

EXHIBIT "S"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
ANTHONY J. GORGIA,

Plaintiff,

-against-

Index No. :
151501/2020

REPLY AFFIDAVIT OF
KENNETH T. McCABE IN
SUPPORT OF CROSS-MOTION
AND IN OPPOSITION TO
MOTION TO DISMISS

TIMOTHY DOLAN, THE ROMAN CATHOLIC
ARCHDIOCESE OF NEW YORK, ADAM PARK,
PETER HARMAN, THE PONTIFICAL NORTH
AMERICAN COLLEGE, JOHN GEARY
McDONALD and "JOHN DOE-I" through
"JOHN DOE-XXV,"

Defendants.

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KENNETH T. McCABE, being first duly sworn, deposes and
says:

1. I previously provided an affidavit in this action,
dated June 20, 2021. I have reviewed that affidavit which is
NYCEF Doc. No. 95 in the electronic filings in this case. The
entirety of my affidavit of June 20, 2021 was and is true and
accurate.

2. I make this affidavit based on my professional
experience and credentials outlined in my June 20, 2021
affidavit ("June 2021 affidavit") and after my review of the
defendants' September 21, 2021 filings; the Plaintiff's

Complaint; the affidavits; Exhibits and other supportive evidence; and the defendants' Motions to Dismiss. I wish to assist the Court in understanding why the 2006 "Special Panel on Clergy Misconduct" report ("Panel Report") (NYSCEF Doc. No. 114, Exhibit "A" to Lemonedes' reply affirmation) is without merit and actually confirms the allegations contained in the filings by the Plaintiff's counsel.

3. James Lemonedes, attorney for defendants THE PONTIFICAL NORTH AMERICAN COLLEGE ("NAC"), PETER HARMAN ("HARMAN"), ADAM PARK ("PARK"), and JOHN GEARY McDONALD ("McDONALD"), makes a number of deceptive and patently false claims under oath in both his Reply Memorandum of Law and his Reply Affirmation of September 21, 2021. With reference to my analysis of allegations that HARMAN and Archbishop George Lucas ("Lucas") engaged in anal contact and other graphic sexual acts at an orgy in the presence of seminarians and NAC Board of Governors member Bishop Kevin Vann, among others, Lemonedes misrepresents my June 2021 affidavit by claiming I asserted that "there was no investigation into an alleged orgy that occurred some 20 years ago" (e.g. Lemonedes Affirmation, page 3, footnote 3). Lemonedes repeats this misrepresentation in his Memorandum of Law (page 1, footnote 2) in order to baselessly attack my affidavit as "disgraceful" and without "credibility." In fact, the purported paragraph "13" Lemonedes cites in a failed attempt

to bolster his attack contains no statement whatsoever about whether an investigation ever occurred into the alleged orgy. Rather, the paragraph Lemonedes cites outlines some of the standards applied when analyzing the credibility of information/intelligence in an investigation, standards which confirmed the credibility of the eyewitness to the orgy. I refer the Court to paragraph 11 of my June 20, 2021 affidavit, which, contrary to Lemonedes' claim, shows that I never stated that there was "no investigation" into the orgy allegations. I instead affirmed that the alleged orgy has yet to be submitted to an investigation that is "authentic," "independent," and "impartial:"

I find it suspicious that both the Vatican and HARMAN's current and former Ordinaries have, to the present, left these allegations without an authentic, independent, and impartial investigation ... [emphasis mine] even while the witness stands prepared to furnish a 'disturbing first-hand report' and 'several photographs of a private party.' (my June 2021 affidavit, Paragraph 11).

Each of these characteristics is vital if the objective is to yield truthful conclusions.

4. I stand behind the statements in my June 20, 2021 affidavit, including my findings that the allegations of sexual misconduct against HARMAN and Lucas are "entirely credible" and have been left without "an authentic, independent, and impartial investigation."

5. Lemonedes' unfounded opinion that the allegations of sexual misconduct against HARMAN, his client, are "false," relies upon the discredited 2006 internal Panel Report commissioned by Lucas, one of the accused parties. Based on the evidence and my extensive experience conducting high-profile investigations as a Special Agent in Charge of the Federal Bureau of Investigation, I hold with confidence that the Panel Report meets the characteristics of a whitewash. I also find serious reasons to reject the truthfulness of the Panel's conclusions regarding HARMAN and Lucas.

6. When I examine the merits of an investigation, I find a number of characteristics to indicate a whitewash, which involves an attempt to exonerate an accused party through a perfunctory investigation or biased presentation of data. Whitewashes typically rely upon conflicts of interest; fiduciary relationships or compensation between an investigator and an accused party; omission of evidence; deliberate misinterpretation of information; the exclusion of witnesses and failure to interview all concerned parties; and threats or ad hominem attacks against witnesses. After my thorough review, I find that the methods employed in the Panel Report are consistent with the attributes of a whitewash.

7. Noteworthy, but not disclosed in the Panel Report, is that it was Lucas himself, one of the accused parties, who

commissioned the Panel with personally-selected members to respond to letters dated January 6, 2005 addressed to HARMAN and the Papal Nuncio, Archbishop Gabriel Montalvo Higuera, reporting allegations that Lucas and HARMAN participated in a homosexual orgy in the presence of seminarians and priests. While the Panel Report stated that it was charged with investigating "allegations of misconduct by priests of the diocese," the Panel excluded the bishop from this sentence. Had the Panel's intent been to transparently investigate the allegations it received against HARMAN and Lucas, the phrase would have read, "allegations of misconduct by the bishop and priests of the diocese." HARMAN's name does not appear at all in the Panel Report, which itself indicates an attempt to conceal the fact that allegations were ever made against him. Further confirming the apparently disingenuous motives of the Panel, the Panel Report admitted that one of its purposes was "to confirm that the overwhelming majority of priests in the Springfield diocese ... continue to be worthy of the support of the faithful" (page 2). Evidence indicates that the motive which impelled the Panel Report was one of "damage control" so as to protect the careers of the Panel's architect, Lucas; HARMAN, with whom he was allegedly sexually involved; and the other orgy participants; as well as to secure the ongoing financial "support of the faithful" who would be scandalized if they learned that their

contributions were being used to fund sexual acts and cover-up of such behavior by defense attorneys.

8. As affirmed in paragraph 11 of my June 2021 affidavit, I examined a January 10, 2005 letter signed by HARMAN in response to the allegations against him and Lucas. I found that HARMAN's letter revealed a number of suspicious characteristics. HARMAN's cautiously constructed letter, never disclosed by the Panel Report, contained no explicit denial of the accusations and an absurd recommendation that the accusations be forwarded to Lucas, who was none other than HARMAN's reported "lover." The recipient of HARMAN's reply pointed out in a January 12, 2005 letter the obvious conflict of reporting allegations against HARMAN and Lucas to Lucas himself, writing:

In your letter you suggest this individual approach Bishop Lucas. That statement would be laughable if this were not such a serious issue, especially considering that his name was mentioned in conjunction with yours. We were also given an alleged detailed description of a certain [intimate] part of your anatomy ... The diocese and bishop now have a serious credibility problem.

9. The Panel Report admitted that it was Lucas, one of the accused parties, who retained a defense attorney, Bill Roberts of Hinshaw & Culbertson LLP, to oversee the Panel which received the allegations against Lucas himself and HARMAN. This arrangement presented an obvious conflict of interest, insofar as attorneys may not reveal the guilt of their client or

incriminating without committing a breach of the attorney-client relationship. By every appearance, the Panel amounted to Lucas investigating himself. Attorney Roberts has a long-standing history of employment by the Springfield Diocese since he was first retained by Lucas, employment which continues to the present.

10. The Panel Report revealed that the Panel commissioned by Lucas, headed by his attorney, Roberts, consisted of five individuals, each of whom was picked from and had ties to parishes or religious orders in the Diocese. Nearly all the members of the Panel lacked investigative credentials. Before the members were selected, an article appeared in *The State Journal-Register* reporting that the Panel was to be "named" by Lucas. Such direct input by Lucas resembles a trial in which the defendant selects his own jury. The Panel Report itself admitted that the members essentially took their cues from Lucas' attorney, Roberts, who communicated his "findings" to them in "closed sessions" (page 3). This structure, permeated by conflicts of interest and lack of transparency, made it highly possible for prejudicial outcomes to be achieved.

11. Disturbingly, the Panel Report gave no indication that the Panel interviewed either the informant who initially reported the orgy allegations or the eyewitness who alleges being present at the orgy. While the Panel Report misleadingly

claimed that the eyewitness "refused to cooperate" with Lucas' "investigation," this statement is directly contradicted by a September 17, 2021 letter I reviewed from an attorney of NAC Board of Governors member, Bishop Vann. The letter, containing significant factual errors and contradictions about Lucas' Panel, claimed that the eyewitness willingly met on April 8, 2005 with the Ross Agency, a private investigation agency employed by Lucas' attorney, Roberts. Even if the Panel persists in contradicting Vann's attorney's letter by claiming that the eyewitness "refused to cooperate," the Panel never disclosed attempts Springfield clerics were alleged to have made to prevent the eyewitness from exposing his allegations. The Panel Report concealed documentation substantiating claims that Springfield clerics harassed him with contrived criminal charges which led to his false arrest, charges later disproven and dismissed after he was unjustly imprisoned for 70 days. The Panel Report similarly hid the fact that both the eyewitness and the informant alleged being threatened by Lucas were they to pursue their allegations. While the informant submitted compelling extensive documentation and supportive evidence for the Panel's review, the Panel refused to include him in the "investigation." In my opinion, this is comparable to law enforcement officers only interviewing an alleged perpetrator without ever interviewing the victim.

12. The Panel Report stated that the eyewitness "voluntarily" submitted to a polygraph examination. Based on my experience, a person such as the eyewitness who expresses eagerness to be polygraphed often does so to confirm the truth of his statements. Notably, none of the accused parties, including HARMAN, is cited as having either requested or been required by attorney Roberts to undergo a polygraph. The informant who reported the eyewitness account of the orgy arranged and paid for William O'Sullivan, who owned and operated the Ross Agency, to have the eyewitness polygraphed. What the informant did not know, nor was he told, was that attorney Roberts had contracted with O'Sullivan's Ross Agency to help in his defense of Lucas, HARMAN, and other Springfield clerics. This was a clear conflict of interest which O'Sullivan ethically should have revealed to both the informant and the eyewitness before accepting payment from the informant in the interest of objectivity. Curiously, the Panel Report never mentioned O'Sullivan and the Ross Agency's purported role in Roberts' "investigation." Because the Ross Agency arranged for a polygrapher to administer the test, O'Sullivan would have prescribed what he and Roberts wanted the eyewitness to be asked. Given the fact that O'Sullivan and Roberts were employed by Lucas, they would not have submitted critical questions which would have incriminated him and which the informant indicated

were necessary, such as, "Did you witness HARMAN sodomizing Lucas at the orgy?"

13. By every indication, the results of the polygraph administered to the eyewitness appear questionable. According to the Polygraph Examination Report of March 22, 2005, instead of asking the eyewitness questions based on his December 31, 2004 account of the orgy, the polygrapher only asked him one same unrelated question twice: "Did you have sex with the Bishop?" and "Did you have sex with the Bishop of Springfield?" This question was both misleading and entirely irrelevant to the allegations the eyewitness made regarding the orgy. Insofar as the eyewitness never alleged that he had sexual relations with Lucas at the orgy, but that he had witnessed HARMAN having sex with Lucas, the polygraph question O'Sullivan prescribed would be comparable to asking the witness to a rape if she herself had sexual relations with the rapist. The witness could reasonably conclude that the irrelevant question was designed to cover up her allegation. Insofar as the eyewitness already provided an in-depth December 31, 2004 video-recorded account of his allegations in O'Sullivan's presence at the Ross Agency, at which time he named HARMAN, Lucas, and NAC Board of Governors member Bishop Vann as attendees at the orgy; O'Sullivan, as well as Roberts and the Panel, ought to have known that his polygraph question was irrelevant to the orgy allegations.

14. While ostensibly, the purpose of the polygraph was to help determine if Lucas and HARMAN truly had sex at the orgy, the polygrapher asked a question that was not only irrelevant to the eyewitness' statement of December 31, 2004, but also confusing. In asking, "Did you have sex with the Bishop?" the polygrapher failed to distinguish whether the eyewitness ever had sex with Lucas or if he had sex with Lucas specifically at the orgy. By the polygrapher's failure to make this distinction, the eyewitness could have truthfully answered affirmatively or negatively as the eyewitness alleged that HARMAN, not he, had sex with Lucas at the orgy; but that Lucas solicited him for sex on other occasions. It should be obvious that this single question could not have determined the veracity of the orgy allegations. The disorienting and deflecting nature of the question, as well as physiological manifestations of the eyewitness' warranted anxiety after he was reportedly harassed and threatened by accused Springfield clerics, are factors which support my finding that the eyewitness' purported "failure" of this polygraph is questionable. The polygraph report shows no evidence that attorney Roberts, O'Sullivan, or the polygrapher ever had the "results" peer-reviewed, a standard practice in polygraph reports. While the Panel Report concealed the highly-questionable circumstances under which the examination was administered, attorney Roberts used the contrived "results" of

the polygraph, a measure generally inadmissible in Courts due to its proven unreliability, to baselessly attack the credible eyewitness (page 7).

15. The eyewitness' allegations, which suspiciously were never detailed in the Panel Report, were also eclipsed by irrelevant *ad hominem* attacks which have no bearing upon the credibility of his claims. At the same time, the Panel Report never disclosed that Springfield clerics themselves were alleged to have unjustly sullied the eyewitness' reputation with false criminal charges that were later disproven and dismissed. I refer the Court to paragraph 13 of my June 2021 affidavit, wherein I explain how credible intelligence and information can be obtained from individuals who may have been engaged in "questionable activity." Considering the threats the eyewitness reportedly faced, a fact which confirms that he had nothing to gain by providing false information, I have no reason to doubt the credibility of the eyewitness' accusations against HARMAN and Lucas. Also significant is that in 2021, the eyewitness again freely submitted to questioning and stands with consistency behind his sexual misconduct allegations against HARMAN and Lucas.

16. The tactics employed to cover up HARMAN's reported misconduct in the Diocese of Springfield in Illinois fit a compelling pattern of tactics which HARMAN, as the NAC rector,

and the other defendants are alleged to have used to cover up sexual misconduct at the NAC to the detriment of the Plaintiff. Resembling how implicated Springfield clerics are alleged to have threatened witnesses regarding the orgy and invented false charges against the eyewitness which were later disproven, evidence shows that HARMAN created an entirely false and disprovable narrative about the Plaintiff. Just as Springfield clerics' intention in threatening and defaming informants was apparently to compel them into silence, evidence substantiates that the motive behind HARMAN's and the other defendants' fabricated statements against the Plaintiff was to oust him from the seminary and prevent him from exposing some of the defendants' homosexual misconduct involving seminarians. Based on the evidence, it appears that the defendants attempted to conceal the depth of sexual misconduct or nonconsensual sexual activity involving subordinates by creating an absurd narrative against the Plaintiff whom they perceived as a threat, the very same action taken against the Springfield witnesses. I refer the Court to paragraphs 5-8 of my June 2021 affidavit, wherein I outlined my analysis of capability, opportunity, motive, and precedent regarding the defendants' actions against the Plaintiff. Just as HARMAN profited from Lucas who covered up their alleged misconduct involving seminarians, so too did HARMAN receive the help of defendant TIMOTHY DOLAN ("DOLAN"),

who covered up misconduct at the NAC enabled by HARMAN by breaching his duties toward the Plaintiff.

17. Insofar as Lucas' Panel seems to have taken extreme measures to hide HARMAN's reported sexual misconduct and the reprisals informants suffered, it is plausible that the Plaintiff, as a victim of fraud and deceit, was unaware that the extent of HARMAN's and PARK's concealed past sexual antics and retaliatory means used to cover them up were behind the defendants' actions against him. While the Plaintiff knew that the defendants' statements against him were false, he was reasonably unaware at the time that HARMAN's actions toward him were of the precise pattern of actions perpetrated against informants of the orgy whom HARMAN perceived as a threat to exposure. Much like sex abuse cases which are strengthened when a Plaintiff can bring forward multiple victims who have suffered the same pattern of abuse by a perpetrator, so too is it relevant for the Plaintiff to show the merits of his causes of action by bringing forward the accounts of numerous alleged victims of sexual misconduct, retaliation, and/or cover-up by HARMAN, PARK, DOLAN, and the other defendants (for example, the June 20, 2021 affidavit of Michael Cassabon and Complaint paragraphs 23-26, 63-70).

18. The defendants' deceit toward the Plaintiff was also abetted by the fact that they had already induced him into a

relationship of trust, vulnerability, and reliance; and that he was incapable of self-protection with respect to his pursuit of ordination. I refer the Court to paragraph 5 of my June 2021 affidavit, wherein I classify the Plaintiff, during his time as a seminarian, as a "vulnerable adult" with respect to the power the defendants wielded over him. While the Panel's concealment of HARMAN's alleged misconduct enabled him to secure promotion as NAC rector, evidence indicates that HARMAN reasonably feared that exposure of sexual predation permitted under his supervision at the NAC would reveal his own reported sordid history involving seminarians and endanger his ascent to higher office. The consequences of such exposure was apparently confirmed by PARK's sudden departure from the NAC within a month of the filing of incriminating affidavits against the defendants.

19. I stand behind my conclusion in my June 20, 2021 affidavit that the eyewitness' account of the orgy alleging sexual misconduct by HARMAN and Lucas is entirely credible. I refer the Court to paragraphs 9-13 of my June 20, 2021 affidavit, wherein I outlined some of the characteristics that led me to find the eyewitness credible. Among my observations, the eyewitness' account was logical, consistent, and supported by specific details such as the reported descriptions of HARMAN's and Lucas' intimate body parts and the graphic sexual

acts attributed to them. The allegations are also corroborated by independent, separate misconduct allegations against some of the very same alleged participants in the orgy, including Lucas. Remarkably, these corroborating allegations are not included in the Panel Report.

20. Based upon my review, I conclude that defendants' submission of the discredited Panel Report (Exhibit "A") to be irrelevant, without merit, and actually supportive of the Plaintiff's allegations. I find the allegations brought forward in the Plaintiff's filings to be credible and strongly supported by documentary evidence.

State of Florida

County of Brevard

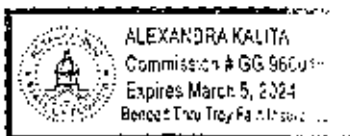
Kenneth T. McCabe

- FLD 17210-518-53-3860-0
KENNETH T. McCABE

Sworn to before me

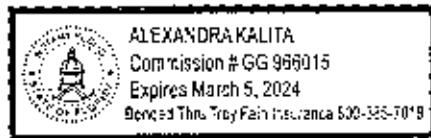
this 8 day of October, 2021

Alexandra Kalita Notary



CERTIFICATE OF CONFORMITY (CPLR 2309(c))

The oath which I administered to Mr. McCabe was taken in a manner consistent with the laws of Florida and is intended for use in litigation now pending in New York.



Alexandra Kalita

Notary

CERTIFICATION OF COUNSEL PURSUANT TO UNIFORM RULE 202.8-b

I, Raymond W. Belair, certify in conformity with Uniform Rule 202.8-b. the foregoing reply affidavit contains no more than 3,258 words, inclusive of all words, in conformity with the limits set forth in at Rule 202.8-a.

In conformity with Rule 202.b(c) I have relied on the word processor system for the word count in preparing this document.

RAYMOND W. BELAIR

RAYMOND W. BELAIR