COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

SUPERIOR COURT

JOHN DOE,

PLAINTIFF

٧.

ROMAN CATHOLIC BISHOP OF SPRINGFIELD, A CORPORATION SOLE;
ARCHBISHOP MITCHELL T. ROZANSKI;
PATRICIA MCMANAMY;
MONSIGNOR CHRISTOPHER CONNELLY;
JEFFREY TRANT; KEVIN MURPHY;
MARK DUPONT; JOHN J. EGAN;
AND JOHN HALE,

DEFENDANTS

CIVIL ACTION No. 2179 AND DEN COUNTY SUPERIOR COURT FILED

APR 1 5 2021

CLERK OF COURTS

DEFENDANTS' JOINT MOTION TO DISMISS THE PLAINTIFF'S COMPLAINT PURSUANT TO MASS. R. CIV. P. 12(B)(6) AND 12(B)(1)

Now come the Defendants, Roman Catholic Bishop of Springfield, a Corporation Sole ("RCBS"); Archbishop Mitchell T. Rozanski; Patricia McManamy; Monsignor Christopher Connelly; Jeffrey Trant; Kevin Murphy; Mark Dupont; John J. Egan; and John Hale (hereinafter "RCBS"), and move to dismiss Counts I through VII of the Complaint pursuant to Mass. R. Civ. P. 12(b)(6) on the grounds that each of those Counts fails to state a claim upon which relief can be granted. RCBS also moves to dismiss Counts VIII through XIV of the Complaint pursuant to Mass. R. Civ. P. 12(b)(1) on the grounds that the Court lacks subject matter jurisdiction of each of those Counts because the religious freedom provisions of the First Amendment to the United States Constitution preclude courts from exercising jurisdiction over disputes touching on matters of doctrine, canon law, polity, discipline, and ministerial relationships.

Denied. Moodwin J 6.17.2150 vuri-21

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN COUNTY FILED

SUPERIOR COURT DOCKET NO. 2179CV00049

JUN 17 2021

JOHN DOE

 \underline{vs} .

ROMAN CATHOLIC BISHOP OF SPRINGFIELD, A CORPORATION SOLE, & others¹

MEMORANDUM OF DECISION AND ORDER ON THE DEFENDANTS' MOTION TO DISMISS

I. Introduction

This lawsuit arises out of allegations by the plaintiff, John Doe, that he was sexually abused by Bishop Christopher Weldon and parish priests while serving as an altar boy in his Roman Catholic parish in the 1960s. Doe further alleges persons within and affiliated with the Roman Catholic Diocese of Springfield (the diocese) concealed and distorted his allegations when he reported that abuse decades later.

Doe has sued the Roman Catholic Bishop of Springfield, a corporation sole (RCBS); former Archbishop Mitchell T. Rozanski; Patricia McManamy, the diocese's former Director of Counseling, Prevention, and Victim Services; Monsignor Christopher Connelly, the Vicar General of the RCBS; Jeffrey Trant, the Director of the Office of Safe Environment and Victim Assistance of the RCBS; Kevin Murphy, an investigator for the RCBS; Mark Dupont, the communications director for the RCBS; John Egan, legal counsel for the RCBS; and John Hale, the chairperson of the Review Board. Counts 1 through 7 of the complaint are claims for harm Doe suffered when he was sexually assaulted in the 1960s. Counts 8 through 14 allege misconduct by the defendants after 2014, when Doe began reporting the sexual assaults.

¹Archbishop Mitchell T. Rozanski, Patricia McManamy, Monsignor Christopher Connelly, Jeffrey Trant, Kevin Murphy, Mark Dupont, John Egan, and John Hale.

More specifically, Counts 1 through 7 and 9, directed against the RCBS, allege assault (Count 1); battery (Count 2); intentional infliction of emotional distress (Count 3); negligent infliction of emotional distress (Count 4); conspiracy (Count 5); negligent supervision of priests assigned to or affiliated with Doe's parish at the time of sexual abuse (Count 6); breach of fiduciary duty (Count 7); and negligent supervision (Count 9). Counts 8 and 10 through 13, directed against all defendants, allege negligence (Count 8); negligent infliction of emotional distress (Count 10); intentional infliction of emotional distress (Count 11); civil conspiracy (Count 12); and violation of the Massachusetts Civil Rights Act, G. L. c. 12, § 111 (Count 13). Count 14, against the RCBS, Trant, Dupont, Hale and Egan, alleges defamation.

Before the court is the defendants' joint motion to dismiss all counts of Doe's complaint. The defendants argue that Counts 1-7 must be dismissed under Mass. R. Civ. P. 12(b)(6) because RCBS is a charitable corporation immune from liability and because the claims conflate Weldon with the corporate entity, the RCBS, which cannot be liable for the acts of individuals. The defendants contend that Counts 8 through 14 must be dismissed under Mass. R. Civ. P. 12(1) because the First Amendment doctrine of church autonomy deprives this court of subject matter jurisdiction to question religious internal proceedings. After a hearing and consideration of the record and the parties' submissions, the court denies the motion to dismiss.²

²For purposes of assessing the defendants' motion under rule 12(b)(6), the court considers the allegations of the complaint and the documents referenced in it and upon which it is based. See *Harhen* v. *Brown*, 431 Mass. 838, 840 (2000) (court may consider documents referenced in complaint without converting motion to dismiss to motion for summary judgment). Insofar as the defendants' motion is filled under rule 12(b)(1), the Court considers the portions of the record relevant to subject matter jurisdiction. See *Hiles* v. *Epis. Dioc. of Mass.* 437 Mass. 505, 515-516 (2002) (where defendants move for dismissal for lack of subject matter jurisdiction and file supporting affidavits, plaintiff must prove jurisdictional facts and court must resolve jurisdictional factual disputes between parties).

II. Background

The court summarizes the relevant allegations of the complaint and documents incorporated into it by reference³ below, with some details reserved for the legal discussion.

Does was a nine-year-old⁴ altar boy at St. Anne's in Chicopee, Massachusetts, in the early 1960s. At that time, Weldon was the bishop, and Authier and Forand were St. Anne's pastor and associate pastor, respectively. Weldon, Authier, Forand, and other clergy members whose names are unknown raped Doe in and near St. Anne's property and at Camp Holy Cross, a diocesan property in Goshen. At times, Weldon committed these acts with the aid and participation of Authier, Forand, and other priests. Some assaults involved other altar boys who were directed to force Doe onto a bed. On one occasion, Doe was told to watch Weldon molest another altar boy.

In 2013, Doe began recovering his memory of these experiences. In November of 2014, he met with Monsignor Ronald Yargeau, who had been the head altar boy at St. Anne's when Doe was an altar boy there. Yargeau referred Doe to Connelly, the diocese's Vicar General. In December of 2014, Doe reported the rapes by Weldon, Authier and Forand to Connelly and McManamy, the Director of Counseling, Prevention and Victim Services. At that time, Doe did not complete the diocese's Sexual Abuse Victim Intake Sheet (the intake sheet) or meet with the Review Board as required by the diocese to process sexual abuse reports. Doe alleges that Connelly and McManamy were mandated pursuant to G. L. c. 119, §§ 21 and 51A, to report Doe's allegations to prosecutors, 5 but such a report was not made until years later. In 2016, Doe met again with McManamy. By 2018, Doe had completed the diocese's intake sheet stating his

³The complaint has four exhibits: the Velis Report June 21, 2020; two articles published by the Berkshire Eagle relating to Doe's allegations and the Review Board's conclusions concerning Weldon; and Rozanski's letter apologizing to Doe in June 2020.

⁴ The age is approximate.

⁵The statutes cited by Doe apply where a mandated reporter has reasonable cause to believe that a child is suffering injury from, *inter alia*, sexual abuse. See G. L. c. 119, §§ 21, 51A. In such cases, the mandated reporter must file a report with the Department of Children and Families and may also notify law enforcement authorities. See *id*.

expectations that the diocese would reimburse his therapy costs, allow him to visit certain property to aid his healing, and afford him an opportunity to give his account of the sexual abuse to the Review Board. On March 24, 2018, McManamy asked Murphy to investigate Doe's allegations of sexual abuse by Weldon, Forand, Authier and others. McManamy's responsibilities included submitting investigatory reports to the Review Board before its meetings. Murphy met once with Doe in April of 2018, at which time Doe identified his sexual abusers as Forand, Authier, and Weldon. Murphy told Doe, "You don't have to go to the [Review] Board. I'll take care of it. Your story is credible."

Murphy then authored several versions of his investigative report. In one, he included Doe's allegations of abuse by Weldon, Forand, Authier and two unnamed priests. Murphy did not send that version of his report to the Review Board. Instead, Murphy sent a version omitting Doe's allegations against Weldon, except to state that Weldon was present when Doe was abused by others. The Review Board members relied heavily on Murphy's report and at the time were not aware that Doe had named Weldon as one of his abusers.

On June 13, 2018, the Review Board met to review Doe's claims. Despite Murphy telling Doe that he did not need to attend the meeting, Doe attended and told the Review Board that Weldon, Authier, and Forand were the three known clergymen who raped him. Some Review Board members questioned Doe's credibility at that meeting because Doe's account conflicted with Murphy's report. The Review Board was unaware of Murphy's alternate and accurate report that Doe had alleged Weldon's participation in the sexual assaults.

In August of 2018, McManamy told the Hampden County District Attorney that Forand and Authier sexually abused Doe. Later in 2018, the diocese added Weldon to this report. On

⁶The Review Board was comprised of laypersons. Those who attended the June 13, 2018, meeting were Chairperson John Hale, Theresa Finnegan, Thomas Lachiusa, Bonnie Moriarty, Marianne Triggs Smith, and Diana Lewis.

September 18, 2018, the Review Board's chairperson, Hale, signed a letter to Doe thanking Doe for "sharing the details of your abuse" relating to Weldon, Authier and Forand. Hale wrote that after hearing Doe's testimony and reviewing materials, the Review Board "finds your testimony compelling and credible" and would so notify Rozanski, who was copied on the letter.

Larry Parnass, an investigations editor for the Berkshire Eagle, was aware of the contents of that letter. On May 29, 2019, Parness asked Mark Dupont, the diocese's communications director, why Weldon's and Authier's names were not on the diocese's list of credibly accused sex abusers given that the Review Board told Doe that his testimony alleging abuse by Weldon, Authier and Forand was credible. Dupont then sent a memorandum to Rozanski, the diocese's legal counsel, Jack Egan, and others, asking how to respond to Parnass's request for an explanation. Dupont proposed that the diocese reply that the Review Board made no finding of a credible allegation of abuse by Weldon. Egan proposed that the response be that the Review Board never found that Weldon engaged in improper contact with anyone. Rozanski thanks Egan for the "good response." On May 31, 2019, Dupont replied to Parnass that "there is no finding of sexual abuse of any person involving Bishop Weldon-none."

On June 21, 2019, Doe met with Rozanski and told him of the sexual abuse by Weldon, Forand and Authier.

At a June 24, 2020, press conference, Judge Velis announced his conclusion of an extensive investigation that Doe's accusations against Weldon were "unequivocally credible." Rozanski then apologized to Doe for the abuse he endured as a child, and "for the chronic mishandling of this case time and time again since 2014. At almost every instance we have failed this courageous man." Doe did not attend that press conference, but Rozanski told a reporter that Doe had been informed, through his lawyer, of Judge Velis's conclusion.

III. Discussion

A. Motion to Dismiss Counts 1-7 Against RCBS Under Mass. R. 12(b)(6)

In ruling on a motion to dismiss brought pursuant to Mass. R. Civ. P. 12(b)(6), the court accepts the factual allegations of the complaint as true but disregards legal conclusions cast in the form of factual allegations. See *The General Convention of New Jerusalem* v. *Mackenzie*, 449 Mass. 832, 838 (2007). The court determines whether the complaint sets forth allegations "plausibly suggesting (not merely consistent with) an entitlement to relief." *Iannachino* v. *Ford Motor Co.*, 451 Mass. 623, 636 (2008).

1. Charitable Immunity of RCBS

The defendants argue that the claims in Counts 1 through 7 against RCBS should be dismissed because the RCBS has charitable immunity from tort liability under the common law controlling at the time of the conduct at issue (the 1960s). RCBS contends that the allegations of the complaint and the charter statute creating the RCBS establish its charitable immunity. See *Ricker v. Northeastern University*, 361 Mass. 169, 172 n.2 (1972)

Until September 16, 1971, religious and charitable institutions in Massachusetts had immunity under common law doctrine of charitable immunity. *Id.* Although there is no authoritative case law applying the common law doctrine of immunity to intentional torts, the Massachusetts Appeals Court has opined that such immunity before 1971 would apply to at least some intentional torts. See *St. Clair* v. *Trustees of Boston University*, 25 Mass. App. Ct. 662, 667 (1988) ("We believe that if a case involving a tort such as intentional interference with advantageous relations or slander uttered recklessly by an agent of a charitable organization had been presented in Massachusetts before 1971, charitable immunity would have applied").

On September 16, 1971, G. L. c. 231, § 85K, became law, partially abrogated the doctrine of charitable immunity, and provided limited tort liability for religious and other charitable entities. See *St. Clair*, 25 Mass. App. Ct. at 667 (charitable organizations had immunity from tort liability for claims based on acts predating charitable immunity statute).

Charitable immunity is an affirmative defense. *Grueninger v. Pres. & Fellows of Harvard*, 343 Mass. 338, 340 (1961). "A charitable corporation is not liable for negligence in the course of activities within its corporate powers carried on to accomplish directly its charitable purpose . . . even though such activities incidentally yield revenue. On the other hand, there is liability for negligence in the course of activities incident to the corporate power but primarily commercial in character, even though carried on to obtain revenue to be used for the charitable purposes of the corporation." *Id.* at 340, quoting *Reavey v. Guild of St. Agnes*, 284 Mass. 300, 301-302 (1933). In *Grueninger*, the court concluded that defendant's charitable immunity defense would fail if the plaintiff could prove at trial that the defendant's activities which gave rise to the lawsuit were primarily commercial in nature.

"[A]t common law, the protection of charitable immunity only extended to negligence committed in the course of activities carried on to accomplish charitable activities." *Keene* v. *Brigham & Women Hosp., Inc.*, 439 Mass. 223, 239-240 (2003). Charitable immunity under § 85K "has been treated as an affirmative defense that must be pleaded under Mass. R. Civ. P. 8(c). . . . Factual matters related to the cap may need to be determined by the fact finder, with the burden on the defendant to prove both that it is a charitable organization and that the tort complained of fell within the range of activities covered by the cap." *Id.* at 239, citing *Grueninger*, 343 Mass. at 340. "The requirement that it be raised as an affirmative defense in

such circumstances prevents unfair surprise, a key focus of the requirement of pleading affirmative defenses, and resulting prejudice to the plaintiff." *Keene*, 439 Mass. at 239.

Whether an institution is a charitable one is a question of fact. See, e.g., *Barrett v. Brooks Hospital, Inc.*, 338 Mass. 754, 756 (1959) (defendant has burden of proving affirmative defense of charitable immunity); *Conners v. Northeast Hosp. Corp.*, 439 Mass. 469, 470-473 (2003) (whether defendant's activity accomplished charitable purposes was fact question upon which fact finder considered trial testimony and defendant's corporate documents). Application of the common law charitable immunity to this case requires an inquiry into whether the tortious conduct alleged in Counts 1 through 7 here was committed in the course of activities carried on to accomplish charitable activities. See *Keene, Inc.*, 439 Mass. at 239-240. As pointed out by the plaintiff, none of the cases cited by the defendants involved the application of charitable immunity on a motion to dismiss. See *Ricker*, 361 Mass. at 172 n.2. The court concludes here that the questions of whether the RCBS is cloaked with common law charitable immunity cannot be resolved on a motion to dismiss.

2. Whether Individuals' Alleged Acts Can be Imputed to RCBS as Corporation

Counts 1 through 7 are lodged against a corporate defendant, the RCBS, but describe acts committed by individuals: Weldon, Forand, Authier, and two unnamed priests. The defendants argue that these claims do not assert facts establishing why the RCBS could be held liable for acts allegedly committed by individuals.

Doe maintains that the wrongful conduct of corporate officers, directors, and stockholders can be imputed to the corporation in some circumstances, including where the misconduct "was so routine as to constitute a general practice or policy," even if the misconduct was not conducted for the benefit of the corporation. See *Worc. Ins. Co. v. Fells Acre Day School, Inc.*, 408 Mass.

393, 409 (1990) (court explained that if sexual abuse of students by preschool's corporate principals were so routine as to constitute general practice or policy, abuse could be imputed to corporation even if it were not committed for corporation's benefit).

The complaint alleges that Weldon, Forand, Authier, and two unnamed priests repeatedly raped Doe in various locations in Chicopee and Goshen. The allegations of the rapes, with Weldon's participation in the presence of other priests, sufficiently alleges that the two parish priests and Weldon engaged in and therefore knew of this pattern of sexual abuse of Doe. The complaint can be construed to allege that during these incidents, Weldon sexually assaulted at least one other altar boy while Doe was ordered to watch. These allegations do not portray a general or routine practice by the corporation of engaging in sexual assaults. It follows that the wrongful acts allegedly committed by Weldon, Forand, Authier, and unnamed priests cannot be imputed to the RCBS as a corporation under the principle articulated in *Worc. Ins. Co. v. Fells Acre Day School, Inc.*, 408 Mass. at 409. However, this conclusion by itself does not entitle the RCBS to judgment on this record on Counts 1-7 if other potentially viable grounds exist for those claims. Consequently, the court considers whether the RCBP could be vicariously liable for the rapes allegedly committed by Weldon, Forand, Authier and two unidentified priests.

3. Vicarious Liability of the RCBS on the Basis of Ratification

The defendants assert that the allegations of Counts 1 through 7 do not support an inference that RCBP could be vicariously liable for the acts of Weldon, Forand, Authier or the unnamed priests who raped Doe. An employer can be held liable for torts committed by the employer's servants if the torts were committed in excess of their authority and if the acts were ratified by the employer. See *Petrell* v. *Shaw*, 453 Mass. 377, 408 n.5 (2009), citing *Pinshaw v*.

⁷Doe's descriptions of gatherings at Camp Holy Cross, where altar boys were skinny dipping, could be viewed as implying, but not alleging, that boys were molested there.

Met. Dist. Comm'n, 33 Mass. App. Ct. 733, 735 (1992), quoting White v. Apsley Rubber Co., 194 Mass. 97, 99 (1907) ("It is a well-established principle that an employer is not only liable for torts committed by its servants acting within the scope of their employment but, 'by ratification may become responsible for such act when committed in excess of their authority"). In Petrell, the court concluded that there was no basis in the summary judgment record upon which to infer that the church leader ratified the local priest's sexual relationship with a parishioner after learning of the relationship. In contrast to Petrell, Weldon, as bishop, allegedly not only knew of the sexual assaults upon Doe but participated in them and directed others to aid him in raping Doe. These allegations could be construed to support an inference that the RCBS ratified the sexual assaults upon Doe. As a result, the defendants have not shown that the RCBS cannot be held vicariously liable for the acts committed by Weldon, Forand, Authier and others.

B. First Amendment Religious Autonomy Doctrine as Basis for Dismissal of Counts 8-14

As noted above, Counts 8 through 14 are based on events that occurred between 2014 and 2020, after Doe recovered his memories of sexually abuse in the 1960s and reported the assaults to diocesan personnel. Doe alleges, *inter alia*, that the defendants (or some of them) failed to report Doe's abuse allegations to prosecutors, failed to document or investigate Doe's allegations, and covered up and misrepresented to the Review Board Doe's allegations about Weldon.

The defendants press a single argument under Mass. R. Civ. P. 12(b)(1) for the dismissal of these claims: they are barred by the doctrine of church autonomy, protected under the free exercise clause of the First Amendment. The defendants argue that this court lacks subject matter jurisdiction because the First Amendment "places beyond [courts'] jurisdiction disputes involving church 'doctrine, canon law, polity, discipline, and ministerial relationships." *Maffei* v. *Roman Catholic Archbishop of Boston*, 449 Mass. 235, 243 (2007), quoting *Williams* v. *Episcopal*

Diocese of Mass., 436 Mass. 574, 579 (2002). Courts cannot "come embroiled in disputes involving a religious organization that would require [the court] to interpret or weigh church doctrine." Petrell, 453 Mass. at 382-383 (First Amendment barred breach of fiduciary duty claim against diocese and its officials where plaintiff's alleged relationship with defendants was solely based on their shared religious affiliation and plaintiff's role as parishioner within diocesan parish of diocese, which relationships do not afford basis for liability in civil context). "Where a dispute 'involves no consideration of doctrinal matters,' a civil court may assume jurisdiction." Parish of the Advent v. Protestant Episcopal Diocese of Mass., 426 Mass. 268, 283 (1997).

The defendants assert that Counts 8-14 are beyond this court's jurisdiction because they challenge how the defendants conducted and commented on the "religious disciplinary process." (Docket # 18.1, p. 10). For this argument, they largely misplace reliance upon *Hiles v. Episcopal Diocese of Mass.*, 437 Mass. 505, 515-516 (2002). The *Hiles* action arose out of a complaint by a parishioner to church authorities that the plaintiff, a priest, violated church morality laws by having an extramarital affair with her decades earlier. The church authorities in *Hiles* investigated and brought disciplinary proceedings in accordance with church morality laws. The plaintiff sued the parishioner and church authorities, asserting that the immorality and related charges were defamatory, conspiratorial, and in retaliation for the plaintiff's refusal to turn over to church authorities a large bequest made to his parish. The court affirmed the dismissal of claims because they could not have been resolved by the court without weighing in on ecclesiastical matters such as the church's disciplinary process, church laws banning immorality, and church authorities' assessment of the plaintiff's fitness to be priest. See *id.* at 511-516.

Hiles is inapposite. First, the Review Board proceedings here could not have been disciplinary or designed to assess the fitness of individuals to serve in clerical roles given that the

three identified sexual abusers were deceased when the proceedings began. Contrast *Hiles*, 437 Mass. at 511. Second and more importantly, contrary to the defendants' characterization, Doe's allegations are not directed against the Review Board or its decisions. Of the Review Board, only one, Hale, is a defendant. The basis of the claims against Hale are not that the Review Board committed a tort, but that Hale, in communicating with some of the other defendants, conspired to misrepresent to the media that Doe had not alleged sexual abuse by Weldon or that the Review Board did not credit Doe's allegations about Weldon.⁸

The defendants have offered no more than broad, conclusory assertions that the court cannot resolve the claims against the without entanglement in "church doctrine, canon law, polity, discipline and ministerial relationships." See *Petrell*, 453 Mass. at 381-382. Doe does not allege that the defendants' conduct violates any ecclesiastical standard, policy, or obligation. See *id.* at 383. In engaging with diocesan personnel beginning in 2014, Doe sought to inform them that Weldon, Forand, and Authier had sexually abused him. What Doe wanted in return was an acknowledgement of that abuse and to obtain aid for his therapy. Nothing in the series of meetings, reports, the intake form, or written communications at issue between the defendants supports the defendants' view that any of that conduct could not be neutrally viewed without construing Catholic dogma, doctrine, or policies. In sum, absent a showing that the court cannot resolve this dispute without entanglement in questions of religious doctrine, policy and practice

⁸The defendants' arguments misread Doe's complaint as challenging the Review Board's process and conclusion. From that premise, the defendants argue that the Review Board's work must comport with religious tenets. In support of that, defense counsel cite Judge Velis's reference to the Dallas Norms standard: "When an allegation of sexual abuse of a minor by a priest or deacon is received, a preliminary investigation in accordance with canon law will be initiated and conducted promptly and objectively. . . . During the investigation the accused enjoys the presumption of innocence, and all appropriate steps shall be taken to protect his reputation." (Velis Report, p. 104). Nothing in the Review Board's correspondence or meeting minutes signals that it took notice of canon law, the Dallas Norms, or any ecclesiastical standard or policy. Instead, at every phase and in every communication relative to Doe's interactions with the defendants, at issue were the acknowledgement of the veracity of Doe's account and whether the diocese would agree to aid his healing process.

in violation of the First Amendment, the defendants' motion to dismiss under Mass. R. Civ. P. 12(b)(1) is denied. See *Episcopal Diocese of Massachusetts* v. *Devine*, 59 Mass. App. Ct. 722, 727 (2003); *Murphy* v. *I.S.K. Con. of New England, Inc.*, 409 Mass. 842, 850 (1991).

ORDER

For all the foregoing reasons, it is hereby **ORDERED** that the defendants' Joint Motion to Dismiss the Complaint is **DENIED**.

Karen L. Goodwin

Associate Justice of the Superior Court

Dated: June 17, 2021