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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN JOAQUIN

14 JOHN DOE 31,
15 Plaintiff,

Case No. 39-2010-00252161-CU-FR-STK

16 COMPLAINT FOR DAMAGES

17 v.
18 THE ROMAN CATHOLIC BISHOP OF
19 STOCKTON, A CORPORATION SOLE,
20 PASTOR OF SACRED HEART CHURCH OF
21 TURLOCK, A CORPORATION SOLE,
22 PASTOR OF PRESENTATION CHURCH, A
23 CORPORATION SOLE, JOHN ROE 1 and
24 ROES 2 through 25, inclusive,
25 Defendants.

- 1. Negligence
- 2. Negligent Retention / Supervision and Failure to Warn
- 3. Breach of Fiduciary Duty and/or Confidential Relationship
- 4. Sexual Battery
- 5. Vicarious Liability

BY FAX

26 GENERAL ALLEGATIONS

27 1. Plaintiff is using a fictitious name in this Complaint under rights to privacy granted
28 by the Constitution of the State of California due to the sensitive nature of this case. If, for any
reason, Defendants cannot accurately determine the identity of the Plaintiff, their attorney can
contact Plaintiff's attorneys at the address on the face sheet of the Complaint, and the name of the
Plaintiff will be provided.

2. Plaintiff JOHN DOE 31 is a natural person who was a resident of the State of
California, at all relevant times mentioned herein. Plaintiff was a minor at the time of the sexual
abuse alleged herein occurring in approximately 1991-1992. Plaintiff is under the age of 26 at the
time of the filing of this action.

1 3. Defendant THE ROMAN CATHOLIC BISHOP OF STOCKTON, A
2 CORPORATION SOLE, (hereinafter "Diocese") is a religious institution organized under the
3 laws of the State of California as a corporation sole with its principle place of business in San
4 Joaquin, California. Defendant Diocese is responsible for the funding, staffing and direction of
5 the parishes, parochial schools, fraternal organizations and other facilities and institutions within
6 the geographic area of the county of San Joaquin, and encompasses five other counties in central
7 valley California.

8 4. Defendant PASTOR OF SACRED HEART CHURCH OF TURLOCK. A
9 CORPORATION SOLE in Turlock, California (hereinafter "Parish 2") is a church located within
10 San Joaquin County. Defendant Parish is a church where Father O'Grady's propensities to sexual
11 abuse minors were known and yet not reported to law enforcement prior to the molestation of
12 Plaintiff.

13 5. Defendant PASTOR OF PRESENTATION CHURCH, A CORPORATION SOLE
14 in Stockton, California (hereinafter "Parish 3") is a church located within San Joaquin County.
15 Defendant Parish is a church where Father O'Grady's propensities to sexual abuse minors were
16 known and yet not reported to law enforcement prior to the molestation of Plaintiff.

17 6. Defendant JOHN ROE 1 (hereinafter "Parish 1") is a church located within
18 Defendant Diocese. Defendant Parish is the church the Plaintiff and his family regularly attended
19 and is a location where the sexual abuses of Plaintiff were perpetrated.

20 7. OLIVER O'GRADY (hereinafter "Father O'Grady") was an adult male who was
21 an ordained priest and worked within Defendant Diocese. At all times material hereto, Father
22 O'Grady was under the direct supervision, employ and control of Defendant Diocese, including
23 the Bishop listed below, from 1971 to 1993. Father O'Grady physically perpetrated acts of sexual
24 abuse upon the Plaintiff when Plaintiff was a minor.

25 8. The most reverend Bishop Merlin Guilfoyle was the bishop of the Defendant
26 Diocese from 1969 to 1979.

27 9. The most reverend Cardinal Roger Mahony was the bishop of Defendant Diocese
28 from 1980 to 1985.

1 10. The most reverend Bishop Donald Montrose was the bishop of Defendant Diocese
2 from 1986 to 1999.

3 11. By placing Father O'Grady in churches throughout the Diocese to serve as a priest
4 and pastor, his position with his collar as the Bishop's agent made the representation to
5 parishioners that he was fit to serve them and act in their best interests. Defendant affirmatively
6 represented to minor children and their families at Parish, including Plaintiff and his family, that
7 Father O'Grady wore a collar, which was a representation of his fitness to be a priest and therefore
8 he was expected by Defendant to be viewed by parishioners as being safe, celibate, and
9 trustworthy, and in fact was so viewed by parishioners.

10 12. Plaintiff is informed and believes and based thereon alleges that at all times
11 material hereto each Defendant was the agent, servant, employee and/or representative of each
12 remaining Defendant, and was at all times acting within the course and scope of said agency,
13 service, employment and/or representation, and did the acts herein alleged with the permission and
14 consent of each other Defendant. Plaintiff is informed and believes and thereon alleges that at all
15 times material hereto Defendants Diocese, Parish 1, Parish 2, Parish 3, and Roes 2 through 25,
16 inclusive and each of them, operated and controlled religious and educational facilities in San
17 Joaquin County and other counties in California, and through such facilities, provided religious
18 and educational instruction to students, parishioners and others.

19 13. The true names and capacities, whether individual, corporate, associate or
20 otherwise, of Defendants Roes 2 through 25 are unknown to Plaintiff, who therefore sues said
21 Defendants by such fictitious names. When the true names and capacities of said Defendants have
22 been ascertained, Plaintiff will seek leave of court to amend this Complaint to allege such true
23 names and capacities. Plaintiff is informed and believes and based thereon alleges that each of the
24 Defendants designated as a Roe herein is liable in some manner for the acts, occurrences and
25 omissions hereinafter alleged.

26 14. Plaintiff is informed and believes and based thereon alleges that at all times
27 material hereto each Defendant was the agent, servant, employee and/or representative of each
28 remaining Defendant, and was at all times acting within the course and scope of said agency.

1 service, employment and/or representation, and did the acts herein alleged with the permission and
2 consent of each other Defendant. Plaintiff is informed and believes and based thereon alleges that
3 at all times material hereto Defendant Diocese and ROES 2 through 25, inclusive, and each of
4 them, operated and controlled religious and educational facilities in Sacramento and other counties
5 in California, and through such facilities, provided religious and educational instruction to
6 students, parishioners and others.

7 15. The true names and capacities, whether individual, corporate, associate or
8 otherwise, of Defendants ROES 2 through 25 are unknown to Plaintiff, who therefore sues said
9 Defendants by such fictitious names. When the true names and capacities of said Defendants have
10 been ascertained, Plaintiff will seek leave of court to amend this Complaint to allege such true
11 names and capacities. Plaintiff is informed and believes and based thereon alleges that each of the
12 Defendants designated as a ROE herein is liable in some manner for the acts, occurrences and
13 omissions hereinafter alleged.

14 16. While religious belief is absolutely protected, conduct is not protected and the
15 actions below herein alleged were illegal secular motivated conduct that is regulated by the law.

16 17. In 1962, the Vatican in Rome issued a Papal Instruction binding upon all Bishops
17 throughout the world including the Bishop of Stockton. The instruction was binding upon the
18 Bishop of Stockton until 2001. The instruction directed that allegations and reports of sexual
19 abuse of children by priest were required to be kept secret and not disclosed either to civil
20 authorities such as law enforcement, to co-employees or supervisors of parish priests, or to
21 parishioners generally.

22 18. Canon law requires Bishops to keep subsecreto files also known as confidential
23 files. These files are not to be made public.

24 19. Because of problems of sexual misconduct of Catholic clergy, the Catholic Church
25 and other organizations sponsored treatment centers for priests that had been involved in sexual
26 misconduct. One of the treatment centers that existed prior to 1982 was in Albuquerque, New
27 Mexico, and sponsored by the servants of the Paracletes. Another treatment center for priests who
28 engaged in sexual misconduct was St. Luke's in Suitland, Maryland.

1 20. Plaintiff is informed and believes and based thereon alleges that Defendants, and all
2 of them, had knowledge or notice of Father O'Grady's prior acts of unlawful sexual conduct with
3 minors. Nevertheless, Defendants failed to take reasonable steps to prevent future criminal sexual
4 misconduct and molestations by Father O'Grady upon minor children, including Plaintiff. These
5 failures included, but were not limited to, preventing or avoiding placement of Father O'Grady in
6 a function or environment in which contact with children is an inherent part of that function or
7 environment.

8 21. Because Father O'Grady was a known child molester, it was foreseeable to
9 Defendants Diocese, Parish 1, Parish 2, Parish 3 and Roes 2 through 25, that Father O'Grady
10 would entice, induce, direct and coerce Plaintiff to engage in Father O'Grady's sexual abuse of
11 Plaintiff, during the course of Father O'Grady's normal duties and assignments of counseling,
12 academic tutoring, secular counseling, and face-to-face confessions of children.

13 22. Using the power, authority and trust of his positions, Father O'Grady enticed,
14 induced, directed and coerced Plaintiff to engage in acts of sexual abuse and Defendants Diocese
15 and Parish 1, Parish 2, Parish 3, and Roes 2 through 25, are vicariously liable for the acts and
16 omissions of their agent Father O'Grady based upon the public policy of respondeat superior and
17 also because said Defendants ratified the conduct of the individual committing the foreseeable
18 unlawful sexual abuse of Plaintiff.

19 23. Plaintiff was raised in a devoutly religious family, was baptized, confirmed, and
20 regularly celebrated weekly mass, went to confession with Father O'Grady, and received the
21 sacraments through his church.

22 24. Plaintiff first met and came to know Father O'Grady as his parish priest and
23 spiritual and secular counselor while attending Defendant Parish 1.

24 25. Father O'Grady molested Plaintiff while babysitting 5 year old Plaintiff in
25 O'Grady's bedroom in the rectory while O'Grady was assigned to Parish 1.

26 26. As a result of Plaintiff's position as a minor, together with Father O'Grady's
27 position as a holy man and authority figure, Father O'Grady was able to have control and
28 influence over Plaintiff. By his words and actions, Father O'Grady represented to Plaintiff that the

1 object of his relationship with Plaintiff was to provide counseling, comfort and advice. This
2 representation was untrue and intended by Father O'Grady to deceive Plaintiff, to gain Plaintiff's
3 trust and confidence and to obtain control over him. By his words and actions, Father O'Grady
4 assured Plaintiff that his conduct was proper.

5 27. Plaintiff is informed and believes and based thereon alleges that after learning of
6 Father O'Grady's conduct, Defendants Diocese, Parish and Defendants Roes 2 through 25, ratified
7 Father O'Grady's conduct by failing to report him to law enforcement authorities, failing to notify
8 police, prosecution, parishioners and the laity. Defendant Diocese acted to suppress the facts of
9 Father O'Grady's sexual misconduct to prevent parishioners from becoming aware of Father
10 O'Grady's criminal activities. Defendants knew, or had reason to know, or were otherwise on
11 notice, that their actions would silence Plaintiff, and prevent him from discovering his injuries.
12 Defendant Diocese actively concealed Father O'Grady's sexual abuse of children, and prevented
13 parishioners at the parishes at which Father O'Grady sexually abused children, as well as parishes
14 to which Father O'Grady was subsequently assigned, from learning of Father O'Grady's sexual
15 abuse of children.

16 28. Plaintiff regularly attended mass and engaged in confession with priests employed
17 by Defendant Diocese. Accordingly, a special relationship was formed between Plaintiff and
18 Defendants. As delineated in California Evidence Code sections 1030-1034, codifying the
19 clergyman-penitent privilege, the fact that a special relationship between Defendants and
20 parishioners not only exists, but extends to non-spiritual matters.

21 29. Plaintiff John Doe is filing this complaint pursuant to Cal. Code Civ. Proc. § 340.1.

22 30. At least one of the Defendants has its primary place of business in San Joaquin
23 County; therefore, venue is properly placed in San Joaquin County.

24 **FIRST CAUSE OF ACTION**
25 **(Negligence)**

26 31. Plaintiff incorporates herein by reference each and every General Allegation as if
27 fully set forth herein and with the same force and effect.

28 ///

1 wrongful acts upon Plaintiff. Defendants Diocese, Parish 1, Parish 2, Parish 3 and ROES 2
2 through 25 failed to take reasonable steps and failed to implement reasonable safeguards to avoid
3 acts of unlawful sexual conduct in the future by Father O'Grady, including but not limited to
4 preventing or avoiding placement of Father O'Grady in a function or environment in which
5 contact with children is an inherent aspect of that function or environment.

6 38. Defendant Diocese failed to provide reasonable supervision of Father O'Grady,
7 failed to use reasonable care in investigating Father O'Grady and failed to provide adequate
8 warning to Plaintiff and his family of Father O'Grady's dangerous propensities and unfitness.

9 39. Said conduct was undertaken while Father O'Grady was a managing agent of
10 Defendants Diocese, Parish 1, Parish 2, Parish 3 and ROES 2 through 25 and each of them, while
11 in the course and scope of Father O'Grady's employment with Defendants Diocese, Parish 1,
12 Parish 2, Parish 3 and ROES 2 through 25 and each of them and/or was ratified by Defendants
13 Diocese, Parish 1, Parish 2, Parish 3 and ROES 2 through 25 and each of them.

14 40. Defendants breached their duty to take reasonable protective measures to protect
15 Plaintiff and other minor students from the risk of childhood sexual abuse by Father O'Grady,
16 such as the failure to properly warn or education Plaintiff and his parents, and other minor
17 parishioners and/or students about how to avoid such a risk, pursuant to *Juarez v. Boy Scouts of*
18 *America, Inc.* (2000) 97 Cal.App.4th 377.

19 41. As a direct result of Defendants' negligence, Plaintiff was caused harm as more
20 fully set forth below.

21 **THIRD CAUSE OF ACTION**
22 **(Breach of Fiduciary Duty and/or Confidential Relationship)**

23 42. Plaintiff incorporates by reference each and every Allegation in this complaint as if
24 fully set forth herein and with the same force and effect.

25 43. Because of Plaintiff's young age, and because of the status of Father O'Grady as an
26 authority figure to Plaintiff, Plaintiff was vulnerable to Father O'Grady. Father O'Grady sought
27 Plaintiff out and was empowered by and accepted the Plaintiff's vulnerability. Plaintiff's
28 vulnerability also prevented Plaintiff from effectively protecting himself.

1 Superior.

2 53. Defendants are vicariously liable for the intentional and/or negligent torts of Father
3 O'Grady because they were acting within the scope of their misconduct, where such misconduct
4 was foreseeable.

5 54. Defendants are vicariously liable because after knowledge or opportunity to learn
6 of Father O'Grady's misconduct, Defendants continued Father O'Grady in service for Defendants.
7 Defendants are also vicariously liable because Defendants authorized Father O'Grady to engage in
8 the tortuous conduct.

9 55. The risk of abuse of a priest's authority, trust, reverence, respect and access to
10 vulnerable families and young children have all been long known to the Defendants. It has been
11 long known to the Defendants that priests with such authority, trust, reverence, respect and access
12 to vulnerable families and young children create a risk of misusing their position to sexually
13 molest children. Defendants have enacted policies designed to prevent this type of misconduct as
14 part of their recognition that parties with access to young, vulnerable children create a special risk
15 of sexual abuse to those children.

16 56. For the reasons set forth above, the Defendants could have and should have
17 reasonably foreseen that Father O'Grady's tortuous conduct might occur in conjunction with his
18 assigned duties.

19 57. Since they could have foreseen, should have foreseen, and did foresee the
20 possibility of this tortuous conduct occurring as an outgrowth of Father O'Grady's duties,
21 Defendants' are vicariously liable for the tortuous conduct.

22 58. As a direct result of Defendants' conduct, Plaintiff was caused harm as more fully
23 set forth below.

24 **DAMAGES**

25 59. As a direct, legal and proximate result of each and all of the Causes of Action
26 hereinabove alleged, Plaintiff has been damaged as hereinbelow set forth.

27 60. Plaintiff has suffered psychological and emotional injury and harm, including not
28 only the immediate distress caused by Defendants and their conduct, but also long-term

1 psychological injuries which were to a large extent only latent at the time of the wrongful conduct,
2 and which have developed and occurred, and will in the future continue to develop and occur in
3 Plaintiff, all to Plaintiff's general damages in a sum to be proven.

4 61. Plaintiff has suffered physical, mental and emotional health problems as a result of
5 which he will in the future have to employ, medical and mental health professionals for diagnosis
6 and treatment and will in the future continue to incur expenses therefore, in a sum as yet
7 unascertained. Plaintiff will ask leave of Court to amend this Complaint to state the exact amount
8 of expenses when they are ascertained.


9 62. Plaintiff has suffered and will in the future continue to suffer a loss of earnings and
10 of earning capacity, in a sum as yet unascertained. Plaintiff will ask leave of court to amend this
11 Complaint to state the exact amount of such losses when the sums are ascertained.

12 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 13 1. For damages for future medical, psychotherapy, and related expenses according to
14 proof at the time of trial;
- 15 2. For general damages for physical and mental pain and suffering and emotional
16 distress in a sum to be proven at the time of trial;
- 17 3. For damages for past and future lost wages and loss of earning capacity according
18 to proof at the time of trial;
- 19 4. For prejudgment interest pursuant to statute;
- 20 5. For costs of suit herein; and
- 21 6. For such other and further relief as the Court deems proper.

22
23 Dated: October 25, 2010

LAW OFFICES OF JOSEPH C. GEORGE, PH.D.

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26 _____
27 JOSEPH C. GEORGE
28 Attorneys for Plaintiff