

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT- LAW DIVISION

Victor Bender,

Plaintiff,

vs.

The Jesuits d/b/a Chicago Province
of the Society of Jesus and
Fr. Donald McGuire, S.J.,

Defendants.

JURY DEMAND

03L 011449

CALENDAR B

TORT-INTENTIONAL

COMPLAINT AT LAW

NOW COMES the Plaintiff, by and through his attorneys, KERNS, PITROF, FROST & PEARLMAN and JEFF ANDERSON & ASSOCIATES, and for his causes of action against Defendants, states as follows:

PARTIES

1. Plaintiff Victor Bender (hereinafter "Plaintiff"), is an adult male resident of the state of Massachusetts. At all times material, Plaintiff was a minor and a resident of Illinois.

2. At all times material, Defendants the Jesuits were and are a world-wide Roman Catholic religious order of priests with its principal place of business located in Rome, Italy which does business in the state of Illinois as Chicago Province of the Society of Jesus, with its principal place of business located at 2050 N. Clark St., Chicago, IL 60614 (hereinafter "Order").

The Order and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy activities, the exercise of authority over various members of its religious order, and the maintenance of the well-being of its members attending

schools and parishes which are owned and/or operated by the Order in the Chicago area. At all times material to the complaint, Defendant Order was conducting business in the State of Illinois.

3. At all times material, Father Donald McGuire (hereinafter "Defendant McGuire") was a priest and member of Defendant Order and the Archdiocese of Chicago. Defendant McGuire was educated by and ordained by Defendant Order and/or the Archdiocese.

FACTS

4. At all times material, the Catholic Bishop of Chicago, a Corporation Sole (hereinafter "Archdiocese") was and is an Illinois corporation. The Archdiocese has approximately eight hundred fifty four Diocesan priests serving in two counties in the State of Illinois. At all times material to the complaint, the Archdiocese was conducting business in the State of Illinois.

5. At all times material hereto the Archdiocese, fostered and maintained a network of schools throughout the diocese, some of which were under its direct control, and others, such as Loyola Academy which were under the control of religious orders, but all of which were under the apparent control of the Archdiocese.

6. In the alternative, whether parishes throughout the Archdiocese were under the direct control of the Archdiocese or not, the Archdiocese was engaged in a joint venture with Defendant Order; said joint venture being a community of interest to promote religious values and education in exchange for money in the form of donations and tuition which was paid by students and their families.

7. Plaintiff was raised in a devout Roman Catholic family. He was baptized, confirmed, regularly celebrated mass, participated in church related activities, and received the

sacraments through the Roman Catholic Church (hereafter “Church”). As a result, Plaintiff developed great admiration, trust, reverence, and respect for, and obedience to Roman Catholic priests. It was through this position of trust, respect and reverence that Defendant McGuire gained access to Plaintiff and his family.

8. At all times material, Defendant McGuire was a Catholic priest, educated, trained ordained, and employed by Defendant Order. At all times material, Defendant McGuire was under the direct supervision, employ and control of Defendant Order and the Archdiocese.

9. Generally, Defendant McGuire’s employment duties with the Defendant Order included providing pastoral care, counseling, spiritual guidance and leadership to Catholics. In addition, Defendant McGuire was a teacher and provided religious instruction for the spiritual and emotional needs of children, including Plaintiff, entrusted to his care.

10. During Defendant McGuire’s tenure as a priest, he served in and/or was transferred to several parishes and teaching positions. These included Loyola Academy, Wilmette, IL; Loyola University, Chicago, IL; University of San Francisco, San Francisco, CA; Bellarmine Hall, Barrington, IL; Canisius House, Evanston, IL; and the Provincial Office, Chicago, IL.

11. At all times material, Plaintiff was a student at Loyola Academy where he came to know, admire, trust, revere and respect Defendant McGuire as a priest, teacher, counselor, spiritual advisor, scholastic advisor and religious instructor.

12. Starting in or around 1966, while Plaintiff was entrusted to Defendants’ care, custody and control, Defendant McGuire began sexually abusing the then minor Plaintiff on a regular and repeated basis over a period of at least two years. During this time period, Plaintiff

essentially lived at Loyola Academy with Defendant McGuire who acted with full authority and *in loco Parentis*.

13. Upon information and belief, both before and after Plaintiff was first sexually abused by Defendant McGuire, Defendant Order and others had actual or constructive knowledge of material facts regarding Defendant McGuire's pedophile impulses and behavior, but failed to act on that knowledge thereby increasing the likelihood that Plaintiff would be harmed. Defendant Order's failure to act on that knowledge also contributed to Plaintiff's inability to come forward, appreciate the abuse and the resulting injuries he sustained or obtain help for the abuse and injuries he suffered.

14. Defendants and others within the Church held themselves out to parishioners, including Plaintiff, as counselors and instructors on matters that were spiritual, moral and ethical. Accordingly, Plaintiff placed trust in Defendants so that Defendants gained superiority and influence over Plaintiff and entered into a fiduciary relationship with Plaintiff.

15. This fiduciary relationship with Plaintiff established a duty of good faith, fair dealing and the duty to act with the highest degree of trust and confidence. This fiduciary relationship includes the duty to warn and to disclose and the duty to protect children from sexual abuse and exploitation by catholic priests whom the Defendant Order promote as being celibate and chaste representatives of God on earth. Said Defendants' fiduciary relationship with Plaintiff was based upon justifiable trust on Plaintiff's side and superiority and influence on Defendants' side.

16. Further, the local leaders of Defendant Order were in a specialized or superior position to receive and did receive specific information regarding misconduct by priests and

other agents and employees that was of critical importance to the well-being, protection, care and treatment of innocent victims including the Plaintiff. This knowledge was not otherwise readily available. Defendant Order exercised its special or superior position to assume control of said knowledge and any response thereto.

17. Plaintiff, on the other hand, was in a subordinate position of weakness, vulnerability, and inequality and was lacking in such knowledge. Further, the ability of Plaintiff or his family to monitor the use or misuse of the power and authority of Defendant Order and McGuire was compromised, inhibited or restricted by Defendants.

18. Defendants had a secular standard of fiduciary duty which they breached by failing to acting upon, or insufficiently acting upon or responding to, information which they had obtained by virtue of their superior status, known only or secretly to them, that was indicative or highly suggestive of a pattern of wrongful, unlawful or criminal behavior on their parts.

19. Defendants breached this duty, as well as other duties, through inaction, manipulation, intimidation, evasion, intended deception, undue influence, duress or otherwise, as more fully described and set forth elsewhere in this complaint, resulting in negative consequences to the welfare and well-being of Plaintiff.

20. As detailed elsewhere in this complaint, the acts of Defendant Order and others allowed pedophile predators, including Defendant McGuire, to perpetrate criminal acts of child sexual abuse throughout the United States for many decades. Persons controlling or directing the affairs of the Church and Defendant Order allowed this by making fraudulent representations, concealing criminal activity, obstructing justice and criminal investigations, evading civil and/or

criminal liability, and by inculcating parishioners to keep their scandals secret through the guise of religious teachings and spiritual instruction and counseling.

21. Defendant Order's intentional concealment and/or negligent and/or reckless failure to prevent, disclose or discover Defendant McGuire's acts of sexual misconduct, contributed to Plaintiff's repression of the events of abuse described herein and prevented Plaintiff from discovering or acting upon the wrongs done to him.

22. By tradition, Roman Catholics, including Plaintiff, are taught to hold priests in the highest esteem as earthly representatives of God, and that priests, unlike lay people, belong to a separate and higher state in life, the so called "clerical state," which they represent to be of divine origin and which they represent entitles them to special privileges. For these and other reasons relating to the practices of the Church, priests and other persons in leadership positions in the Church have traditionally occupied a position of great trust and allegiance among the parents and youth of Illinois, including Plaintiff.

23. As part of this traditional reverence of Church clergy, Plaintiff was instructed and indoctrinated as a child to show obedience to priests and was taught to believe and did believe that it would be "sinful" or wrong to make any kind of an accusation against a priest or Bishop. Additionally, Plaintiff was instructed and believed that priests and Bishops followed their vow of celibacy and chastity and could not and would not engage in conduct considered sexual, evil or wrong. Plaintiff relied upon these teachings and incorporated them into his religious beliefs and practices. Accordingly, he believed that it would be sinful or wrong for anyone to make any kind of an accusation against a priest or Bishop

24. In addition, Plaintiff and others were taught and instructed that Church issues and scandals were not to be disclosed to the public at large or to law enforcement and that any such scandals were to remain strictly secret. "Good" Catholics, like Plaintiff, were taught and believed that such issues would be handled internally by the Church, including Defendant Order, and that it was un-Christian and counter to the tenants of the faith to make any public allegations against the Church or any priest. In fact, to disclose any such issues or scandals could result in excommunication. (See, for example, the Holy See's 1962 INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation," attached hereto as Exhibit A.) Plaintiff believed what he was taught by the Church. These teachings kept the wide spread problem of pedophile priests out of the public arena until recently.

FACTS APPLICABLE TO THE CONSPIRACY

25. The Church is a hierarchal organization having its principal place of business in Vatican City, Italy. The Vatican is considered a sovereign nation enjoying all the rights and privileges of a sovereign nation. The ultimate political and religious ruler of the Church and the Vatican is the Pope, currently Pope John Paul II.

26. The Church, its dioceses, religious Orders, and educational institutions are supported primarily by assessments and/or contributions by its member parishioners.

27. Leaders in the Church, including local leaders of Defendant Order, were aware since at least the 1950's that there were a disturbing number of incidents involving sexual molestation and abuse of minor children by Roman Catholic priests.

28. Church Leaders, including local leaders of Defendant Order, were aware that child molesters (also variously characterized as pedophiles, ephebophiles and/or those with

psychosexual disorders) are recidivistic, mobile, predators that usually abuse multiple victims and gravitate to activities with young persons in order to continue to molest.

29. Leaders in the Church, including local leaders of Defendant Order, were aware that the effects of sexual molestation upon children could be devastating, and knew that parishioners and potential victims were largely naive and ignorant of the reality and prevalence of pedophilia in the priesthood.

30. Leaders in the Church, including local leaders of Defendant Order, were gravely concerned about the scandal that would result if parishioners and the public at large were aware of the prevalence of pedophilia in the priesthood.

31. Regrettably, Church leaders, including local leaders of Defendant Order, placed concern for the Church's reputation and financial well being over the safety and well being of its parishioners and children everywhere. As a result, since no later than the early 1960's, persons controlling or directing the affairs of the Church, including the Defendant Order, have engaged in a conspiracy to intentionally, recklessly and/or negligently conceal criminal conduct of their agents, aid and abet the concealment of criminal conduct, aid and abet criminal sexual conduct, fail to report criminal conduct of their agents, obstruct justice, obstruct criminal investigations, obstruct state and/or local law enforcement, evade criminal and/or civil prosecution and liability, bribe and/or pay money to victims in order to keep their criminal conduct secret, violate the civil rights of children and families, engage in mail and/or wire fraud, and commit fraud and/or fraudulent inducement of their parishioners in furtherance of their scheme to protect molesting priests and other clergy from criminal prosecution. This conspiracy was carried out in part to

maintain or increase charitable contributions and tuition payments and/or avoid public scandal in the Church.

32. This conspiracy was conducted by and through Defendant Order and others and directed by the Holy Roman Catholic Church (a/k/a, the Holy See).

33. Evidence of this conspiracy by the Church, including Defendant Order, and others and of their knowledge that Roman Catholic clergy were sexually abusing children can be seen in the Holy See's 1962 INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (hereinafter the "INSTRUCTION") (Ex. A.) This INSTRUCTION was intended to reach all patriarchs, Archbishops, superiors and diocesan ordinaries (Bishops). At the top of the INSTRUCTION, it states that it is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries." (Ex. A.) The INSTRUCTION contains explicit instructions as to how Bishops and Church leaders are to proceed in cases where a priest entices a penitent to engage in sexual conduct. (Ex. A.) The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73). It provides that transferring offending (i.e., pedophile) priests to a different church is an appropriate way of dealing with the problem. (Ex. A, ¶ 4.) The INSTRUCTION makes clear throughout that in all circumstances sex abuse cases dealing with a penitent, are to be kept strictly secret. (Ex. A.) In particular, if Church leaders find that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the Bishop and Church leaders must keep the pertinent documents in secret archives. (Ex. A, ¶ 42.) The Vatican INSTRUCTION also encourages Bishops and Church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) The INSTRUCTION

identifies the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.)

34. As further evidence of this conspiracy to avoid “scandal,” and that persons controlling the affairs of the Church, including Defendant Order, had knowledge that Roman Catholic clergy were sexually abusing children, in 1985, the National Conference of Catholic Bishops received a report titled “The Problem of Sexual Molestations By Roman Catholic Clergy” (hereinafter “Report”). This Report described the continuing and growing problem of child sexual abuse by priests within the Church. According to the Report, if the Church failed to deal with the problem of its pedophile priests, the Church could face liability in excess of \$1,000,000,000.00 over ten years.

35. The Report outlined steps that the Church, through the National Conference of Catholic Bishops, must take to protect the Church and parishioners from the devastating effects of priests who molest children. However, the Church and the National Conference of Bishops ignored the Report and, instead, continued to allow pedophile priests to molest children.

36. The Report, further cautioned the National Conference of Catholic Bishops to resist the practice by some to sanitize or purge the secret files of potentially dangerous material. In addition, the Report warned the National Conference of Catholic Bishops that their practice of moving files containing potentially dangerous material to the Papal Apostolic Delegate, where the files would be immune from subpoena, could ultimately destroy the immunity enjoyed by the Holy See. These warnings were not heeded.

37. Upon information and belief, Defendant Order and others engaged in the conspiracy and other wrongful activity described above in order to: avoid scandal, protect

molesting priests and others in the Church who knew of their conduct from criminal and civil prosecution, and protect the financial interests of the Church and Defendant Order.

38. In furtherance of its scheme and enterprise to protect molesting priests and other clergy from criminal prosecution, maintain or increase charitable contributions and tuition payments and/or avoid public scandal in the Church, persons controlling or directing the affairs of Defendant Order and others, intentionally and fraudulently engaged in the routine practice of maintaining secret "*sub secreto*" archival files of sexual misconduct by priests. These *sub secreto* files were and are accessible to the Bishops only. Such secret files were not reported to or made available to law enforcement to investigate the known crimes of the priests.

39. In fact, on information and belief, the Church and its Bishops encouraged the fraudulent purging of files and hiding of files from authorities and others seeking access to them. Evidence of such conduct is seen, for example, in a 1990 address to the National Conference of Catholic Bishops titled "NCCB Guidelines, and other Considerations in Pedophilia Cases," by Bishop A. James Quinn. Bishop Quinn stated:

Nevertheless, personnel files should be carefully examined to determine their content. Unsigned letters alleging misconduct should be expunged. Standard personnel files should contain no documentation relating to possible criminal behavior. Serious moral questions, signed allegations, those should be a part of the secret file anyhow. But they still subpoena them. But comb through your files.

Now, when files have been subpoenaed, they cannot be tampered with; destroyed, removed; that constitutes obstruction of justice and contempt of court. Prior, however, thought and study ought to be given if you think its going to be necessary; if there's something there you really don't want people to see you might send it off to the Apostolic Delegate, because they have immunity to protect something that is potentially dangerous, or that you consider to be dangerous, you might send it there.

(The Apostolic Delegate is the delegate from the Vatican and Holy See, which the Church contends enjoys sovereign immunity from lawsuits and subpoenas.)

40. In furtherance of this conspiracy, the Church, including Defendant Order, have misrepresented, concealed and suppressed the existence of the problem of pedophile priests from parishioners and the public at large by suggesting that priests that were transferred because of credible allegations of sexual molestation or were in treatment due to sexual misconduct, were "on leave," on "retreat," on "sabbatical" and/or participating in "advanced studies."

41. Leaders of the Church, including local leaders of Defendant Order, were aware that the problem of pedophile priests within the Church, including within the Defendant Order, was a widespread problem since at least the 1950's and that as a result of their conspiracy to keep this problem secret, millions of innocent children were put at risk. Thousands of those innocent children, including Plaintiff, fell prey to these pedophile priests and were gravely harmed and injured.

42. When credible evidence of sexual molestation by a priest was brought to the attention of the Church, including Defendant Order, they represented to victims and their families that such molestation was an isolated incident and that the problem would be "taken care of" by the Church. In fact, Church leaders, including local leaders of Defendant Order, secretly colluded and conspired to conceal all such offenses using whatever means necessary including but not limited to transferring the offending priests to other assignments without informing: the victims or their families that the priests would continue in ministry; parishioners or subsequent supervisors of the molestation or the reason for the transfer; and law enforcement or the general

public about the offending priests' pedophile activities. Further, those offending priests which were removed from their assignments or suspended for misconduct were continuously listed in official Catholic Directories by euphemism, such as "absent on leave," "advanced studies," "on special assignment" or "retired."

43. Maintaining that they viewed sexual assaults of children by priests as moral failings, the Church, including Defendant Order, professed to be saddened by such activity and claimed that at all times they took appropriate steps to detect and prevent such activities. In fact, to protect their reputations and income, the Church and Defendant Order treated the sexual molestation of children by priests as scandal that was to be suppressed at any cost, despite knowing that suppression put the minor children under the care of the Church and Defendant Order at grave risk.

44. The Church, including local leaders of Defendant Order, deliberately adopted a policy of public deception.

45. It was and is the policy and practice of the Church and Defendant Order to secrete the identities, retain the services of, and protect sexual offenders who are or had been Roman Catholic priests incardinated to and functioning within the Defendant Order over whose conduct the Defendant Order had control, and for whom Defendant Order was responsible in a master to servant relationship.

46. The Church and Defendant Order purposely suppressed the identity of sexual offenders to prevent the filing of both criminal and civil complaints in courts of competent jurisdiction, thus enabling further criminal conduct by those sexual offenders, while preventing the diminution of the flow of donated funds to the Church and Defendant Order.

47. In instances where the Church, including local leaders of Defendant Order, had actual knowledge about offending clerics, including Defendant McGuire, they failed to warn children and their parents and denied knowledge thereof.

48. Despite having actual knowledge of Defendant McGuire's pedophile propensities and previous instances of molestation of other children, Defendant Order and others concealed the danger which he and other offending clerics presented by misrepresenting them as priests in good standing, thus enabling those offending clerics to retain their continued, unrestricted access to minor children in Illinois.

49. At the same time, the Church, including Defendant Order, continued to teach children and other parishioners that priests were next to God and that priests would not engage in conduct considered sexual or evil or wrong. In addition, the Church, including Defendant Order, taught and instructed parishioners that Church issues and scandals were not to be disclosed to the public at large; rather, "good" Catholics, like Plaintiff, were taught and believed that such issues would be handled internally by the Church, including Defendant Order, and that it was un-Christian and counter to the tenants of the faith to make any public allegations against the Church or any priest. Plaintiff relied upon these teachings of the Church and Defendant Order and incorporated them into his religious beliefs and practices.

50. The Church and Defendant Order created the misperception in the mind of Plaintiff and others that he and other children were safe with priests in general and with Defendant McGuire in particular, and that, if there was conduct about which Plaintiff or his family might be concerned, it was an isolated instance of spurious misconduct which would be

taken care of. In fact, Plaintiff was a victim of a known and preventable hazard that the Church, Defendant Order and Defendant McGuire created and allowed to continue.

51. Plaintiff had the right to rely, and did rely, on the representations and teachings of the Church and Defendant Order including, but not limited to, representations regarding priests in general and Defendant McGuire in particular (including the representation that Defendant McGuire was a priest in good standing). Plaintiff also expected and believed that the Church and Defendant Order would not tolerate criminal misconduct that represented a known threat to children by any priest.

52. As a result of his early instruction and indoctrination, it would never have occurred to Plaintiff that the Church, including Defendant Order, or any priest would engage in criminal behavior, or knowingly or actively be involved in a conspiracy to conceal criminal behavior. Accordingly, even after Defendant McGuire had sexually molested him, Plaintiff assumed that he was somehow the guilty party, rather than Defendant McGuire.

53. Further, as a result of that early instruction and indoctrination, Plaintiff assumed that Defendant McGuire's sexual molestation of him was an isolated occurrence happening only to him and that Defendant Order was unaware and uninvolved, regarding both the criminal sexual behavior and the wide-ranging efforts to conceal that criminal conduct from him and others.

54. Defendant Order deliberately exploited the respect and reverence for the Church and its clergy which had been inculcated into Plaintiff and other victims of sexual abuse and their families.

55. As a result of the Defendants conduct as described herein, including but not limited to their fraudulent concealment and conspiracy, Defendants are equitably estopped from asserting any limitation defense which Defendants may claim is applicable to this complaint. Plaintiff maintains that his claim is brought within the applicable limitation period and/or any tolling period of the limitation period.

56. The sexual abuse of Plaintiff and the circumstances under which it occurred caused Plaintiff to develop confusion, various coping mechanisms and symptoms of psychological disorders, including great shame, guilt, self-blame, depression, repression and disassociation. As a result of: 1) these disorders; 2) Plaintiff's religious teachings and beliefs; and 3) Defendants' conspiracy and fraudulent conduct, Plaintiff was unable to perceive or know that the conduct of Defendant McGuire was wrongful or abusive. Plaintiff also was unable to perceive or know the existence or nature of his psychological and emotional injuries and their connection to the sexual abuse perpetrated upon him by Defendant McGuire. Only recently has the Plaintiff begun to know or have reason to know that Defendant McGuire engaged in wrongful or abusive acts and/or that those acts caused his injuries.

57. As a direct result of the sexual abuse and sexual exploitation, Plaintiff has suffered and continues to suffer severe and permanent emotional distress, resulting in physical manifestations, embarrassment, loss of self-esteem, humiliation and psychological injuries, was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, and has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling, and has incurred and will continue to incur loss of income and/or loss of earning capacity.

COUNT I: CHILDHOOD SEXUAL ABUSE/BATTERY -
DEFENDANT McGUIRE

Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further alleges:

58. From approximately 1966 through at least 1968, when Plaintiff was a minor child, Defendant McGuire repeatedly engaged in un-permitted, exploitative, harmful and offensive sexual contact upon the person of Plaintiff at Loyola Academy, other property owned by Defendant Order, and elsewhere.

59. As already alleged and described herein, the sexual abuse of Plaintiff was undertaken while Defendant McGuire was a managing agent of Defendant Order, while in the course and scope of Defendant McGuire's employment with Defendant Order, and/or was ratified by Defendant Order and others.

60. As a direct result of this sexual abuse, Plaintiff has suffered the injuries and damages described herein.

WHEREFORE, Plaintiff demands judgment against in an amount in excess of \$50,000, plus costs, disbursements, reasonable attorney's fees, interest and such other relief as the court deems just and equitable.

COUNT II: VICARIOUS LIABILITY
DEFENDANT ORDER

Plaintiff incorporates all paragraphs of this Complaint as if fully set forth in this count and further alleges:

61. At all times material, Defendant Order employed Defendant McGuire. Defendant McGuire was under Defendant Order's direct supervision, employ, and control when he committed the wrongful and negligent acts described herein. Defendant McGuire engaged in this conduct while acting in the course and scope of his employment with the Defendant Order and/or accomplished the sexual abuse by virtue of his job-created authority.

61. Defendant Order ordained Defendant McGuire and in so doing granted him facilities to perform as a priest, teacher, spiritual leader and counselor within Defendants Archdiocese and Order and held Defendant McGuire out to the community as a fit and competent agent of Defendant Order. At all times material, Defendant McGuire was employed by and/or was an agent of Defendant Order and was under its direct supervision and control when he negligently performed his duties and committed the wrongful acts described herein. Defendant McGuire committed the acts alleged within the apparent authority arising from his agency. Said conduct was undertaken while Defendant McGuire was a managing agent of Defendant Order, while in the course and scope of Defendant McGuire's employment with Defendant Order and/or was ratified by Defendant Order.

62. Defendant McGuire was acting at least in part to serve the interests of his employer when he committed the sexual abuse. Specifically, Defendant McGuire was acting as a priest, as well as using the trust, power and authority of the position granted by Defendant Order while he was with the Plaintiff.

63. By using his position as a priest and the trust, power and authority the position conferred on him, Defendant McGuire purported to act and/or speak on behalf of Defendant

Order when he committed the tortuous acts alleged herein. Plaintiff further relied upon Defendant McGuire's apparent authority to act on behalf of the Defendant Order.

64. Defendant McGuire would not have been able to commit the sexual abuse were he not given the authority to act as a priest by Defendant Order under its direct supervision. Defendant McGuire conducted his tortuous conduct during his agency relationship with Defendant Order while providing religious instruction and counseling to Plaintiff. Therefore, Defendants are liable for the negligent and wrongful conduct of Defendant McGuire under the law of vicarious liability, including the doctrine of respondeat superior.

65. As a direct result of Defendant Order's conduct, Plaintiff has sustained and continues to sustain the injuries and damages described herein.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount in excess of \$50,000, plus costs, disbursements, reasonable attorney's fees, interest and such other relief as the court deems just and equitable.

COUNT III: BREACH OF FIDUCIARY DUTY
DEFENDANT MCGUIRE

Plaintiff incorporates all paragraphs of the Complaint as if fully set forth under this count and further alleges:

66. As already alleged and described herein, and by holding himself out as a qualified Catholic priest, religious instructor, counselor, and by undertaking to provide religious counsel and guidance to the Plaintiff, Defendant McGuire entered into a fiduciary relationship with Plaintiff. Defendant McGuire breached his fiduciary duty to the Plaintiff by engaging in the

negligent and wrongful conduct described herein, causing the Plaintiff to sustain substantial personal injury constituting the tort of breach of fiduciary duty under Illinois Law.

67. As a direct result of Defendant McGuire's conduct, Plaintiff has sustained and continues to sustain the injuries and damages described herein.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount in excess of \$50,000, plus costs, disbursements, reasonable attorney's fees, interest and such other relief as the court deems just and equitable.

COUNT IV: BREACH OF FIDUCIARY DUTY
DEFENDANT ORDER

Plaintiff incorporates all paragraphs of this Complaint as if fully set forth in this count and further alleges:

68. By holding Loyola Academy out as a safe and secure environment, by undertaking the religious and educational instruction and spiritual and emotional counseling of Plaintiff, and as described elsewhere in this Complaint, Defendant Order entered into a fiduciary relationship with the minor Plaintiff. Defendant Order breached their fiduciary duty to the Plaintiff by engaging in the negligent and wrongful conduct described herein.

69. As a direct result of Defendant Order's conduct, Plaintiff has sustained and continues to sustain the injuries and damages described herein.

WHEREFORE, Plaintiff demands judgment in an amount in excess of \$50,000, plus costs, disbursements, reasonable attorney's fees, interest and such other relief as the court deems just and equitable.

COUNT V: NEGLIGENCE
DEFENDANTS ORDER

Plaintiff incorporates all paragraphs in this Complaint as if fully set forth in this count and further alleges:

70. Defendant Order by accepting minor parishioners and holding Loyola Academy out as a place of safety, guidance, healing, refuge and support and by holding Defendant McGuire out as a fit agent, Defendant Order agreed to and did undertake to provide for the supervision, care and physical safety of Plaintiff. As such Defendant Order owed Plaintiff a duty to provide for the supervision, care, and physical safety of Plaintiff in a reasonable manner.

71. Defendant Order, by and through its agents, servants and employees, knew or should reasonably have known of McGuire's dangerous and exploitative propensities as a child sexual abuser and/or an unfit agent. Despite such knowledge, Defendant Order negligently retained and/or failed to supervise McGuire in his position of trust and authority as a Roman Catholic priest, where he was able to commit the wrongful acts against Plaintiff.

72. Defendant Order failed to provide adequate warning to Plaintiff and his family of McGuire's dangerous and exploitive propensities.

73. Defendant Order breached its duty of care by exposing the minor Plaintiff to unsupervised contact with McGuire, wherein he was able to sexually abuse Plaintiff.

74. As a direct result of this negligent conduct, Plaintiff has sustained and continues to sustain the injuries and damages alleged herein.

WHEREFORE, Plaintiff requests a jury trial and demands judgment in an amount in excess of \$50,000.00 plus costs, disbursements, reasonable attorney's fees, interest, and such other relief as the court deems just and equitable.

COUNT VI: FIDUCIARY FRAUD
DEFENDANT ORDER

Plaintiff incorporates all paragraphs in this Complaint as if fully set forth in this count and further alleges:

75. By holding Loyola Academy out as a safe and secure environment, and by undertaking the religious and educational instruction and spiritual and emotional counseling of Plaintiff, Defendants entered into a relationship of influence and superiority over the minor Plaintiff. Further, this relationship caused the minor Plaintiff to maintain confidence in Defendants' actions. Thus, Defendants entered into a fiduciary relationship with Plaintiff.

76. Further and as detailed elsewhere in this complaint, by holding itself, and its agents such as Defendant McGuire, out as leaders, holy figures and representatives of the Catholic Church, Defendant Order solicited, accepted and/or entered into a relationship with Plaintiff whereby Defendant Order held a position of power and control over Plaintiff. Plaintiff entrusted his health, welfare and safety to Defendant Order because of Defendants' position of power and control, thus resulting in a fiduciary relationship between Defendant Order and Plaintiff.

77. As fiduciaries to Plaintiff, Defendant Order had a duty to obtain, warn, and disclose to Plaintiff (as well as other parishioners in harms way) correct information relating to acts of sexual misconduct and other inappropriate, dangerous conduct by Defendant McGuire.

78. On information and belief, Defendant Order and others had actual or constructive knowledge of Defendant McGuire's negligent and wrongful behavior. Defendant Order, however, misrepresented, concealed, failed to investigate, failed to warn and/or failed to disclose information relating to sexual misconduct and other inappropriate behavior of Defendant McGuire. Defendant Order also failed to adequately supervise Defendant McGuire or otherwise insulate Plaintiff and other potential victims from McGuire.

79. Plaintiff justifiably relied upon Defendant Order for information, assistance and guidance relating to sexual misconduct and other inappropriate behavior of Defendant McGuire.

80. Upon information and belief, Defendant Order intended to conceal or failed to disclose information relating to the sexual misconduct and other inappropriate behavior of Defendant McGuire.

81. Had Plaintiff been aware of the information described above, Plaintiff would have acted differently.

82. As a direct result of Defendants Archdiocese and Order's conduct, Plaintiff has sustained and continues to sustain the injuries and damages described herein.

WHEREFORE, Plaintiff requests a jury trial and demands judgment in an amount in excess of \$50,000.00 plus costs, disbursements, reasonable attorney's fees, interest, and such other relief as the court deems just and equitable.

COUNT VII: INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
AGAINST ALL DEFENDANTS

Plaintiff incorporates all paragraphs in this Complaint as if fully set forth in this count and further alleges:

83. The Defendants' conduct described herein is extreme and outrageous.

84. The Defendants knew that there was a high probability that its conduct would inflict severe emotional distress upon Plaintiff.

85. The Defendants recklessly disregarded the high probability that its conduct would inflict severe emotional distress upon Plaintiff causing Plaintiff severe emotional distress.

86. Plaintiff suffered medically significant and diagnosable distress as a result of Defendants' actions as set forth in the Facts above.

WHEREFORE, Plaintiff requests a jury trial and demands judgment against Defendants in an amount in excess of \$50,000.00 plus costs, disbursements, reasonable attorney's fees, interest, and such other relief as the court deems just and equitable.

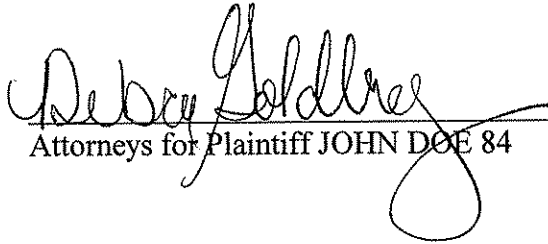
COUNT VIII: CONSPIRACY
AGAINST ALL DEFENDANTS

Plaintiff incorporates all paragraphs of the Complaint as if fully set forth under this count.

87. As detailed herein, Defendants and others, in concert with each other, and with the intent to conceal and defraud, conspired and came to a meeting of the minds whereby they would misrepresent, conceal or fail to disclose information relating to the sexual misconduct of Defendant Order's agents, including Defendant McGuire. By so concealing, Defendants committed at least one act in furtherance of the conspiracy.

88. As a direct result, Plaintiffs have suffered substantial personal injury and damages described herein.

WHEREFORE, Plaintiffs requests a trial by jury and demands judgment in an amount in excess of \$50,000.00, plus costs, disbursements, reasonable attorney's fees, interest, and whatever relief the court deems just and equitable


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