her that there had been other complaints when McCormick was at St. Adalbert's.** *Id.* She remembered how McCormick would invite boys into the rectory a lot.

Miss Visconto's "gut [was] saying that something was wrong that no adult or even priest should be inviting my child into the rectory without my permission." Id.

Mrs. Visconto's son also gave an interview to Detective Owen's. In it he described the "proximity issues" McCormick had with boys at St. John Cantius. In response to the being asked if McCormick made him uncomfortable, Adam responded:

"Certainly. There were proximity issues. He would sit next to you really close on the couch and put his arm around you. He would take us [other boys] up to his bedroom. I was in his bedroom with [him] alone on at least one occasion when he was getting ready for mass. I was in his bedroom on other occasions with as many as two or three other altar boys. He would let us have the run of the rectory... He took us to Burger King almost every day..."

See Exhibit "N" Adam Visconto Police Interview. During Adam's deposition in this case, he recounted a time, after McCormick was arrested where he went to speak with Fr. Zingaro. During that conversation, Fr. Zingaro brought up how Adam previously expressed to him times when McCormick and Fr. Martino used to wrestle with Adam when he was a boy, attending St. John Cantius. The wrestling made Adam feel uncomfortable. *See* Exhibit "O" Adam Visconto Dep. Tr. pgs. 108-112.

Plaintiff's liability expert, Father Tom Doyle, a Roman Catholic Priest and co-author of *Sex, Priests, and Secret Codes: The Catholic Church's 2,000 Year Paper Trail of Sexual Abuse*. Los Angeles: Volt Press: Los Angeles 2006. Print., provided his expert opinions on how/why the Defendant knew and/or should have known and was on notice that McCormick posed a danger to children:

- a. The Archdiocese of Philadelphia was keenly aware of the problem and danger of priests sexually abusing children, including but not limited to priests within the Archdiocese of Philadelphia, prior to [Plaintiff] becoming an altar boy and ultimately being

abused in 1997. However, the Archdiocese actively worked to conceal the dangers that priests posed to children and chose not to inform the public and parishioners about the risk, thereby endangering the welfare of children who attended parish churches and schools and preventing parents from making informed decisions regarding the safety of their children. This was confirmed by Monsignor Lynn's deposition testimony in the numerous civil cases in which he has testified as well as the trial evidence and testimony in Lynn's criminal case. Had [Plaintiff's] parents been informed of the problem regarding clerical sexual abuse of minors prior to allowing Plaintiff to serve as an altar boy, they would not have allowed Plaintiff to do so and he would most likely not have been put in a position to be abused by McCormick.

b. Prior to the abuse of Plaintiff, despite their knowledge of clerical sexual abuse of children as outlined above, the Archdiocese chose not to have any formal, documented policies and procedures in place to protect children from clerical sexual abuse, including, but not limited to, procedures for reporting dealing with priests who were known to pose a safety risk or danger to children. This decision was a result, at least in part, of the culture of secrecy that existed in the Archdiocese. Having formal policies and procedures in place to prevent clerical sexual abuse of children would be an acknowledgment by the Archdiocese that clerical sexual abuse can and does happen within the Archdiocese, an acknowledgment the Archdiocese was not ready to make publicly. Just as the decision not to inform the public about the danger and problem of priests abusing children, the Archdiocese's decision not to have formal procedures and policies in place to protect children from clerical sexual abuse needlessly endangered countless children, including Plaintiff. If formal, documented policies and procedures for the protection of children, like the Standards for Ministerial Behavior that exist today, were in place, implemented and enforced, the abuse of [Plaintiff] may very well have been prevented.

c. Prior to the abuse of Plaintiff and continuing thereafter, **the numerous priests within the Archdiocese of Philadelphia were aware of the danger that Fr. McCormick posed to children, including, but not limited to Fr. McCormick's sexual urges and attraction towards minor boys, including specific "types" of boys, as well as his regular and continuous violation of safety**

norms and standards for priests for the protection of children, including, but not limited to his secret and excessive viewing of pornography, his continuous practice of spending excessive time with minor boys, including having boys in the rectory “hanging out,” spending time alone with boys in his private living quarters of the rectory, taking boys off of school/church property without their parents knowledge or permission, giving gifts to boys and having personal communication with them without their parents knowledge and taking boys on overnight and overseas trips. Complaints were made concerning McCormick’s conduct with juvenile boys dating back to his time at St. Adalbert’s and continuing through his time at St. John Cantius and St. Bede’s. McCormick himself testified that he was reprimanded by Archdiocesan officials multiple times for having young boys in his private living quarters. Yet every single priest chose to protect McCormick and the Archdiocese at the expense of children he was exposed to and took no action whatsoever to prevent him from being around children or inform parishioners, parents and children of the danger McCormick posed. This decision to protect McCormick, the Archdiocese and the Church was commonplace within the Archdiocese of Philadelphia and unfortunately for Plaintiff, he was one of many children exposed to priests within the Archdiocese who were a known risk to children. Despite all of the information the Archdiocese had concerning the risk that McCormick posed to children, it never initiated any investigation into Fr. McCormick’s behavior prior to 2004. Additionally, there was no oversight and/or supervision whatsoever to ensure Fr. McCormick was not sexually abusing, inappropriately touching, and/or having

inappropriate contact with minor boys. Incredibly, the Archdiocese promoted McCormick to pastor shortly after the 2004 canonical investigation wherein, among other evidence, the Archdiocese learned from both polygraph examinations that McCormick had sexually abused a child and viewed/downloaded child pornography, thereby ratifying and in essence, approving McCormick’s sexual abuse of children.

d. The decision to endanger children in the Archdiocese and ultimately, the abuse that occurred to Plaintiff, was and is a result of clericalism and the culture in the Archdiocese of Philadelphia as described more fully above.

e. The Archdiocese was intentionally inconsistent in its dealings with accused perpetrators of inappropriate sexual contact. It applied dishonest methods in the 2004 canonical investigation of Fr. McCormick.

f. The credibility of any inquiries, investigations or canonical processes conducted by the Archdiocese of Philadelphia is highly questionable and cannot be relied upon to provide accurate and trustworthy results.

d. The Archdiocese concealed, destroyed and/or failed to preserve evidence that it knew existed relating to Father McCormick and other priests who were known to either have abused or were accused of sexually abusing a child/children.

(emphasis added). *See* Exhibit “P” Doyle Ex. Rep.³

Likewise, Plaintiff utilized Dr. Robert Gordon, Ph.D., ABPP who is board certified in Clinical Psychology and in Psychoanalysis Clinical and Forensic Psychology, to determine whether or not McCormick met the provisional diagnosis of Pedophilic Disorder DMS-5 302.2.⁴ After reviewing nearly all of the documents/evidence in this case Dr. Gordon opinions are as follows: “To a reasonable degree of professional certainty, Fr. Andrew McCormick meets the provisional diagnosis of Pedophilic Disorder DSM-5 302.2 and exhibited symptoms of his

³ Plaintiff respectfully invites this Honorable Court to read in its entirety, Father Tom Doyle’s expert report, which is attached hereto, to gain a full appreciation on how Fr. Doyle reached his opinions and for additional guidance on how the Defendant was on notice and either knew or reasonably should have known McCormick was and/or might be a danger to children.

⁴ Plaintiff requested that Defendant McCormick submit to an independent medical examination with Dr. Gordon. McCormick refused.

pedophilia before, during and after the alleged abuse to [Plaintiff]. *See* Exhibit “Q” Gordon Ex. Rep.⁵

23-32. Denied as stated. The Exhibits cited by Defendant are written documents that speaks for themselves. These averments attempt to summarize a portion of Defendant McCormick’s life. Any mischaracterizations of the any of the Exhibits cited are therefore denied. By way of further answer, in addition to the evidence discussed above regarding McCormick’s sexual attraction to minor boys, violation of safety rules pertaining to children, etc. and the AOP’s knowledge of same, McCormick was actually disciplined in the seminary for “frequent visits” to the “new student dormitory” and began regularly viewing pornography as soon as he arrived at St. Adelbert’s parish. *See* Exhibit “P” at p. 42 and AOP – John Doe 000064. Fr. McCormick began viewing homosexual pornographic magazines while at St. Adalbert’s. He would purchase these magazines from a pornography store (McCormick deposition pg. 50). While at St. John Cantius, Fr. McCormick utilized the third floor of the rectory to view homosexual pornographic videos once a week. The third floor was an attic that contained a television. *Id.* The pornographic materials were kept in a chest of drawers. No one from the Archdiocese ever inquired into why McCormick was going to the attic. No one from the Archdiocese ever inquired into why there was a television and a chest of drawers containing homosexual pornography either. **These things were known to the Archdiocese because Fr. McCormick told his confessant, a fellow priest.** *See* Exhibit “II.”

⁵ Plaintiff respectfully invites this Honorable Court to read in its entirety, Dr. Gordon’s expert report, which is attached hereto, to gain a full appreciation on how Dr. Gordon reached his opinions and for additional guidance on how the Defendant was on notice and either knew or reasonably should have known McCormick was and/or might be a danger to children.

33. Denied. By way of further answer *see* Plaintiff's response to paragraphs #6-7 and #22, *supra*, and Plaintiff's Memorandum of Law, *infra*.

34. Denied. By way of further answer, in addition to the reports discussed above from parents of children at St. Adelbert's in the 1980's and from Father Palkowski in the early 1990's, the Defendant has kept, what it calls "secret archives" dating back to at least 1900. Inside of the Defendant's "secret archives" are "File 3" personnel files for priests who have been accused of sexual abuse, inappropriate contact/conduct and boundary issues with minor children as well as the viewing and/or downloading of child pornography. ⁶ Defendant Lynn testified at length about the secret archives and about a list he created which catalogued priests who were in active ministry that had at least one accusation in the past of sexually abusing a minor child. Defendant Lynn testified:

Q. Okay. Who directed or put in place the policy to have secret archives?

A. I have no idea. That was long, long history of the church, so...

Q. Do you recall how far back you remember seeing the first File 3 file in terms of the year?

A. It was early 1900s, so...

⁶ Defendant has maintained a filing system whereby any given priest could have three separate personnel files. "File 1" designations are regular personnel files. "File 2" designations are for complaints made against priest that are not of a highly sensitive nature. "File 3" designations are priest personnel files that contain allegations of sexual abuse, including the downloading/viewing of child pornography, both founded and unfounded.

Q. When you took over for secretary -- or when you became secretary of clergy in 1992, did you review all of or begin to review all of File 3 files?

A. I did.

Q. When you went through these File 3 files, did you create a list of the priests who were named or who have alleged to have committed sexual abuse upon a minor child?

A. Yes.

Q. What did you do with that list?

A. I sent it to Monsignor Malloy.

Q. Do you remember when the list was complete? I don't mean the day, but are we talking '92, '93?

A. I think it was '94.

Q. Did you maintain the practice of keeping File 3s? And what I mean by that is, if an allegation came to you when you were the secretary of clergy, would you add that priest who was alleged to have committed sexual abuse to the secret archives File 3s?

A. Take their file and add it?

Q. Yes?

A. Yes.

Q. Were there other priests that you found in the secret archives of File 3s that had allegations of sexual abuse that were also in active ministry?

A. I believe so.

Q. Did you make any recommendations to Monsignor Malloy in terms of those priests?

A. Not that I recall.

See Exhibit “R” William Lynn Dep. Tr. pgs. 75, 118, 81-83, 85-97; lines 11-17, 2-5, 14-19, 23-24, 1-8, 23-24, 1-8, 8-24.

There were over 60 depositions in this case. Of those deposed three high ranking members within the Defendant’s organization, namely Defendant Monsignor William Lynn, Bishop Timothy Senior and Monsignor Daniel Sullivan, all had/have access to the secret archives. The Defendant designated Bishop Senior and Monsignor Sullivan as corporate designees in this case, specifically relating to their knowledge concerning Father McCormick’s past abuse of children, viewing of child pornography and his “File 3” contained in the “secret archives.” All three men knew they were going to be deposed about, among other things, what the Defendant knew in regard to McCormick and minor children and when they knew it, including, what was contained in any/all of McCormick’s personnel file(s). *See* collectively Exhibit “S” Notice of Depositions for Lynn, Thomas, and Sullivan. **All three men indicated they had no idea whether or not McCormick had a secret archive file. All of them had seen the list of those priests accused of sexually abusing children, that Defendant Lynn created but then Sullivan shredded** (as discussed below). **Once more, none of them could say that McCormick was not on that list.** (emphasis added). The reason they did not know or could not remember is because they chose not to look at any of McCormick’s personnel files. *See* Exhibit “R” at pg. 190; pgs. 272-273 – lines 20-24, 1-6; Exhibit “T” Timothy Senior Dep. Tr. pgs. 117-118, lines 11-24, 1; Exhibit “U” Daniel Sullivan Dep. Tr. pgs. 154-155, 159-160, lines 19-24, 1-10, 5-24, 1-2.

The Defendant wants it both ways. On the one hand, the Defendant asserts Plaintiff cannot establish the church had notice prior to 1997 that McCormick was a danger to children, despite the evidence produced in this case that clearly indicates otherwise. And on the other hand, the Defendant obstructs the civil process by willfully choosing not to look for and testify to the existence or lack thereof, of a File 3 – secret archive for McCormick. The willful concealment of McCormick’s secret archive file should be very telling to this Court. The Defendant cannot get the benefit of its own willful ignorance. In fact, what is most shocking is that it is not simply willful ignorance. When Monsignor Sullivan was asked what he did with Lynn’s list of priests accused of sexually abusing boys, Sullivan responded flippantly “**probably shredded it.**” *See* Exhibit “U” pg. 168, line 6. Nothing prevented these men of God from doing the right thing and simply looking into the secret archives. Instead, all **three** conveniently “can’t remember” whether or not McCormick had a secret archive file and/or was on that list and destroyed evidence pertaining to same.

The Defendant’s attempt to hide, conceal and/or fail to produce evidence does not stop there. In 2005, the Defendant submitted McCormick to two separate polygraph examinations. Prior to the examination McCormick was interviewed and that interview was video-taped. *See* Exhibit “V” Polygraph 1-11-05 and Exhibit “W” Polygraph 1-14-05.⁷ The polygraphs were conducted while Bishop Senior was Vicar for Clergy. The polygraph reports were sent to Bishop Senior. *See* Exhibit “X” Jack Rossiter Ltr. To James Bock and Bishop Senior acknowledging

⁷ McCormick failed both of these polygraph examinations concerning whether or not he sexually abused a child and whether he has ever viewed and/or downloaded child pornography. This has been attested to by the actual polygrapher, Patrick Kelly. *See* Exhibit “CC” Affidavit of Patrick Kelly.

receipt of same. When Bishop Senior was asked where these video recordings were, he had no idea. Again, he did not bother to look in any of McCormick's personnel files. *See* Exhibit "T" pg. 306, lines 10-23. Defendant has failed to produce these videos to Plaintiff.

Moreover, there was a 2004 Canonical investigation into McCormick's conduct that started when Monsignor Lynn was Vicar for Clergy, whose responsibility it was to sign off on any investigation concerning an allegation of a priest having inappropriate contact or sexually abusing a child. Once more, Monsignor Lynn in his deposition claims that he did not know there was a Canonical investigation that was started under his watch. Moreover, he had no idea why McCormick was being investigated. *See* Exhibit "R" pgs. 239-240, lines 17-24, 1-2. Ultimately that investigation was closed by way of a closing decree. The decree would outline everything in terms of why/how the Defendant "concluded" all of the accusations against McCormick were "unfounded". Plaintiff has still not received a copy of this decree that was issued under Bishop Senior. Once again Bishop Senior does not remember what was contained in the closing decree and did not look in any of McCormick's personnel files to find out.

Additionally, during the 2004 Canonical investigation into McCormick, the Defendant appointed Father Eduardo Montero to represent him. The only things shared with Fr. Montero were three separate and distinct warnings that were issued to McCormick. Defendant has failed to produce and/or concealed these documents from Plaintiff. Fr. Montero could not recall the specifics of each warning. **He did remember that at least one of the written warnings concerned McCormick's inappropriate behavior with a minor child.** (emphasis added). He could not elaborate more. Moreover, he was unclear as to the specifics of the second two warnings. *See* Exhibit "Y" Eduardo Montero Dep. Tr. pgs. 34-39. Warnings that were issued by

the Defendant to McCormick about inappropriate contact and/or sexual abuse of a minor child are beyond relevant in this case. Defendant has willfully concealed and/or destroyed these written warnings, in addition to the other evidence it has willfully concealed and/or destroyed regarding Father McCormick's prior abuse of children and/or the AOP's notice of same and therefore, Defendant AOP should not be entitled to the benefit of arguing and/or the presumption that, the Defendant did not know and/or should not have reasonably known McCormick *might* be a danger to children.

A document Defendant actually did produce contained hand written notes by Defendant Lynn. *See* Exhibit "Z" Lynn's Handwritten Notes. The notes pertain to a phone call Defendant Lynn received from Monsignor Francis Beach. The notes, indicate "**Andy McCormick – McCormick took kid from parish to Poland, stopped in New York, 20-year old, sexually abused in New York – 8th grade Poland.**" This abuse would have predated the abuse of Plaintiff. Defendant Lynn was extensively questioned about this during his deposition. Despite "how serious" Defendant Lynn said he takes allegations of a priest sexually abusing a child he, in this instance, conveniently does not remember a single thing about this allegation concerning McCormick, an 8th grade boy, and sexual abuse in New York. He does not remember whether he called the police. He does not remember if he even investigated it. *See* Exhibit "R" pgs. 166-179. Monsignor Beach was also deposed in this case. Just like Defendant Lynn, Monsignor Beach conveniently cannot remember anything about this allegation of sexual abuse and/or reporting it to Defendant Lynn. *See* Exhibit "AA" Francis Beach Dep. Tr. pgs. 69-76.

In addition to, Defendant Lynn being shown his own handwritten notes, he was also shown typed minutes from a meeting he had with McCormick. Despite this memo being very

detailed, Defendant Lynn once again was struck by amnesia and does not remember the meeting even taking place, let alone what was discussed. *See* Exhibit “BB”. Perhaps, Defendant Lynn “cannot” remember the meeting because it referenced “concerns about the appropriateness of some of Father McCormick’s actions.” Id.

35. Denied. The deposition transcript of Detective Owens is a written document and speaks for itself. This averment attempts to summarize a portion of Detective Owens testimony. Any mischaracterizations of any of the testimony cited are therefore denied. It is further denied that the portions of the deposition transcript that are cited, which are taken out of context, fully and accurately represent the full extent of the evidence in this case. The exhibit must be read in its entirety. By way of further answer, Detective Owens did not have evidence relating to Father McCormick abusing other children because Defendant AOP did not produce it to Detective Owens and evidence regarding Father McCormick sexually abusing other children was destroyed.

36. Denied. Information the Defendant had leading up to and after the sexual abuse of Plaintiff by McCormick are relevant to show, among other things, the Defendant’s notice of McCormick’s abusive and inappropriate tendencies to minor boys, the Defendant’s actions, or lack thereof, in regard to McCormick’s abusive and inappropriate tendencies with minor boys and the Defendant’s ratification of McCormick’s conduct for which the AOP is vicariously liable for.

37. Denied. The exhibits cited by Defendant are written documents that speaks for themselves. Any mischaracterizations of any of the exhibits cited are therefore denied. It is further denied that the portions of the exhibits that are cited, which are taken out of context, fully

and accurately represent the full extent of the evidence in this case. The exhibits must be read in their entirety. By way of further answer, Defendant AOP knew long before Plaintiff reported his abuse to them when he was in high school that McCormick had abused children and was viewing child pornography, yet the AOP chose to promote him and continue to expose him to children in the community.

38. Denied. The letter referenced by Defendant is a written document that speaks for itself. By way of further answer, the March 2011 letter referenced by Defendant in the corresponding paragraph makes no mention of the 2011 Grand Jury Report and/or why McCormick was being placed on administrative leave. In fact, according to evidence produced in this case, McCormick was removed as a result of the Grand Jury's concern regarding the "number and types of complaints received by the Archdiocese" concerning McCormick prior to Plaintiff's report of abuse. *See* correspondence of Monsignor Sullivan attached hereto as Exhibit "MM". Additionally, when learning that his file was being reviewed by the Grand Jury in 2011, McCormick informed Bishop Thomas that he was "nervous" and "alluded to inappropriate behavior in the past." *See* Email from Bishop Thomas to Bishop Sullivan attached hereto as Exhibit "NN". This was prior to Plaintiff reporting he had been abused by McCormick.

39. Denied. *See* Plaintiff's answer to paragraph #34, *supra* and Plaintiff's Memorandum of Law, *infra*. By way of further answer, Defendant has failed to produce a single witness who has reviewed McCormick's personnel file and/or who can definitively and adequately address all of the reasons McCormick is currently on administrative leave. Rather, they have destroyed and/or willfully concealed evidence pertaining to same.

40. Denied. This averment is patently false. There have been numerous complaints that McCormick has sexually abused and/or acted inappropriately other children. *See* Plaintiff's answer to paragraphs #6-7, #22 and #34, *supra* and Plaintiff's Memorandum of Law, *infra*.

III. SUMMARY OF LEGAL BASIS FOR MOTION

41. Denied as stated. This averment attempts to summarize the claims Plaintiff brought against the Defendant. By way of further answer *see* Plaintiff's response in paragraph 3, *supra*. In addition, *see* Exhibit "A" Plaintiff's Second Amended Complaint.

42. Requires no response as the corresponding paragraph in Defendant's motion is a request of this Court. By way of further answer, Plaintiff requests this Court deny Defendant's Summary Judgment Motion in its entirety as there are clearly genuine issues of material fact that exist that warrant this case being heard by a jury.

43-49. These paragraphs contain conclusions of law, not averments of fact, to which no response is required. To the extent these paragraphs contain any factual allegations, they are hereby denied. By way of further answer, Summary judgment can only be properly granted if there is no genuine issue as to any material fact and a moving party is entitled to judgment as a matter of law. The moving party has the burden of persuading the Court that no genuine issue exists as to any material fact and summary judgment may only be entered where the case is free from doubt. Hower v. Whitmak Assoc., 371 Pa. Super. 443, 445, 538 A.2d 524, 525, allocator denied 522 Pa. 585, 559 A.2d 527 (1987). The record must be examined in the light most favorable to the non-moving party. Any doubt must be resolved against the moving party. French v. United Parcel Service, 337 Pa. Super. 366, 371, 547 A.2d 411, 414 (1988). "The court must accept as true all well pleaded facts in the non-moving party's pleadings and other proper

evidence submitted in response to the motion giving him the benefit of all reasonable inferences to be drawn therefrom.” McFadden v. American Oil Co., 215 Pa. Super. 44, 47, 257 A.2d 283, 286 (1969) (emphasis added).

The Archdiocese of Philadelphia is vicariously liable for the negligence of Monsignor William Lynn, which has been admitted to by way of his decision not to respond to Plaintiff’s Second Amended Complaint, as well as the sexual assault of John Doe, by its employee, Fr. Andrew McCormick under the theory of *respondeat superior*. Vicarious liability may extend to intentional or criminal acts when the conduct is within the scope of employment; or if the conduct was unauthorized, when the employer ratifies the conduct. (See generally, Costa v. Roxborough Memorial Hospital, 708 A.2d 493 (1998) (citing Fitzgerald v. McCutcheon, 410 A.2d 1270, 1271 (Pa. Super. 1979); Sullivan, 535 A.2d at 1100).

“Whether a person acted within the scope of employment is ordinarily a question for the jury.” Spitsin v. WGM Transp., Inc., 97 A.3d 774, (Pa. Super. 2014) (quoting Fitzgerald v. Mutcheon, 270 Pa. Super. 102, 410 A.2d 1270, 1271-72 (Pa. Super 1979)). For purposes of determining vicarious liability, the conduct of an agent is considered within the scope of employment if the act: (1) is of a kind and nature the agent is employed to perform; (2) occurs substantially within an authorized time and space; (3) is actuated, at least in part, by a purpose to serve the employer; and (4) uses force against another and the force is not unexpected by the employer. McCutcheon, 270 Pa. Super. at 107 (citing Restatement (Second) of Agency § 228). The liability of an employer may extend even when the employee’s actions are intentional or criminal. Fitzgerald v. Mutcheon, 270 Pa. Super. 102 (1979).

Pennsylvania courts have held that sexual abuse does not fall outside an employee's scope of employment. *See Patel v. Himalayan Int'l. Inst. of Yoga Sci. & Philosophy of the United States*, 1999 U.S. Dist. LEXIS 22532, at 22532 (E.D. Pa. 1999) (holding "where tortious conduct [of a sexual nature] arises out of and is reasonably incidental to the employees' legitimate work activities, the 'motivation to serve' test [of vicarious liability] will have been satisfied."). In *Patel*, the employer was held vicariously liable because its employee's sexual abuse of the victim occurred incident to the employee's legitimate work activities. *Id.* at **26-27. Moreover, the Defendant was on notice of Co-Defendant's sexual propensity and prior transgressions. *Id.* at *30. There, the Co-Defendant, "a guru", used his authority in a religious counseling relationship to sexually abuse the victim and the abuse happened within the institution. *Id.* at **10-11. The employer was vicariously liable because the "tortious conduct [of a sexual nature] arose out of and was reasonably incidental to the employees' legitimate work activities." *Id.* at *30. The Court wrote, "[c]ontrary to the Himalayan Institute's argument, however, such evidence would also permit an inference that the Himalayan Institute **condoned sexual relations between Swami Rama and his disciples as part of the services he provided.**" *Id.* (emphasis added). Therefore, the employees' activities satisfied the "motion to serve" prong of vicarious liability because his actions were meant to be performed for his employer. *Id.*

Moreover, Pennsylvania courts have specifically found vicarious liability when clergy members commit an act of sexual abuse. *See Nardella v. Datillo*, 36 Pa. D. & C. 4th 364, 377-78 (Pa. Ct. Comm. Pl. 1997). The Court found vicarious liability for a priest who sexual abused an adult plaintiff because:

“[Defendant priest] extended parochial duties by counseling plaintiff; conduct of this kind and nature may be construed as that type of conduct which [defendant priest] was employed to perform; the acts substantially occurred within authorized time and space limits since the counseling sessions were held on church property; and finally, [defendant priest] acted in part, to serve his employer by facilitating plaintiff's return to the Catholic church”

Datillo, 36 Pa. D. & C. 4th 364 at 377-78.

This case, is factually analogous to both Patel and Nardella. Just like “guru” in Patel and the priest in Nardella, McCormick sexually abused the Plaintiff during legitimate work activities. Specifically, McCormick was in charge of the altar boys at St. John Cantius. His role was to foster a potential vocation to the priesthood by mentoring the altar boys under his care. This is exactly the “kind and nature” of work McCormick was hired to perform by the Defendant. Plaintiff was an altar boy serving the Defendant while under the care of McCormick. The acts of sexual abuse substantially occurred during authorized time and space limits set by the Defendant. Shortly after serving a mass under McCormick, at St. John Cantius, McCormick directed Plaintiff back to the rectory. Thereafter, the sexual abuse occurred on Defendant's property. Finally, the act of having the Plaintiff participate in a Catholic Mass within the Archdiocese of Philadelphia was, at least in part, McCormick serving the Defendant - his employer's, interests. Therefore, McCormick's actions, like the actions of the “guru” in Patel and the priest in Nardella satisfy the “motion to serve” prong of vicarious liability.

Defendant relies most on the court's holding in Doe v. Penn State University, 982 F.Supp. 2d 437, (E.D. Pa. 2013), to support its motion, this reliance is misplaced. First, this is a federal case which is not binding precedent and Defendant is unable to cite a Pennsylvania state court case for the same proposition. Moreover, the court in Doe v. Penn. State, held that Penn State

could not be held vicariously liable for Sandusky's actions because of the outrageous manner in which they occurred and because the actions were not within the scope of employment. Id. at 445. The Doe v. PSU court then cited Patel, discussed *supra*, in acknowledging that a religious counseling relationship can fall within the scope of employment. Id. at **443-44. In its analysis, the court distinguishes this case from that of Patel, due to the relationship between the victim and employee and the location of the abuse. Id.

Likewise, Defendant's reliance on R.A. v. First Church of Christ is equally misplaced. The facts of R.A. are fundamentally different than the facts of this case. The Superior Court held that "[n]othing about [the employee's] sexual abuse of [the plaintiff] had any connection to the kind and nature of his employment as a minister." R.A. v. First Church of Christ, 748 A.2d at 692 (Pa. Super. 2000). In R.A., the perpetrator was a Christian minister who lived with a family in a private residence who abused a minor he befriended while living in the residence. Id. at 695. All of the abuse in that case occurred at a private residence and outside of any work being performed by the minister. Id. Additionally, the Court in R.A. did not address whether vicarious liability would apply if the abuse had occurred on church property with a minor volunteer of the Church, while both individuals were performing services for the Church or where the Church had ratified the conduct, as is the case here.

Additionally, vicarious liability may extend to intentional or criminal acts when the conduct is within the scope of employment, **or, if the conduct was unauthorized, the employer ratifies the conduct.** (emphasis added). *See generally*, Costa, 708 A.2d 493 (citing Fitzgerald v. McCutcheon, 410 A.2d 1270, 1271 (Pa. Super. 1979)); Sullivan, 535 A.2d at 1100. When an employer or principal ratifies an agent's previous unauthorized act, "a purported master or other

principal becomes subject to liability for injuries caused by the tortious act of one acting or purporting to act as his agent as if the act had been authorized....” Restatement (Second) of Agency § 218. Upon ratification, the one ratifying the agent’s conduct is subject to liability to the person harmed by the agent. *See Id.* at cmt. *a.*

A principal ratifies the unauthorized acts of its agent when the principal has knowledge of the facts and circumstances surrounding the agent’s conduct. C. F. Simonin's Sons, Inc. v. American Credit Indem. Co., 117 A. 807, 808 (Pa. 1935) (holding that it was the defendant-company's practice to require payment of a deposit premium when an application was made, and, in the absence of evidence that it was aware of its agent’s departure from this practice and his alleged waiver of the provision regarding losses occurring before such payment, defendant's conduct is not to be deemed a ratification). “Where the relation of a principle and agent exists, before an unauthorized act of the agent can be said to be ratified by the principal, he must have full knowledge of all the material facts and circumstances attending the act.” Shields v. Hitchman, 96 A. 1039, 1041 (Pa. 1916).

However, ratification may also be made by a formal action, or by passive acquiescence. Pinebrook Minerals, LLC v. Anadarko E & P Co. LLP, 2011 U.S. Dist. LEXIS 90676, at *26 (M.D. Pa. July 25, 2011) (finding no ratification when defendant-corporation did not submit evidence that an agent from another corporation received royalties or consideration for a land-use contract that would prove that the other corporation had knowledge of the contract); *see also*, McGuire Performance Solutions, Inc. v. Massengill, 904 A.2d 971, 978 (Pa. Super. 2006) (finding that a subsidiary corporation’s board ratified a corporate lawsuit against the third-party

debtor-plaintiff by passive acquiescence after its three and one-third year pursuit of the action lacked evidence of the board taking steps to discontinue the suit).

In this case, if the Defendant's actions did not ratify McCormick's conduct, it is difficult to imagine what would.⁸ The Defendant knew since the early 1980's that McCormick was having minor boys in his personal living quarters, taking boys off of school property, taking boys on overnight trips with no other adult present, that McCormick was sexually attracted to minor boys and was a danger to children. Defendant knew that McCormick was repeatedly violating safety rules pertaining priests' interaction with children. All of these actions by McCormick were in violation of the understood safety rules of the Archdiocese of Philadelphia, as testified to by Fr. Joseph Zingaro. After at least one of McCormick's overnight trips to the cabin, Parents submitted written complaints to the Defendant. There were other complaints against McCormick relating to children at St. Adalbert's as testified to by Mrs. Kathleen Viscontio. McCormick constantly had a contingent of boys surrounding him. This behavior spanned all of his pastoral assignments, including at St. Adalbert's, St. John Cantius, and St. Bedes. The Defendant was aware at every stage. It was known among AOP employees that McCormick was sexually attracted to young boys. In fact, it was known by the Defendant the "type" of boy McCormick was attracted to.

Throughout the 1990's McCormick took boys, without their parents being present, on overseas trips to Poland. After, at least one of these trips, an allegation of sexual abuse was reported to Defendant Lynn. Despite an allegation of sexual abuse, the Defendant did nothing. Additionally, McCormick was reprimanded on multiple occasions for having boys in his

⁸ Plaintiff incorporates by reference, all facts and evidence as set forth in subsections (B1 and B2) of his Memorandum of Law, *supra*.

personal living quarters – including his personal bedroom. In 2001, McCormick entered therapy for his inappropriate conduct with minor boys at the request of Defendant Lynn. Father Martino was surprised that it took so long for the Defendant to send McCormick to therapy.

In 2004, a Canonical investigation was started, to look into whether McCormick sexually abused a boy(s). During the course of this investigation it was learned that McCormick had viewed and/or downloaded child pornography. The exact websites McCormick was visiting could not be ascertained because the Defendant, through one of its employees, Deacon Joseph Orlando, deleted the website log entries for all of the offensive sites McCormick had accessed and/or was attempting to access. **Given all the information that was brought forth, the Defendant had McCormick undergo two polygraph examinations in 2005. Both polygraph examinations addressed whether McCormick had sexually abused a child and whether he viewed and/or downloaded child pornography. McCormick failed both of these polygraph examinations.** (emphasis added). The results which clearly indicated he failed, were sent to the Defendant. Moreover, Fr. Montero, McCormick’s Canonical advocate, viewed three additional written warnings that were issued to McCormick by the Defendant. At least one of which dealt with McCormick having inappropriate contact with a minor child. The other two Fr. Montero was unclear of the facts but knew the warnings dealt with McCormick violating AOP Ministerial Guidelines.

Amazingly, despite all of this information and knowledge, the Defendant “cleared” McCormick of any wrongdoing following the 2004 Canonical investigation. The Defendant indicated that the polygraph examination categorically proved that McCormick did not view and/or download child pornography – *despite both polygraph examinations saying the exact*

opposite. To this day the Defendant cannot produce one piece of evidence that categorically disproves any of the allegations against McCormick. In the same breath though, the Defendant sent McCormick to additional therapy for his boundary issues and inappropriate relationships with minors. It defies logic that someone who the Defendant unequivocally and categorically determined had done nothing wrong would then require training/therapy on boundary issues and inappropriate contact with children.

The Defendant then “doubled down” on its ratification of McCormick’s conduct. The Defendant made McCormick a pastor. In other words, he was in charge of his own parish. No one was warned. Defendant gave no notice to any unsuspecting parent about McCormick’s sexual predatory tendencies so that the parents could make their own informed decision about whether their child should be in the company of McCormick. At every stage, going back to the 1980’s, the Defendant systematically and repeatedly ratified McCormick’s conduct. It was not until 2011 that Defendant AOP was forced to removed McCormick from active ministry because of the “number and type of complaints received by the Archdiocese.” In essence, the AOP did not remove McCormick, rather, the Grand Jury forced the AOP to do so.

50-56. These paragraphs contain conclusions of law, not averments of fact to which no response is required. To the extent these paragraphs contain any factual allegations, they are hereby denied. By way of further answer, summary judgment can only be properly granted if there is no genuine issue as to any material fact and a moving party is entitled to judgment as a matter of law. The moving party has the burden of persuading the Court that no genuine issue exists as to any material fact and summary judgment may only be entered where the case is free from doubt. Hower v. Whitmak Assoc., 371 Pa. Super. 443, 445, 538 A.2d 524, 525, allocator

denied 522 Pa. 585, 559 A.2d 527 (1987). The record must be examined in the light most favorable to the non-moving party. Any doubt must be resolved against the moving party. French v. United Parcel Service, 337 Pa. Super. 366, 371, 547 A.2d 411, 414 (1988). “The court must accept as true all well pleaded facts in the non-moving party’s pleadings and other proper evidence submitted in response to the motion giving him the benefit of all reasonable inferences to be drawn therefrom.” McFadden v. American Oil Co., 215 Pa. Super. 44, 47, 257 A.2d 283, 286 (1969) (emphasis added).

The Defendant AOP and Defendant William Lynn⁹ are liable to Plaintiff for the sexual assault he suffered because they acted negligently in supervising and retaining their employee, McCormick – a sexual predator, who it knew or should have known was a danger to the Plaintiff and other minors. In determining whether the Archdiocese was negligent, the Pennsylvania Courts have adopted the Restatement (Second) of Torts Section 317. *See* Hutchison v. Luddy, 360 Pa. 51 (1997) (*citing* Restatement (Second) of Torts § 317) (*see also* Dempsey v. Walso Bureau, Inc., 431 Pa. 562, 571 (1968); Sabric v. Lockheed Martin, 532 Fed. Appx. 286 (2013); R.A. by & Through N.A. v. First Church of Christ, 2000 Pa. Super. 58, (2000)). Section 317 of the Restatement states that an employer must exercise reasonable care to prevent harm to a third party if they know or have reason to know an employee, who is acting outside the scope of his employment, is causing harms to others. *See* Restatement (Second) of Torts § 317. Further, the Superior Court in Dempsey held an employer can be found to be negligent if they have failed to

⁹ As of the date of Defendant William Lynn filing his Joinder Motion for Summary Judgment with Defendant AOP, he had not contested the averments in Plaintiff’s Complaint. As such the averments are deemed admitted, including that Defendant Lynn was negligent and that Defendant AOP is vicariously liable for his negligence.

exercise reasonable care in assessing an employee's propensity for violence. Dempsey v. Walso Bureau, Inc., 431 Pa. 562, 571 (1968).

An employer fails to act with reasonable care where it knows of an employee's propensity for pedophilic behavior yet fails to prevent a foreseeable harm of this behavior. Hutchison v. Luddy, 360 Pa. at 64-65. The court in Hutchison found that the employer, a bishop and the diocese, negligently supervised a priest because it failed to prevent a foreseeable harm by allowing the priest to remain in a position in which he had unsupervised interactions with children. Id. at 65. The court found that the employer knew or had reason to know of the foreseeable harm because the supervising priest was informed of a complaint by the victim's mother and that supervising priest saw the boy in the abuser priest's rectory bedroom. Id. at 56. In its reasoning, the court considered other factually similar cases from other jurisdictions that involved a mentor/mentee relationship between the abuser and victim and the employer's knowledge of the employee's prior violence. *See* Coath v. Jones, 277 Pa. Super 479 (1980) (electric technician gained access to victim's home through his employment after employer failed to warn victim the technician was fired for his propensity for violence); Golden Spread Council, Inc. v. Akins, 926 S.W.2d 287 (Tex. 1996) (boy scout mentor molested boy scouts when he was hired and retained by the Boy Scouts of America after they received complaints that mentor was "messing with" the children); Funkhouser v. Wilson, 89 Wn. App. 644 (church that knew of bible teacher's conduct could be held liable for bible teacher's sexual abuse of students, regardless of whether the abuse took place on church premises).

As stated and supported repeatedly throughout Plaintiff's Response to and Memorandum of Law in Opposition to, Defendant's Motion for Summary Judgement, the Defendant knew or

reasonably should have known McCormick *might* be a danger to children. Defendant failed to prevent a foreseeable harm when it allowed McCormick to remain in active ministry, in charge of altar boys and constantly surrounded by children. The Defendant knew or reasonably should have known McCormick *might* be a danger to children given the numerous warnings, warning signs and complaints that were lodged against McCormick in regard to his interaction with minors.¹⁰

The Defendant knew from the time McCormick was assigned to St. Adalbert's not only that he *might* pose a danger to children, but that he did. Just as was the case in Hutchison, *infra*, McCormick repeatedly had boys in his personal living quarters on Defendant's property. He took boys, alone, on overnight stays to a cabin after which, parents complained. There were numerous other complaints made against McCormick at St. Adalbert's, however, the Defendant has failed to and/or refused to provide Plaintiff with those complaints. The Defendant knew McCormick was sexually attracted to minor boys. Specifically, Defendant knew the "type" of boys McCormick was attracted to. McCormick was reprimanded by the Defendant, numerous times for having boys in his private living quarters prior to the abuse of Plaintiff. Despite these reprimands McCormick continued to violate understood safety rules, that were in place to protect children. Defendant did nothing. No warnings were sent to parents, including the parents of Plaintiff. No information was provided whatsoever about McCormick's conduct and predatory tendencies.

¹⁰ Plaintiff incorporates by reference, all facts and evidence as set forth in subsection (B1) of his Memorandum of Law, *supra*.

The Defendant maintained a “secret archive” which contained the names of priests who had allegations lodged against them for sexually abusing minors. Defendant Lynn created a list, completed in 1994 and maintained through his tenure as Vicar for Clergy, of all priests that were in the secret archives for having allegations of sexual abuse made against them. No one – not even the Defendant’s appointed Corporate Designees, can say McCormick does not have a file in the secret archives or is not on that list. The reason, they did not bother to look in the archive and Monsignor Sullivan shredded the list. The Defendant should not be given any presumption in its favor, let alone a presumption that McCormick’s name is not on that list. A jury should decide, given the conduct of the Defendant, whether it knew or reasonably should have known McCormick did and/or *might* pose a danger to children as there is clearly record evidence of same predating the abuse of Plaintiff, as well as the fact that Defendant AOP ratified McCormick’s conduct after it concretely knew that he had abused children and viewed child pornography.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Defendant’s Motion for Summary Judgment, as there are genuine issues of material fact and the evidence presents a sufficient disagreement between the parties that requires submission to a jury.

LAFFEY, BUCCI & KENT, LLP



By: _____

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Dated: September 6, 2017

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Identification No.: 94221/87394/315708

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John Doe (a fictitious name)	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
c/o Laffey, Bucci & Kent LLP	:	CIVIL TRIAL DIVISION
1435 Walnut Street, 7 th Floor	:	
Philadelphia, PA 19102	:	JULY TERM, 2015
	:	
Plaintiff	:	No. 1077
	:	
v.	:	
	:	<u>JURY TRIAL DEMANDED</u>
Roman Catholic Archdiocese of Philadelphia,	:	
Monsignor William Lynn and	:	
Father Andrew McCormick	:	
	:	
Defendants.	:	

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF HIS RESPONSE IN
OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT OF DEFENDANT
ARCHDIOCESE OF PHILADELPHIA**

Plaintiff, John Doe, by and through his counsel, Laffey, Bucci & Kent LLC, hereby submits his Memorandum of Law in Support of his response to the Defendant, the Roman Catholic Archdiocese of Philadelphia’s (hereinafter “AOP” or “Defendant”), Motion for Summary Judgment and avers the following:

I. INTRODUCTION

As a preliminary matter, as of the date the AOP filed its Motion for Summary Judgment, Defendant, Monsignor William Lynn, at all relevant times the AOP’s agent and employee whose

acts and omissions the AOP is vicariously liable for (a fact not in dispute or raised in the AOP's Motion for Summary Judgment), had not contested the averments contained in Plaintiff's Complaint by way of an Answer or raised legal defenses by way of New Matter despite being served with Plaintiff's Complaint approximately **twenty-six (26) months ago, being serve with Plaintiff's Second Amended Complaint approximately twenty-two months ago, being ordered by the Court to file an Answer approximately eighteen months ago, several extensions of deadlines in this case, discovery being over, Plaintiff's expert reports already being produced and the pre-trial motion period expiring.** As such, those averments are deemed admitted pursuant to Pa. R. Civ. P. 1026 for purposes of Defendant's Motion for Summary Judgment and on that basis alone, Defendant AOP's Motion for Summary Judgment should be denied.

In addition to the above, Defendant's incredible representation to the Court that there is no evidence that Defendant knew or should have known that Defendant, Father Andrew McCormick, was a danger to children and/or sexually abused other children prior to abusing Plaintiff, flies in the face of the documents they produced in this case and the statements and testimony of their own employees and witnesses. Moreover, the Defendant has spoliated much of the evidence pertaining to Father McCormick's past abuse of children, either by willful concealment and/or actual destruction of evidence and as such, they are estopped from claiming that it had no notice that McCormick posed a danger to children prior to the abuse of Plaintiff. Further, it is uncontested that the AOP *knew* that Father Andrew McCormick was sexually attracted to minor boys, particularly those with Plaintiff's physical characteristics, that other parents and fellow priests complained about McCormick's behavior with children and that

McCormick was repeatedly violating safety rules pertaining to priests interaction with children, all before the abuse of Plaintiff, yet the AOP continued to expose McCormick to children and allow him to be in charge of altar boys, including Plaintiff, at multiple parishes. In fact, Defendant, Monsignor William Lynn, testified that he was specifically directed *not* to warn parishioners about priests who were a danger to children:

Q: When a priest admitted to you that they had sexually abused a child in the past, did you let – or did you inform the parishioners of the parishes in which that priest was assigned?

THE WITNESS: Not until 2000 -- maybe '1 or 2002.

Q. Were you directed by the Archdiocese not to disseminate that information?

THE WITNESS: Yes.

Q. Who from the Archdiocese directed you to not disseminate to the parishioners that a priest had admitted to sexually abusing a child?

THE WITNESS: Bishop Cullen.

Q. Did Bishop Cullen receive his orders from Archbishop Bevilacqua?

THE WITNESS: He said he did.

Q. In terms of if a priest did not admit, meaning you interviewed them and they say I did not commit the sexual abuse that I'm alleged to have committed, would you, between 1992 and 2000, disseminate to the parishioners that, at least at a minimum, an accusation has been made?

A. No.

Q. And who directed – did someone direct you not to do that?

A. Yes.

Q. And who was that?

A. Bishop Cullen.

See deposition of Defendant, Monsignor William Lynn attached hereto as Exhibit “

Even after the AOP had confirmation that McCormick had sexually abused children and had viewed child pornography, prior to Plaintiff revealing his abuse, they awarded him by making him a pastor and allowing him to remain in active ministry, thereby ratifying his abhorrent conduct. Such an action is not only negligent, but willful, malicious and constitutes an abject indifference to the safety of children in this community. As such, as is clear from the evidence adduced in this case, Defendant AOP may be held liable for all of the claims brought by Plaintiff. In the very least, genuine issues of material fact exist such that Defendant’s Motion for Summary Judgment should be denied.

II. MATTER BEFORE THE COURT

Plaintiff’s response in opposition to Defendant’s Motion for Summary Judgment.

III. COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Are there genuine issues of material fact as to whether the Defendant is vicariously liable for acts/omissions of Defendant, William Lynn, as well as the sexual assault perpetrated upon the Plaintiff by Father Andrew McCormick where the record evidence establishes that the Defendants knew that McCormick was a danger to children and sexually attracted to minor boys prior to the abuse of Plaintiff, the abuse was committed in the course of McCormick’s duties as a priest and the AOP ratified McCormick’s conduct after it concretely

knew McCormick had abused children such that Defendants' Motion for Summary Judgment should be denied?

Suggested Answer: Yes.

2. Are there genuine issues of material fact as to whether the Archdiocese was negligent and engaged in negligent supervision of Father Andrew McCormick when the record evidence establishes that the AOP knew McCormick was a danger and sexually attracted to minor boys, was repeatedly violating safety rules pertaining to children, parents and priests had complained about McCormick's behavior with minor boys and AOP destroyed/concealed evidence regarding McCormick's prior abuse of children, all *before* the abuse of Plaintiff, such that Defendant's Motion for Summary Judgment should be denied?

Suggested Answer: Yes

III. FACTS

A. Relevant Procedural History

Plaintiff John Doe instituted this action by way of a complaint on July 10, 2015. Plaintiff amended his complaint on August 26, 2015. After Defendants filed preliminary objections to Plaintiff's First Amended Complaint, Plaintiff filed his Second Amended Complaint on October 2, 2015. Plaintiff's Second Amended Complaint alleges multiple claims against Defendant, Archdiocese of Philadelphia including: Count I (Childhood Sexual Abuse and Vicarious Liability); Count II (Negligence); and Count IV (Nuisance).¹¹ See a true and complete copy of Plaintiff's Second Amended Complaint attached hereto as "Exhibit A." Plaintiff also alleges

¹¹ On December 16, 2015, the Court dismissed Count IV (Nuisance).

negligence against Defendants Monsignor William Lynn (hereafter “Monsignor Lynn”) and the Archdiocese of Philadelphia in Count III. Id.

B. Factual Background

Plaintiff sustained injuries during Plaintiff’s third grade year at St. Cantius School, when Defendant Father Andrew McCormick, entered his third-grade classroom, and hand selected Plaintiff to be an altar boy at the parish. See Exhibit A at ¶ 30. In the winter of 1997, after Plaintiff, age ten (10) at that time, served an evening mass as an altar boy with McCormick alone, McCormick directed Plaintiff back to the rectory. Id. at ¶ 32. McCormick was alone with the Plaintiff and directed Plaintiff to his personal chambers at which time he locked the door. Id. at ¶¶ 33-34. After the door was locked, outrageously, unlawfully, and unconscionably, McCormick undressed himself and undressed the Plaintiff, a child. Id. at ¶ 35. After they were undressed, McCormick outrageously, unlawfully, and unconscionably pushed the Plaintiff onto his bed and attempted to insert his penis into the mouth of the ten-year-old boy. Id. Plaintiff clenched his jaw to prevent insertion. Id. at ¶ 36. However, McCormick was still able to insert his penis beyond the lips of Plaintiff’s mouth. Id. Plaintiff yelled “no” when this was being done and tried to fight off McCormick. Id. at ¶ 37. Obscenely compounding these depraved acts, McCormick continued to force his penis into the Plaintiff’s mouth even after Plaintiff screamed and yelled “no,” trying to fight off McCormick as Plaintiff lay under the body of McCormick on McCormick’s bed. Id. at ¶ 38.

As a direct and proximate result of the forcible oral rape, Plaintiff sustained severe psychological and emotional distress, including post-traumatic stress disorder, manifested by

physical ailments and complaints, including, but not limited to, sleeplessness, loss of appetite, attempted suicide and drug addiction. *Id.* at ¶ 40.

- 1. The Archdiocese of Philadelphia was on notice and knew or reasonably should have known that that McCormick *might* assault a child before Plaintiff was assaulted in 1997.**

Father Joseph Zingaro (an employee of the Defendant), who became pastor of St. John Cantius, told the Defendant's investigator, Jack Rossiter that "McCormick ... always had a contingent of Polish Kids around him, both at St. Adalbert's and St. John Cantius. He took boys on several trips to Poland, some in the company of [Father] Martino." *See* Exhibit "B" Zingaro Interview. Father Zingaro, who was first assigned as an assistant pastor to St. John Cantius, clearly laid out the safety rules regarding a priests interaction with children that dated back to at least the early 80's. All of which, McCormick violated and the Defendant knew about:

Q. Let me talk to you about your first assignment at Saint John Cantius under – was that Monsignor Bydlon?

A. Monsignor Bydlon.

Q. When you were under Monsignor Bydlon in the early 1980's, where children allowed to be present in the rectory?

A. No.

Q. Okay. Were children allowed to be present in the living quarters at the rectory?

A. No.

Q. Were priests allowed to take children off of church property without their parents' knowledge or consent?

A. No.

Q. Were priest allowed to take children off of school property – or excuse me on overnight trips without their parents present?

A. No.

Q. Okay. So, if I understand you correctly, it didn't really matter whether it was Saint John Cantius or whether it was Sacred Heart or whether it was Saint Adalbert's, those were policies in effect for priests during that time frame since the time you left the seminary?

A. That's correct.

Q. Okay. And is it – is it fair to say that the reason that those policies – that there were policies for priests pertaining to their interaction with children, like the ones we talked about, were there for the protection of children at these parishes?

A. Yes.

Q. And if there was a priest that was violating some of those policies, would that cause you concern that they may be a danger to children?

A. Yes.

Q. And if there was a priest that was repeatedly violating those safety rules for children that were in effect for priests back then, would that cause you even greater concern that a priest may be a danger to children?

A. Yes.

See Exhibit "C" Zingaro Dep. Tr. pgs. 14-17, lines 12-24, 1-9, 1-4, 4-10. Father Jan Palkowski, another employee of the Defendant, who was assigned to St. John Cantius from 1986 until 1994 with McCormick for part of that time, stated "McCormick always had kids in the rectory and numerous Polish Kids, who were altar servers." He felt it was "not normal to have so many kids in the rectory. Also, McCormick made four or five trips to Poland and maybe more in the company of minors." See Exhibit "D" Palkowski Interview. The boys McCormick surrounded

himself were exactly the “type” the Defendant knew McCormick was sexually attracted to, as testified to by Father Nicholas Martino:

Q. The question, so it’s clear is, can you tell us what Father McCormick’s type was when it came to minor boys?

A. Okay. I think he was attracted to kind of blonde hair, blue-eyed type of boys, that kind of thing, like a country look, if we could say that. The kind of – maybe the way the rest of us would look at a girl and say, you know, I like red hair, I like green eyes, or whatever, or she’s, you know, she’s – I’m attracted to her. Maybe boys with those characteristics he would be attracted to.

See Exhibit “E” Matrino Dep. Tr. pgs. 158-159, lines 5-24, 1-2.

Father Martino was one of McCormick’s closest friends. He detailed McCormick’s interactions with children and how concerning those interactions were. Martino and other employees of the Defendant were so concerned they believed McCormick needed therapy. Martino told Defendant’s investigator he had “been concerned for years about McCormick’s involvement with adolescents.” *See Exhibit “F” Martino Interview.* Martino knew that McCormick “had a habit of traveling with five or six boys, the oldest of whom would be in the 8th or 9th grade.” *Id.* Martino knew that McCormick was bringing children into his private living quarters at St. John Cantius, which was on the second floor of the rectory. Instead of stopping McCormick, contacting the parents of these children, and/or reporting the behavior to the authorities, Martino simply told McCormick, “when he [Martino] visited he [McCormick] could not bring the kids upstairs.” *Id.* Additionally, Martino and others had “privately tried to get McCormick into counseling.” *Id.*

Even the pastor at the time, Bernard Witowski, knew McCormick had these boys all over the rectory but did nothing about it. *Id.* Father Jan Palkowski specifically informed Pastor

Witowski, whom the Defendant placed in charge of St. Cantius. Pastor Witowski did nothing to protect children thereby allowing the sexual abuse of Plaintiff to occur on Defendant's property.

Q. (To Fr. Palkowski) Okay. So, you made a statement to the investigator that McCormick always had kids in the rectory and numerous Polish kids between 1988 and 1994; is that accurate?

A. Yes, it is.

Q. Sure. Father McCormick would take these boys that he was close with off of school and church property; correct?

A. Yes

Q. In your statement to this investigator in 2004, you stated that you felt it was not normal to have so many kids in the rectory?

A. Yes, because I – I feel not comfortable. This is – I was taught and always had this style, that this is a place where the priests are living. Priest, not for the lay persons, places of office or other meetings room. And so it, for me, it was like something new, and I never saw it before.

Q. Okay. Did you tell anybody during your first time during your -- at Saint John Cantius, that you felt uncomfortable because --

A. Yes, I told Monsignor Witkowski, the pastor.

Q. When did you tell Monsignor Witkowski that you felt uncomfortable with kids being in the rectory all the time and being with Father McCormick?

A. I don't remember the date or -- but during the time he was pastor I told him.

Q. So my question is, when you reported to Monsignor Witkowski that you felt uncomfortable with these kids being in the rectory all the time, were the kids there -- your understanding the kids were there with Father McCormick; correct?

Q. Yes?

A. Yes.

Q. After you told Monsignor Witowksi that you felt uncomfortable with kids being in the rectory, did kids continue to be in the rectory after that?

A. I would say yes.

See Exhibit “H” Palkowski Dep. Tr. pgs. 34, 38, 43-44, 46-47; lines 1-6, 1-5, 15-24, 1-17, 7-17, 13-17.

Fr. Martino recalled several boys in particular that McCormick was particularly fond of. One boy in particular, named Philip was at the rectory all of the time. McCormick even confessed to Martino that someone had complained that he was in an unhealthy relationship with Philip. *Id.* McCormick was relating to and putting children on the same level as adults. *Id.* This is a sign of both predatory and grooming behavior. What is most telling is that McCormick’s own best friend, stated that he “could not conclude anything else but that McCormick has acted on his sexual urges,” referring to children. *Id.* Additionally, Martino was surprised at how long McCormick was able to get away with his behavior and that the Defendant did not send him to therapy. *Id.*

Between 1988-1990, while assigned to St. Adalbert’s, McCormick told Martino that he had taken a couple of kids on an overnight trip to a cabin. Upon their return, the parents complained. *Id.* This complaint was in writing and sent to the Defendant. McCormick even had to meet with Defendant Lynn regarding the complaint. *See* Exhibits “G” Martino Police Interview and “E” pgs. 168-171. Despite Plaintiff’s requests for production of this written complaint, Defendant has failed to produce it.

Another close friend of McCormick Father Louis Kolenkiewicz “complimented” McCormick for his friendliness towards the kids at St. John Cantius. He described it as a “free for all” with 5 to 6 kids always being in the rectory with McCormick. *See* Exhibit “I” Kolenkiewicz Interview. It is unsurprising that Kolenkiewicz “complimented” how McCormick interacted with children. This is a man who on multiple occasions was placed on administrative leave by the Defendant. He had been found in 2005 to have over 12,000 pornographic photographs on a church computer, some of which appeared to depict juveniles. The Bucks County District Attorney’s Office looked into criminally charging him but after a “frustrating investigation ... that was hobbled by the church’s failure to preserve evidence found a decade ago and leaving local law enforcement in the dark,” they were unable to proceed with criminal charges. *See* Exhibit “J” News Article. It is also unsurprising the Defendant has placed him back in active ministry.

Defendant’s assertion that they did not have notice that McCormick might be a danger to children defies logic and is patently false. The defendant reprimanded McCormick for his inappropriate interactions with minor boys. In the 2014 criminal trial of McCormick the prosecutor specifically asked about the time in which the Plaintiff attended St. John Cantius. This was the exchange:

Q. You agree with me that [Plaintiff] was in your room with you?

A. He could have been.

Q. Sir, you are aware that there is a policy that children are not supposed to be up in your private living quarters; is that correct?

A. Not at that time.

Q. At the time, that was not the policy?

A. No, it was not.

Q. Sir, you have actually been reprimanded for having children in your private quarters before; is that correct?

A. Yes. By the Archdiocese, yes.

Q. Also after you left St. John Cantius, you were reprimanded again at St. Bede's for having a child up in your private quarters when you were not supposed to, correct?

A. He was helping me move.

Q. Sir, were you or were you not reprimanded?

A. Yes. Okay, I was, yes.

Q. So this is not the first time or the second time; you have been told repeatedly not to have children in your private quarters, correct?

A. That is right.

Q. And yet you still did, correct?

A. Not anymore. I did.

Q. Sir, my question is –

A. Yes, okay, I did

Q. -- after being told, you still chose to bring children up to your private quarters?

A. But it wasn't for anything social. It was to carry stuff up there or to carry things down.

Q. Sir, did you or did you not after being told not to have children in your private quarters, still bring children into your private quarters?

A. Yes.

See Exhibit “K” Criminal Tr. March 5, 2014 mina script pgs. 111-113, lines 16-25, 1-25, 1-2. Just like the written complaints from McCormick’s overnight trip with boys to the cabin, these reprimands by the Defendant (at least 3) have never been produced to Plaintiff. These concerns will be discussed *infra* in paragraph numbered “2”.

Darek Raguza¹², a witness called by Defendant McCormick in his criminal case, was deposed. Mr. Raguza attended St. Adalbert’s in the early 80’s while McCormick was a deacon first and then later an assistant pastor. The testimony reveals McCormick had boys in his personal bedroom/living quarters since at least the early 1980’s. When Mr. Raguza was in the 7th or 8th grade McCormick had him in the rectory, in his private living quarters, to watch movies. See Exhibit “L” Dep. Tr. Raguza pgs. 49-50, 132-133. To put this in context, McCormick was an adult man and had an 11 to 13-year-old in his private living quarters, who is unrelated to by blood or marriage, to watch movies. McCormick was not the only priest assigned to St. Adalbert’s during this time. The other assistant pastors and/or the pastor should never have allowed this. The Defendant, through its employees, knew or should have known since the early 1980’s of McCormick’s attraction to minor boys and that he *might* pose a danger to them.

Kathleen Viscontto, a mother of one of the children who McCormick had in appropriate contact with became very concerned about McCormick’s interaction with her son. Her concerns were shared by the Defendant’s employees. When interviewed by Detective James Owens and asked, “did anyone in the school or parish share your concerns”, she responded:

“Yes, one teacher in particular Mrs. [Mary Ann] Cordalis. She was a teacher that advised me to get [my son] out of the school the day of the Monsignor’s funeral when Father [McCormick] had asked [my son] to meet him in the basement.

¹² Mr. Raguza is currently an employee of the Defendant, Archdiocese of Philadelphia.

Another teacher was Sister Barbara. Her concern was that Father [McCormick] would come at any time of the school day and just pull boys out of the class. [My son] was one of the boys that would leave class to go serve a funeral or go to the cemetery after serving a funeral.”

See Exhibit “M” Kathleen Viscontò Police Interview. Miss Viscontò shared her concerns with Fr. Zingaro, who informed her that there had been other complaints when McCormick was at St. Adalbert’s. *Id.* She remembered how McCormick would invite boys into the rectory a lot. Miss Viscontò’s “gut [was] saying that something was wrong that no adult or even priest should be inviting my child into the rectory without my permission.” *Id.*

Miss Viscontò’s son also gave an interview to Detective Owen’s. In it he described the “proximity issues” McCormick had with boys at St. John Cantius. In response to the being asked if McCormick made him uncomfortable, Adam responded:

“Certainly. There were proximity issues. He would sit next to you really close on the couch and put his arm around you. He would take us [other boys] up to his bedroom. I was in his bedroom with [him] alone on at least one occasion when he was getting ready for mass. I was in his bedroom on other occasions with as many as two or three other altar boys. He would let us have the run of the rectory... He took us to Burger King almost every day...”

See Exhibit “N” Adam Viscontò Police Interview. During Adam’s deposition in this case, he recounted a time, after McCormick was arrested where he went to speak with Fr. Zingaro. During that conversation, Fr. Zingaro brought up how Adam previously expressed to him times when McCormick and Fr. Martino used to wrestle with Adam when he was a boy, attending St. John Cantius. The wrestling made Adam feel uncomfortable. See Exhibit “O” Adam Viscontò Dep. Tr. pgs. 108-112.

Plaintiff’s liability expert, Father Tom Doyle, a Roman Catholic Priest and co-author of *Sex, Priests, and Secret Codes: The Catholic Church’s 2,000 Year Paper Trail of Sexual Abuse.*

Los Angeles: Volt Press: Los Angeles 2006. Print., provided his expert opinions on how/why the Defendant knew or should have known and was on notice that McCormick *might* pose a danger to children:

a. The Archdiocese of Philadelphia was keenly aware of the problem and danger of priests sexually abusing children, including but not limited to priests within the Archdiocese of Philadelphia, prior to [Plaintiff] becoming an altar boy and ultimately being abused in 1997. However, the Archdiocese actively worked to conceal the dangers that priests posed to children and chose not to inform the public and parishioners about the risk, thereby endangering the welfare of children who attended parish churches and schools and preventing parents from making informed decisions regarding the safety of their children. This was confirmed by Monsignor Lynn's deposition testimony in the numerous civil cases in which he has testified as well as the trial evidence and testimony in Lynn's criminal case. Had [Plaintiff's] parents been informed of the problem regarding clerical sexual abuse of minors prior to allowing Plaintiff to serve as an altar boy, they would not have allowed Plaintiff to do so and he would most likely not have been put in a position to be abused by McCormick.

b. Prior to the abuse of Plaintiff, despite their knowledge of clerical sexual abuse of children as outlined above, the Archdiocese chose not to have any formal, documented policies and procedures in place to protect children from clerical sexual abuse, including, but not limited to, procedures for reporting dealing with priests who were known to pose a safety risk or danger to children. This decision was a result, at least in part, of the culture of secrecy that existed in the Archdiocese. Having formal policies and procedures in place to prevent clerical sexual abuse of children would be an acknowledgment by the Archdiocese that clerical sexual abuse can and does happen within the Archdiocese, an acknowledgment the Archdiocese was not ready to make publicly. Just as the decision not to inform the public about the danger and problem of priests abusing children, the Archdiocese's decision not to have formal procedures and policies in place to protect children from clerical sexual abuse needlessly endangered countless children, including Plaintiff. If formal, documented policies and procedures for the protection of children, like the Standards for Ministerial Behavior that exist today, were in place, implemented and enforced, the abuse of [Plaintiff] may very well have been prevented.

c. Prior to the abuse of Plaintiff and continuing thereafter, the numerous priests within the Archdiocese of Philadelphia were aware of the danger that Fr. McCormick posed to children, including, but not limited to Fr. McCormick's

sexual urges and attraction towards minor boys, including specific “types” of boys, as well as his regular and continuous violation of safety norms and standards for priests for the protection of children, including, but not limited to his secret and excessive viewing of pornography, his continuous practice of spending excessive time with minor boys, including having boys in the rectory “hanging out,” spending time alone with boys in his private living quarters of the rectory, taking boys off of school/church property without their parents knowledge or permission, giving gifts to boys and having personal communication with them without their parents knowledge and taking boys on overnight and overseas trips. Complaints were made concerning McCormick’s conduct with juvenile boys dating back to his time at St. Adalbert’s and continuing through his time at St. John Cantius and St. Bede’s. McCormick himself testified that he was reprimanded by Archdiocesan officials multiple times for having young boys in his private living quarters. Yet every single priest chose to protect McCormick and the Archdiocese at the expense of children he was exposed to and took no action whatsoever to prevent him from being around children or inform parishioners, parents and children of the danger McCormick posed. This decision to protect McCormick, the Archdiocese and the Church was commonplace within the Archdiocese of Philadelphia and unfortunately for Plaintiff, he was one of many children exposed to priests within the Archdiocese who were a known risk to children. Despite all of the information the Archdiocese had concerning the risk that McCormick posed to children, it never initiated any investigation into Fr. McCormick’s behavior prior to 2004. Additionally, there was no oversight and/or supervision whatsoever to ensure Fr. McCormick was not sexually abusing,

inappropriately touching, and/or having inappropriate contact with minor boys. Incredibly, the Archdiocese promoted McCormick to pastor shortly after the 2004 canonical investigation wherein, among other evidence, the Archdiocese learned from both polygraph examinations that McCormick had sexually abused a child and viewed/downloaded child pornography, thereby ratifying and in essence, approving McCormick’s sexual abuse of children.

d. The decision to endanger children in the Archdiocese and ultimately, the abuse that occurred to Plaintiff, was and is a result of clericalism and the culture in the Archdiocese of Philadelphia as described more fully above.

e. The Archdiocese was intentionally inconsistent in its dealings with accused perpetrators of inappropriate sexual contact. It applied dishonest methods in the 2004 canonical investigation of Fr. McCormick.

f. The credibility of any inquiries, investigations or canonical processes conducted

by the Archdiocese of Philadelphia is highly questionable and cannot be relied upon to provide accurate and trustworthy results.

d. The Archdiocese concealed, destroyed and/or failed to preserve evidence that it knew existed relating to Father McCormick and other priests who were known to either have abused or were accused of sexually abusing a child/children.

See Exhibit “P” Doyle Ex. Rep.¹³

Likewise, Plaintiff utilized Dr. Robert Gordon, Ph.D., ABPP who is board certified in Clinical Psychology and in Psychoanalysis Clinical and Forensic Psychology, to determine whether or not McCormick met the provisional diagnosis of Pedophilic Disorder DMS-5 302.2.¹⁴ After reviewing nearly all of the documents/evidence in this case Dr. Gordon opinions are as follows: “To a reasonable degree of professional certainty, Fr. Andrew McCormick meets the provisional diagnosis of Pedophilic Disorder DSM-5 302.2 and exhibited symptoms of his pedophilia before, during and after the alleged abuse to [Plaintiff]. *See* Exhibit “Q” Gordon Ex. Rep.¹⁵

2. The Archdiocese of Philadelphia has failed to produce/concealed evidence, destroyed evidence, purposefully chose not to review the personnel file of Andrew McCormick and/or developed “convenient amnesia” regarding

¹³ Plaintiff respectfully invites this Honorable Court to read in its entirety, Father Tom Doyle’s expert report, which is attached hereto, to gain a full appreciation on how Fr. Doyle reached his opinions and for additional guidance on how the Defendant was on notice and either knew or reasonably should have known McCormick *might* be a danger to children.

¹⁴ Plaintiff requested that Defendant McCormick submit to an independent medical examination with Dr. Gordon. McCormick refused.

¹⁵ Plaintiff respectfully invites this Honorable Court to read in its entirety, Dr. Gordon’s expert report, which is attached hereto, to gain a full appreciation on how Dr. Gordon reached his opinions and for additional guidance on how the Defendant was on notice and either knew or reasonably should have known McCormick *might* be a danger to children.

McCormick’s conduct, as a means to avoid, escape and shamelessly shelter itself from liability in this case.

The Defendant has kept, what it calls “the secret archives” dating back to at least 1900. Inside of the Defendant’s “secret archives” are “File 3” personnel files for priests who have been accused of sexual abuse, inappropriate contact/conduct and boundary issues with minor children as well as the viewing and/or downloading of child pornography.¹⁶ Defendant Lynn testified at length about the secret archives and about a list he created which catalogued priests who were in active ministry that had at least one accusation in the past of sexually abusing a minor child.

Defendant Lynn testified:

Q. Okay. Who directed or put in place the policy to have secret archives?

A. I have no idea. That was long, long history of the church, so...

Q. Do you recall how far back you remember seeing the first File 3 file in terms of the year?

A. It was early 1900s, so...

Q. When you took over for secretary -- or when you became secretary of clergy in 1992, did you review all of or begin to review all of File 3 files?

A. I did.

¹⁶ Defendant has maintained a filing system whereby any given priest could have three separate personnel files. “File 1” designations are regular personnel files. “File 2” designations are for complaints made against priest that are not of a highly sensitive nature. “File 3” designations are priest personnel files that contain allegations of sexual abuse, including the downloading/viewing of child pornography, both founded and unfounded.

Q. When you went through these File 3 files, did you create a list of the priests who were named or who have alleged to have committed sexual abuse upon a minor child?

A. Yes.

Q. What did you do with that list?

A. I sent it to Monsignor Malloy.

Q. Do you remember when the list was complete? I don't mean the day, but are we talking '92, '93?

A. I think it was '94.

Q. Did you maintain the practice of keeping File 3s? And what I mean by that is, if an allegation came to you when you were the secretary of clergy, would you add that priest who was alleged to have committed sexual abuse to the secret archives File 3s?

A. Take their file and add it?

Q. Yes?

A. Yes.

Q. Were there other priests that you found in the secret archives of File 3s that had allegations of sexual abuse that were also in active ministry?

A. I believe so.

Q. Did you make any recommendations to Monsignor Malloy in terms of those priests?

A. Not that I recall.

See Exhibit "R" William Lynn Dep. Tr. pgs. 75, 118, 81-83, 85-97; lines 11-17, 2-5, 14-19, 23-24, 1-8, 23-24, 1-8, 8-24.

There were over 60 depositions in this case. Of those deposed three high ranking members within the Defendant's organization, namely Defendant Monsignor William Lynn,

Bishop Timothy Senior and Monsignor Daniel Sullivan, all had/have access to the secret archives. The Defendant designated Bishop Senior and Monsignor Sullivan as corporate designees in this case. All three men knew they were going to be deposed about, among other things, what the Defendant knew in regard to McCormick and minor children and when they knew it. Including, what was contained in any/all of McCormick's personnel file(s). *See* collectively Exhibit "S" Notice of Depositions for Lynn, Thomas, and Sullivan. All three men indicated they had no idea whether or not McCormick had a secret archive file. All of them had seen the list of those priests accused of sexually abusing children, that Defendant Lynn created. Once more, they all indicated they did not know or could not remember whether McCormick was on that list. The reason they did not know or could not remember is because they did not bother to look at any of McCormick's personnel files. *See* Exhibit "R" at pg. 190; pgs. 272-273 – lines 20-24, 1-6; Exhibit "T" Timothy Senior Dep. Tr. pgs. 117-118, lines 11-24, 1; Exhibit "U" Daniel Sullivan Dep. Tr. pgs. 154-155, 159-160, lines 19-24, 1-10, 5-24, 1-2.

The Defendant wants it both ways. On the one hand the Defendant asserts, Plaintiff cannot establish the church *knew* prior to 1997 that McCormick was a danger to children. And on the other hand, the Defendant obstructs the civil process by refusing to look for and testify to the existence or lack thereof, of a File 3 – secret archive for McCormick. The failure to produce, look for and/or testify as to whether or not McCormick has a secret archive file should be very telling to this Court. The Defendant cannot get the benefit of its own willful ignorance. In fact, what is most shocking is that it is not simply willful ignorance. When Monsignor Sullivan was asked what he did with the Lynn's list of priests accused of sexually abusing boys, Sullivan responded flippantly "**probably shredded it.**" *See* Exhibit "U" pg. 168, line 6. Nothing

prevented these men of God from doing the right thing and simply looking into the secret archives. Instead, all **three** conveniently “can’t remember” whether or not McCormick had a secret archive file and/or was on that list.

The Defendant’s attempt to hide, conceal and/or fail to produce evidence does not stop there. In 2005, the Defendant submitted McCormick to two separate polygraph examinations. Prior to the examination McCormick was interviewed and that interview was video-taped. *See* Exhibit “V” Polygraph 1-11-05 and Exhibit “W” Polygraph 1-14-05.¹⁷ The polygraphs were conducted while Bishop Senior was Vicar for Clergy. The polygraph reports were sent to Bishop Senior. *See* Exhibit “X” Jack Rossiter Ltr. to Senior. When Bishop Senior was asked where these video recordings were, he had no idea. Again, he did not bother to look in any of McCormick’s personnel files. *See* Exhibit “T” pg. 306, lines 10-23. Defendant has failed to produce these videos to Plaintiff.

Moreover, there was a 2004 Canonical investigation into McCormick’s conduct that started when Monsignor Lynn was Vicar for Clergy, whose responsibility it was to sign off on any investigation concerning an allegation of a priest having inappropriate contact or sexually abusing a child. Once more, Monsignor Lynn in his deposition claims that he did not know there was a Canonical investigation that was started under his watch. Moreover, he had no idea why McCormick was being investigated. *See* Exhibit “R” pgs. 239-240, lines 17-24, 1-2. Ultimately that investigation was closed by way of a closing decree. The decree would outline everything in

¹⁷ McCormick failed both of these polygraph examinations concerning whether or not he sexually abused a child and whether he has ever viewed and/or downloaded child pornography. This has been attested to by the actual polygrapher, Patrick Kelly. *See* Exhibit “CC” Affidavit of Patrick Kelly.

terms of why/how the Defendant “concluded” all of the accusations against McCormick were “unfounded”. Plaintiff has still not received a copy of this decree that was issued under Bishop Senior. Once again Bishop Senior does not remember what was contained in the closing decree and did not look in any of McCormick’s personnel files to find out.

Additionally, during the 2004 Canonical investigation into McCormick, the Defendant appointed Father Eduardo Montero to represent him. The only things shared with Fr. Montero were three separate and distinct warnings that were issued to McCormick. Defendant has failed to produce and/or concealed these documents from Plaintiff. Fr. Montero could not recall the specifics of each warning. He did remember that at least one of the written warnings concerned McCormick’s inappropriate behavior with a minor child. He could not elaborate more. Moreover, he was unclear as to the specifics of the second two warnings. *See* Exhibit “Y” Eduardo Montero Dep. Tr. pgs. 34-39. Warnings that were issued by the Defendant to McCormick about inappropriate contact and/or sexual abuse of a minor child are beyond relevant in this case. Defendant has not produced these written warnings and therefore, should not be entitled to the benefit of arguing and/or the presumption that, the Defendant did not know and/or should not have reasonably known McCormick *might* be a danger to children. Further, since we do not know the date of these warnings, Defendant is not entitled to any presumption. Let alone a presumption that the warnings were issued post Plaintiff’s abuse.

A document Defendant actually did produce contained hand written notes by Defendant Lynn. *See* Exhibit “Z” Lynn’s Handwritten Notes. The notes pertain to a phone call Defendant Lynn received from Monsignor Francis Beach. The notes, indicate “Andy McCormick – McCormick took kid from parish to Poland, stopped in New York, 20-year old, sexually abused

in New York – 8th grade Poland.” Defendant Lynn was extensively questioned about this during his deposition. Despite “how serious” Defendant Lynn said he takes allegations of a priest sexually abusing a child he, in this instance, conveniently does not remember a single thing about this allegation concerning McCormick, an 8th grade boy, and sexual abuse in New York. He does not remember whether he called the police. He does not remember if he even investigated it. *See* Exhibit “R” pgs. 166-179. Monsignor Beach was also deposed in this case. Just like Defendant Lynn, Monsignor Beach conveniently cannot remember anything about this allegation of sexual abuse and/or reporting it to Defendant Lynn. *See* Exhibit “AA” Francis Beach Dep. Tr. pgs. 69-76.

In addition to, Defendant Lynn being shown his own handwritten notes, he was also shown typed minutes from a meeting he had with McCormick. Despite this memo being very detailed, Defendant Lynn once again was struck by amnesia and does not remember the meeting even taking place, let alone what was discussed. *See* Exhibit “BB”. Perhaps, Defendant Lynn “cannot” remember the meeting because it referenced “concerns about the appropriateness of some of Father McCormick’s actions.” *Id.*

IV. LEGAL ARGUMENT

A. Summary Judgment Standards

Summary judgment is only appropriate if “there is no genuine issue of any material fact as to a necessary element of the cause of action or defense.” Pa.R.C.P. 1035.2(1). The inquiry is “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.” Anderson v. Liberty

Lobby, Inc., 477 U.S. 242, 251-252 (1986). In this analysis, all facts should be viewed in favor of the non-moving party. Doe v. Liberatore, 478 F. Supp. 2d 742 (M.D. 2007).

B. Defendant is Vicariously Liable for the Childhood Sexual Assault of Plaintiff.

The Archdiocese of Philadelphia is vicariously liable for the sexual assault of John Doe, by its employee, Fr. Andrew McCormick under the theory of *respondeat superior*. Vicarious liability may extend to intentional or criminal acts when the conduct is within the scope of employment; or if the conduct was unauthorized, when the employer ratifies the conduct. (*See generally*, Costa v. Roxborough Memorial Hospital, 708 A.2d 493 (1998) (*citing* Fitzgerald v. McCutcheon, 410 A.2d 1270, 1271 (Pa. Super. 1979); Sullivan, 535 A.2d at 1100).

1. Whether McCormick Acted Within the Scope of His Employment while Sexually abusing the Plaintiff, is a Question of Fact for the Jury to Determine.

“Whether a person acted within the scope of employment is ordinarily a question for the jury.” Spitsin v. WGM Transp., Inc., 97 A.3d 774, (Pa. Super. 2014) (*quoting* Fitzgerald v. Mutcheon, 270 Pa. Super. 102, 410 A.2d 1270, 1271-72 (Pa. Super 1979)). For purposes of determining vicarious liability, the conduct of an agent is considered within the scope of employment if the act: (1) is of a kind and nature the agent is employed to perform; (2) occurs substantially within an authorized time and space; (3) is actuated, at least in part, by a purpose to serve the employer; and (4) uses force against another and the force is not unexpected by the employer. McCutcheon, 270 Pa. Super. at 107 (*citing* Restatement (Second) of Agency § 228). The liability of an employer may extend even when the employee’s actions are intentional or criminal. Fitzgerald v. Mutcheon, 270 Pa. Super. 102 (1979).

Pennsylvania courts have held that sexual abuse does not fall outside an employee's scope of employment. *See Patel v. Himalayan Int'l. Inst. of Yoga Sci. & Philosophy of the United States*, 1999 U.S. Dist. LEXIS 22532, at 22532 (E.D. Pa. 1999) (holding "where tortious conduct [of a sexual nature] arises out of and is reasonably incidental to the employees' legitimate work activities, the 'motivation to serve' test [of vicarious liability] will have been satisfied."). In *Patel*, the employer was held vicariously liable because its employee's sexual abuse of the victim occurred incident to the employee's legitimate work activities. *Id.* at **26-27. Moreover, the Defendant was on notice of Co-Defendant's sexual propensity and prior transgressions. *Id.* at *30. There, the Co-Defendant, "a guru", used his authority in a religious counseling relationship to sexually abuse the victim and the abuse happened within the institution. *Id.* at **10-11. The employer was vicariously liable because the "tortious conduct [of a sexual nature] arose out of and was reasonably incidental to the employees' legitimate work activities." *Id.* at *30. The Court wrote, "[c]ontrary to the Himalayan Institute's argument, however, such evidence would also permit an inference that the Himalayan Institute **condoned sexual relations between Swami Rama and his disciples as part of the services he provided.**" *Id.* (emphasis added). Therefore, the employees' activities satisfied the "motion to serve" prong of vicarious liability because his actions were meant to be performed for his employer. *Id.*

Moreover, Pennsylvania courts have specifically found vicarious liability when clergy members commit an act of sexual abuse. *See Nardella v. Datillo*, 36 Pa. D. & C. 4th 364, 377-78 (Pa. Ct. Comm. Pl. 1997). The Court found vicarious liability for a priest who sexual abused an adult plaintiff because:

“[Defendant priest] extended parochial duties by counseling plaintiff; conduct of this kind and nature may be construed as that type of conduct which [defendant priest] was employed to perform; the acts substantially occurred within authorized time and space limits since the counseling sessions were held on church property; and finally, [defendant priest] acted in part, to serve his employer by facilitating plaintiff's return to the Catholic church”

Datillo, 36 Pa. D. & C. 4th 364 at 377-78.

This case, is factually analogous to both Patel and Nardella. Just like “guru” in Patel and the priest in Nardella, McCormick sexually abused the Plaintiff during legitimate work activities. Specifically, McCormick was in charge of the altar boys at St. John Cantius. His role was to foster a potential vocation to the priesthood by mentoring the altar boys under his care. This is exactly the “kind and nature” of work McCormick was hired to perform by the Defendant. Plaintiff was an altar boy serving the Defendant while under the care of McCormick. The acts of sexual abuse substantially occurred during authorized time and space limits set by the Defendant. Shortly after serving a mass under McCormick, at St. John Cantius, McCormick directed Plaintiff back to the rectory. Thereafter, the sexual abuse occurred on Defendant's property. Finally, the act of having the Plaintiff participate in a Catholic Mass within the Archdiocese of Philadelphia was, at least in part, McCormick serving the Defendant - his employer's, interests. Therefore, McCormick's actions, like the actions of the “guru” in Patel and the priest in Nardella satisfy the “motion to serve” prong of vicarious liability.

Defendant relies most on the court's holding in Doe v. Penn State University, 982 F.Supp. 2d 437, (E.D. Pa. 2013), to support its motion, this reliance is misplaced. The court in Doe v. Penn. State, held that Penn State could not be held vicariously liable for Sandusky's actions because of the outrageous manner in which they occurred and because the actions were not

within the scope of employment. *Id.* at 445. The Doe v. PSU court then cited Patel, discussed *supra*, in acknowledging that a religious counseling relationship can fall within the scope of employment. *Id.* at **443-44. In its analysis, the court distinguishes this case from that of Patel, due to the relationship between the victim and employee and the location of the abuse. *Id.*

Likewise, Defendant's reliance on R.A. v. First Church of Christ is equally misplaced. The facts of R.A. are fundamentally different than the facts of this case. The Superior Court held that "[n]othing about [the employee's] sexual abuse of [the plaintiff] had any connection to the kind and nature of his employment as a minister." R.A. v. First Church of Christ, 748 A.2d at 692 (Pa. Super. 2000). In R.A., the perpetrator was a Christian minister who lived with a family in a private residence who abused a minor he befriended while living in the residence. *Id.* at 695. All of the abuse in that case occurred at a private residence and outside of any work being performed by the minister. *Id.* Additionally, the Court in R.A. did not address whether vicarious liability would apply if the abuse had occurred on church property with a minor volunteer of the Church, while both individuals were performing services for the Church or where the Church had ratified the conduct, as is the case here.

Therefore, viewing all facts in the light most favorable to the non-moving party Defendant's Motion for Summary Judgment to Count I (Vicarious Liability) should be denied as there is a genuine issue of material fact as to a necessary element of this cause of action that requires the case be submitted to a jury.

2. The Defendant's Ratification of McCormick's Conduct/Actions is a Question of Fact for the Jury to Determine, for Purposes of Vicarious Liability.

Vicarious liability may extend to intentional or criminal acts when the conduct is within the scope of employment, **or, if the conduct was unauthorized, the employer ratifies the conduct.** (emphasis added). *See generally*, Costa, 708 A.2d 493 (*citing* Fitzgerald v. McCutcheon, 410 A.2d 1270, 1271 (Pa. Super. 1979)); Sullivan, 535 A.2d at 1100. When an employer or principal ratifies an agent's previous unauthorized act, "a purported master or other principal becomes subject to liability for injuries caused by the tortious act of one acting or purporting to act as his agent as if the act had been authorized...." Restatement (Second) of Agency § 218. Upon ratification, the one ratifying the agent's conduct is subject to liability to the person harmed by the agent. *See Id.* at cmt. *a.*

A principal ratifies the unauthorized acts of its agent when the principal has knowledge of the facts and circumstances surrounding the agent's conduct. C. F. Simonin's Sons, Inc. v. American Credit Indem. Co., 117 A. 807, 808 (Pa. 1935) (holding that it was the defendant-company's practice to require payment of a deposit premium when an application was made, and, in the absence of evidence that it was aware of its agent's departure from this practice and his alleged waiver of the provision regarding losses occurring before such payment, defendant's conduct is not to be deemed a ratification). "Where the relation of a principle and agent exists, before an unauthorized act of the agent can be said to be ratified by the principal, he must have full knowledge of all the material facts and circumstances attending the act." Shields v. Hitchman, 96 A. 1039, 1041 (Pa. 1916).

However, ratification may also be made by a formal action, or by passive acquiescence. Pinebrook Minerals, LLC v. Anadarko E & P Co. LLP, 2011 U.S. Dist. LEXIS 90676, at *26 (M.D. Pa. July 25, 2011) (finding no ratification when defendant-corporation did not submit

evidence that an agent from another corporation received royalties or consideration for a land-use contract that would prove that the other corporation had knowledge of the contract); *see also*, McGuire Performance Solutions, Inc. v. Massengill, 904 A.2d 971, 978 (Pa. Super. 2006) (finding that a subsidiary corporation's board ratified a corporate lawsuit against the third-party debtor-plaintiff by passive acquiescence after its three and one-third year pursuit of the action lacked evidence of the board taking steps to discontinue the suit).

In this case, if the Defendant's actions did not ratify McCormick's conduct, it is difficult to imagine what would.¹⁸ The Defendant knew since the early 1980's that McCormick was having minor boys in his personal living quarters, taking boys off of school property and taking boys on overnight trips with no other adult present. The Defendant knew that McCormick had taken young boys to a cabin in the woods. All of these actions, by McCormick were in violation of the understood safety rules of the Archdiocese of Philadelphia, as testified to by Fr. Joseph Zingaro. After at least one of McCormick's overnight trips to the cabin, Parents submitted written complaints to the Defendant. McCormick constantly had a contingent of boys surrounding him. This behavior spanned all of his pastoral assignments, including at St. Adalbert's, St. John Cantius, and St. Bedes. The Defendant was aware at every stage. It was known among AOP employees that McCormick was sexually attracted to young boys. In fact, it was known by the Defendant the "type" of boy McCormick was attracted to.

Throughout the 1990's McCormick took boys, without their parents being present, on overseas trips to Poland. After, at least one of these trips, an allegation of sexual abuse was

¹⁸ Plaintiff incorporates by reference, all facts and evidence as set forth in subsections (B1 and B2) of his Memorandum of Law, *supra*.

reported to Defendant Lynn. Despite an allegation of sexual abuse, the Defendant did nothing. Additionally, McCormick was reprimanded on multiple occasions for having boys in his personal living quarters – including his personal bedroom. In 2001, McCormick entered therapy for his boundary issues and inappropriate conduct with minor boys at the request of Defendant Lynn. Father Martino was surprised that it took so long for the Defendant to send McCormick to therapy.

In 2004, a Canonical investigation was started, to look into whether McCormick sexually abused a boy(s). During the course of this investigation it was learned that McCormick had viewed and/or downloaded child pornography. The exact websites McCormick was visiting could not be ascertained because the Defendant, through one of its employees, Deacon Joseph Orlando, deleted the website log entries for all of the offenses cited McCormick had accessed and/or was attempting to access. Given all the information that was brought forth, the Defendant had McCormick undergo two polygraph examinations in 2005. Both polygraph examinations addressed whether McCormick had sexually abused a child and whether he viewed and/or downloaded child pornography. McCormick **failed** both of these polygraph examinations. The results which clearly indicated he failed, were sent to the Defendant. Moreover, Fr. Montero, McCormick's Canonical advocate, viewed three additional written warnings that were issued to McCormick by the Defendant. At least one of which dealt with McCormick having inappropriate contact with a minor child. The other two Fr. Montero was unclear of the facts but knew the warnings dealt with McCormick violating AOP Ministerial Guidelines.

Amazingly, despite all of this information and knowledge, the Defendant “cleared” McCormick of any wrongdoing following the 2004 Canonical investigation. The Defendant

indicated that the polygraph examination categorically proved that McCormick did not view and/or download child pornography – despite both polygraph examinations saying the exact opposite. To this day the Defendant cannot produce one piece of evidence that categorically disproves any of the allegations against McCormick. The defendant concluded McCormick was “cleared” of all wrongdoing after the 2004 investigation. In the same breath though, the Defendant sent McCormick to additional therapy/classes for his boundary issues and inappropriate relationships with minors. It defies logic that someone who the Defendant unequivocally and categorically determined had done nothing wrong would then require training/therapy on boundary issues and inappropriate contact with children.

The Defendant then “doubled down” on its ratification of McCormick’s conduct. The Defendant made McCormick a pastor. In other words, he was in charge of his own parish. No one was warned. Defendant gave no notice to any unsuspecting parent about McCormick’s sexual predatory tendencies so that the parents could make their own informed decision about whether their child should be in the company of McCormick. At every stage, going back to the 1980’s, the Defendant systematically and repeatedly ratified McCormick’s conduct.

As such, Defendant’s Motion for Summary Judgment must be denied.

C. Plaintiff has Established Sufficient Notice to Sustain its Negligence and Negligent Hiring, Retention, and Supervision Claims against Defendant.

The Defendant AOP and Defendant William Lynn¹⁹ are liable to Plaintiff for the sexual assault he suffered because they acted negligently in supervising and retaining their employee,

¹⁹ As of the date of Defendant William Lynn filing his Joinder Motion for Summary Judgment with Defendant AOP, he had not contested the averments in Plaintiff’s Complaint. As such the averments are deemed admitted, including that Defendant Lynn was negligent and that Defendant AOP is vicariously liable for his negligence.

McCormick – a sexual predator, who it knew or should have known was a danger to the Plaintiff and other minors. In determining whether the Archdiocese was negligent, the Pennsylvania Courts have adopted the Restatement (Second) of Torts Section 317. *See* Hutchison v. Luddy, 360 Pa. 51 (1997) (*citing* Restatement (Second) of Torts § 317) (*see also* Dempsey v. Walso Bureau, Inc., 431 Pa. 562, 571 (1968); Sabric v. Lockheed Martin, 532 Fed. Appx. 286 (2013); R.A. by & Through N.A. v. First Church of Christ, 2000 Pa. Super. 58, (2000)). Section 317 of the Restatement states that an employer must exercise reasonable care to prevent harm to a third party if they know or have reason to know an employee, who is acting outside the scope of his employment, is causing harms to others. *See* Restatement (Second) of Torts § 317. Further, the Superior Court in Dempsey held an employer can be found to be negligent if they have failed to exercise reasonable care in assessing an employee’s propensity for violence. Dempsey v. Walso Bureau, Inc., 431 Pa. 562, 571 (1968).

An employer fails to act with reasonable care where it knows of an employee’s propensity for pedophilic behavior yet fails to prevent a foreseeable harm of this behavior. Hutchison v. Luddy, 360 Pa. at 64-65. The court in Hutchison found that the employer, a bishop and the diocese, negligently supervised a priest because it failed to prevent a foreseeable harm by allowing the priest to remain in a position in which he had unsupervised interactions with children. Id. at 65. The court found that the employer knew or had reason to know of the foreseeable harm because the supervising priest was informed of a complaint by the victim’s mother and that supervising priest saw the boy in the abuser priest’s rectory bedroom. Id. at 56. In its reasoning, the court considered other factually similar cases from other jurisdictions that involved a mentor/mentee relationship between the abuser and victim and the employer’s

knowledge of the employee's prior violence. *See Coath v. Jones*, 277 Pa. Super 479 (1980) (electric technician gained access to victim's home through his employment after employer failed to warn victim the technician was fired for his propensity for violence); *Golden Spread Council, Inc. v. Akins*, 926 S.W.2d 287 (Tex. 1996) (boy scout mentor molested boy scouts when he was hired and retained by the Boy Scouts of America after they received complaints that mentor was "messing with" the children); *Funkhouser v. Wilson*, 89 Wn. App. 644 (church that knew of bible teacher's conduct could be held liable for bible teacher's sexual abuse of students, regardless of whether the abuse took place on church premises).

As stated and supported repeatedly throughout Plaintiff's Response to and Memorandum of Law in Opposition to, Defendant's Motion for Summary Judgment, the Defendant knew or reasonably should have known McCormick *might* be a danger to children. Defendant failed to prevent a foreseeable harm when it allowed McCormick to remain in active ministry, in charge of altar boys and constantly surrounded by children. The Defendant knew or reasonably should have known McCormick *might* be a danger to children given the numerous warnings, warning signs and complaints that were lodged against McCormick in regard to his interaction with minors.²⁰

The Defendant knew from the time McCormick was assigned to St. Adalbert's that he *might* pose a danger to children. McCormick, repeatedly had boys in his personal living quarters, on Defendant's property. He took boys, alone, on overnight stays to a cabin. Parents complained. What is most telling is that Defendant has failed to and/or refused to provide Plaintiff with those

²⁰ Plaintiff incorporates by reference, all facts and evidence as set forth in subsection (B1) of his Memorandum of Law, *supra*.

complaints. The Defendant knew McCormick was sexually attracted to minor boys. Specifically, Defendant knew the “type” boys McCormick was attracted to. McCormick was reprimanded by the Defendant, numerous times for having boys in his private living quarters. Despite these reprimands McCormick continued to violate understood safety rules, that were in place to protect children. Defendant did nothing. No warnings were sent to parents. No information was provided whatsoever about McCormick’s conduct and predatory tendencies.

The Defendant maintained a “secret archive” which contained the names of priests who had allegations lodged against them for sexually abusing minors. Defendant Lynn created a list, completed in 1994 and maintained through his tenure as Vicar for Clergy, of all priests that were in the secret archives for having allegations of sexual abuse made against them. No one – not even the Defendant’s appointed Corporate Designees, can say whether or not McCormick is in the secret archives or on that list. The reason, they did not bother to look in the archive and Monsignor Sullivan shredded the list. The Defendant should not be given any presumption in its favor, let alone a presumption that McCormick’s name is not on that list. A jury should decide, given the conduct of the Defendant, whether it knew or reasonably should have known McCormick *might* pose a danger to children.

Therefore, this Court should view all facts in favor of Plaintiff, the non-moving party and deny Defendant’s Motion for Summary Judgment.

D. This Case Does Not Implicate the First Amendment.

As a last resort, Defendant attempts to shield itself behind the First amendment. The Supreme Court, however has held that the constitutional considerations applicable to intra-church disputes do not apply to Civil Actions brought by third parties:

There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity *in adjudicating intrachurch disputes*. But this Court never has suggested that those constraints similarly apply outside the context of such intraorganization disputes. Thus, ... the other cases cited by applicant are not in point. Those cases are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged.

General Council on Finance & Administration, United Methodist Church v. California Superior Court, 439 U.S. 1369, 1372-73, 81-82 (1978) (citations omitted) (emphasis added). Further, it is well-established that subjecting religious organizations to neutral laws of general applicability does not run afoul of the First Amendment. Employment Div Smith, v. 494 U.S. 872, (1990) (Free Exercise Clause of First Amendment does not prohibit states from banning sacramental use of peyote through general criminal prohibition laws).

This case is not an intra-church dispute. This is a case about a sexual predator, employed by the Defendant and due to Defendant's actions or lack thereof, was allowed to prey upon children with impunity. Plaintiff is a "third party" who was sexually abused by an employee of the Defendant.

Therefore, Defendant's reliance on the First Amendment is without merit and its Motion for Summary Judgment should be denied.

CONCLUSION

For the foregoing reasons, the Plaintiff respectfully requests that this Court enter an order denying Defendant's Motion for Summary Judgment.

LAFFEY, BUCCI & KENT, LLP

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BY:

BRIAN D. KENT, ESQUIRE
Attorney for Plaintiff

DATED: September 6, 2017

VERIFICATION

The undersigned, having read the attached pleading, verifies that the within pleading is based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. Signer verifies that he has read the within pleading and that it is true and correct to the best of the signer's knowledge, information, and belief. This Verification is made subject to the penalties relating to unsworn falsification to authorities.

LAFFEY, BUCCI & KENT, LLP

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BRIAN D. KENT, ESQUIRE

Date: September 6, 2017

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Plaintiff

v.

Roman Catholic Archdiocese of Philadelphia,

Monsignor William Lynn and

Father Andrew McCormick

Defendants.

: COURT OF COMMON PLEAS

: PHILADELPHIA COUNTY

: CIVIL TRIAL DIVISION

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JULY TERM, 2015

No. 1077

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Brian D. Kent, do hereby certify that service of a true and correct copy of Plaintiff's Response in Opposition to Defendant, The Roman Catholic Archdiocese of Philadelphia's Motion for Summary Judgment was made via the Court's electronic filing system, on September 6, 2017, upon all counsel of record:

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