

**IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA**

**STATE OF WEST VIRGINIA ex rel.  
PATRICK MORRISEY,  
ATTORNEY GENERAL,**

**Plaintiff,**

**v.**

**Civil Action No. 19-C-69  
Judge John D. Beane**

**DIOCESE OF WHEELING-  
CHARLESTON and MICHAEL  
J. BRANSFIELD in his capacity  
as former Bishop of the Diocese of  
Wheeling-Charleston,**

**Defendants.**

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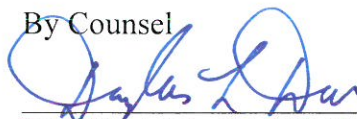
**NOTICE OF HEARING**

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Please take notice that a hearing on the State's **MOTION FOR LEAVE TO AMEND COMPLAINT** in the above-styled case will be held on a date and time to be set at the convenience of the Honorable John D. Beane, at the Wood County Judicial Building, 2 Government Square, Room 421, Parkersburg, West Virginia, at which time you may appear to protect your interests, if you so desire.

STATE OF WEST VIRGINIA, ex rel.  
PATRICK MORRISEY,  
ATTORNEY GENERAL

By Counsel



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**MOTION FOR LEAVE TO AMEND COMPLAINT**

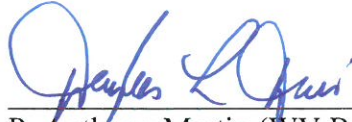
State of West Virginia *ex rel.* Patrick Morrissey, Attorney General, by counsel, moves the Court for leave to amend the Complaint pursuant to W. Va. R. Civ. P. 15. The State of West Virginia requests leave to amend the complaint to allow the State of West Virginia to add a new cause of action, and add allegations in support of its causes of action related to the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 *et seq.* This amendment will not cause any delay in this action and will not prejudice the Defendants. No answer has been filed and no discovery has commenced.

Wherefore, for these reasons and for reasons more specifically set forth in the accompanying Memorandum In Support Of Motion For Leave to Amend Complaint, the State of West Virginia requests that the motion be granted and the State's First Amended Complaint, attached hereto as Exhibit A, be deemed filed.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.  
PATRICK MORRISEY,  
Attorney General, Plaintiff

By Counsel



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**FIRST AMENDED COMPLAINT**

The State of West Virginia, by and through its duly elected Attorney General, Patrick Morrissey (hereinafter “the State”), brings this action pursuant to the provisions of the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101, *et seq.* (the “WVCCPA”), to redress the above-named Defendants’ violations of the WVCCPA.

**PARTIES**

1. The State, by and through the Attorney General, is authorized to bring this action pursuant to the Consumer Credit and Protection Act, W. Va. Code § 46A-1-101, *et seq.*
2. Defendant Diocese of Wheeling-Charleston (hereinafter “Diocese”) is a non-profit organization operating and doing business at 1322 Eoff Street, Wheeling, West Virginia. The

**EXHIBIT  
A**



entire state of West Virginia lies within the Diocese's territory. The Diocese is a subordinate of the Archdiocese of Baltimore, Maryland. It is also part of the Catholic Church, which is headed worldwide by Pope Francis.

3. Defendant Michael J. Bransfield is an individual who was Bishop of the Diocese from early 2005 through September 2018, and is sued in his capacity as Bishop of the Diocese during this time period. Title to diocesan property is held in the name of the Bishop.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 51-2-2, and W. Va. Code § 53-5-3.

5. Venue is proper in this Court pursuant to W. Va. Code § 46A-7-114.

### **FACTS COMMON TO ALL COUNTS**

#### **A. Procedural Facts**

6. A Statewide Grand Jury Report, issued by the Commonwealth of Pennsylvania on August 14, 2018, identified hundreds of Catholic Church priests who had abused one thousand or more children in six dioceses in Pennsylvania. One or more of the identified priests had also been employed in the Diocese.

7. The State commenced an investigation in the fall of 2018 to determine if other Catholic priests who were active or had been employed in West Virginia had been accused of sexually abusing children. The preliminary investigation of the Attorney General disclosed that priests other than the ones identified in the Pennsylvania Grand Jury Report had worked in West Virginia and had been accused of the sexual abuse of children.

8. The Diocese currently operates six high schools and 19 elementary schools (including kindergarten to 8th grade) in West Virginia, but has operated more in the past. Some parishes also operate pre-kindergarten day care facilities.

9. Based upon the foregoing, the Attorney General issued two formal investigative subpoenas (“Subpoenas”) to the Diocese on October 12, 2018, and February 14, 2019, as authorized by the WVCCPA. The Diocese responded to the Subpoenas in part and withheld documents based upon objections.

10. Although the State has not fully completed its investigation, due, in part, to the lack of cooperation from the Diocese, the facts learned and the documents disclosed show the Diocese has engaged and engages in unfair or deceptive acts or practices by failing to disclose to consumers of its educational and recreational services that it employed priests and laity who have sexually abused children—including an admitted abuser who the Diocese nevertheless allowed to work in a Catholic elementary school—and by failing to conduct background checks for priests, employees, and volunteers who worked with or otherwise had access to children at the Diocese’s schools and camps in violation of the WVCCPA.

11. The State recognizes the right of the Diocese to select priests and other employees who advance its religious mission, and the Diocese’s freedom to act pursuant to its doctrinal tenets. Nothing in this action should be construed as an attempt to modify or interfere with doctrinal matters and hiring decisions.

12. Nevertheless, the Diocese is not immune from liability for misleading advertising and other unfair conduct to the detriment of the consumers who pay for the services it provides. The WVCCPA demands that the Diocese—like any institution, religious or secular—provide

adequate information to consumers that will allow them to make informed choices about the safety of the educational and recreational services for minors which the Diocese offers for sale to the public.

**B. Background Facts**

13. The Diocese is comprised of parishes, educational schools, camps and other entities located within the State of West Virginia.

14. The Diocese sells and supplies educational services to parents of children in kindergarten through high school. This includes pre-kindergarten daycare and preschool educational services.

15. Parents purchase educational and recreational services from the Diocese for a wide variety of reasons, but the purchases are primarily for personal, family, or household purposes.

16. One of the reasons parents purchase educational and recreational services from the Diocese is the explicit and implicit representations that their children will be safe.

17. The Diocese's schools and camps compete for children that might otherwise attend other private or public schools and camps.

18. The Diocese advertises for, and accepts students at its schools who are not Catholic and, upon information and belief, accepts students of various Christian denominations, non-Christians and those professing no faith.

19. Upon information and belief, the Diocese has advertised the educational and recreational services it sells to the public since at least 1974, through various media such as print, radio, television, billboards, and the Internet.

20. Upon information and belief, none of the advertising done by the Diocese for its schools and camps disclosed that the Diocese sometimes employed priests and laity that had been convicted of, admitted to, or had been credibly accused of sexually abusing children.

21. The Diocese sometimes provides partial scholarships to pay for tuition costs for educational services provided by its schools.

22. The Diocese sometimes arranges for financing tuition costs through third parties.

23. The Diocese also sometimes finances educational service fees and costs in-house through installment plans.

24. Diocesan schools have sued to enforce the terms of these installment plans.

25. Yearly fees for the Diocese's elementary school education can top \$6,000 per year and more than \$8,000 per year for high school.

26. The Diocese's six high schools and 19 elementary schools in West Virginia serve more than 5,100 children in 12 West Virginia counties. The Diocese claims to be the fifth largest school system in West Virginia by number of schools operated and 16th largest by number of enrolled students.

27. The Diocese, including its school system, is normally overseen by a Bishop who is a member of the United States Conference of Catholic Bishops.

28. The Diocese's most recent Bishop, Michael J. Bransfield, retired in September 2018. The Pope of the Catholic Church accepted the retirement letter and ordered an investigation into allegations that Bransfield had sexually abused adults while he was Bishop.

29. Although the Archdiocese of Baltimore has completed its internal investigation of Bransfield, and a report of its findings has been made, the report has not been released to the public.

30. Upon information and belief, Bransfield, as Bishop of the Diocese, as well as prior Bishops Joseph Hodges and Bernard Schmitt, was ultimately responsible for and controlled all activities of the Diocese including the operation of the Diocese's schools, camps and other recreational facilities.

31. Former Bishops Hodges and Schmitt knew of sexual abuse complaints against priests of the Diocese, but did not disclose the conduct to criminal law authorities or to parents paying for educational or recreational services for their children.

32. Following a conference of Catholic bishops in Dallas, Texas in 2002, the Diocese adopted a "Safe Environment Program" but did not fully implement it until 2005.

33. The Safe Environment Program is meant to protect children and young people from being abused by religious and lay employees of the Diocese, as well as volunteers.

34. The Safe Environment Program is comprised of three components: i) background checks, ii) policy relating to sexual abuse of children and iii) awareness training for adults. All three components are required by the Diocese for adults seeking employment or to volunteer.

35. The Diocese stated on its website, "Providing a safe learning environment is inherent in the mission of our Catholic schools. School employees and volunteers must pass a national background check, be fingerprinted and trained according to the Diocesan Safe Environment Policy (VIRTUS). Each school has an Emergency Response Plan for emergencies that is put into practice on a regular basis. Safety measures are in place at all of our schools."

<http://web.archive.org/web/20181113210711/https://wvcatholicschools.org/why-catholic-schools/>. (Frequently Asked Questions – How Safe Are Catholic Schools?).<sup>1</sup>

36. Safety, however, has not always been inherent in West Virginia’s Catholic schools. On November 29, 2018—after the State issued its first subpoena—the Diocese published a list of 18 of its priests who the Diocese deemed to have been credibly accused of the sexual abuse of children within the Diocese beginning around 1950 to the summer of 2018.

37. Also published was a list of 13 priests who were employed by the Diocese within that timeframe and were credibly accused of sexual abuse in another state, but no complaints of abuse had been reported in West Virginia.

38. A number of the 31 priests listed had been employed in Catholic schools or at camps or retreats owned by the Diocese. See <https://dwc.org/diocese-of-wheeling-charleston-releases-list-of-priests-credibly-accused-of-abuse-against-minors/>.

39. Upon information and belief, it has been the policy of the Diocese and its Bishops to conceal information about incidents of child sexual abuse from parents of children who attend its schools and camps, and from parents considering enrolling their children in Catholic schools and camps.

40. In a February 2003 letter publicly announcing changes to Diocesan policies regarding the sexual abuse of children, Bishop Schmitt stated: “I have promised not to enter into confidentiality agreements in the future so that the truth may be known to all.”

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<sup>1</sup> Sometime after the State filed the initial complaint in this action, the Diocese removed the “Why Catholic Schools?” page from its website which included Frequently Asked Questions. The link provided above contains an archived version of the page as it appeared on November 13, 2018.



41. However, according to notes dated from late 2006 made by Ellen O'Hara, former Chancellor for the Diocese, it was Bishop Bransfield's policy to not disclose the incidents of sexual abuse unless the victim or the victim's family agreed to the disclosure.

42. In early October 2006, the Diocese was made aware that a female teacher at a Catholic school in Kanawha County had sexually abused a student who had been in her class for the previous two academic years.

43. Upon learning of the abuse, Bishop Bransfield appointed O'Hara to investigate the claim on behalf of the Diocese.

44. Over the course of the next few months, upon information and belief, O'Hara interviewed numerous people in connection with her examination and memorialized her conversations in notes and memoranda kept by the Diocese.

45. Upon information and belief, through O'Hara's investigation, the Diocese learned that the teacher "groomed" the teenage student, including providing the student with alcohol and prescription drugs.

46. "Grooming" can involve special attention being given to a target of abuse. The predator may provide the target or his family with gifts of cash or goods, take the target to dinner, movies, sporting events, offer assistance with tasks around the home or at school, and otherwise attempt to appear nice, kind, and trustworthy.

47. Upon information and belief, through O'Hara's investigation, the Diocese learned that, after the teacher "groomed" the teenage student, the teacher engaged in sexual abuse of the student multiple times.

48. Some of these incidents of sexual abuse occurred on school property.

49. The Diocese deemed the allegations credible. The teacher was suspended and the matter was reported to local law enforcement. The teacher resigned a few days later.

50. Upon information and belief, the Safe Environment Coordinator for the Catholic school where the teacher was employed contacted the Diocese in October 2006 after learning of the abuse.

51. Upon further information and belief, during an interview with O'Hara, the Safe Environment Coordinator requested that information about the abuse be made public, in part due to concerns that other students also may have fallen victim to the abusive teacher.

52. Upon information and belief, O'Hara told the Safe Environment Coordinator not to disclose any details about the sexual abuse incidents because disclosure would violate policy. Upon information and belief, it was Bishop Bransfield's policy to conceal all information about incidents of child sexual abuse committed by Diocesan personnel unless the victim, or the victim's family, agreed to its disclosure.

53. Upon information and belief, the Safe Environment Coordinator stopped acting as the Safe Environment Coordinator shortly after the interview with O'Hara.

54. Upon information and belief, despite learning detailed allegations of repeated acts of child sexual abuse, and despite deeming these allegations credible, Bishop Bransfield and the Diocese failed to disclose in any advertising or other communication any information concerning the teacher's abuse of her student to the public or parents of other students who attended the school, and to prospective purchasers of the Diocese's educational services, despite Bishop Schmitt's public promise to let the truth be known.

55. The Diocese has intentionally omitted facts from its advertisements that purchasers of the Diocese's educational and recreational services would find material, including, but not limited to, the fact that the Diocese and its Bishops knowingly employed admitted sexual abusers; the fact that the Diocese knowingly employed priests who had been credibly accused of child sexual abuse; and the fact that priests and lay employees were hired with inadequate background checks, or who had had no background checks at all.

56. The Diocese has represented to the public and advertised to purchasers of its educational and recreational services that it "screened" employees and volunteers to keep children at its camps and schools safe from sexual predators.

57. The Diocese, however, failed to ensure that adequate background checks were always performed, which resulted in at least one instance of actual employment of a convicted child sexual abuser.

58. The Diocese continues to omit material facts in its advertising, including that it has knowingly employed priests at its schools and camps who have been credibly accused, convicted of sexual abuse of children or admitted to sexual abuse of children.

- **Bishops and Diocese Knowingly Employed Admitted Sexual Abusers**

59. The Diocese and its Bishops chose to cover up and conceal arguably criminal behavior of admitted child sex abusers.

60. Father Patrick Condrón was employed by the Diocese at St. Joseph Preparatory Seminary high school in Vienna, West Virginia, from 1980-1987.

61. While working at St. Joseph, Condrón became close to one student in particular and "groomed" him for a number of years. According to allegations made by the student years later,

in 1995, Condrón groomed him “beginning with long embraces, passing through kissing and culminating in an attempt at genital sexual intercourse.”

62. Condrón admitted the allegations when confronted by Diocese leadership. Condrón was placed on administrative leave by Bishop Bernard Schmitt, the Bishop of the Diocese at the time.

63. Condrón was sent for evaluation and treatment at two different facilities, one in Jemez Springs, New Mexico, and the other, St. Michael’s Community in St. Louis, Missouri, for substance abuse and psychotherapy.

64. After several years, Bishop Schmitt returned Condrón to active ministry, first at a parish in Wheeling, and later at Wheeling Catholic Elementary School, from 1998-2001.

65. Upon information and belief, the Diocese did not advise parents of children at Wheeling Catholic Elementary School that it was employing a pedophile during the time that Condrón was employed there, or for many years thereafter.

- **Diocese Hired Priests Without Adequate Background Checks**

66. The Diocese staffs its parishes, schools, and camps with priests of the Diocese, priests of other dioceses, and priests of other religious orders, such as the Jesuits.

67. Bishop Schmitt hired a priest who was part of a religious order, but had been working in another diocese. This priest had worked in the Diocese in the past, as well as in Maryland and Virginia.

68. Upon information and belief, before hiring the priest, the Diocese failed to conduct an adequate background check.

69. The priest admitted on his 2002 application for employment in the Diocese that he had been accused of sexual abuse of a child in 1979.

70. The Diocese had the opportunity to thoroughly vet this priest after being put on notice to do so, yet, it failed to adequately investigate this priest's background before hiring him.

71. Upon information and belief, the Diocese only checked on this priest's background by calling the Archdiocese of Baltimore to see if it had any complaints against the priest.

72. The Diocese had concerns about employing this priest as memorialized in a note from the Episcopal Vicar for the Diocese, that stated "Trial 1 Year," yet, it failed to conduct a thorough background check.

73. Nevertheless, under Bishop Schmitt's leadership, and then Bransfield's, the priest was employed by the Diocese for about four years at a parish that operates an elementary school.

74. The priest agreed to leave the assignment after discussing "the situation" with his Provincial Superior and agreeing to terminate his employment in West Virginia in early 2007.

- **The Diocese Hired Priests Credibly Accused of Sexual Abuse of Children**

75. Victor Frobias, a priest ordained by the Diocese, was employed by the Diocese from 1965 through 1983.

76. Upon information and belief, when employed by the Diocese, Frobias had been credibly accused of sexually abusing a child in 1962, before he came to the Diocese. According to the Diocese, the complaint was made to the Archdiocese of Philadelphia in 1964.

77. Upon information and belief, the Diocese knew of Frobias's background, and the credible allegation, and allowed him to come to West Virginia. In fact, Frobias had been asked to

leave the Philadelphia seminary system because of the complaint. The Bishop of the Diocese at that time, Joseph Hodges, chose to give Frobias a second chance in the Diocese.

78. Upon information and belief, Frobias was moved from one Diocese job to the next. Upon further information and belief, Frobias was moved frequently due to suspicions of and sometimes allegations of sexual abuse of children.

79. Frobias became the chaplain of the Catholic Committee on Scouting in 1969, and later became the Diocesan Director of Scouting in 1971.

80. Frobias became the Director of Camp Tygart in 1972 and remained there through January 1976.

81. Camp Tygart is a summer youth camp owned by the Diocese, and it is now known as Camp Bosco.

82. Upon information and belief, Frobias had been accused of sexually abusing children while director of Camp Tygart.

83. After Frobias was removed as director of Camp Tygart, he took a leave of absence. He spent the next several months at House of Affirmation, Inc., in Whitinsville, Massachusetts.

84. Upon information and belief, the House of Affirmation was known for treating priests engaged in pedophilia and other psychological disorders.

85. After Frobias's treatment at House of Affirmation, Bishop Hodges returned Frobias to work as a chaplain in Wheeling in 1976 and then as the chaplain at Wheeling Central Catholic High School in 1977.

86. Upon information and belief, the Diocese allowed Frobias to take another leave of absence following allegations of abuse in 1978.



87. Upon further information and belief, Frobias returned from his leave of absence in 1980 and was assigned at St. Paul's Roman Catholic Church in Weirton, WV, from 1980 to 1982.

88. St. Paul's also operates a Catholic elementary school.

89. Upon further information and belief, Frobias was also placed in charge of St. Paul's Boy Scout troop.

90. Upon information and belief, Frobias sexually abused children who attended St. Paul's Catholic grade school while he was assigned at St. Paul's Catholic Church.

91. Upon information and belief, Frobias "groomed" children at St. Paul's school by taking them out of their classes to play video games in the rectory, which was housed within the school.

92. Upon information and belief, once Frobias had established the trust of the children through this grooming process, he took them out of their classes to sexually abuse them in the rectory.

93. Upon information and belief, Frobias remained at St. Paul's until July 1982 when he was moved to other assignments.

94. In 1983 Frobias took yet another leave of absence. During part of his leave of absence, Frobias spent time at Foundation House, a psychotherapy and counseling facility for Catholic priests, in Jemez Springs, New Mexico.

95. Frobias did not return to work in the Diocese after 1983, and the Diocese finally suspended Frobias in 1987.

96. While Frobias was on leave after 1983, he found work in St. Louis with a Catholic Franciscan community.

97. However, Frobias again engaged in sexual abuse of children. In 1987, Frobias was indicted in St. Louis for inappropriate contact with two minors. He pled guilty and agreed to a five year prison term, of which he served about two years.

98. Frobias died in 1993.

99. Upon information and belief, during Frobias's assignments in West Virginia, the Diocese, through its advertising and other communications, did not disclose to parents that Frobias had been accused of sexual abuse of children stemming from his time in Philadelphia and continuing through his work at Camp Tygart, Wheeling Central Catholic High School, and St. Paul's Church and school.

100. The Diocese only brought Frobias's wrongdoing to light many years later and after the State issued the first subpoena, on November 29, 2018, when the Diocese publicized its list of credibly accused priests.

101. Upon information and belief, Bishop Hodges extended his benevolence to another priest who had been credibly accused of sexually abusing children.

102. The credibly accused priest had been ordained in the Diocese of Rockville Centre, New York, but after a few years, the Rockville Centre Diocese suspended his priestly faculties due to credible allegations of sexual abuse of children.

103. Upon information and belief, the Rockville Centre Diocese refused to allow this priest to resume his duties, but gave him the opportunity to find a benevolent bishop that would accept him into a different diocese.

104. Upon information and belief, Bishop Hodges accepted this priest into the Diocese in 1962.

105. This priest served at many parishes until his religious faculties were suspended by the Diocese in 1986.

106. This priest's first assignment in the Diocese was at a parish with an affiliated school.

107. The Diocese has deemed several of the sexual abuse claims against this priest in West Virginia as credible.

108. Upon information and belief, during his assignments in West Virginia, the Diocese through its advertising and other communications did not disclose to parents or the public that it employed this priest who had been credibly accused of sexual abuse of children stemming from his time in New York.

- **The Diocese Hired Lay Employees Without Adequate Background Checks**

109. The Diocese has represented to consumers for decades that it has employed a rigorous screening process for personnel and volunteers in its camps and schools, which includes criminal background checks. However, upon information and belief, the Diocese failed to ensure that all background checks were performed before personnel and volunteers were allowed access to children at the Diocese's schools and camps.

110. Upon information and belief, the Diocese delegated the responsibility to perform background checks of personnel and volunteers to the parish, camp, or school where the personnel were employed instead of performing the background checks at the chancery.

111. Upon further information and belief, the Diocese relied on the representations of local leadership that screening processes had been completed, even after its adoption of its Safe Environment Program in 2002.

112. Upon information and belief, local leadership did not always perform background checks before personnel and volunteers began interacting with children at the Diocese's schools and camps.

113. Upon information and belief, as of May 2008, background checks had not been performed on as many as 22 employees and volunteers working at a single Catholic school in Kanawha County dating back to August 2007.

114. Upon further information and belief, Bishop Bransfield was made personally aware that the background checks had not been completed.

115. Upon information and belief, an individual who never received a criminal background check and never completed VIRTUS training was permitted to hold various positions at Catholic schools in Cabell county from 2004 to 2016, including serving as a volunteer, a chaperone on overnight trips, and as a guest teacher.

116. Upon information and belief, the Diocese employed a convicted sex offender in one of its schools because the Diocese failed to adequately investigate the individual's background before he was hired.

117. This individual, Ronald Cooper, was hired by the Diocese in April 2011 to work at Madonna High School in Weirton. Diocesan documents produced pursuant to the State's investigative Subpoena disclosed that Cooper was hired by the Diocese under a "teacher contract."

However, upon information and belief, Cooper's position at Madonna High School was that of a custodian.

118. Cooper failed to disclose on his 2011 employment application that he had been convicted of third-degree Statutory Rape in the state of Washington in 1985, and also that he had pled guilty to first-degree Robbery.

119. Cooper did, nevertheless, provide a signed release that specifically authorized the Diocese to investigate his criminal record.

120. Upon information and belief, the Diocese failed to conduct a criminal background investigation before hiring Cooper. Cooper's criminal conduct was not discovered by the Diocese until December 2013, after Cooper had been working at Madonna High School for more than two years.

121. The Diocese terminated Cooper in January 2014 after it conducted a background check that disclosed the criminal conduct.

122. Upon information and belief, the Diocese, through its advertising and other communications, did not disclose to the public or parents of children attending or considering attending Madonna High School that it had employed a person convicted of sexual abuse of a child.

123. Years earlier, the Diocese hired a male to be the principal at a Catholic high school in West Virginia. Many years later, this individual became an ordained priest in the Diocese.

124. Upon information and belief, the Diocese conducted an inadequate background check on this individual before hiring him as the principal.

125. Upon information and belief, this priest “groomed” a teenager while he was the principal at this Catholic high school, even before he was employed as a priest by the Diocese.

126. In addition to the grooming, the victim claims he was sexually abused by this principal when he was a teenager at this Catholic high school.

127. Upon information and belief, the Diocese has deemed this complaint to be credible.

128. Upon information and belief, the Diocese was made aware of other inappropriate behavior of this priest during the 2004-2005 time period involving middle school and high school boys.

129. In 2005, the Diocese sent this priest to St. Luke Institute for psychiatric evaluation, but he left the program after less than two months.

130. The Diocese suspended this priest from ministry in August 2005.

131. Upon information and belief, other priests and staff who were credibly accused of sexual abuse have been employed in Catholic schools or camps in West Virginia.

132. Upon information and belief, one such employee was hired by the Diocese to work as a music teacher at a Catholic high school in the northern part of the state in 2012.

133. The music teacher also was hired as music minister for a local Catholic parish in 2012.

134. Upon information and belief, an inadequate background check was performed prior to hiring this music teacher for the high school or the parish, and no criminal background check was performed.

135. Upon information and belief, the music teacher sexually abused a student at the high school.



136. The music teacher was not offered a contract for the next school year and he resigned from a position as music director of the local parish.

137. Upon information and belief, the incident was reported to local law enforcement.

138. Upon information and belief, the Diocese, through its advertising or otherwise, has yet to adequately warn potential purchasers of its educational and recreational services that it has knowingly employed pedophiles in the past, and has failed to adequately investigate the background of employees that it has hired for its schools and camps.

**FIRST CAUSE OF ACTION**  
**(Advertised Services Not Delivered, W.Va. Code § 46A-6-104)**

139. The State restates and realleges the allegations contained in paragraphs 1 through 138 as if each were set forth herein in its entirety.

140. Under the leadership of Bishop Bransfield and his predecessors, the Diocese advertised on its Internet website that “Providing a safe learning environment is inherent in the mission of our Catholic schools.”

141. The Diocese, however, has a long history of not always providing a safe learning environment for students in its schools and children attending its recreational camps.

142. The Diocese, under direction of Bishop Bransfield and other bishops, failed to adequately investigate the backgrounds of priests and lay employees and failed to conduct criminal background checks for all employees even after the Safe Environment Program was adopted by the Diocese in 2002.

143. Under the direction and leadership of Bishop Bransfield and his predecessors, when the Diocese learned of priests or lay employees sexually abusing children at schools and camps,

the Diocese did not disclose the misconduct to parents of children attending the schools or camps, or in advertising to prospective purchasers of its educational or recreational services.

144. The Diocese advertises its educational and recreational services in various media omitting material facts about the services it sells to the public.

145. The Diocese intends for the public to rely on its advertisements that omit material facts when making decisions on whether to purchase the Diocese's educational and recreational services.

146. The Diocese's policy, at least under Bishop Bransfield's direction, was to conceal incidents of sexual abuse of children from parents of other children potentially affected by the conduct, and conceal the abuse from the public unless the victim and victim's family consented.

147. The Bishops and the Diocese failed, and continues to fail, to clearly and conspicuously disclose that the learning environment it provides for children at its schools and camps is not as safe as advertised in violation of W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(L) and (M).

148. The Bishops and the Diocese fail to safely deliver the educational and recreational services provided as advertised, in violation of W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(I) and (L).

**SECOND CAUSE OF ACTION**  
**(Failure to Warn of Dangerous Services, W.Va. Code § 46A-6-104)**

149. The State restates and realleges the allegations contained in paragraphs 1 through 148 as if each were set forth herein in its entirety.

150. The Diocese advertised, and continues to advertise, its educational and recreational services to the public on a daily basis on the Internet and in other media including but not limited to print and radio.

151. The Diocese advertised, and continues to advertise, its educational and recreational services in various media omitting material facts about the educational and recreational services it sells to the public.

152. The Diocese intends for the public to rely on its advertisements that omit material facts in making decisions on whether to purchase the Diocese's educational and recreational services.

153. The Diocese's policy, at least under Bishop Bransfield's direction, was to conceal incidents of sexual abuse of children from parents of other children potentially affected by the conduct, and conceal the abuse from the public unless the victim and victim's family consented.

154. The Bishops and the Diocese knew the Diocese employed priests who had been credibly accused of sexually abusing children in schools and camps and intentionally concealed these facts from the purchasers of educational and recreational services—parents—of the danger of sending their children to those schools and camps.

155. The Diocese intentionally published or caused to be published, and continues to publish or cause to publish, numerous advertisements about its schools and camps that omit material facts about the educational and recreational services being sold to the public.

156. The Diocese intends that the purchasers of its educational and recreational services would rely on the Diocese's omissions and failures to warn of its employment of priests and laity who had been credibly accused of sexually abusing children.

157. The Bishops' and the Diocese's intentional concealment and omissions of these material facts in its advertising and other communications caused some purchasers of their educational and recreational services to buy inherently dangerous services for their children for many decades in violation of W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(L) and (M).

**THIRD CAUSE OF ACTION**  
**(Unfair Methods of Competition, W.Va. Code § 46A-6-104)**

158. The State restates and realleges the allegations contained in paragraphs 1 through 157 as if each were set forth herein in its entirety.

159. The Diocese advertised, and continues to advertise, to the general public for prospective students to attend its schools and camps.

159. Advertisements used by the Diocese to induce consumers to purchase educational and recreational services from the Diocese omit facts material to prospective purchasers – parents. The Diocese intends for the purchasers to rely on the advertisements that omit material facts – that the Diocese has knowingly employed priests who had been credibly accused of sexually abusing children or admitted they had sexually abused children, and that the Diocese failed to conduct background checks on all employees and volunteers.

160. By omitting or concealing material facts from prospective purchasers about its recreational and educational services, the Diocese gained, and continues to gain, an unfair advantage in trade or commerce over competing private and public schools and camps.

161. Parents may have sent their children to schools and camps competing with Diocesan schools and camps if they had been made aware of material facts that were omitted from the Diocese's advertising.

162. The Bishops' and the Diocese's concealment and omissions of material facts about the educational and recreational services advertised and sold to the public allowed, and continue to allow, it to unfairly compete against private and public schools and camps in West Virginia in violation of W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(L) and (M).

### **PRAYER FOR RELIEF**

WHEREFORE, The State of West Virginia requests that this Court—while not modifying or interfering with doctrinal decisions, other internal church matters, or the Diocese's hiring and firing decisions:

1. Enter an Order PERMANENTLY ENJOINING and RESTRAINING the Diocese from violating W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(I), (L) and (M); and
2. Enter an Order imposing all equitable relief available to the Court including, but not limited to injunctive relief, restitution and disgorgement; and
3. Enter judgment against former Bishop Bransfield and the Diocese and Order each of them to pay civil penalties for each and every willful and repeated violation of chapter 46A of the West Virginia Code that it committed, as provided in W. Va. Code § 46A-7-111(2); and
4. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.  
PATRICK MORRISEY  
ATTORNEY GENERAL

By Counsel



P. Anthony Martin (WV Bar No. 12201)

*Chief Deputy Attorney General*

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**IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA**

**STATE OF WEST VIRGINIA ex rel.  
PATRICK MORRISEY,  
ATTORNEY GENERAL,**

**Plaintiff,**

**v.**

**Civil Action No. 19-C-69  
Judge John D. Beane**

**DIOCESE OF WHEELING-  
CHARLESTON and MICHAEL  
J. BRANSFIELD in his capacity  
as former Bishop of the Diocese of  
Wheeling-Charleston,**

**Defendants.**

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**MEMORANDUM IN SUPPORT OF MOTION  
FOR LEAVE TO AMEND COMPLAINT**

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Plaintiff, State of West Virginia, ex rel. Patrick Morrissey, Attorney General for the State of West Virginia ("State"), requests leave from the Court to amend the Complaint against the Defendants, the Diocese of Wheeling-Charleston and Michael J. Bransfield. (collectively referred to as "Diocese"). The State of West Virginia submits that leave should be freely granted pursuant to W. Va. R. of Civ. P. 15, and for reasons more fully explained as follows.

## **BACKGROUND**

As set forth in the First Amended Complaint, attached to the Motion For Leave To Amend Complaint as Exhibit A and incorporated herein by reference, the State has alleged a number of violations of the Consumer Credit and Protection Act, W. Va. Code 46A-1-101 *et seq.*, by the Diocese, including various unfair methods of competition, and unfair or deceptive acts or practices in the advertisement and promotion of its fee-based schools and camps.

The Diocese, a subordinate of the Archdiocese of Baltimore, Maryland, and part of the Catholic Church, operates 25 private schools in West Virginia comprised of six high schools and 19 elementary schools. The Bishop of the Diocese is the head of Catholic schools in West Virginia. The Diocese charges fees for students to attend its schools and camps. Tuition and fees at high schools can exceed \$8,000.00 per academic year, and more than \$6,000 per year for elementary schools. Parents purchasing educational services from the Diocese can pay by cash, or the Diocese may extend credit to the parents or help in finding third-party financing.

The Diocese advertises its educational and recreational services broadly in various media including print, radio, and the Internet. In some of its advertising, the Diocese claims “Providing a safe learning environment is inherent in the mission of our Catholic schools.” <http://web.archive.org/web/20181113210711/https://wvcatholicschools.org/why-catholic-schools/>. (Frequently Asked Questions – How Safe Are Catholic Schools?).<sup>1</sup> The State believes the Diocese has failed to deliver on this promise when it has knowingly employed priests that have been credibly accused, convicted of or have admitted to sexually abusing children. The Diocese also presents a dangerous environment when it fails to conduct adequate background checks in a timely manner. The First Amended Complaint identifies new allegations of

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<sup>1</sup> Sometime after the State filed the initial complaint in this action, the Diocese removed the frequently asked questions page from its website. The link provided above contains an archived version of the page as it appeared on November 13, 2018.

misconduct by a lay employee at one of its elementary schools in Charleston, West Virginia. An advertising brochure for this school states "Since 1924, St. Agnes has been providing an exceptional education and safe, nurturing environment to children." At this school, however, children were exposed to the sexual predations of one of the teachers in 2005-2006. Yet the Diocese did not publicly disclose this to, at a minimum, other parents of children at the school. By May 2008, the Diocese had more than 20 background checks to do for current employees and volunteers that had not been done at this school dating back to August 2007.

Furthermore, if the Diocese had conducted a criminal background check before hiring one lay employee at a high school in the Northern Panhandle in April 2011, it would have seen the man's child sexual abuse conviction from more than 20 years prior to his hiring. After employing the man for 2 years, the Diocese ran a background check and discovered the conviction and promptly fired him in January 2014.

The State's First Amended Complaint adds additional allegations, and one additional cause of action. The additional allegations should clarify and better identify the facts that make up the State's three causes of action. The additional facts should make it easier for the Court to rule on the Diocese's Motion to Dismiss.

Since this case was just filed at the end of March, and no discovery has commenced, the Diocese will not be prejudiced by the filing of the First Amended Complaint. It will have ample opportunity to respond to the new allegations.

### **DISCUSSION**

This Court should grant leave to the State of West Virginia to amend its Complaint against the Diocese since "leave shall be freely given when justice so requires." W. Va. R. Civ. P. 15(a).

'[Motions to amend should always be granted under Rule 15 when: (1) the amendment permits the presentation of the merits of the action; (2) the adverse party is not prejudiced by the sudden assertion of the subject of the amendment; and (3) the adverse party can be given ample opportunity to meet the issue.'

*Interstate Drilling, Inc. v. Parcoil Gathering Systems*, 199 W. Va. 359, 484 S.E.2d 475, Syl. Pt. 3 (1997), *quoting in part*, *Rosier v. Garron, Inc.*, 156 W. Va. 861, 199 S.E.2d 50, Syl. Pt. 3 (1973) *overruled on other grounds by* *Bradshaw v. Soulsby*, 210 W.Va. 682, 558 S.E.2d 681 (2001); *Calif.St.Teachers' Retirement Sys. v. Blanknship*, 814 S.E.2 549, Syl. Pt. 5 (W.Va. 2018); *Bowden v. Monroe Cty. Comm'n*, 750 S.E.2d 263, Syl. Pt. 7 (W.Va. 2013).

Under this standard, the Court should permit the amendment of the State's Complaint to permit the State to add allegations that will further describe the unlawful conduct alleged and clarify the causes of action asserted under West Virginia's Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 *et seq.*

The Diocese will not be prejudiced by the clarification and addition of factual allegations. Instead, it should assist the Diocese in understanding the causes of action being brought and allow the Diocese to accurately answer or otherwise respond to the First Amended Complaint.

Finally, the Diocese has ample opportunity to address the First Amended Complaint since discovery has not commenced in this matter. In fact, the Diocese has not answered the Complaint, but has moved to dismiss it. The First Amended Complaint should assist the Diocese and the Court in determining whether the State has set forth claims upon which relief can be granted.

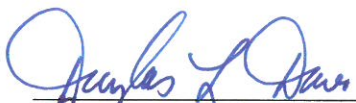
West Virginia courts have permitted parties to freely amend their pleadings under the Rules of Civil Procedure. This Court should allow the State to do the same.

WHEREFORE, the State of West Virginia respectfully requests the Court to grant it leave to amend its Complaint and deem the First Amended Complaint filed.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.  
PATRICK MORRISEY,  
Attorney General, Plaintiff

By Counsel



---

P. Anthony Martin (WV Bar No. 12201)  
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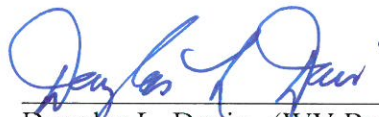
Defendants.

CERTIFICATE OF SERVICE

I, DOUGLAS L. DAVIS, counsel for Plaintiff, do hereby certify that a true and accurate copy of the foregoing **MOTION FOR LEAVE TO AMEND COMPLAINT, MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPLAINT, and NOTICE OF HEARING** was served via U.S. First Class Mail this 21<sup>st</sup> day of May, 2019 as follows:

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