SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHENECTADY

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, Plaintiff, v. ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK, BISHOP EDWARD SCHARFENBERGER, BISHOP EMERITUS HOWARD HUBBARD, VERY REVEREND DAVID LEFORT, JOSEPH POFIT, AND THE ST. CLARE'S CORPORATION, Defendants.	**JURY TRIAL REQUESTED** **VERIFIED COMPLAINT** Index No. Hon.

The People of the State of New York, by their attorney, Letitia James, Attorney General of the State of New York, respectfully allege as follows:

PRELIMINARY STATEMENT

1. This is an action to hold the Roman Catholic Diocese of Albany, New York, bishops Edward Scharfenberger and Howard Hubbard of the Roman Catholic Diocese of Albany, the Very Reverend David LeFort, of the Albany Diocese, and Joseph Pofit (collectively the "Defendants"), as charitable fiduciaries of the St. Clare's Corporation, accountable for violating their fiduciary duties to the St. Clare's Corporation, and to hold St. Clare's Corporation accountable for failing to secure the proper administration of its charitable assets held by it for the benefit of the former employees of St. Clare's Hospital. St. Clare's Corporation was responsible for managing the St. Clare's Retirement Income Plan (the "Pension Plan"), and its intentional decision, made at the direction of the Diocese of Albany and Bishop Howard Hubbard, to remove the Plan from the protections available under federal law, pursuant to the Employment Retirement Income Security Act of 1974, 29 USC § 1001 et seq. ("ERISA"),

coupled with their subsequent failures to adequately fund or insure the Pension Plan, were violations of their fiduciary and legal obligations under New York state law that have stripped approximately 1100 pensioners of their hard-earned and vested pension benefits.

2. The Roman Catholic Diocese of Albany (the "Diocese") cofounded St. Clare's Corporation (the "Corporation" or "St. Clare's Corporation") (formerly known as St. Clare's Hospital of Schenectady, N.Y.), to operate a hospital (the "Hospital") in the City of Schenectady in 1948. The Diocese dominated and controlled the Corporation at all relevant times through its Bishops, who were required by the Diocese to serve as Honorary Chairman and members of the Corporation's board of directors (the "Board") pursuant to the Corporation's Bylaws. As Board members serving at the behest and direction of the Diocese, the defendant Bishops, as well as Rev. LeFort, who acted as and voted on behalf of Bishop Scharfenberger on the Board, and Joseph Pofit, the president of the Board and a *de facto* employee of the Diocese (collectively, the "Individual Defendants"), each owed to the Corporation duties of care, loyalty and obedience. The Diocese and the Individual Defendants breached their fiduciary duties to the Corporation by failing to preserve and protect the Corporation's assets and ensure that it fulfill its legal obligations to pay vested benefits to former employees of St. Clare's Hospital, and otherwise comply with applicable law, including New York wage and insurance laws.

3. The Corporation, which had a legal obligation to administer the assets of the Pension Plan properly, so as to ensure that it was sufficiently funded to pay the benefits due and owing to the vested employees of the Corporation (the "Pensioners"), failed to fulfill its duties as well by not adequately funding, insuring or prudently managing the Pension Plan.

4. In 2018, the Board terminated the Pension Plan, effective February 1, 2019. As a result of the termination of the Pension Plan, over 1100 former employees of the Hospital lost

their retirement benefits. Over 650 former employees, vested in the plan, lost all pension rights; about 450 received a single payment equal to 70% of the value of their vested pension. These former employees served the St. Clare's Hospital as nurses, lab technicians, social workers, EMTs, orderlies, housekeepers, and other essential workers for between 10 and 50 years each, and trusted the Corporation and the Diocese, which controlled the Corporation, to provide their vested and promised retirement benefits.

Factual Background

5. In 1959, the Corporation established the Pension Plan to provide a pension benefit to retired hospital employees and their beneficiaries.

6. In 2008, the Hospital closed. The Corporation, however, continued to exist primarily to manage the Pension Plan. In connection with the Hospital closing, the Corporation's Pension Plan received $28.5 million in Medicaid funds from the State of New York, which the Corporation's officers and directors represented to the State was sufficient to fully fund its employee and retiree pensions.

7. In 2018, when the directors of the Corporation learned that their current Directors' and Officers' Liability Insurance coverage would not be extended, to avoid exposing themselves to the risk of personal liability, they unanimously voted to terminate the Pension Plan and dissolve the Corporation.

8. The directors of the Corporation filed a petition pursuant to New York Not for Profit Corporation Law ("N-PCL") § 1102 to dissolve the Corporation in 2019. In the petition, the directors admitted that the Corporation owed over $50,000,000 to the Pension Plan and Pensioners, and had no assets or intention to make the plan whole. The Attorney General opposed this petition for dissolution until she could fully investigate the cause of the harm to the

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