

2010 CI - 05994

CAUSE NO. _____

2010 APR -3 PM 12:07
DEPUTY

JOHN DOE I,
(A PSEUDONYM)

Plaintiff,

vs.

ARCHDIOCESE OF SAN ANTONIO
BY AND THROUGH ARCHBISHOP
JOSE H. GOMEZ, HIS PREDECESSORS
AND SUCCESSORS, AS ARCHBISHOP
OF THE ARCHDIOCESE OF
SAN ANTONIO,

Defendants.

IN THE DISTRICT COURT OF

131st

BEXAR COUNTY, TEXAS

____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, REQUEST FOR JURY TRIAL
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE DISTRICT COURT JUDGE:

COMES NOW John Doe I, Plaintiff herein, and files this his *Original Petition, Request For Jury Trial and Request for Disclosure*, complaining of Defendant Archdiocese of San Antonio by and through, Archbishop Jose H. Gomez, his Predecessors and Successors, as Archbishop of the Archdiocese of San Antonio, and would show the Court the following:

I

DISCOVERY CONTROL PLAN

1.01 As required by TEX. R. CIV. P. 190.1, Plaintiff files this lawsuit under a Level 3 Discovery Control Plan (Tex. R. Civ. P. 190.4).

II **PARTIES**

2.01 Plaintiff John Doe I (hereinafter “Doe I”) currently resides in Edwards County, Texas. He is an adult male whose identity will be made known to Defendants. At the time of all sexual abuse and sexual exploitation alleged herein, Doe I was a minor and resident of Edwards County, Texas. Doe I was sexually abused when he was a boy by Father John M. Fiala (hereinafter “Fiala”), who was working at the Sacred Heart of Mary in Rocksprings, Edwards County, Texas as a Roman Catholic priest under the direction of the Archdiocese of San Antonio and its Archbishop. Doe I and his family were members of the parish there.

2.02 Defendant Archdiocese of San Antonio (herein after the “Archdiocese”) by and through Archbishop Jose H. Gomez, his Predecessors and Successors as Archbishop of the Archdiocese of San Antonio purports to be a religious organization which may be served with process through its Archbishop, Jose H. Gomez at 2718 West Woodlawn, San Antonio, Texas 78228. The Archdiocese was the employer of Fiala which, through its Archbishop, Gomez, accepted Fiala into its Archdiocese, granted priestly faculties to him and assigned him to various parishes within the Archdiocese, including Sacred Heart of Mary, where he met and preyed upon Doe I.

2.03 Venue is proper in this case in Bexar County, Texas pursuant to Texas Civil Practice and Remedies Code §15.002(a)(3) because the principal place of business of the Archdiocese of San Antonio is located in Bexar County, Texas.

III

SEXUAL ABUSE OF THE VICTIM

3.01 At all times material herein, Father Fiala was a Roman Catholic priest working within the parish of Sacred Heart of Mary, which was operated by the Roman Catholic Archdiocese of San Antonio. In approximately 2004, Fiala was assigned by the Archdiocese to Sacred Heart of Mary. At that time and presently, this church was owned, operated, and controlled by the Roman Catholic Archdiocese of San Antonio. During this time Defendant Archdiocese knew or should have known that Fiala was engaging in forbidden sexual contact which was both actually and potentially damaging to Plaintiff.

3.02 Fiala's assignment history also includes an earlier "stint" in Texas during 1997-1999 within the Corpus Christi Diocese with various other appointments in Omaha, Nebraska and Kansas City, Missouri with intermittent absences due to "leaves."

3.03 At all times material herein, Fiala using the imprimatur of priesthood remained under the remained under the retention, direct supervision, employ, agency and control of Defendant Archdiocese and its Archbishops receiving support and benefits from them. Father Fiala was also a vice-principal of the Diocese serving both as pastor and the Director of the World Apostolate of Fatima in San Antonio at the times he sexually abused and exploited Plaintiff.

3.04 Father Fiala first met Doe I in 2007 at a basketball game when the boy was approximately sixteen years old. The priest discussed Doe I and his brother's First Communion with their family. He visited in their grandparents' home where Doe I was living at the time. He asked to take the boy's picture with his camera. He lavished gifts on the boy, including an

expensive laptop computer, cell phone, an MP3 player and money and, later, a car. He bought and provided alcohol to Doe I. Beginning in early 2008, under the pretext of giving private catechism classes, Fiala gained access to John Doe I whom he began to sexually abuse approximately once or twice a month and included sexual contact on church grounds when Doe I was approximately sixteen years old.

3.05 In approximately January 2008, during his employment at Sacred Heart of Mary, Father Fiala offered to take the boy to an out of town youth event in San Angelo. Father Fiala induced John Doe I, approximately age 16 at the time, to take the out of town trip by telling the youth that he would take John Doe I in the church truck to see Doe I's girlfriend in Big Spring. However, in actuality what happened is Father Fiala satisfied his own desires, spending the night with the boy in a Motel 6 in San Angelo and holding Doe I at gun point, raped the boy, anally penetrating him. Father Fiala threatened Doe I saying, "If you tell anyone what happened, I will hurt you and your family." In February, Fiala assaulted the boy again, including anal penetration on a similar trip.

3.06 Father Fiala then bought Doe I a Chrysler Sebring. The boy left the car at a friend's house. When the car needed some work, Doe I went to the rectory and Fiala gave him \$80 for repairs, saying Doe I had to perform oral sex to get the keys. The boy complied at the priest's room in the rectory. Fiala began texting Doe I daily on the cell phone he gave the boy. When Doe I ignored the texts, Fiala threatened to kill the boy, saying he would then kill himself so they could be in heaven together. He later arranged a meeting with the boy to "go over" what he could do as a reference for Doe I who was looking for a job. Doe I told Fiala he did not want to be friends and gave him back the car keys. Fiala threatened to hurt Doe I's girlfriend and

threw the boy into a coat closet. Fiala came back with two cases of beer and told the boy he wanted to see him drink. Father Fiala pulled a revolver on the boy and forced Doe I to perform fellatio on the priest. This occurred in August 2008. Finally, unable to take it anymore, Doe I ran away from home, and eventually tried to commit suicide. Later, Doe I's school counselor reported the abuse to the authorities and his family has cooperated in the criminal investigation.

IV

CAUSES OF ACTION AGAINST DEFENDANT ARCHDIOCESE OF SAN ANTONIO BY AND THROUGH ITS ARCHBISHOP GOMEZ, HIS PREDECESSORS AND SUCCESSORS

4.01 At all times material herein, Father Fiala was employed as a Roman Catholic priest by Defendant Archdiocese and was under Defendant's direct supervision and control when he engaged in sexual contact with then-minor Plaintiff, Doe I. As a priest, Father Fiala acted upon delegated authority of the Archdiocese as agent, servant, apparent agent or ostensible agent for the Archbishop of the Archdiocese. Fiala was also a vice-principal of the Archdiocese by virtue of his high rank as pastor and Director of the World Apostolate of Fatima. Father Fiala came to know the Plaintiff and gained access to him and others because of his status as a Roman Catholic priest. He engaged in this wrongful conduct while in the course and scope of his employment with Defendant Archdiocese. Consequently, Defendant Archdiocese is liable for the wrongful conduct of Fiala. Plaintiff, therefore, pleads vicarious liability under the doctrine of *respondeat superior*, agency, apparent agency and agency by estoppels. Plaintiff pleads Fiala was a vice-principal of the Archdiocese. Plaintiff thus pleads that Defendant Archdiocese and its Bishops knew or should have known of the sexual misconduct and continuing dangerous propensities of Fiala and that his injurious sexual actions were clearly foreseeable.

4.02 Defendants Archdiocese, its Archbishops, its delegated hierarchy and its priests negligently retained and/or continued the employment of Fiala in a position of trust, confidence and authority as a priest in direct contact with children when they knew or should have known of his dangerous sexual propensities against children.

4.03 Defendants Archdiocese, its Archbishops, its delegated hierarchy and its priests failed to warn Plaintiff or his family of Fiala's dangerous sexual propensities towards minor children.

4.04 Defendants Archdiocese, its Archbishops, its delegated hierarchy and its priests failed to provide reasonable supervision of Fiala.

4.05 Plaintiff alleges that Fiala, while a Catholic priest of the Archdiocese, had a psychosexual disorder characterized by an abnormal, impulsive sexual attraction to boys. Plaintiff further alleges that Defendants knew or should have known of Fiala's perverse proclivities and illegal behavior prior to the abuses complained of herein. These Defendants also knew or should have known that Fiala's psychosexual disorder rendered him unfit for a position of trust and confidence as priest at Sacred Heart of Mary and the other parishes to which he was assigned in that it would allow him unsupervised access to youngsters such as Doe I. Thus, Plaintiff relies on Fiala's mental condition as part of his claims. *See Texas Rules of Evidence* 509(e) (4) and 510(d) (5).

4.06 Plaintiff was raised in a devout Roman Catholic family. Plaintiff had been taught to hold his clergy and hierarchy in great trust, confidence, reverence and respect and to obey and to rely, without question, upon the secular counseling and spiritual guidance of their priests, bishops and superiors.

4.07 As good Catholics, Plaintiff and his family trusted that the church, its official representatives, its priests, archbishops, bishops and superiors would always be and behave as they represented, namely as chaste honorable and moral men acting in parishioners' best interests and as embodiments of God on Earth who would never knowingly expose any of them, certainly not children, to any danger, especially sexual injury, and particularly from one of their own clergy. Plaintiff and his family trusted and expected with the highest degree of confidence, good faith and loyalty that all Defendants would act prudently on his behalf. Doe I and his family depended on their bishops and superiors to provide them with priests who were honest, of good moral character, sexually safe and otherwise suitable for service among them.

4.08 Defendant Archdiocese, as a purported eleemosynary, is granted special privileges and immunities by society and is in a special fiduciary relationship or special relationship with Plaintiff. Defendant Archdiocese and its Archbishops thus owed Plaintiff the highest duty of trust and confidence and were required to act in his best interest. Defendants knowingly violated and breached that relationship when they failed to act with the highest degree of trust and confidence to protect Plaintiff from its sexually predatory priest. This knowing breach of fiduciary duty and conduct proximately caused injuries to Plaintiff.

4.09 Defendants were under the duty to disclose the extent of the problem of sexual abuse of children by Roman Catholic clergy and the severe psychological problems that would result from such abuse is not properly treated. Instead, Defendants Archdiocese and its Archbishops fraudulently concealed this information, whereby allowing Fiala unopposed access to children for his own perverse sexual gratification.

4.10 Defendants Archdiocese and its Archbishops also committed fraud that proximately caused Plaintiff's damages when it failed to disclose Fiala's pedophilic tendencies and instead misrepresented him as a celibate priest in good standing to his parishioners, their families and the public, including this Plaintiff.

4.11 Defendants Archdiocese and its Archbishops at the time and on the occasions in question acted with heedless and reckless disregard of the safety of the Plaintiff, which disregard was the result of conscious indifference to the rights, welfare and safety of Doe I and in violation of the laws of the State of Texas.

4.12 Plaintiff alleges that the actions of Defendant have inflicted emotional distress upon Plaintiff. Defendant Archdiocese and its Archbishops are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 302B, under the legal doctrine of negligent assumption of risk of intentional or criminal conduct which states:

An act or omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such harm is criminal. Restatement (Second) of Torts, Section 302B.

4.14 Defendants Archdiocese and its Archbishops realized or should have realized that Fiala posed an unreasonable risk of harm to minor children, including Plaintiff Doe I.

4.15 Plaintiff asserts that Defendants Archdiocese and its Archbishops are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 311, under the legal doctrine of negligent misrepresentation involving risk of physical harm:

- (1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results

- (a) to the other, or
- (b) to such third persons as the actor should expect to be put in peril by the action taken.

(2) Such negligence may consist of failure to exercise reasonable care

- (a) In ascertaining the accuracy of the information, or
- (b) In the manner in which it is communicated.

Restatement (Second) of Torts, Section 311.

4.16 Defendants Archdiocese and its Archbishops' failure to ascertain and apprise Plaintiff and his family of Fiala's sexually predatory nature and the Archdiocese's representation that Fiala was not sexually dangerous to young boys placed Doe I in danger and peril.

4.17 Plaintiff asserts that all entities and individuals who are named as Defendants are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 876, under the legal doctrine of concert of action, as joint venturers, as agents of these entities, and as shareholders of this entity under which theories Plaintiff seeks damages from all Defendants jointly and severally.

4.18 Defendants Archdiocese and its Archbishops negligently failed to implement reasonable policies and procedures to detect and prevent the sexual abuse of boys by Fiala even though Defendants knew or should have known he was a predictable risk for such sexual abuse and sexual misconduct. The negligent and reckless acts arising out of Defendants' policies and practices, include, but are not limited to:

1. supervising, assigning, and retaining Fiala;
2. failing to inform the public that Fiala and priests like him assigned to their parishes were sexual threats to minors;

3. ignoring warnings from medical professionals even within the Catholic Church that certain priests were potentially dangerous to children;
4. misrepresenting facts to victims who requested information about such priests who abused them in order to fraudulently conceal their own negligence;
5. ignoring warnings from others within the Archdiocese', Dioceses', Archbishops', and Bishops' conferences who believed that such priests were threats to children;
6. failing to report the crimes committed by such priests to law enforcement and obstructing or interfering with law enforcement investigations concerning abusive priests, including spiriting them out of the state of Texas, not just to other dioceses or parishes, beyond the reach of law enforcement;
7. failing to alert parishioners, previous parishes and the surrounding communities where abusive priests had served that they were exposed to known or suspected child molesters;
8. making decisions which reflected that the reputations of abusive priests and the desire to avoid scandal were vastly superior and more important to the Archdiocese than the welfare of victims who had been abused by priests and of their families;
9. using Church influence to alter the outcome of the criminal legal process relating to priests who had been engaging in illegal sexual acts and to conspire to recycle them back into active ministry; and
10. fostering an environment and culture where abuse of children by priests could flourish and in which it was clearly understood that there was no accountability for such criminal acts toward children.

4.19 The conduct of Defendants Archdiocese, its Archbishops, its delegated hierarchy and its priests was in violation of state and federal criminal statutes regarding sexual abuse of children and vulnerable persons which constitutes negligence per se, including but not limited to Texas Penal Code §21.11, §22.011, §22.021 and §43.25.

4.20 Plaintiff alleges fraud against Defendants Archdiocese and its Archbishops, Fiala and others at this time unknown to Plaintiff in that (1) Defendants made material representations;

(2) the representations of each were false; (3) Defendants knew their statements were false when they made it or recklessly made the statements as a positive assertion without knowledge of the truth; (4) Defendants intended that the Plaintiff rely on their misrepresentations; (5) Plaintiff relied on the misrepresentations; and (6) the Plaintiff suffered injuries in consequence.

4.21 Plaintiff claims that Defendants Archdiocese and its Archbishops and Fiala took actions designed to fraudulently conceal their breach of duty, which give rise to Plaintiff's claims against Defendants. Plaintiff alleges that (1) Defendants had actual knowledge of the facts concealed and (2) each Defendant had a fixed purpose to conceal the wrong. Plaintiff thus alleges facts sufficient to establish fraudulent concealment in that Plaintiff has established (1) the existence of the underlying tort; (2) each Defendant's knowledge of the tort; (3) Defendants use of deception to conceal the tort and (4) Plaintiff's reasonable reliance on Defendants' deception.

4.22 At time of trial, Plaintiff will prove that he was an invitee to the premises at issue, including the rectory of Sacred Heart of Mary which was purchased in part and/or maintained by Defendants Archdiocese and its Archbishops. Defendants owed a duty of care to those who might be harmed by criminal acts on its premises when the risk of criminal conduct was so great that it was both unreasonable and foreseeable. In that Defendants were aware or should have been aware of criminal acts of assault by Fiala against Plaintiff on the property and at other locations, Defendants breached their duty of care to Plaintiff.

4.23 The acts or omissions of Defendants pled in Paragraphs 4.01-4.22 herein proximately caused injuries to Plaintiff.

**CLAIMS OF CONSPIRACY: PATTERN AND
PRACTICE OF COVER-UP OF CLERGY SEXUAL ABUSE OF CHILDREN**

5.01 Dioceses and Archdioceses throughout the United States, including the Archdiocese of San Antonio, have handled cases of criminal sexual abuse of minors by Catholic clergy in such a uniform fashion as to demonstrate a common pattern and practice for concealing these crimes from the public, including the affected parishes and even victims identified within them; for failing to report them to proper civil authorities; and/or for spiriting clerics out of dioceses, state and even the country to church-run treatment facilities in order to evade probable criminal prosecution of priest- perpetrators and the possible filing of civil claims by their victims.

5.02 This well established pattern, practice, scheme and protocol of recycling abusive priests by the Roman Catholic hierarchy was finally publicly acknowledged and exposed in February 2004 in a research study conducted by the John Jay School of Criminal Justice. The study, titled *A Report on the Crisis in the Catholic Church in the United States*, concluded in part that:

Too many bishops in the United States failed to respond to this problem forthrightly and firmly. Their responses were characterized by moral laxity, excessive leniency, **insensitivity, secrecy, and neglect**. Aspects of the failure to respond properly to sexual abuse of minors by priests included: (i) inadequately dealing with victims of clergy sexual abuse, both pastorally and legally; (ii) **allowing offending priests to remain in positions of risk; (iii) transferring offending priest to new parishes or other dioceses without informing others of their histories; (iv) failing to report instances of criminal conduct by priests to secular law enforcement authorities, whether such a report was required by law or not; and (v) declining to take steps to laicize priests who clearly had violated the law [emphasis ours].**¹

¹ See John Jay Report at page 92, which can be found on the United States Catholic Conference of Bishops' website, www.usccb.org/ocyp/webstudy.shtml

5.03 This common plan and scheme, which was in existence well before the abuse of Plaintiff, was followed by the Bishops of San Antonio Archdiocese to conceal the crimes against children by Fiala and other priests of the Archdiocese. Members of this common plan and scheme have included not only Bishops and Archbishops of San Antonio Archdiocese and hierarchical agents of the Archdiocese, but also “other clerics”, including Fiala, and other individuals and entities currently unknown to the Plaintiff.

5.04 Most disturbingly, and in keeping with the protocol described above, Fiala, like others of his ilk, was allowed to serve in various parishes as a priest in good standing following reports of his sexual abuse of minors.

5.05 Defendants Archdiocese and its Archbishops were aware or should have been aware of the sexual abuse of Plaintiff and other boys within its territory and of the wrongful conduct of Fiala as well as the other San Antonio clerics. Defendant Archbishop knew or should have known that other young boys had been sexually abused by Fiala prior to his abuse of Plaintiff. Instead of reporting Fiala’s crimes, Defendants Archdiocese entered into an agreement with Fiala and others, in keeping with their protocol, to conceal this abuse and keep it secret at the expense of victims. Defendants intended to accomplish the unlawful purpose of concealing crimes against children by Fiala and other priests of the Archdiocese and/or intended to conceal their breach of duty by the unlawful means of failing to report Fiala and other known perpetrators as required by law. Further, these Defendants intended to cause additional injury to Plaintiff as a consequence of failing to report unlawful abuse as required by law. This combination had the

result of concealing crimes by fraudulent and illegal means and concealing the facts giving rise to claims for civil damages by the Plaintiff against Defendants by fraudulent and illegal means.

5.06 The acts or omissions of Defendants pled in Paragraphs 5.01-5.05 herein proximately caused injuries to Plaintiff.

VI

THE ARCHDIOCESE OF SAN ANTONIO AND ITS ARCHBISHOPS WERE CRIMINALLY COMPLICIT WITHIN THE MEANING OF TEX. CIV. PRAC. & REM. CODE ANN. §41.005(2), THEREFORE, PUNITIVE DAMAGES APPLY

6.01 Tex. Civ. Prac. & Rem. Code §41.005(a) does not apply to bar punitive damages in this matter because the Defendants were criminally complicit. Tex. Civ. Prac. & Rem. Code §41.005(b)(2) provides an exception when a defendant is criminally responsible as a party to the criminal act. Under Chapter 7 of the Texas Penal Code, specifically §7.02(a), a person is criminally responsible for an offense committed by the conduct of another if:

- (2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or
- (3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

6.02 Tex. Pen. Code Ann. §7.02(a)(2). The provisions of this statute are met because the Archdiocese assisted and aided Fiala in the commission of the sexual assaults on Plaintiff and other minor boys in Texas by failing to report Fiala to law enforcement.

6.03 Further, Tex. Pen. Code Ann. §7.02(a)(3) is met because Defendants had a duty to prevent the sexual assault of Plaintiff. Defendants knew of Fiala's pattern and history of sexual

abuse of boys and despite that knowledge, never reported him to the police and repeatedly placed him in environments where he could prey upon young boys like Plaintiff and others.

6.04 Additionally, Tex. Pen Code Ann. §7.21-7.23 encompasses the criminal responsibility of corporations or associations and provides that a corporation or association is criminally responsible for the conduct of its agent if it was authorized, performed or recklessly tolerated by a high managerial agent. The Archbishops of San Antonio Archdiocese not only tolerated Fiala's conduct, they aided and abetted Fiala in acquiring more and more victims. Plaintiff would show that Defendants recklessly tolerated and allowed the conduct of Fiala and are therefore, subject to punitive damages in this matter.

VII

SEXUAL EXPLOITATION BY A MENTAL HEALTH SERVICES PROVIDER

7.01 Since Fiala violated the provisions of Tex. Civ. Prac. & Rem. Code § 81.001 *et seq.*, all Defendants are parties respondent to this cause of action.

7.02 Using his position as a priest and counselor, Fiala repeatedly, sexually abused and sexually exploited Doe I. The Plaintiff was a vulnerable youth and minor who sought counseling from Fiala because of his position as a counselor and priest. While under the pretext of this counseling relationship, Fiala used his position as trusted counselor and priest to gain emotional dependence over Plaintiff Doe I so he could sexually abuse him.

7.03 Fiala knew of his own dangerous sexual propensities toward young boys.

7.04 Fiala sexually molested and exploited Plaintiff on numerous occasions during this counseling relationship with Doe I.

7.05 Fiala made inappropriate and unwanted sexual contact with Plaintiff and thereby exploited him when he knew or should have reasonably believed that such contact would be offensive and psychologically damaging to him.

7.06 Fiala made threats, instructions and/or statements to Plaintiff Doe I not to tell anyone about the abuse in order to silence him and instill fear in him.

7.07 Fiala's sexual abuse and exploitation resulted in the infliction of emotional injury on Plaintiff when he subjected him to his sexual misconduct.

7.08 Fiala and violated §§22.01, 22.011, 22.021 and 22.04 of the Texas Penal Code when he engaged in the above described sexual misconduct with the Plaintiff.

7.9 Fiala maintained himself in a position of trust, confidence and authority as a priest and counselor and used this trust, confidence and authority to sexually exploit Doe I.

7.10 Fiala knowingly breached this fiduciary (special and confidential) relationship when he sexually exploited Doe I which proximately caused damages to Plaintiff.

7.11 Doe I seeks attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code §81.004.

VIII

STATEMENTS TO THE COURT

8.01 Plaintiff asserts that the statute of limitations has not run on these causes of action pursuant to TCPRC § 16.0045.

8.02 Plaintiff asserts that the statute of limitations as to these causes of action has been suspended at various times pursuant to TCPRC § 16.0063. Further, upon information and belief, Fiala is currently absent from the State of Texas.

8.03 Plaintiff alleges that these Defendants have acted in concert to fraudulently conceal their predatory priests by recycling them, concealing the extent and nature of their sexual abuse and trivializing the harmful effects of such abuse on their victims.

IX

DAMAGES

9.01 As a result of the conduct and incidents described herein, Doe I has incurred medical expenses in the past which were reasonable and necessary and in all reasonable probability such expenses will continue in the future.

9.02 As a result of the conduct, incidents and injuries described herein, Doe I has experienced severe emotional and psychological pain and suffering in the past and in all reasonable probability will sustain severe psychological and emotional pain and suffering in the future.

9.03 As a result of the conduct and incidents described herein, Doe I has suffered mental anguish in the past and, in all reasonable probability, will sustain mental anguish in the future.

9.04 As a result of the conduct and incidents described herein, Doe I has suffered many other damages, including loss of self-esteem, loss of trust, depression, substance abuse, suicide attempts and loss of faith. In all reasonable probability, his social and professional adjustment in the past has been affected and in all probability his future social and professional life will be adversely impacted as well.

9.05 Doe I has suffered lost wages in the past and will suffer a diminished wage-earning capacity for the future.

9.06 As a result of the above, Plaintiff seeks damages in excess of the jurisdictional limits of the Court.

9.07 Plaintiff also seeks punitive and exemplary damages in order to punish and deter the outrageous conduct taken in heedless and reckless disregard for the safety of the Plaintiff and

as a result of Defendants' conscious indifference to the rights, welfare and safety of the Plaintiff in violation of the laws of the State of Texas.

X

GROSS NEGLIGENCE AND PUNITIVE DAMAGES

10.01 Plaintiff also seeks punitive and exemplary damages in order to punish and deter the outrageous conduct of all of the Defendants herein. Facts as alleged above will be proven by Plaintiff's clear and convincing evidence that Defendants acted fraudulently and maliciously and were grossly negligent in that, either by act or omission, they exposed Plaintiff to an extreme degree of risk of harm, considering the probability, magnitude and extent of the harm that would likely impact them and which ultimately did. Further, Defendants had real, subjective awareness of the risks involved, but nevertheless proceeded with callous indifference to the rights, safety, and welfare of Plaintiff, physically, psychologically and spiritually. These damages, in concert with the conduct of Fiala are described as felonies where applicable, specifically Tex. Pen. Code §21.11 (indecent with a child), §22.011 (sexual assault), §22.021 (aggravated sexual assault) and §43.25 (sexual performance by a child). They were committed knowingly, in consequence of which the punitive damage cap does not apply. *See* Tex. Civ. Prac. & Rem. Code §41.008(c).

10.02 To the extent that this case arises out of criminal conduct committed by Fiala, an unfit employee or agent of Defendants, Defendants are liable for exemplary damages because the agent was notably unfit; Defendants acted with malice in employing or retaining him and in failing to supervise him; the employee or agent was employed in a managerial capacity and was acting in the scope of employment; and/or Defendants effectively ratified or approved his acts.

XI

CLAIM FOR PRE-JUDGMENT AND POST-JUDGMENT INTEREST

11.01 Plaintiff claims interest in accordance with §304.104, et seq., Texas Finance Code and any other applicable law.

XII

JURY DEMAND

12.01 Plaintiff requests a jury of his peers to hear the evidence in this case.

XIII

REQUEST FOR INITIAL DISCLOSURE

13.01 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants herein are required to disclose to Plaintiff within fifty (50) days of service of this request the information or material described in Rule 194.2 to be produced to Tahira Khan Merritt, attorney for Plaintiff, 8499 Greenville Avenue, Suite 206, Dallas, Texas 75231-2424 during normal business hours.

XIV

PRAYER

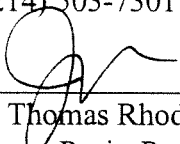
14.01 FOR THE REASONS STATED ABOVE, Plaintiff prays that upon final hearing of this cause, Plaintiff has judgment against Defendants, jointly and severally, for all damages described herein, including actual damages, punitive damages, costs of suit, interest allowable by law and for such other relief to which Plaintiff may be justly entitled.

RESPECTFULLY SUBMITTED:

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