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**CONNIE MAZZEI
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J. GEDILLO DEPUTY**

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CASE MANAGEMENT CONFERENCE
DATE: 10-17-2011
TIME: 9:00 AM
PLACE: Courtroom 15, 2nd Floor
1200 Agualto Rd. Monterey CA 93940

FILED BY FACSIMILE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

10 JOHN RJ DOE, an individual,
11
12 Plaintiff,

13 v.

14 THE ROMAN CATHOLIC BISHOP OF
15 MONTEREY, CALIFORNIA, a California
16 corporation sole; MADONNA DEL SASSO
17 PARISH, a business entity of form unknown;
18 FATHER EDWARD FITZ-HENRY, an
19 individual; and DOES 1 through 100, inclusive,
20
21 Defendants.

Case No.: **M710724**
Judge: Honorable _____
Dept.: _____

COMPLAINT FOR DAMAGES FOR:

- 1) NEGLIGENCE;
- 2) NEGLIGENT SUPERVISION;
- 3) NEGLIGENT HIRING/RETENTION;
- 4) NEGLIGENT FAILURE TO WARN, TRAIN OR EDUCATE;
- 5) CONSTRUCTIVE FRAUD (C.C. § 1573);
- 6) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
- 7) SEXUAL BATTERY (C.C. § 1708.5);
- 8) ASSAULT;
- 9) SEXUAL HARASSMENT (C.C. § 51.9);
- 10) GENDER VIOLENCE (C.C. § 52.4).

[DEMAND FOR JURY TRIAL]

[Filed Pursuant to C.C.P. § 340.1]

24 **COMES NOW**, Plaintiff JOHN RJ DOE, who complains and alleges as follows:

25 **GENERAL ALLEGATIONS AS TO THE PARTIES**

26 1. At all times mentioned herein, Plaintiff JOHN RJ DOE (hereinafter "Plaintiff") was
27 a resident of the County of Monterey, State of California. The name used by JOHN RJ DOE in
28 this Complaint is not the actual name of JOHN RJ DOE, but is a fictitious name utilized to protect

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1 the privacy of JOHN RJ DOE, a victim of childhood sexual harassment, molestation and abuse.
2 Plaintiff JOHN RJ DOE is a Caucasian male, born on April 10, 1989, and was a minor during the
3 entire time of the sexual misconduct alleged herein.

4 2. Defendant The Roman Catholic Bishop of Monterey, California (hereinafter
5 "RCBM"), at all times mentioned herein, was and is a religious corporation sole and Roman
6 Catholic Diocese, organized under the laws of the State of California, having its principal place of
7 business and office in the County of Monterey, State of California.

8 3. Defendant Madonna Del Sasso Parish (hereinafter "Madonna Parish"), at all times
9 mentioned herein, was and is a business entity, form unknown, operating as a parish and school for
10 minors of the Roman Catholic Church, with its principal place of business and office located in the
11 City of Salinas, in the County of Monterey, in the State of California.

12 4. Defendant Father Edward Fitz-Henry (hereinafter "Father Fitz-Henry"), at all times
13 mentioned herein, was and is an individual male adult, born in Ireland, residing in the County of
14 Monterey, in the State of California. During the period of time during which the childhood sexual
15 abuse, harassment, and molestation alleged herein took place, Defendant Father Edward Fitz-
16 Henry was a Roman Catholic priest working for RCBM, Madonna Parish and DOES 1-100 as a
17 priest, teacher, youth group organizer, spiritual advisor, youth counselor and mentor. In such
18 capacities, at all times herein alleged, Father Edward Fitz-Henry was an employee, agent, and
19 servant of RCBM and Madonna Parish and DOES 1-100, and was under their complete control
20 and active supervision.

21 5. At all times mentioned herein, each and every Defendant was an employee, agent,
22 and/or servant of all named Defendants and DOES 1-100, inclusive, and/or was under their
23 complete control and/or active supervision. Defendants and each of them and are individuals,
24 corporations, partnerships and/or other entities that engaged in, joined in, and conspired together
25 and with Defendants and wrongdoers in carrying out the tortuous and unlawful activities described
26 in this Complaint.

27 6. Defendants DOES 1-100, inclusive, and each of them, are sued herein under said
28 fictitious names. Plaintiff is ignorant as to the true names and capacities of DOE Defendants 1-

1 100, whether individual, corporate, associate, or otherwise, and therefore sues said Defendants by
2 such fictitious names. When their true names and capacities are ascertained, Plaintiff will request
3 leave of Court to amend this Complaint to state their true names and capacities herein.

4 7. Plaintiff is informed and believes, and on that basis alleges, that at all times
5 mentioned herein, each fictitiously named Defendant was responsible in some manner or capacity
6 for the occurrences herein alleged, and that Plaintiffs' damages, as herein alleged, were
7 proximately caused by all named and DOE Defendants.

8 8. Defendants RCBM, Madonna Parish, Father Fitz-Henry and DOES 1-100 inclusive,
9 are sometimes collectively referred to herein as "Defendants" and/or as "All Defendants"; such
10 collective reference refers to all specifically named Defendants as well as those fictitiously named
11 herein.

12 9. Plaintiff is informed and believes, and on that basis alleges, that at all times
13 mentioned herein, there existed a unity of interest and ownership among Defendants and each of
14 them, such that any individuality and separateness between Defendants, and each of them, ceased
15 to exist. Defendants and each of them, were the successors-in-interest and/or alter egos of the
16 other Defendants, and each of them, in that they purchased, controlled, dominated and operated
17 each other without any separate identity, observation of formalities, or other manner of division.
18 To continue maintaining the facade of a separate and individual existence between and among
19 Defendants, and each of them, would serve to perpetrate a fraud and an injustice.

20 10. Plaintiff is informed and believes, and on that basis alleges, that at all times
21 mentioned herein, Defendants and each of them were the agents, representatives and/or employees
22 of each and every other Defendant. In doing the things hereinafter alleged, Defendants and each of
23 them were acting within the course and scope of said alternative personality, capacity, identity,
24 agency, representation and/or employment and were within the scope of their authority, whether
25 actual or apparent.

26 11. Plaintiff is informed and believes, and on that basis alleges, that at all times
27 mentioned herein, Defendants and each of them were the trustees, partners, servants, joint
28 venturers, shareholders, contractors, and/or employees of each and every other Defendant, and the

1 acts and omissions herein alleged were done by them, acting individually, through such capacity
2 and within the scope of their authority, and with the permission and consent of each and every
3 other Defendant and that said conduct was thereafter ratified by each and every other Defendant,
4 and that each of them is jointly and severally liable to Plaintiff.

5 **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

6 12. At all times material hereto, Father Fitz-Henry's employment duties with
7 Defendants included providing for the religious, educational, spiritual and emotional needs and
8 well-being of students, including Plaintiff.

9 13. At all times material hereto, Plaintiff was a minor student and parishioner of
10 RCBM and Madonna Parish, holding such positions as altar server and choir member.

11 14. It is under these circumstances that Plaintiff came to be under the direction and
12 control of Father Fitz-Henry, who was assigned at Madonna Parish by RCMB as an associate
13 pastor. Father Fitz-Henry used this position of authority and trust over Plaintiff to sexually harass,
14 molest and abuse him. Father Fitz-Henry did sexually harass, molest and abuse Plaintiff, who was
15 a minor at the time. Such conduct was done for Father Fitz-Henry's sexual gratification,
16 performed on Plaintiff without his free consent. These acts of sexual abuse constituted conduct in
17 violation of California Penal Code sections 226j, 272, 273a, 286, 288, 288a, 288.2, 288.5, 289 and
18 647.6.

19 15. As a minor student, parishioner and altar server at Defendants RCBM and Madonna
20 Parish, Plaintiff was under Defendants' supervision, care and control, thus creating a special,
21 fiduciary, confidential and *in loco parentis* relationship between Plaintiff and Defendants. As the
22 responsible parties and employers supervising and controlling Father Fitz-Henry, Defendants owed
23 special duties of care to Plaintiff, to ensure his welfare while under their control and supervision.

24 16. Plaintiff is informed and believes, and on that basis alleges that prior to Plaintiff's
25 sexual abuse by Father Fitz-Henry, RCBM and Madonna Parish had prior knowledge of Father
26 Fitz-Henry's dangerous propensities and tendencies as a child molester, sexual harasser and sexual
27 abuser. As such, Defendants had a duty to reveal to Plaintiff, Plaintiff's parents, and students and
28 parishioners of all named Defendants the truth about Father Fitz-Henry and his dangerous sexual

1 propensities and status as a child molester. Defendants, however, never provided Plaintiff,
2 Plaintiff's parents, or students or parishioners of all named Defendants with such notice of Father
3 Fitz-Henry's dangerous sexual propensities or history.

4 17. Plaintiff is informed and believes, and on that basis alleges, that Defendants had a
5 duty to disclose to Plaintiff, as well as students, parishioners and parents of RCBM and Madonna
6 Parish and others under Father Fitz-Henry's direction, guidance, control and supervision that
7 Father Fitz-Henry had in the past engaged in unlawful sexually-related conduct with minor
8 parishioners and students of Defendants, but negligently or intentionally suppressed, concealed or
9 failed to disclose this information. The duty to disclose this information arose by the special,
10 fiduciary, confidential and *in loco parentis* relationship between Defendants and Plaintiff.
11 Despite knowing that Father Fitz-Henry had previously been known to sexually abuse children,
12 Defendants nevertheless made the conscious decision to place him back into ministry with
13 insufficient supervision, where he was able to again sexually molest minors, including Plaintiff. As
14 such, the Defendants owed the minors whom Father Fitz-Henry would come into contact with
15 thereafter, including their parents, a duty to warn of his sexual propensities and dangerousness.

16 18. Plaintiff is informed and believes, and on that basis alleges, that Plaintiff was a
17 student and parishioner at Madonna Parish, Defendants engaged in a pattern and practice of
18 employing other staff known to be dangerous child molesters. In addition to employing Father
19 Fitz-Henry, Defendants employed multiple other priests, teachers, ministers, spiritual advisors,
20 employees, assistants or faculty members who were known to have sexually abused minors.

21 19. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew
22 or had reason to know, or were otherwise put on notice of Father Fitz-Henry's past sexual abuse of
23 minors, past arrests, charges, claims or investigations, and his propensity and disposition to engage
24 in unlawful sexual activity with minors such that Defendants knew or had reason to know that
25 Father Fitz-Henry would commit wrongful sexual acts with minors, including Plaintiff. This
26 belief is founded on the fact that church, parish, hierarchical, and school records of Defendants
27 reflect numerous incidents of inappropriate sexual contact and conduct with minors by priests,
28 teachers, ministers, spiritual advisors, employees, assistants, faculty members and others,

1 including incidents involving Father Fitz-Henry, both on and off the physical premises of such
2 Defendants. Based on these records, Defendants knew or had reason to know of Father Fitz-
3 Henry's past sexual abuse of minors, past arrests, charges, claims and/or investigations, and his
4 propensity and disposition to engage in unlawful activity and unlawful sexual activity with minors
5 such that Defendants knew or had reason to know that Father Fitz-Henry would commit wrongful
6 sexual acts with minors, including Plaintiff.

7 20. Defendants failed to take reasonable steps and implement reasonable safeguards to
8 avoid acts of unlawful sexual conduct by Father Fitz-Henry in the future, including but not limited
9 to preventing abuse of Plaintiff by Father Fitz-Henry, avoiding placement of Father Fitz-Henry in a
10 function or environment in which contact with children is an inherent part of that function or
11 environment. Instead, Defendants ignored and covered up the sexual abuse by Father Fitz-Henry
12 that had already occurred.

13 21. Plaintiff is informed and believes, on that basis alleges, that prior to and during the
14 sexual harassment, molestation and abuse of Plaintiff, Defendants knew or had reason to know
15 that Father Fitz-Henry would commit wrongful sexual acts with minors. Defendants knew or had
16 reason to know that Father Fitz-Henry had violated his role and vows as a priest, teacher, spiritual
17 advisor, youth counselor and mentor, and used these positions of authority and trust acting on
18 behalf of Defendants to gain access to children, including Plaintiff, on and off the parish and
19 school facilities and grounds, in which he caused Plaintiff to touch him, to allow him to touch
20 Plaintiff in a sexual manner, and engaged in sexual conduct and abuse, including harassment and
21 molestation, with such children including Plaintiff JOHN RJ DOE.

22 22. Plaintiff is informed and believes, on that basis alleges, that because of the
23 relationship between Plaintiff and Defendants, Defendants had an obligation and legally-imposed
24 duty not to hide material facts and information regarding Father Fitz-Henry's past, including his
25 deviant sexual behavior and propensities and allegations lodged against him, from Plaintiff,
26 Plaintiff's parents, parishioners and students. Additionally, Defendants had an affirmative duty to
27 inform, warn, and institute appropriate protective measures to safeguard minors who were
28 reasonably likely to come in contact with Father Fitz-Henry and other perpetrators of childhood

1 sexual harassment, molestation and abuse at Defendants' institutions. Plaintiff further alleges that
2 the Defendants wilfully refused to notify, give adequate warning, and/or to implement appropriate
3 safeguards, and thereby creating the peril that ultimately damaged Plaintiff.

4 23. Plaintiff is informed and believes, on that basis alleges, that with knowledge that
5 Defendant Father Fitz-Henry was a child molester, Defendants conspired to and did knowingly fail
6 to take reasonable steps, and failed to implement reasonable safeguards to avoid acts of unlawful
7 sexual conduct in the future by Father Fitz-Henry, including preventing and avoiding placement of
8 Father Fitz-Henry in a function or environment in which contact with children is an inherent aspect
9 of that function or environment.

10 24. Plaintiff is informed and believes, on that basis alleges, that with actual or
11 constructive knowledge that Defendants were incapable of supervising or stopping child molesters,
12 Defendants conspired to and did knowingly fail to take reasonable steps, and failed to implement
13 reasonable safeguards to avoid acts of unlawful sexual conduct in the future by those supervised by
14 Father Fitz-Henry, including, but not limited to, preventing or avoiding placement of those
15 molesters in a function or environment in which supervision of employees whose contact with
16 children is an inherent aspect of that function or environment.

17 25. Plaintiff is informed and believes, on that basis alleges, that Defendants failed to
18 report and did hide and conceal from students, parents, parishioners, care givers, teachers, law
19 enforcement authorities, civil authorities and others, the true facts and relevant information
20 necessary to bring Father Fitz-Henry to justice for the sexual misconduct he committed with
21 minors, as well as protect their fiduciaries, including Plaintiff.

22 26. Plaintiff further alleges Defendants have engaged in a pattern and practice of
23 employing sexual abusers as priests, teachers, employees, faculty and staff administrators within
24 the ownership and control of Defendants. Defendants knowingly and/or negligently concealed
25 these facts from students, their parents, the Catholic community, the public at large and law
26 enforcement.

27 27. Plaintiff is informed and believes, and on that basis alleges that Defendants
28 intentionally, conspiratorially, and fraudulently attempted to hide and conceal Father Fitz-Henry's

1 propensities and acts of sexual harassment, molestation and abuse from public scrutiny and
2 criminal investigation. Defendants created and implemented a “Conspiracy of Silence,” a policy
3 and procedure whereby any and all allegations of sexual misconduct by employees and agents of
4 Defendants would be immediately squelched, concealed and hidden from the public, parishioners
5 and law enforcement. Defendants continued this “Conspiracy of Silence,” a policy and procedure
6 of concealing and hiding allegations of sexual misconduct by employees and agents of Defendants
7 from the public, parishioners, and law enforcement, to the present. Defendants concealed from
8 Plaintiff, the public and law enforcement the fact that Defendants had multiple accused sexual
9 abusers working within their ranks. After receiving the report of Father Fitz-Henry's sexual
10 misconduct with Plaintiff, Defendants immediately implemented the “Conspiracy of Silence”—an
11 elaborate scheme, which had already been in place, utilized to conceal the identities and actions of
12 sexual abusers operating within Defendants from parishioners, law enforcement personnel, and the
13 public. The sexual abuse of Plaintiff committed by Father Fitz-Henry was a result of the tolerance
14 and culture of sexual abuse fostered by defendants.

15 28. Plaintiff is informed and believes, on that basis alleges, that Defendants utilized the
16 purportedly “confidential” information obtained about Plaintiff and Plaintiff’s family members to
17 further conceal the sexual misconduct of Father Fitz-Henry, and to allow him to escape civil and
18 criminal liability for the sexual abuse he committed upon Plaintiff and likely many other minors of
19 which Defendants were aware, by destroying and manipulating evidence. Defendants utilized the
20 information obtained from Plaintiff to enable or aid in their conspiratorial plan to shield the sexual
21 abuse committed by Father Fitz-Henry, to mislead parishioners, the public and law enforcement as
22 to the true reason Father Fitz-Henry was being transferred from parish to parish in the Roman
23 Catholic Archdiocese, and removed from the area when Plaintiff’s claim was presented.

24 29. Defendants also implemented various measures designed to, or which effectively,
25 made Father Fitz-Henry’s conduct harder to detect including, but not limited to:

- 26 a. Failing to disclose Father Fitz-Henry’s prior record of sexual abuse and molestation of
27 minors and his propensity to commit such acts to the church community including
28 parishioners, students, parents, care givers, teachers and staff, the public at large, and law
enforcement;

- 1 b. Permitting Father Fitz-Henry to remain in a position of authority and trust after
2 Defendants knew or should have known he was a molester of children;
- 3 c. Placing Father Fitz-Henry in a separate and secluded environment, including placing
4 him in charge of young boys as a teacher, in counseling programs and youth programs
5 where they purported to supervise the children, which allowed him to sexually and
6 physically interact with and abuse the children, including Plaintiff;
- 7 d. Allowing Father Fitz-Henry to come into contact with minors, including Plaintiff,
8 without supervision;
- 9 e. Failing to adequately hire, supervise or retain Father Fitz-Henry, who they permitted and
10 enabled to have access to minors, including Plaintiff;
- 11 f. Failing to investigate or otherwise confirm or deny such facts about Father Fitz-Henry,
12 including prior arrests, charges, claims and investigations for sexual abuse of minors;
- 13 g. Failing to tell or concealing from Plaintiff, Plaintiff's parents, Plaintiff's guardian,
14 students, parishioners, the church community, the community as a whole, and law
15 enforcement officials the fact that Father Fitz-Henry was or may have been sexually
16 abusing minors;
- 17 h. Failing to tell, or concealing from Plaintiff's parents or Plaintiff's guardian and law
18 enforcement officials the fact that Plaintiff and others were or may have been sexually
19 abused after Defendants knew or had reason to know that Father Fitz-Henry may have
20 sexually abused Plaintiff or others, thereby enabling Plaintiff to continue to be endangered
21 and sexually abused, and/or creating the circumstance where Plaintiff and others were less
22 likely to receive medical/mental health care and treatment, thus exacerbating the harm to
23 Plaintiff;
- 24 i. Holding out Father Fitz-Henry to Plaintiff and his parents and guardian, students,
25 parishioners, and to the school and church community as being in good standing and
26 trustworthy;
- 27 j. Cloaking Father Fitz-Henry's contact and actions within the facade of normalcy, thereby
28 disguising the nature of his sexual abuse and contact with minors;
- k. Failing to take reasonable steps, and to implement reasonable safeguards to avoid acts of
unlawful sexual conduct by Father Fitz-Henry with students and parishioners, who were
minor children, including but not limited to preventing or avoiding placement of Father
Fitz-Henry in functions or environments in which his solitary contact with children was
inherent;
- l. Failing to put in place a system or procedure to supervise or monitor employees,
volunteers, representatives or agents to insure that they did not molest or abuse minors in
Defendants' care, including Plaintiff.

30. By his position within the Defendants' institutions, Father Fitz-Henry attained a
position of respect and influence over Plaintiff, and others. Defendants' conduct created a situation
of peril that was not, and could not be appreciated by Plaintiff. By virtue of Defendants'
conspiratorial and fraudulent conduct, and in keeping with their intent to fail to disclose and hide

1 Father Fitz-Henry's past and present conduct from the parish, school and church community, the
2 public at large, and law enforcement, Defendants allowed molester Father Fitz-Henry to remain in
3 a position of influence where his unsupervised or negligently supervised conduct with minors
4 made the molestation and abuse of minors possible. By his position within the Defendants'
5 institutions, Defendants and Father Fitz-Henry demanded and required that Plaintiff respect Father
6 Fitz-Henry in his position as a priest, teacher, spiritual advisor, counselor and mentor.

7 31. The incidents of abuse outlined herein took place while Plaintiff was under the
8 control of Father Fitz-Henry, in his capacity and position as a priest, teacher, spiritual advisor,
9 counselor and mentor at and for Defendants, while acting specifically on behalf of Defendants,
10 including, but not limited to, the following:

- 11 a. Before Father Fitz-Henry sexually harassed, molested and abused Plaintiff,
12 Defendants were well aware that Father Fitz-Henry took an unusual and prurient
13 interest in children, and spent an inordinate amount of time with minor
14 parishioners, students, and other minors in his charge;
- 15 b. In full awareness that minors and parishioners were at risk of becoming victims of
16 sexual harassment, molestation and abuse by Father Fitz-Henry, Defendants (except
17 Father Fitz-Henry) and each of them did wilfully assign Father Fitz-Henry as a
18 priest, teacher, spiritual advisor, counselor and mentor at Madonna Parish;
- 19 c. In his capacity as a priest, teacher, spiritual advisor, counselor and mentor for
20 Defendants, Father Fitz-Henry was given custody and supervision of minors,
21 including Plaintiff. Father Fitz-Henry was able to use his position as a priest,
22 teacher, spiritual advisor, counselor and mentor to require children to give into his
23 sexual suggestions, and to use his authority and position of trust to exploit them
24 physically and emotionally;
- 25 d. At the time Plaintiff began attending Madonna Parish, his parents were divorced
26 and he was living with his mother in Salinas, California. Plaintiff was a flutist, and
27 attended the parish, regularly celebrating mass and receiving the sacraments.
28 Plaintiff had aspirations of pursuing a vocation as a priest. He became a parishioner
and student at the Parish, attending events several days each week. As a parishioner
and student in the Roman Catholic Church, Plaintiff was taught to hold utmost
admiration, trust, reverence, respect, and obedience for authority figures within the
Catholic hierarchy such as priests, Archbishops, Bishops, who occupied positions
of great influence and persuasion.;
- e. In or around 2004, when Plaintiff was approximately fourteen years old and a
parishioner at Madonna Parish, Father Fitz-Henry befriended Plaintiff. Father Fitz-
Henry increasingly became interested in Plaintiff, admiring Plaintiff's flute playing
abilities, telling him he should play flute for the parish choir. Father Fitz-Henry also
began hearing Plaintiff's confessions. While in the sacrament of confession, Father
Fitz-Henry asked Plaintiff unsolicited questions about his sexual experience, about
masturbation, and about his sexual persuasion, telling the young Plaintiff that he
should experiment with sex, that it is okay to have sex with men, that he can teach

1 Plaintiff how to kiss, and that he can teach Plaintiff how to play the “skin flute”.
2 Father Fitz-Henry began utilizing his position of trust and authority to sexually
3 abuse, harass and molest Plaintiff as soon as he befriended him, in 2004, continuing
4 throughout 2005;

- 5 f. During 2004 and 2005, Father Fitz-Henry sexually harassed, abused and molested
6 Plaintiff on numerous occasions, and in various locations, including on the grounds
7 of Madonna Parish, such as in the sacristy, the sacristy restroom, and interior
8 grounds of Madonna Parish. During this time, Father Edward Fitz-Henry was
9 employed by Defendants;
- 10 g. At no time did Defendants or any of them advise Plaintiff or his family of any past
11 sexual misconduct of Father Fitz-Henry involving minors;
- 12 h. At no time did Defendants take any action to restrict Father Fitz-Henry’s access to,
13 or interaction with minors, including Plaintiff. Defendants’ conduct made it a
14 virtual certainty that Plaintiff and other minors would be victimized, because Father
15 Fitz-Henry had unrestricted, unsupervised access to children of Madonna Parish;
- 16 i. Plaintiff, performed religious duties at Madonna Parish for Defendants, including
17 attending and serving at masses, singing and playing flute in the choir, and
18 attending religious courses and parish functions, and performing other services for
19 Defendants. Father Fitz-Henry took a special interest in Plaintiff, and gained
20 Plaintiff’s confidence by feigning to be a friend, counselor and mentor to Plaintiff;
- 21 j. While with Plaintiff, Father Fitz-Henry attempted to get increasingly and physically
22 closer to Plaintiff before, during and after services, parish functions and religious
23 courses by isolating Plaintiff for periods of time from other parishioners, his
24 classmates, friends and family;
- 25 k. Using his position as a priest, teacher, spiritual advisor, counselor and mentor,
26 Father Fitz-Henry would initially try to give Plaintiff long hugs, attempting to gain
27 his friendship, trust and affection. Plaintiff believed that Father Edward Fitz-Henry
28 was being a good person and a friend to Plaintiff. In fact, Father Edward Fitz-Henry
was merely initiating the process of grooming Plaintiff for sexual abuse, gaining
access to Plaintiff sexually;
- l. The sexual harassment and abuse of Plaintiff by Father Fitz-Henry, at Madonna
Parish from 2004-2005, included Father Fitz-Henry: talking to Plaintiff about
sexual issues; asking Plaintiff about his sexual history and sexuality; asking
Plaintiff whether he masturbated; telling Plaintiff that he needed to experiment
more with sex, offering to teach Plaintiff about sex and how to have sex; asking
Plaintiff if he played the “skin flute” and offering to teach him how; telling Plaintiff
that it was ok to have homosexual feelings and urges; telling Plaintiff that he should
act upon any homosexual urges; offering to teach Plaintiff how to act upon his
homosexual urges; giving Plaintiff long, sensual hugs while he had an erection;
placing his hands down Plaintiff’s pants and massaging his buttocks; placing his
hands under Plaintiff’s shirt and rubbing his back; placing his leg between
Plaintiff’s legs and rubbing Plaintiff’s groin, grinding his body and erect penis
against Plaintiff’s; massaging Plaintiff’s body; grabbing Plaintiff’s penis through
his clothes; and luring Plaintiff into the sacristy bathroom, unzipping his pants,
grabbed Plaintiff’s hand and placed it onto his erect penis, placing his hand on
Plaintiff’s neck and attempting to force Plaintiff’s head down to Father Fitz-Henry’s
penis while encouraging Plaintiff to “give him a blow job,” striking Plaintiff in the
face, on the lips and in the mouth with his penis, all while Plaintiff was crying and

- 1 wrestling with Father Fitz-Henry, struggling to get away;
- 2 m. The sexual harassment, molestation and abuse of Plaintiff, perpetrated by
- 3 Defendant Father Fitz-Henry, occurred on various occasions and in various
- 4 locations in Monterey County and the City of Salinas, all of which occurred in
- 5 Madonna Parish;
- 6 n. Plaintiff is informed and believes, on that basis alleges, that all of these acts were
- 7 done at a time after Defendants knew of prior sexual abuse by Father Fitz-Henry of
- 8 other students and parishioners of Defendants;
- 9 o. All of the acts of sexual harassment, molestation and abuse of Plaintiff by Father
- 10 Fitz-Henry were done on real property owned, operated and controlled by
- 11 Defendants, and within full view of other priests, teachers, students, administrators
- 12 and staff;

13 32. As set forth more fully herein above, Father Fitz-Henry did sexually harass, molest

14 and abuse Plaintiff, who was a minor at the time. Such conduct by Defendant Father Fitz-Henry

15 was based upon Plaintiff's gender, and was done for his sexual gratification. These actions upon

16 Plaintiff were performed by Defendant Father Fitz-Henry without the free consent of Plaintiff, who

17 was a minor. These actions upon Plaintiff constitute conduct in violation of California Penal Code

18 sections 226j, 272, 273a, 286, 288, 288a, 288.2, 288.5, 289 and 647.6.

19 33. Plaintiff is informed and believes, and on that basis alleges, that Defendants and

20 each of them knew or had reason to know of Father Fitz-Henry's prior and continuing wrongful

21 conduct within Defendants, and elsewhere, his wrongful conduct at or about the time it was

22 occurring, and thereafter, but took no action to obstruct, inhibit or stop such continuing conduct, or

23 to help Plaintiff endure the trauma from such conduct. Despite the authority and ability to do so,

24 Defendants negligently and/or wilfully refused to, and/or did not, act effectively to stop the sexual

25 assaults on Plaintiff, to inhibit or obstruct such abuse, or to protect Plaintiff from the results of that

26 trauma.

27 34. During the period of abuse of Plaintiff at the hands of Father Fitz-Henry,

28 Defendants and each of them had the authority and the ability to obstruct or stop Father Fitz-

Henry's sexual assaults on Plaintiff, but negligently and/or wilfully failed to do so, thereby

allowing the abuse to occur and to continue unabated. This failure was a part of Defendants'

"Conspiracy of silence"—a conspiratorial plan and arrangement to conceal wrongful acts, to avoid

and inhibit detection, to block public disclosure, to avoid scandal, to avoid the disclosure of their

1 tolerance of child sexual molestation and abuse, to preserve a false appearance of propriety, and to
2 avoid investigation and action by public authority including law enforcement.

3 35. Plaintiff is informed and believes, and on that basis alleges, that such actions were
4 motivated by a desire to protect the reputation of Defendants and each of them, and to protect the
5 monetary support of Defendants while fostering an environment where such abuse could continue
6 to occur.

7 36. Following the above-described sexual harassment, abuse, and molestation of the
8 minor Plaintiff by Father Fitz-Henry, Plaintiff began to experience multiple mental, psychological
9 and emotional problems, injuries or illnesses, including but not limited to, problems maintaining
10 intimate relationships throughout his life, confusion about his sexuality, trust issues, control issues,
11 depression, anxiety, sleeplessness, fear, and suicidal thoughts.

12 37. In or around April of 2010, Plaintiff began, for the first time in his life, to discover
13 that the psychological and/or emotional injuries and illnesses he was suffering as an adult were due
14 to the sexual harassment and abuse he suffered at the hands of Defendant Father Fitz-Henry, while
15 he was a student, parishioner and altar server at Defendants. Plaintiff subsequently began to realize
16 that the mental, emotional and psychological problems he was experiencing were caused by the
17 sexual abuse he suffered at the hands of Father Edward Henry, including, but not limited to:
18 Plaintiff experiencing significant weight gain; Plaintiff suffering from nightmares, depression and
19 anxiety; Plaintiff cutting himself to relieve his anxiety; Plaintiff questioning his sexuality; Plaintiff
20 feeling shame and embarrassment; Plaintiff having problems in his personal life, including
21 relationship problems and major problems with intimacy; Plaintiff having significant trust issues;
22 problems with authority figures; Plaintiff having problems maintaining an occupation; and Plaintiff
23 having problems in school. Plaintiff only at this time began to realize that his psychological or
24 emotional issues as outlined above were in some way caused by the childhood sexual harassment
25 and abuse he suffered at the hands of Father Fitz-Henry.

26 38. Subsequently, after April of 2010, Plaintiff began making a mental connection
27 between his present intimacy, mental, psychological and emotional problems and the sexual
28 harassment and abuse he suffered as a minor parishioner and student at Defendants, at the hands of

1 Father Fitz-Henry. It was only upon discovery of these additional facts after April of 2010 that
2 Plaintiff reasonably determined and discovered that the emotional and psychological injury, illness
3 and suffering that Plaintiff has endured throughout his adult and part of his minor life was actually
4 caused by the childhood sexual harassment and abuse of Father Fitz-Henry. Plaintiff was
5 reasonably and blamelessly unaware of the connection between his sexual harassment and abuse
6 and the psychological and emotional problems illnesses or injuries they created for him as an adult
7 before April of 2010, and had no way of knowing such prior to that time, himself being young with
8 no psychological training or experience with such persons. Plaintiff's delay in discovering the
9 connection was also due to his trust of Defendants, the nature of a victim's understanding of sexual
10 abuse, his young and tender age when he was abused, and Defendants' manipulation and control
11 over Plaintiff. He was unable to make such a connection before April of 2010.

12 39. As a direct result of the sexual harassment, molestation and abuse of Plaintiff by
13 Father Fitz-Henry, Plaintiff has difficulty in reasonably or meaningfully interacting with others,
14 including those in positions of authority over Plaintiff, including supervisors, and in intimate,
15 confidential and familial relationships, due to the trauma of childhood sexual harassment,
16 molestation and abuse inflicted upon him by Defendants. This inability to interact creates conflict
17 with Plaintiff's values of trust and confidence in others, and has caused Plaintiff substantial
18 emotional distress, anxiety, nervousness and fear.

19 40. As a direct result of Plaintiff's molestation by Father Fitz-Henry, Plaintiff
20 experienced severe issues with his personal life, including issues with trust and difficulties in
21 maintaining meaningful relationships. As a further direct result of the Plaintiff's molestation by
22 Father Fitz-Henry, Plaintiff has never been able to maintain a normal intimate relationship. These
23 feelings have caused Plaintiff substantial emotional distress, anxiety, nervousness and fear.

24 41. As a direct and proximate result of the Defendants' tortuous acts, omissions,
25 wrongful conduct and/or breaches of their duties, whether willful or negligent, Plaintiff's
26 employment and professional development has been adversely affected, as Plaintiff is not able to
27 adequately maintain a job or profession. Plaintiff has lost wages as a result of the abuse he
28 suffered at the hands of Defendants, and will continue to lose wages in an amount to be determined

1 at trial. Plaintiff has suffered substantial economic injury, all to Plaintiff's general, special and
2 consequential damage in an amount to be proven at trial, but in no event less than the minimum
3 jurisdictional amount of this Court. As a further direct and proximate result of Defendants'
4 wrongful actions, as herein alleged, Plaintiff has been hurt in his health, strength and activity.
5 Plaintiff has sustained permanent and continuing injury to his nervous system and person, which
6 has caused and continues to cause great mental, physical and nervous pain, suffering, fright, upset,
7 grief, worry and shock in an amount according to proof at trial, but in no event less than the
8 jurisdictional minimum requirements of this Court.

9 42. As is set forth herein, Defendants and each of them have failed to uphold numerous
10 mandatory duties imposed upon them by state and federal law, and by written policies and
11 procedures applicable to Defendants, including but not limited to the following:

- 12 * Duty to use reasonable care to protect students from known or foreseeable dangers
(Government Code §§ 820, 815.2);
- 13 * Duty to refrain from taking official action that contradicts the provisions of Article 1,
14 section 28(c) of the California Constitution;
- 15 * Duty to enact policies and procedures that are not in contravention of the Federal Civil
16 Rights Act, section 1983, and the 14th Amendment of the United States Constitution;
- 17 * Duty to protect students and staff, and provide adequate supervision;
- 18 * Duty to ensure that any direction given to parishioners and students is lawful, and that
adults act fairly, responsibly and respectfully towards parishioners and students;
- 19 * Duty to properly train priests, teachers, choir directors, spiritual advisors, youth
20 counselors, mentors, administrators, and staff so that they are aware of their individual
responsibility for creating and maintaining a safe environment;
- 21 * Duty to review the criminal history of priests, teachers, choir directors, spiritual advisors,
22 youth counselors, mentors, administrators, and staff, applicants and current employees;
- 23 * Duty to supervise parishioners and students and enforce rules and regulations prescribed
for schools, exercise reasonable control over students as is reasonably necessary to
24 maintain order, protect property, or protect the health and safety of parishioners and
students or to maintain proper and appropriate conditions conducive to learning;
- 25 * Duty to exercise careful supervision of the moral conditions in the church and school;
- 26 * Duty to provide playground and parking lot supervision, before and after school as well
as during recess and other scheduled breaks;
- 27 * Duty to hold pupils to a strict account for their conduct on the way to and from school, on
28 the playgrounds or during recess;

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- * Duty to properly monitor students, prevent or correct harmful situations or call for help when a situation is beyond their control;
- * Duty to ensure that personnel are actually on hand and supervising students;
- * Duty to provide enough supervision to students;
- * Duty to supervise diligently;
- * Duty to act promptly and diligently and not ignore or minimize problems;
- * Duty to refrain from violating Plaintiff's right to protection from bodily restraint or harm, from personal insult, from defamation, and from injury to her personal relations (Civil Code § 43);
- * Duty to abstain from injuring the person or property of Plaintiff, or infringing upon any of her rights (Civil Code § 1708); and
- * Duty to report suspected incidents of child abuse and more specifically childhood sexual abuse (Penal Code §§ 11166, 11167).

43. Students in California have a Constitutional right to a safe, secure and peaceful school environment. Defendants and each of them failed to acknowledge unsafe conditions, and therefore failed to guarantee safe surroundings in an environment in which Plaintiff was not free to leave, specifically including but not limited to allowing Father Fitz-Henry to take children for the purposes of sexual activity and allowing Father Fitz-Henry to operate in isolated environments, incapable of monitoring from the outside, wherein Defendants sexually harassed, molested and abused Plaintiff and others.

44. Defendants and each of them had and have a duty to protect students and parishioners, including Plaintiff. Defendants were required to, and failed, to provide adequate campus and church supervision, and failed to be properly vigilant in seeing that supervision was sufficient to ensure the safety of Plaintiff and others

45. Defendants and each of them lodged with Father Fitz-Henry the color of authority, by which he was able to influence, direct and abuse Plaintiff and others, and to act illegally, unreasonably and without respect for the person and safety of Plaintiff. Defendants and each of them had a duty to and failed to adequately train and supervise all teachers, priests, spiritual advisors, counselors, mentors, employees and staff to create a positive, safe, spiritual and educational environment, specifically including training to perceive, report and stop inappropriate

1 conduct by other members of the clergy and staff, specifically including Father Edward Fitz-Henry,
2 with children.

3 46. Defendants and each of them had a duty to and failed to enact and enforce rules and
4 regulations prescribed for schools, and execute reasonable control over students necessary to
5 protect the health and safety of the student and maintain proper and appropriate conditions
6 conducive to learning.

7 47. Defendants and each of them were required to and failed to exercise careful
8 supervision of the moral conditions in their parishes and schools, and provide supervision before
9 and after parish functions such as during scheduled breaks. This duty extended beyond the
10 physical boundaries of the parish.

11 48. Plaintiff is informed and believes, and on that basis alleges, that Defendants are
12 further liable for the conduct of Father Fitz-Henry, in sexually harassing, abusing and molesting
13 Plaintiff, because they approved of that conduct after it occurred, thereby ratifying such.
14 Defendants approved and ratified such conduct because Father Fitz-Henry, in sexually harassing,
15 abusing and molesting Plaintiff, intended to act on behalf of Defendants, Defendants learned of
16 such conduct of Father Fitz-Henry after it occurred, and Defendants approved of such conduct.
17 Such approval is inferred through Defendants' words and conduct in voluntarily keeping the
18 benefits of Father Fitz-Henry's unauthorized conduct after they learned of such conduct.

19 49. In subjecting Plaintiff to the wrongful treatment herein described, Defendants acted
20 willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's
21 rights, so as to constitute malice and/or oppression under California Civil Code section 3294.
22 Plaintiff is informed, and on that basis alleges, that these willful, malicious, and/or oppressive acts,
23 as alleged herein above, were ratified by the officers, directors, and/or managing agents of the
24 Defendants. Plaintiff is therefore entitled, upon proper application to the court, to the recovery of
25 punitive damages, in an amount to be determined by the court, against Father Fitz-Henry. Plaintiff
26 reserves his right, pursuant to California Code of Civil Procedure § 425.14, to seek leave of court
27 to pursue an award of punitive damages against Defendants RCBM and Madonna Parish in a sum
28 to be shown according to proof.

FIRST CAUSE OF ACTION
NEGLIGENCE
(Against all Defendants)

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3 50. Plaintiff re-alleges and incorporates by reference herein each and every allegation
4 contained herein above as though fully set forth and brought in this cause of action.

5 51. Plaintiff is informed and believes, and on that basis alleges that prior to and after
6 the first incident of Father Fitz-Henry's sexual harassment, molestation and abuse of Plaintiff,
7 through the present, Defendants, knew or had reason to know that Father Fitz-Henry had or was
8 capable of sexually, physically, and/or mentally abusing Plaintiff or other victims.

9 52. Defendants and each of them had special duties to protect the minor Plaintiff and
10 the other students, when such students were entrusted to Defendants' care by their parents.
11 Plaintiff's care, welfare and/or physical custody was entrusted to Defendants. Defendants
12 voluntarily accepted the entrusted care of Plaintiff. As such, Defendants owed Plaintiff, a minor
13 child, a special duty of care, in addition to a duty of ordinary care, and owed Plaintiff the higher
14 duty of care that adults dealing with children owe to protect them from harm. The duty to protect
15 and warn arose from the special, trusting, confidential, and/or fiduciary relationship between
16 Defendants and Plaintiff. Plaintiff felt great trust, faith and confidence in Defendants, and in
17 Father Fitz-Henry as his priest, spiritual advisor, youth counselor and mentor.

18 53. Plaintiff is informed and believes, and on that basis alleges, that Defendants
19 breached their duties of care to the minor Plaintiff by allowing Father Fitz-Henry to come into
20 contact with the minor Plaintiff and other students, without supervision; by failing to adequately
21 hire, supervise and/or retain Father Fitz-Henry who they permitted and enabled to have access to
22 Plaintiff; by failing to investigate or otherwise confirm or deny such facts about Father Fitz-Henry;
23 by failing to tell or concealing from Plaintiff, his mother, his family, guardians and law
24 enforcement officials that Father Fitz-Henry was or may have been sexually harassing, molesting
25 and abusing minors; by failing to tell or concealing from Plaintiff's mother, his family, guardians
26 or law enforcement officials that Plaintiff was or may have been sexually harassed, molested and
27 abused after Defendants knew or had reason to know that Father Fitz-Henry may have sexually
28 harassed, molested and abused Plaintiff or others, thereby enabling Plaintiff to continue to be

1 endangered and sexually harassed, molested and abused, and/or creating the circumstance where
2 Plaintiff was less likely to receive medical/mental health care or treatment, thus exacerbating the
3 harm done to Plaintiff; and/or by holding out Father Fitz-Henry to Plaintiff and to his family as
4 being in good standing and trustworthy. Defendants cloaked within the facade of normalcy
5 Defendants' conduct, contact and actions with Plaintiff and/or other children who were Father
6 Fitz-Henry's victims, and/or disguised the nature of the sexual harassment, molestation and abuse
7 and contact.

8 54. Defendants, and each of them, breached their duty to Plaintiff by, *inter alia*, failing
9 to investigate or otherwise confirm or deny such facts, failing to reveal such facts to Plaintiff, the
10 community of the school, students, minors, and law enforcement agencies, placing and continuing
11 to place Father Fitz-Henry in positions of trust and authority within Defendants, and holding out,
12 and continuing to hold out Father Fitz-Henry to Plaintiff, the public, the community of the school,
13 students, minors, and law enforcement agencies as being in good standing and trustworthy.

14 55. Defendants, and each of them, breached their duty to Plaintiff by, *inter alia*, by
15 failing to adequately monitor and supervise Father Fitz-Henry and/or stopping Father Fitz-Henry
16 from committing wrongful sexual acts with minors including Plaintiff. This belief is founded on
17 the facts that church, personnel and/or school records of Defendants, reflect numerous incidents of
18 inappropriate sexual contact and conduct with minors by priests, teachers, staff, counselors and
19 others, including incidents involving Father Fitz-Henry, both on and off the premises of such
20 Defendants. Based on these records, Defendants knew and/or should have known of Father Fitz-
21 Henry's incapacity to supervise and/or stop employees of Defendants from committing wrongful
22 sexual acts with minors.

23 56. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through
24 their employees and agents, were child care custodians and were under a statutory duty to report
25 known or suspected incidents of sexual harassment, molestation or abuse of minors to a child
26 protective agency, pursuant to California Penal Code § 11166, and/or not to impede the filing of
27 any such report.

28 57. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew

1 or should have known that Father Fitz-Henry, their priest, agent, teacher, spiritual advisor,
2 counselor and mentor and other priests, teachers and staff of Defendants, had sexually molested,
3 abused, or caused touching, battery, harm, and other injuries to minors, including Plaintiff, giving
4 rise to a duty to report such conduct under California Penal Code § 11166. Plaintiff is informed
5 and believes, and on that basis alleges, that Defendants also knew, or should have known in the
6 exercise of reasonable diligence, that an undue risk to minors, including Plaintiff, existed because
7 Defendants did not comply with California's mandatory reporting requirements.

8 58. By failing to report the continuing molestations and abuse, which Defendants and
9 each of them knew or had reason to know, and by ignoring the fulfillment of the mandated
10 compliance with the reporting requirements provided under California Penal Code § 11166,
11 Defendants created the risk and danger contemplated by the Child Abuse and Neglect Reporting
12 Act, and as a result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual
13 molestation and abuse.

14 59. Plaintiff was a member of the class of persons for whose protection California
15 Penal Code § 11166 was specifically adopted to protect.

16 60. Had Defendants adequately reported the molestation of Plaintiff and other minors as
17 required by California Penal Code § 11166, further harm to Plaintiff and other minors would have
18 been avoided.

19 61. As a proximate result of Defendants' failure to follow the mandatory reporting
20 requirements of California Penal Code § 11166, Defendants wrongfully denied Plaintiff and other
21 minors, the intervention of child protection services. Such public agencies would have changed
22 the then-existing arrangements and conditions that provided the access and opportunities for the
23 molestation of Plaintiff by Father Fitz-Henry.

24 62. The physical, mental, and emotional damages and injuries resulting from the sexual
25 molestation of Plaintiff by Father Fitz-Henry, were the type of occurrence and injuries that the
26 Child Abuse and Neglect Reporting Act was designed to prevent.

27 63. As a result, Defendants' failure to comply with the mandatory reporting
28 requirements of California Penal Code section 11166 also constituted a *per se* breach of

1 Defendants' duties to Plaintiff.

2 64. As a result of the above-described conduct, Plaintiff has suffered and continues to
3 suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional
4 distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life;
5 has suffered and continues to suffer and was prevented and will continue to be prevented from
6 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings
7 and earning capacity, and/or has incurred and will continue to incur expenses for medical and
8 psychological treatment, therapy, and counseling.

9 **SECOND CAUSE OF ACTION**
10 **NEGLIGENT SUPERVISION**
11 **(Against All Defendants Except Father Fitz-Henry)**

12 65. Plaintiff re-alleges and incorporates by reference herein each and every allegation
13 contained herein above as though fully set forth and brought in this cause of action.

14 66. By virtue of Plaintiff's special relationship with Defendants, and Defendants'
15 relation to Father Fitz-Henry, Defendants owed Plaintiff a duty to provide reasonable supervision
16 of Father Fitz-Henry, to use reasonable care in investigating Father Fitz-Henry's background, and
17 to provide adequate warning to the Plaintiff, the Plaintiff's family, and minor students and
18 parishioners of Father Fitz-Henry's dangerous propensities and unfitness.

19 67. As a Diocese and representative of the Roman Catholic Church, and a school,
20 where all of the students are minors entrusted to the church, the schools, their priests and their
21 teachers, Defendants expressly and implicitly represented that their priests, teachers, directors,
22 spiritual advisors, counselors and ministers, including Father Fitz-Henry, were not a sexual threat
23 to children and others who would fall under Father Fitz-Henry's influence, control, direction, and
24 guidance.

25 68. Plaintiff is informed and believes, and on that basis alleges, that Defendants by and
26 through their respective agents, servants and employees, knew or had reason to know of Father
27 Fitz-Henry's dangerous and exploitive propensities and/or that Father Fitz-Henry was an unfit
28 agent. Despite such knowledge, Defendants negligently failed to supervise Father Fitz-Henry in
his position of trust and authority as a priest, teacher, director, spiritual advisor, counselor and

1 mentor and/or other authority figure, where he was able to commit wrongful acts against the
2 Plaintiff. Defendants failed to provide reasonable supervision of Father Fitz-Henry, failed to use
3 reasonable care in investigating Father Fitz-Henry, and failed to provide adequate warning to
4 Plaintiff and Plaintiff's family of Father Fitz-Henry's dangerous propensities and unfitnes.
5 Defendants further failed to take reasonable steps to ensure the safety of minors, including
6 Plaintiff, from sexual harassment, molestation and abuse.

7 69. Plaintiff is informed and believes, and on that basis alleges, that at no time during
8 the periods of time alleged did Defendants have in place a system or procedure to reasonably
9 investigate, supervise and/or monitor priests, teachers, counselors and mentors, including Father
10 Fitz-Henry, to prevent pre-sexual grooming and/or sexual harassment, molestation and abuse of
11 children, nor did they implement a system or procedure to oversee or monitor conduct toward
12 minors, students and others in Defendants' care.

13 70. Defendants and each of them were or had reason to be aware and understood how
14 vulnerable children were to sexual harassment, molestation and abuse by priests, teachers and
15 other persons of authority within Defendants.

16 71. Plaintiff is informed and believes, and on that basis alleges, that Defendants were
17 put on notice, and knew or had reason to know that Father Fitz-Henry had previously engaged and
18 was continuing to engage in unlawful sexual conduct with minors and committed other felonies,
19 for his own personal gratification, and that it was, or should have been foreseeable that he was
20 engaging, or would engage in illicit sexual activities with Plaintiff, and others, under the cloak of
21 their authority, confidence, and trust, bestowed upon him through Defendants, and each of them.

22 72. Plaintiff is informed and believes, and on that basis alleges, that Defendants were
23 placed on actual and/or constructive notice that Father Fitz-Henry had molested other minors and
24 students, both before his employment at Defendants, and/or during that employment. Plaintiff is
25 informed, and thereon alleges, that other third parties, minor parishioners, minor students, law
26 enforcement officials and/or parents informed Defendants of molestations committed by Father
27 Fitz-Henry or of conduct that would put a reasonable person on notice of such propensity to molest
28 and abuse.

1 73. Even though Defendants knew or had reason to know of these activities by
2 Father Fitz-Henry Defendants did nothing to investigate, supervise or monitor Father Fitz-Henry to
3 ensure the safety of the minor parishioners, students and altar servers.

4 74. Defendants' conduct was a breach of their duties to Plaintiff.

5 75. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through
6 their employees and agents, were child care custodians and were under a statutory duty to report
7 known or suspected incidents of sexual molestation or abuse of minors to a child protective
8 agency, pursuant to California Penal Code section 11166, and/or not to impede the filing of any
9 such report.

10 76. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew
11 or had reason to know that their agent, priest, teacher, director, spiritual advisor, counselor and
12 mentor, Father Fitz-Henry, and other priests, teachers and staff of Defendants, had sexually
13 molested, abused or caused touching, battery, harm, and other injuries to minors, including
14 Plaintiff, giving rise to a duty to report such conduct under California Penal Code section 11166.

15 77. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew,
16 or had reason to know, in the exercise of reasonable diligence, that an undue risk to minors,
17 including Plaintiff, existed because Defendants did not comply with California's mandatory
18 reporting requirements.

19 78. By failing to report the continuing molestations and abuse, which Defendants and
20 each of them knew or had reason to know, and by ignoring the fulfillment of the mandated
21 compliance with the reporting requirements provided under California Penal Code section 11166,
22 Defendants created the risk and danger contemplated by the Child Abuse and Neglect Reporting
23 Act, and as a result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual
24 molestation and abuse.

25 79. Plaintiff was a member of the class of persons for whose protection California
26 Penal Code section 11166 was specifically adopted to protect.

27 80. Had Defendants adequately reported the molestation of Plaintiff and other minors as
28 required by California Penal Code section 11166, further harm to Plaintiff and other minors would

1 have been avoided.

2 81. As a proximate result of Defendants' failure to follow the mandatory reporting
3 requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and
4 other minors the intervention of child protection services. Such public agencies would have
5 changed the then-existing arrangements and conditions that provided the access and opportunities
6 for the molestation of Plaintiff by Father Fitz-Henry.

7 82. The physical, mental, and emotional damages and injuries resulting from the sexual
8 molestation of Plaintiff by Father Fitz-Henry, were the type of occurrence and injuries that the
9 Child Abuse and Neglect Reporting Act was designed to prevent.

10 83. As a result, Defendants' failure to comply with the mandatory reporting
11 requirements of California Penal Code section 11166 also constituted a *per se* breach of
12 Defendants' duties to Plaintiff.

13 84. Defendants, and each of them, breached their duty to Plaintiff by, inter alia, by
14 failing to adequately monitor and supervise Father Fitz-Henry and/or stopping Father Fitz-Henry
15 from committing wrongful sexual acts with minors including Plaintiff. Defendants knew or had
16 reason to know of Father Fitz-Henry's incapacity to supervise and/or stop employees of Defendants
17 from committing wrongful sexual acts with minors.

18 85. As a result of the above-described conduct, Plaintiff has suffered and continues to
19 suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional
20 distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life;
21 has suffered and continues to suffer and was prevented and will continue to be prevented from
22 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings
23 and earning capacity, and/or has incurred and will continue to incur expenses for medical and
24 psychological treatment, therapy, and counseling.

25 **THIRD CAUSE OF ACTION**
26 **NEGLIGENT HIRING/RETENTION**
(Against All Defendants Except Father Fitz-Henry)

27 86. Plaintiff re-alleges and incorporates by reference herein each and every allegation
28 contained herein above as though fully set forth and brought in this cause of action.

1 87. By virtue of Plaintiff's special relationship with Defendants and each of them, and
2 Defendants' relation to Father Fitz-Henry, Defendants owed Plaintiff a duty to not hire and/or
3 retain Father Fitz-Henry, given his dangerous and exploitive propensities, which Defendants knew
4 or had reason to know had they engaged in a meaningful and adequate investigation of his
5 background prior to his hiring.

6 88. As a Diocese and/or representative of the Roman Catholic Church, and operator of
7 a school, where all of the students are minors entrusted to the church, the schools, their priests and
8 their teachers, Defendants, expressly and implicitly represented that the priests and teachers,
9 including Father Fitz-Henry, were not a sexual threat to children and others who would fall under
10 Father Fitz-Henry's influence, control, direction, and guidance.

11 89. Plaintiff is informed and believes, and on that basis alleges, that at no time during
12 the periods of time alleged did Defendants have in place a system or procedure to reasonably
13 investigate, supervise and/or monitor teachers, including Father Fitz-Henry, to prevent pre-sexual
14 grooming and/or sexual harassment, molestation and abuse of children, nor did they implement a
15 system or procedure to oversee or monitor conduct toward minors, students and others in
16 Defendants' care.

17 90. Defendants and each of them were or had reason to be aware and understood how
18 vulnerable children were to sexual harassment, molestation and abuse by teachers and other
19 persons of authority within the control of Defendants.

20 91. Plaintiff is informed, and believes, and on that basis alleges, that the Defendants
21 were put on notice, and had reason to know that Father Fitz-Henry had previously engaged and
22 continued to engage in unlawful sexual conduct with minors and other felonies, for his own
23 personal gratification, and that it was, or should have been foreseeable that he was engaging, or
24 would engage in illicit sexual activities with Plaintiff, and others, under the cloak of his authority,
25 confidence, and trust, bestowed upon him through Defendants.

26 92. Defendants were placed on actual and/or constructive notice that Father Fitz-Henry
27 had molested and/or was molesting minors and students, both before his employment within
28 Defendants, and during that employment. Plaintiff is informed, and thereon alleges, that other

1 third parties, minors students, law enforcement officials and/or parents informed Defendants of
2 inappropriate conduct and molestations committed by Father Fitz-Henry.

3 93. Even though Defendants knew or should have known of these activities by Father
4 Fitz-Henry, Plaintiff is informed that Defendants failed to use reasonable care in investigating
5 Father Fitz-Henry and did nothing to investigate, supervise or monitor Father Fitz-Henry to ensure
6 the safety of the minor students.

7 94. Defendants' conduct was a breach of their duties to Plaintiff.

8 95. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through
9 their employees and agents, were child care custodians and were under a statutory duty to report
10 known or suspected incidents of sexual molestation or abuse of minors to a child protective
11 agency, pursuant to California Penal Code section 11166, and/or not to impede the filing of any
12 such report.

13 96. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew
14 or had reason to know that their priest, agent, teacher, director, spiritual advisor, counselor and
15 mentor, Father Fitz-Henry, and other priests, teachers and staff within Defendants, had sexually
16 molested, abused or caused touching, battery, harm, and other injuries to minors, including
17 Plaintiff, giving rise to a duty to report such conduct under California Penal Code section 11166.

18 97. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew,
19 or had reason to know in the exercise of reasonable diligence, that an undue risk to minors,
20 including Plaintiff, existed because Defendants did not comply with California's mandatory
21 reporting requirements.

22 98. By failing to report the continuing molestations and abuse, which Defendants and
23 each of them knew or had reason to know, and by ignoring the fulfillment of the mandated
24 compliance with the reporting requirements provided under California Penal Code section 11166,
25 Defendants created the risk and danger contemplated by the Child Abuse and Neglect Reporting
26 Act, and as a result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual
27 molestation and abuse.

28 99. Plaintiff was a member of the class of persons for whose protection California

1 Penal Code section 11166 was specifically adopted to protect.

2 100. Had Defendants adequately reported the molestation of Plaintiff and other minors as
3 required by California Penal Code section 11166, further harm to Plaintiff and other minors would
4 have been avoided.

5 101. As a proximate result of Defendants' failure to follow the mandatory reporting
6 requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and
7 other minors the intervention of child protection services. Such public agencies would have
8 changed the then-existing arrangements and conditions that provided the access and opportunities
9 for the molestation of Plaintiff by Father Fitz-Henry.

10 102. The physical, mental, and emotional damages and injuries resulting from the sexual
11 molestation of Plaintiff by Father Fitz-Henry, were the type of occurrence and injuries that the
12 Child Abuse and Neglect Reporting Act was designed to prevent.

13 103. As a result, Defendants' failure to comply with the mandatory reporting
14 requirements of California Penal Code section 11166 also constituted a *per se* breach of
15 Defendants' duties to Plaintiff.

16 104. As a result of the above-described conduct, Plaintiff has suffered and continues to
17 suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional
18 distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life;
19 has suffered and continues to suffer and was prevented and will continue to be prevented from
20 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings
21 and earning capacity, and/or has incurred and will continue to incur expenses for medical and
22 psychological treatment, therapy, and counseling.

23 **FOURTH CAUSE OF ACTION**
24 **NEGLIGENT FAILURE TO WARN, TRAIN, or EDUCATE**
(Against All Defendants)

25 105. Plaintiff re-alleges and incorporates by reference herein each and every allegation
26 contained herein above as though fully set forth and brought in this cause of action.

27 106. Defendants owed Plaintiff a duty to take reasonable protective measures to protect
28 Plaintiff and other minor students from the risk of childhood sexual harassment, molestation and

1 abuse by Father Fitz-Henry by properly warning, training or educating Plaintiff and other students
2 about how to avoid such a risk.

3 107. Defendants breached their duty to take reasonable protective measures to protect
4 Plaintiff and other minor students from the risk of childhood sexual harassment, molestation and
5 abuse by Father Fitz-Henry, such as the failure to properly warn, train or educate Plaintiff and
6 other students about how to avoid such a risk.

7 108. Defendants breached their duty to take reasonable protective measures to protect
8 Plaintiff and other minor students from the risk of childhood sexual harassment, molestation and
9 abuse by Father Fitz-Henry, by failing to supervising and/or stop employees of Defendants,
10 including Father Fitz-Henry, from committing wrongful sexual acts with minors, including
11 Plaintiff.

12 109. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through
13 their employees and agents, were child care custodians and were under a statutory duty to report
14 known or suspected incidents of sexual molestation or abuse of minors to a child protective
15 agency, pursuant to California Penal Code section 11166, and/or not to impede the filing of any
16 such report.

17 110. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew
18 or had reason to know that their agent, priest, spiritual advisor, youth counselor and mentor, Father
19 Fitz-Henry, and other priests, teachers and staff of Defendants, had sexually molested, abused or
20 caused touching, battery, harm, and other injuries to minors, including Plaintiff, giving rise to a
21 duty to report such conduct under California Penal Code section 11166.

22 111. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew,
23 or had reason to know in the exercise of reasonable diligence, that an undue risk to minors,
24 including Plaintiff, existed because Defendants did not comply with California's mandatory
25 reporting requirements.

26 112. By failing to report the continuing molestations and abuse, which Defendants and
27 each of them knew or had reason to have known, and by ignoring the fulfillment of the mandated
28 compliance with the reporting requirements provided under California Penal Code section 11166,

1 Defendants created the risk and danger contemplated by the Child Abuse and Neglect Reporting
2 Act, and as a result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual
3 molestation and abuse.

4 113. Plaintiff was a member of the class of persons for whose protection California
5 Penal Code section 11166 was specifically adopted to protect.

6 114. Had Defendants adequately reported the molestation of Plaintiff and other minors as
7 required by California Penal Code section 11166, further harm to Plaintiff and other minors would
8 have been avoided.

9 115. As a proximate result of Defendants' failure to follow the mandatory reporting
10 requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and
11 other minors the intervention of child protection services. Such public agencies would have
12 changed the then-existing arrangements and conditions that provided the access and opportunities
13 for the molestation of Plaintiff by Father Fitz-Henry.

14 116. The physical, mental, and emotional damages and injuries resulting from the sexual
15 molestation of Plaintiff by Father Fitz-Henry, were the type of occurrence and injuries that the
16 Child Abuse and Neglect Reporting Act was designed to prevent.

17 117. As a result, Defendants' failure to comply with the mandatory reporting
18 requirements of California Penal Code section 11166 also constituted a *per se* breach of
19 Defendants' duties to Plaintiff.

20 118. As a result of the above-described conduct, Plaintiff has suffered and continues to
21 suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional
22 distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life;
23 has suffered and continues to suffer and was prevented and will continue to be prevented from
24 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings
25 and earning capacity, and/or has incurred and will continue to incur expenses for medical and
26 psychological treatment, therapy, and counseling.

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FIFTH CAUSE OF ACTION
CONSTRUCTIVE FRAUD: Civil Code § 1573
(Against all Defendants)

119. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

120. By holding Father Fitz-Henry out as an agent of Defendants, and by allowing him to undertake the spiritual, academic and emotional instruction of minor children such as Plaintiff, Defendants entered into a fiduciary relationship and special confidential relationship with Plaintiff.

121. By holding themselves out as qualified institutions of learning for children, and by undertaking to provide the academic, spiritual, and emotional instruction and counseling of Plaintiff and other minor students, Defendants entered into a fiduciary relationship and special confidential relationship with Plaintiff.

122. Defendants, and each of them, breached their fiduciary duty and/or special duties to Plaintiff by the wrongful and negligent conduct described or incorporated in this Complaint, and in doing so gained an advantage over Plaintiff in matters relating to Plaintiff's safety, security and health. In particular and without limiting the generality of the foregoing, in breaching such duties as alleged, Defendants among other things, was able to sustain the status of Defendants, as institutions of high moral repute, and preserve the reputation of Defendants, including their administrators and staff, all at the expense of Plaintiff's further injury and in violation of Defendants' and each of their mandatory duties.

123. By virtue of their fiduciary relationship and/or special relationship with Plaintiffs, Defendants and each of them owed Plaintiff a duty to:

- a. Investigate or otherwise confirm or deny such claims of sexual abuse;
- b. Reveal such facts to Plaintiff, Plaintiff's family and caretakers, the church community, parish community, school community, and law enforcement agencies;
- c. Refuse to place Father Fitz-Henry and other molesters in positions of trust and authority within Defendants' institutions;
- d. Refuse to hold out Father Fitz-Henry and other molesters to the public, the parish community, students, minors, parents and law enforcement agencies as being in good standing and, trustworthy in keeping with his and their position as a teacher, priest, mentor, counselor, director and authority figure;

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- e. Refuse to assign Father Fitz-Henry and other molesters to positions of power within the school and parish and over minor students; and
- f. Disclose to Plaintiff, his family, the public, the church community, the school community, students, minors, and law enforcement agencies the wrongful, tortious, and criminal acts of Father Fitz-Henry and others.

124. Plaintiff is informed, and on that basis alleges, that Defendants' breach of their respective duties included, but were not limited to:

- a. Making no or inadequate investigations of Father Fitz-Henry;
- b. Issuing no warnings about Father Fitz-Henry;
- c. Permitting Father Fitz-Henry to routinely be alone and in control of minors, unsupervised;
- d. Not having adopted a policy to prevent Father Fitz-Henry from routinely having minors, parishioners, and minor students in his unsupervised control;
- e. Making no reports of any allegations of Father Fitz-Henry's abuse of students, parishioners, or of minors prior to his employment at Defendants;
- f. Assigning and continuing to assign Father Fitz-Henry to duties which placed him in positions of authority and trust over minors, positions in which Father Fitz-Henry could easily isolate and sexually abuse minors; and

125. At the time that Defendants engaged in such suppression and concealment of acts, such acts were done for the purpose of causing Plaintiff to forbear on Plaintiff's rights.

126. Defendants' misconduct did reasonably cause Plaintiff to forbear on Plaintiff's rights.

127. Plaintiff is informed and believes, and on that basis alleges, that the misrepresentation, suppressions and concealment of facts were likely to mislead Plaintiff and others to believe that Defendants had no knowledge of any charges, or that there were no other charges of unlawful and/or sexual misconduct against Father Fitz-Henry or others and that there was no need for them to take further action or precaution.

128. Plaintiff is informed and believes, and on that basis alleges, that the misrepresentation, suppressions and concealment of facts by Defendants was likely to mislead Plaintiff and others to believe that Defendants had no knowledge of the fact that Father Fitz-Henry was a molester, and was known to commit wrongful sexual acts with minors, including Plaintiff.

129. Plaintiff is informed and believes, and on that basis alleges, that Defendants, and

1 each of them, knew or should have known at the time they suppressed and concealed the true facts
2 regarding others' sexual molestations, that the resulting impressions were misleading.

3 130. Plaintiff is informed and believes, and on that basis alleges, that Defendants, and
4 each of them, suppressed and concealed the true facts with the purpose of: preventing Plaintiff,
5 Plaintiff's mother & family, and others, from learning that Father Fitz-Henry and others had been
6 and were continuing to sexually harass, molest and abuse minors and others under Father Fitz-
7 Henry's and Defendants' control, direction, and guidance, with complete impunity; inducing
8 people, including Plaintiff and other benefactors and donors to participate and financially support
9 Defendants' church, school and other enterprises of Defendants; preventing further reports and
10 outside investigations into Father Fitz-Henry's and Defendants' conduct; preventing discovery of
11 Defendants' own conduct; avoiding damage to the reputations of Defendants; protecting
12 Defendants' power and status in the community and the academic community; avoiding damage to
13 the reputation of Defendants, or Defendants' institutions; and avoiding the civil and criminal
14 liability of Defendants, of Father Fitz-Henry, and of others.

15 131. Plaintiff is informed and believes, and on that basis alleges, that at all times
16 mentioned herein, Defendants, with knowledge of the tortious nature of their own and each others'
17 conduct, negligently, recklessly, knowingly and intentionally gave each other substantial assistance
18 to perpetrate the misrepresentations, fraud and deceit alleged herein.

19 132. Plaintiff is informed and believes, and on that basis alleges, that Plaintiff and others
20 were misled by Defendants' suppressions and concealment of facts, and in reliance thereon, were
21 induced to act or induced not to act, exactly as intended by Defendants. Specifically, Plaintiff and
22 Plaintiff's mother and family were induced to believe that there were no allegations of criminal or
23 sexual abuse against Father Fitz-Henry. Had Plaintiff or others known the true facts, they would
24 have not participated further nor continued to financially support the Defendants' activities alleged
25 herein; they would have reported the matters to the proper authorities, to other minor parishioners,
26 students and their parents so as to prevent future recurrences; they would not have allowed
27 children, including Plaintiff, to be alone with, or have any relationship with Father Fitz-Henry;
28 they would not have allowed children, including Plaintiff, to attend or be under the control of

1 Defendants; they would have undertaken their own investigations which would have led to
2 discovery of the true facts; and they would have sought psychological counseling for Plaintiff, and
3 for other children molested and abused by Father Fitz-Henry.

4 133. By giving Father Fitz-Henry the position of priest, teacher, spiritual advisor,
5 counselor and mentor, Defendants impliedly represented that Father Fitz-Henry was safe and
6 morally fit to give children direction and guidance.

7 134. Plaintiff is informed and believes, and on that basis alleges, that when Defendants
8 made these affirmative or implied representations and/or non-disclosures of material facts,
9 Defendants knew or should have known that the facts were otherwise. Defendants knowingly and
10 intentionally suppressed the material facts that Father Fitz-Henry had on numerous, prior occasions
11 sexually, physically, and/or mentally abused minors and students of Defendants, including
12 Plaintiff, and/or knew of or learned of conduct, or should have learned of conduct by Father Fitz-
13 Henry which placed Defendants on notice that Father Fitz-Henry had previously been suspected,
14 charged, arrested and/or convicted of felonies, including unlawful sexual conduct with minors, and
15 was likely abusing children.

16 135. Because of Plaintiff's young age, and because of the status of Father Fitz-Henry as
17 an authority figure to Plaintiff, Plaintiff was vulnerable to Father Fitz-Henry. Father Fitz-Henry
18 sought Plaintiff out, and was empowered by and accepted Plaintiff's vulnerability. Plaintiff's
19 vulnerability also prevented Plaintiff from effectively protecting herself from the sexual advances
20 of Father Fitz-Henry.

21 136. Defendants had the duty to obtain and disclose information relating to sexual
22 misconduct of Father Fitz-Henry.

23 137. Defendants misrepresented, concealed or failed to disclose information relating to
24 sexual misconduct of Father Fitz-Henry.

25 138. Defendants knew that they had misrepresented, concealed or failed to disclose
26 information related to sexual misconduct of Father Fitz-Henry.

27 139. Plaintiff justifiably relied upon Defendants for information relating to sexual
28 misconduct of Father Fitz-Henry.

1 140. Defendants, in concert with each other and with the intent to conceal and defraud,
2 conspired and came to a meeting of the minds whereby they would misrepresent, conceal or fail to
3 disclose information relating to the sexual misconduct of Father Fitz-Henry, the inability of
4 Defendants to supervise or stop Father Fitz-Henry from sexually harassing, molesting and abusing
5 Plaintiff, and their own failure to properly investigate, supervise and monitor his conduct with
6 minor parishioners and students.

7 141. By so concealing, Defendants committed at least one act in furtherance of the
8 conspiracy.

9 142. As a result of the above-described conduct, Plaintiff has suffered and continues to
10 suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional
11 distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life;
12 has suffered and continues to suffer and was prevented and will continue to be prevented from
13 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings
14 and earning capacity, and/or has incurred and will continue to incur expenses for medical and
15 psychological treatment, therapy, and counseling.

16 143. In addition, when Plaintiff finally discovered the fraud of Defendants, and
17 continuing thereafter, Plaintiff experienced recurrences of the above-described injuries. In
18 addition, when Plaintiff finally discovered the fraud of Defendants, and continuing thereafter,
19 Plaintiff experienced extreme and severe mental anguish and emotional distress that Plaintiff had
20 been the victim of Defendants' fraud; that Plaintiff had not been able to help other minors being
21 molested because of the fraud, and that Plaintiff had not been able because of the fraud to receive
22 timely medical treatment needed to deal with the problems Plaintiff had suffered and continues to
23 suffer as a result of the sexual harassment, molestation and abuse.

24 144. Plaintiff is informed and based thereon alleges that the conduct of Defendants was
25 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for
26 the rights and safety of others, and were carried out with a conscious disregard of her right to be
27 free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to
28 California Civil Code section 3294, entitling Plaintiff to punitive damages against Father Fitz-

1 Henry in an amount appropriate to punish and set an example of Father Fitz-Henry. Plaintiff
2 further reserves the right, pursuant to California Code of Civil Procedure § 425.14, to seek leave of
3 court to pursue an award of punitive damages against Defendants RCBM and Madonna Parish, in a
4 sum to be shown according to proof.

5 **SIXTH CAUSE OF ACTION**
6 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
7 **(Against All Defendants)**

8 145. Plaintiff re-alleges and incorporates by reference herein each and every allegation
9 contained herein above as though fully set forth and brought in this cause of action.

10 146. Father Fitz-Henry's conduct toward Plaintiff, as described herein, was outrageous
11 and extreme.

12 147. A reasonable person would not expect or tolerate the sexual harassment,
13 molestation and abuse of Plaintiff by Father Fitz-Henry. Plaintiff had great trust, faith and
14 confidence in Father Fitz-Henry and in Defendants, which, by virtue of Father Fitz-Henry's and
15 Defendants' wrongful conduct, turned to fear.

16 148. Defendants' conduct toward Plaintiff, as described herein, was outrageous and
17 extreme.

18 149. A reasonable person would not expect or tolerate Defendants putting Father Fitz-
19 Henry, who was known to Defendants to be a child molester and child abuser, in charge at
20 Madonna Parish, which enabled Father Fitz-Henry to have access to minor students and
21 parishioners so that he could commit wrongful sexual acts, including the conduct described herein,
22 with minors, including Plaintiff. Plaintiff had great trust, faith and confidence in Defendants,
23 which, by virtue of Defendants' wrongful conduct, turned to fear.

24 150. A reasonable person would not expect or tolerate Defendants to be incapable of
25 supervising and/or stopping employees of Defendants, including Father Fitz-Henry, from
26 committing wrongful sexual acts with minors, including Plaintiff, or to supervise Father Fitz-
27 Henry. Plaintiff had great trust, faith and confidence in Defendants, which, by virtue of
28 Defendants' wrongful conduct, turned to fear.

151. Father Fitz-Henry's and Defendants' conduct described herein was intentional and

1 malicious and done for the purpose of causing or with the substantial certainty that Plaintiff would
2 suffer humiliation, mental anguish, and emotional and physical distress.

3 152. As a result of the above-described conduct, Plaintiff has suffered and continues to
4 suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional
5 distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life;
6 has suffered and continues to suffer and was prevented and will continue to be prevented from
7 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings
8 and earning capacity, and/or has incurred and will continue to incur expenses for medical and
9 psychological treatment, therapy, and counseling.

10 153. Plaintiff is informed and based thereon alleges that the conduct of Defendants was
11 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for
12 the rights and safety of others, and were carried out with a conscious disregard of her right to be
13 free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to
14 California Civil Code section 3294, entitling Plaintiff to punitive damages against Father Fitz-
15 Henry in an amount appropriate to punish and set an example of Father Fitz-Henry. Plaintiff
16 further reserves the right, pursuant to California Code of Civil Procedure § 425.14, to seek leave of
17 court to pursue an award of punitive damages against Defendants RCBM and Madonna Parish in a
18 sum to be shown according to proof.

19 **SEVENTH CAUSE OF ACTION**
20 **SEXUAL BATTERY: Civil Code § 1708.5**
21 **(Against Defendant Father Fitz-Henry)**

22 154. Plaintiff re-alleges and incorporates by reference herein each and every allegation
23 contained herein above as though fully set forth and brought in this cause of action.

24 155. During Plaintiff's time as a minor parishioner and student at RCBM and Madonna
25 Parish, Defendant Father Fitz-Henry intentionally, recklessly and wantonly did acts which were
26 intended to, and did result in harmful and offensive contact with intimate parts of Plaintiff's
27 person, including but not limited to Defendant Father Fitz-Henry talking to Plaintiff about sexual
28 issues; asking Plaintiff about his sexual history and sexuality; asking Plaintiff whether he
masturbated; telling Plaintiff that he needed to experiment more with sex, offering to teach

1 Plaintiff about sex and how to have sex; asking Plaintiff if he played the “skin flute” and offering
2 to teach him how; telling Plaintiff that it was ok to have homosexual feelings and urges; telling
3 Plaintiff that he should act upon any homosexual urges; offering to teach Plaintiff how to act upon
4 his homosexual urges; giving Plaintiff long, sensual hugs while he had an erection; placing his
5 hands down Plaintiff’s pants and massaging his buttocks; placing his hands under Plaintiff’s shirt
6 and rubbing his back; placing his leg between Plaintiff’s legs and rubbing Plaintiff’s groin,
7 grinding his body against Plaintiff’s; massaging Plaintiff’s body; grinding his erect penis against
8 Plaintiff’s body; grabbing Plaintiff’s penis through his clothes; and on one occasion luring Plaintiff
9 into the sacristy bathroom, unzipping his pants, grabbing Plaintiff’s hand and placing it on Father
10 Fitz-Henry’s erect penis, placing his hands on Plaintiff’s neck and attempting to force Plaintiff’s
11 head down to Father Fitz-Henry’s penis, hitting Plaintiff in the face, lips and mouth with his penis,
12 while encouraging Plaintiff to “give him a blow job,” all while Plaintiff was crying and struggling
13 to get away; all while Father Fitz-Henry was in the course and scope of his agency/employment by
14 Defendants, and each of them.

15 156. Defendant Father Fitz-Henry did the aforementioned acts with the intent to cause a
16 harmful or offensive contact with an intimate part of Plaintiff’s person, and would offend a
17 reasonable sense of personal dignity. Further, said acts did cause a harmful or offensive contact
18 with an intimate part of Plaintiff’s person that would offend a reasonable sense of personal dignity.

19 157. Because of Father Fitz-Henry’s position of authority over Plaintiff, and Plaintiff’s
20 mental and emotional state, and Plaintiff’s young age under the age of consent, Plaintiff was unable
21 to, and did not, give meaningful consent to such acts.

22 158. As a direct, legal and proximate result of the acts of Defendant Father Fitz-Henry,
23 Plaintiff sustained serious and permanent injuries to his person, all to his damage in an amount to
24 be shown according to proof and within the jurisdiction of the Court.

25 159. As a direct result of the sexual abuse by Father Fitz-Henry, Plaintiff has difficulty in
26 reasonably or meaningfully interacting with others, including those in positions of authority over
27 Plaintiff including teachers, and supervisors, and in intimate, confidential and familial
28 relationships, due to the trauma of childhood sexual abuse inflicted upon him by Defendants. This

1 inability to interact creates conflict with Plaintiff's values of trust and confidence in others, and has
2 caused Plaintiff substantial emotional distress, anxiety, nervousness and fear. As a direct result of
3 the molestation by Father Fitz-Henry, Plaintiff has had issues with his personal life, as Plaintiff has
4 issues with trust and is unable to maintain relationships. As a further direct result of the
5 molestation by Father Fitz-Henry, Plaintiff has never been able to maintain a normal intimate
6 relationship. These feelings have caused Plaintiff substantial emotional distress, anxiety,
7 nervousness and fear.

8 160. Plaintiff is informed and based thereon alleges that the conduct of Defendants was
9 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for
10 the rights and safety of others, and were carried out with a conscious disregard of his right to be
11 free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to
12 California Civil Code section 3294, entitling Plaintiff to punitive damages against Father Fitz-
13 Henry in an amount appropriate to punish and set an example of Father Fitz-Henry.

14 **EIGHTH CAUSE OF ACTION**
15 **ASSAULT**
16 **(Against Defendant Father Fitz-Henry)**

17 161. Plaintiff re-alleges and incorporates by reference herein each and every allegation
18 contained herein above as though fully set forth and brought in this cause of action.

19 162. Defendant Father Fitz-Henry, in doing the things herein alleged, including
20 intending to talk to Plaintiff about sexual issues; intending to ask Plaintiff about his sexual history
21 and sexuality; intending to ask Plaintiff whether he masturbated; intending to tell Plaintiff that he
22 needed to experiment more with sex, intending to offer to teach Plaintiff about sex and how to
23 have sex; intending to ask Plaintiff if he played the "skin flute" and intending to offer to teach him
24 how; intending to tell Plaintiff that it was ok to have homosexual feelings and urges; intending to
25 tell Plaintiff that he should act upon any homosexual urges; intending to offer to teach Plaintiff
26 how to act upon his homosexual urges; intending to give Plaintiff long, sensual hugs while he had
27 an erection; intending to place his hands down Plaintiff's pants and massage his buttocks;
28 intending to place his hands under Plaintiff's shirt and rub his back; intending to place his leg
between Plaintiff's legs and rub Plaintiff's groin, intending to grind his body against Plaintiff's;

1 intending to massage Plaintiff's body; intending to grind his erect penis against Plaintiff's body;
2 intending to grab Plaintiff's penis through his clothes; and intending to lure Plaintiff into the
3 sacristy bathroom, unzipping his pants, grabbing Plaintiff's hand, placing it on Father Fitz-Henry's
4 erect penis, place his hand on Plaintiff's neck, attempting to force Plaintiff's head down to Father
5 Fitz-Henry's penis while intending to encouraging Plaintiff to "give him a blow job," hitting
6 Plaintiff in the mouth, face and lips with his penis, all while Plaintiff was crying and struggling to
7 get away; all while Father Edward Fitz-Henry was in the course and scope of his
8 agency/employment by Defendants, was intended to cause harmful or offensive contact with
9 Plaintiff's person, or intended to put Plaintiff in imminent apprehension of such contact.

10 163. In doing the things herein alleged, Plaintiff was put in imminent apprehension of a
11 harmful or offensive contact by Father Fitz-Henry, and actually believed Father Fitz-Henry had the
12 ability to make harmful or offensive contact with Plaintiff's person.

13 164. Plaintiff did not consent to Father Fitz-Henry's intended harmful or offensive
14 contact with Plaintiff's person, or intent to put Plaintiff in imminent apprehension of such contact.
15 Additionally, because Plaintiff was a minor during the time herein alleged, he lacked the ability to
16 consent to sexual contact with any person, especially with a priest, mentor, teacher, spiritual
17 advisor, and counselor at the church and school he attended.

18 165. In doing the things herein alleged, Father Fitz-Henry violated Plaintiff's right,
19 pursuant to Civil Code section 43, of protection from bodily restraint or harm, and from personal
20 insult. In doing the things herein alleged, Father Fitz-Henry violated his duty, pursuant to Civil
21 Code section 1708, to abstain from injuring the person of Plaintiff or infringing upon his rights.

22 166. As a result of the above-described conduct, Plaintiff has suffered and continues to
23 suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional
24 distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life;
25 has suffered and continues to suffer and was prevented and will continue to be prevented from
26 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings
27 and earning capacity, and/or has incurred and will continue to incur expenses for medical and
28 psychological treatment, therapy, and counseling.

1 167. Plaintiff is informed and based thereon alleges that the conduct of Defendant was
2 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for
3 the rights and safety of others, and were carried out with a conscious disregard of his right to be
4 free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to
5 California Civil Code section 3294, entitling Plaintiff to punitive damages against Father Fitz-
6 Henry in an amount appropriate to punish and set an example of Father Fitz-Henry.

7 **NINTH CAUSE OF ACTION**
8 **SEXUAL HARASSMENT: Civil Code § 51.9**
9 **(Against ALL Defendants)**

10 168. Plaintiff re-alleges and incorporates by reference herein each and every allegation
11 contained herein above as though fully set forth and brought in this cause of action.

12 169. During Plaintiff's time as a student and parishioner at Defendants, Defendant Father
13 Fitz-Henry intentionally, recklessly and wantonly made sexual advances, solicitations, requests,
14 demands for sexual compliance of a hostile nature based on Plaintiff's gender that were
15 unwelcome, pervasive and severe, including but not limited to Defendant Father Fitz-Henry talking
16 to Plaintiff about sexual issues; asking Plaintiff about his sexual history and sexuality; asking
17 Plaintiff whether he masturbated; telling Plaintiff that he needed to experiment more with sex,
18 offering to teach Plaintiff about sex and how to have sex; asking Plaintiff if he played the "skin
19 flute" and offering to teach him how; telling Plaintiff that it was ok to have homosexual feelings
20 and urges; telling Plaintiff that he should act upon any homosexual urges; offering to teach
21 Plaintiff how to act upon his homosexual urges; giving Plaintiff long, sensual hugs while he had an
22 erection; placing his hands down Plaintiff's pants and massaging his buttocks; placing his hands
23 under Plaintiff's shirt and rubbing his back; placing his leg between Plaintiff's legs and rubbing
24 Plaintiff's groin, grinding his body against Plaintiff's; massaging Plaintiff's body; grinding his
25 erect penis against Plaintiff's body; grabbing Plaintiff's penis through his clothes; and on one
26 occasion in a church bathroom, unzipping his pants, grabbing Plaintiff's hand and placing it on
27 Father Fitz-Henry's erect penis, placing his hands on Plaintiff's neck, attempting to force
28 Plaintiff's head down to his penis while encouraging Plaintiff to "give him a blow job," all while
Plaintiff was crying and struggling to get away; all while Father Fitz-Henry was acting in the

1 course and scope of his agency/ employment with Defendants and each of them.

2 170. The incidents of abuse outlined herein above took place while Plaintiff was under
3 the control of Father Fitz-Henry, in his capacity and position as a priest, teacher, spiritual advisor,
4 youth counselor and mentor at Defendants, and while acting specifically on behalf of Defendants.

5 171. During Plaintiff's time as a parishioner, altar server and student at Defendants,
6 Father Fitz-Henry intentionally, recklessly and wantonly did acts which resulted in harmful and
7 offensive contact with intimate parts of Plaintiff's person, including but not limited to, using his
8 position as a teacher, priest, spiritual advisor, youth counselor and mentor to require Plaintiff to
9 give into his sexual suggestions, and to use his authority and position of trust to exploit him
10 physically and emotionally.

11 172. Because of Plaintiff's relationship with Father Fitz-Henry as a student, altar server
12 and parishioner at Defendants, and Plaintiff's young age as a minor student, Plaintiff was unable to
13 easily terminate the priest-penitent relationship he had with Defendant Father Fitz-Henry.

14 173. Because of Father Fitz-Henry's position of authority over Plaintiff, and Plaintiff's
15 mental and emotional state, and Plaintiff's young age under the age of consent, Plaintiff was unable
16 to, and did not, give meaningful consent to such acts.

17 174. Even though the Defendants knew or should have known of these activities by
18 Defendant Father Fitz-Henry, Defendants did nothing to investigate, supervise or monitor
19 Defendant Father Fitz-Henry to ensure the safety of the minor students.

20 175. Defendants' conduct was a breach of their duties to Plaintiff.

21 176. As a result of the above-described conduct, Plaintiff has suffered and continues to
22 suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional
23 distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life;
24 has suffered and continues to suffer and was prevented and will continue to be prevented from
25 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings
26 and earning capacity, and/or has incurred and will continue to incur expenses for medical and
27 psychological treatment, therapy, and counseling.

28 177. Plaintiff is informed and based thereon alleges that the conduct of Defendants was

1 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for
2 the rights and safety of others, and were carried out with a conscious disregard of her right to be
3 free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to
4 California Civil Code section 3294, entitling Plaintiff to punitive damages against Father Fitz-
5 Henry in an amount appropriate to punish and set an example of Father Fitz-Henry. Plaintiff
6 further reserves the right, pursuant to California Code of Civil Procedure § 425.14, to seek leave of
7 court to pursue an award of punitive damages against Defendants RCBM and Madonna Parish, in a
8 sum to be shown according to proof.

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10 **TENTH CAUSE OF ACTION**
GENDER VIOLENCE: Civil Code § 52.4
(Against Defendant Father Edward Fitz-Henry)

11 178. Plaintiff re-alleges and incorporates by reference herein each and every allegation
12 contained herein above as though fully set forth and brought in this cause of action.

13 179. Defendants' acts committed against Plaintiff, as alleged herein, including the sexual
14 harassment, molestation and abuse of the minor Plaintiff constitute gender violence and a form of
15 sex discrimination in that one or more of Defendants' acts of would constitute a criminal offense
16 under state law that has as an element the use, attempted use, or threatened use of physical force
17 against the person of another, committed at least in part based on the gender of the victim, whether
18 or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

19 180. Defendants' acts committed against Plaintiff, as alleged herein, including the sexual
20 harassment, molestation and abuse of the minor Plaintiff constitute gender violence and a form of
21 sex discrimination in that Defendants' conduct caused a physical intrusion or physical invasion of
22 a sexual nature upon Plaintiff under coercive conditions, whether or not those acts have resulted in
23 criminal complaints, charges, prosecution, or conviction.

24 181. Plaintiff is informed and based thereon alleges that the conduct of Defendants was
25 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for
26 the rights and safety of others, and were carried out with a conscious disregard of her right to be
27 free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to
28 California Civil Code section 3294, entitling Plaintiff to punitive damages against Father Fitz-

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1 Henry in an amount appropriate to punish and set an example of Father Fitz-Henry, in a sum to be
2 shown according to proof.

3 **WHEREFORE**, Plaintiff prays for a jury trial and for judgment against Defendants, and
4 each of them, as follows:


5 **FOR ALL CAUSES OF ACTION**

- 6 1. For past, present and future general damages in an amount to be determined at trial;
- 7 2. For past, present and future special damages, including but not limited to past, present
8 and future lost earnings, economic damages and others, in an amount to be determined at trial;
- 9 3. Any appropriate punitive or exemplary damages against Defendant Father Fitz-Henry;
- 10 4. Plaintiff reserves his right, pursuant to California Code of Civil Procedure §§ 52.4 and
11 425.14, to seek leave of Court via noticed motion to pursue an appropriate award of punitive
12 damages against all religious Defendants, namely RCBM and Madonna Parish, subject to
13 California Code of Civil Procedure § 425.14.
- 14 5. Any appropriate statutory damages;
- 15 6. For costs of suit;
- 16 7. For interest as allowed by law;
- 17 8. For attorney's fees pursuant to California Code of Civil Procedure § 1021.5, § 52, or
18 otherwise as allowable by law; and
- 19 9. For such other and further relief as the court may deem proper.

20 Filed Pursuant to California Code of Civil Procedure section 340.1.

21 Dated: February 15, 2011

MANLY & STEWART

22
23 By: 
24 VINCE WILLIAM FINALDI, Esq.
25 Attorneys for Plaintiff,
26 JOHN RJ DOE.
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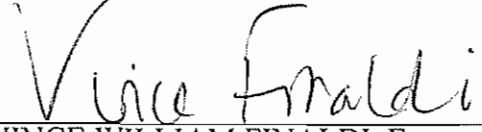
DEMAND FOR JURY TRIAL

Plaintiff JOHN RJ DOE, an individual, **HEREBY** demands a trial by jury.

Dated: February 15, 2011

MANLY & STEWART

By:



VINCE WILLIAM FINALDI, Esq.
Attorney for Plaintiff,
JOHN RJ DOE.

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