

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Mother Doe 100 on behalf of
John Doe 100,

File No. 11-cv-3129

Plaintiff,

vs.

COMPLAINT

HOLY SEE (State of the Vatican City),
Apostolic Palace
00120 Vatican City
Europe

Defendants.

PARTIES

1. Plaintiff Mother Doe 100 on behalf of John Doe 100 is an adult female resident of the State of Illinois. Plaintiff John Doe 100 is a minor and was a minor at the time of the sexual abuse alleged herein.

2. At all times material, Defendant Holy See (State of the Vatican City), (hereinafter "Holy See") is a foreign country.

3. Plaintiff John Doe 100 reached a settlement with the Archdiocese of Chicago in 2008. John Doe 100 did not sue or assert a claim against the Holy See in those proceedings and the settlement release does not release the Holy See. Plaintiff brings this case because he has a legal right to do so and because the Holy See has not adequately addressed childhood sexual abuse by its priests, leaving numerous children at risk.

JURISDICTION

4. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and the Plaintiff herein, a citizen of the state of Illinois, is diverse in state citizenship from Defendants, citizens of a foreign country.

5. This Court has both personal and subject matter jurisdiction over all matters in this action with respect to 28 U.S.C. § 1330, as a claim for relief with respect to a foreign state not entitled to immunity under §§ 1604-1607 of that title.

6. This Court has jurisdiction over Defendant Holy See and/or Does 1-10 because the Holy See engaged in commercial activity in Illinois and throughout the United States.

7. This Court has personal jurisdiction over the Defendant Holy See and/or Does 1-10 because a tort was committed by the Defendant against Plaintiff in this district. This Court also has jurisdiction over the Defendant Holy See and/or Does 1-10 in that the actions that the Plaintiff complains of involve an activity for which the law provides an exception to sovereign immunity.

FACTS

8. At all times material, Daniel McCormack, (hereinafter "McCormack"), was a Roman Catholic priest, counselor and a teacher educated by, and under the direct supervision, authority, employ and control of Defendant Holy See.

9. Defendant Holy See is the sovereign nation located in Rome, Italy and the ecclesiastical, governmental, and administrative capital of the Roman Catholic Church. Defendant Holy See is the composite of the authority, jurisdiction, and sovereignty vested in the Pope and his delegated advisors and/or agents to direct the activities and business of the world-

wide Roman Catholic Church. Defendant Holy See has unqualified power over the Catholic Church including each and every individual and section of the church, including but not limited to all priests, Bishops, Archbishops, Metropolitans, Cardinals, and all other church workers, as well as dioceses, archdioceses, ecclesiastical provinces, and orders.

10. Defendant Holy See directs, supervises, supports, promotes and engages in the oversight of the sovereign nation, the organization, and its employees for the purpose of the business, foreign affairs, and employees of the worldwide Roman Catholic Church, and provides religious and pastoral guidance, education and counseling to Roman Catholics world-wide in exchange for all or a portion of the revenues collected from its members.

11. The Holy See engages in some of its activities through its agents, cardinals, bishops and clergy, including religious order priests, brothers and sisters, who work under its authority.

12. The Holy See actively engages in commercial activity in the United States by collecting contributions from members. Moreover, Doe's claims are based in part on his perpetrator's commercial employment relationship with the Holy See and its agents. The relevant employment relationship is not peculiar to a sovereign as the employment is not part of civil service, the diplomatic corps, or the military. Nor was the perpetrator privy to governmental policy deliberations or engaged in legislative work.

13. The Holy See also actively engages in commercial activity in the United States by recruiting and soliciting people to become members and contribute to the financial operation.

14. Defendant Holy See's business or private operation, in addition to overseeing its employees not engaged in work peculiar to a sovereign, performs acts that are commercial in nature, including extensive financial operations and fundraising activities throughout the United

States. Consistent with its corporate structure, Defendant Holy See has instituted worldwide, mandatory policies that perpetuate its financial strength and stability.

15. The Defendant, Holy See, is a unique entity, with an organizational structure and chain of command that mandates that the Holy See and its head of state, the Pope, have a significantly high level of involvement in the routine and day-to-day activities of its agents and instrumentalities, particularly with respect to the handling of clergy who have engaged in certain specified conduct, including child sex abuse.

16. It enters into treaties and conventions with other foreign states, including but not limited to the *Universal Declaration of Human Rights* and the *Convention on the Rights of the Child*, maintains diplomatic relations with other foreign states, including the United States, and has observer status in the United Nations. The Defendant occupies its own sovereign territory located within the city of Rome.

17. The Defendant, Holy See, engages in commercial activity in the State of Illinois, the United States and throughout the world.

18. As part of its fundraising activities, the Holy See has continued the long and entrenched tradition of Peter's Pence. Peter's Pence fundraising for the Holy See has been active since 1871 when it was created by the "Saepe Venerabilis" encyclical authored by Pope Pius IX. Members are encouraged to send their donations throughout the year directly to the Office of the Holy Father in Vatican City, but the Holy See also directs and coordinates an international campaign each and every year on June 29 or the closest Sunday to the Solemnity of Saints Peter and Paul for its subdivisions, agencies, and/or instrumentalities to take up a specific collection for the benefit of the Holy See.

[Http://www.vatican.va/roman_curia/secretariat_state/obolo_spietro/documents/index_en.htm](http://www.vatican.va/roman_curia/secretariat_state/obolo_spietro/documents/index_en.htm)

(last visited May 9, 2011).

19. Peter's Pence raises funds that are required to be sent directly to the Holy See. Dioceses, Bishops, Archbishops and other agents are ordered to send the funds directly to "His Holiness Pope Benedict XVI, 00120, Vatican City State – Europe." As part of Peter's Pence, the Holy See is involved in the United States in creating materials to advertise for its campaign and benefits directly from solicitation letters sent to members of its organization throughout the United States. It is also directly involved in and authorizes and supports appeals at parishes throughout the United States for members to give money to the Holy See and the creation and distribution of materials to help its agents recruit funds for the Peter's Pence Collection. The Holy See also uses other forms of media such as ads and posters to solicit funds in the United States.

20. On information and belief the Peter's Pence operation has provided the Holy See with millions of dollars each year from the United States. The Peter's Pence collection brought in almost \$80 million for the Holy See in 2007 and over \$100 million in 2006, with the United States providing the largest percentage of the funds. The Holy See's business divisions in the United States facilitate the largest portion of money collected for the Holy See in the Peter's Pence Collection.

21. A part of this campaign the Holy See and its agents recruit and solicit people to become paying members of the organization.

22. The Holy See also assesses each Bishop, Archbishop, and Cardinal a taxa for certain activities. This is money that is required to be sent to the Holy See.

23. The Holy See also assesses a monetary amount that each Diocese, Archdiocese, Bishop, Archbishop and Cardinal must pay annually to the Holy See. Generally this amounts to

thousands of dollars from each Diocese.

24. As part of its business and private operation Defendant Holy See requires its agents in charge of its operation in a particular geographical location to come to Rome and report about the state of the Holy See's operations, including any problems involving issues that are commercial in nature, including financial status and business issues. The Holy See calls these Ad Limina visits. These agents, as appointed leaders of the local business and private operations including those in the United States, are required to make this visit at least once every five years. As part of its business and private operation, the Holy See also requires its divisions to write detailed reports about the status of the operation including but not limited to personnel issues, finances, and real estate holdings. With respect to the income of pastors and their supervisors, the Holy See requires information regarding whether it is from real estate, public funds, an uncertified sum accruing through individual stole fees, or from a contribution made by the faithful or by the diocese. These reports are sometimes called "quinquennial reports."

25. The Holy See has direct involvement with seminaries in the United States including Illinois, where it trains agents in its organization and operation. On August 15, 1990, Pope John Paul II issued an apostolic constitution on Catholic higher education entitled *Ex corde Ecclesiae*. The Apostolic Constitution described, in detail, the top-down relationship between the Holy See and its educational institutions like seminaries. According to the Catholic Church Extension Society, no matter where it's located or how it's structured, every institution within the organization answers to the Holy See. The Vatican's Congregation for Catholic Education has jurisdiction over all Catholic institutions of higher learning, including seminaries. As a result, it oversees and controls the admissions requirements and curricula to ensure that candidates are properly prepared. In addition, since 1971, U.S. seminaries have adhered to the Program of

Priestly Formation (PPF) promulgated by the U.S. bishops' conference and also approved by Rome. The Holy See has a vast enterprise in the United States which recruits and solicits members in order to support its business operations in the United States and worldwide.

26. The Holy See controls the hiring of individual priests. The Vatican sets all of the rules for which people can become priests. These rules dictate who can administer the process, who can be made a priest, who is barred from the priesthood, how the ceremony is to be conducted when someone becomes a priest, and how to document the process.

27. Additionally the Holy See's Congregation for Seminaries and Universities watches over all those things pertaining to the governance, discipline, administration of property, and studies of Seminaries.

28. Defendant Holy See is solely responsible for creating new divisions of its business and private enterprise (called a "Diocese" or "Archdiocese") around the world. Only the Holy See has this power. The Holy See created all of the Dioceses in Illinois, including the Archdiocese of Chicago. It creates, divides and re-aligns dioceses, archdioceses and ecclesiastical provinces see comment. It also gives final approval to the creation, division or suppression of provinces of religious orders and it is solely responsible for modification or elimination of one of the divisions of its business enterprise. Defendant Holy See reserves the exclusive right to perform numerous local activities within its business operation within the United States including but not limited to marriage annulments, marriage dissolutions, Pius Wills, laicization of clerics, dispensations from canon law, and appeals of a bishop's decision. The Holy See has control over and involvement with property owned by all Catholic entities in Illinois. The Holy See's permission is required for the alienation (sale, gift, etc.) of much of the property owned by Catholic Entities in Illinois. Can. 1292 §2 ("The permission of the Holy See

also is required for the valid alienation of goods whose value exceeds the maximum sum, or if it is a question of the alienation of something given to the Church by reason of a vow, or of objects which are precious by reason of their artistic or historical significance.”); Can. 1296 (“When alienation has taken place without the prescribed canonical formalities, but is valid in civil law, the competent authority must carefully weigh all the circumstances and decide whether, and if so what, action is to be taken, namely personal or real, by whom and against whom, to vindicate the rights of the Church.”).

29. Defendant Holy See directly and definitely controls the standards, morals, and obligations of the clergy of the Catholic Church. Defendant Holy See also does this by and through its agents and instrumentalities, including the Congregation for the Clergy and the Congregation for Religious both delegated by the Pope and acting on his behalf and acting under his authority. Defendant Holy See interacts with its local business units including those in the United States in a manner that controls their day-to-day business and provides for no discretion on numerous issues, and in particular the handling of child sex abuse by clergy and the determinations whether clergy remain in the Holy See’s employ. The Holy See routinely promulgates its policies through various means including encyclical, canon law, and Papal pronouncements.

30. The Holy See controls what its agents wear, where they live, and prohibit certain conduct. At times the Holy See has prohibited clerics from gambling, carrying arms, hunting, spending time at a tavern without just cause. The Holy See has also prohibited clerics from practicing medicine or surgery, from being a legislator, or volunteer for the army.

31. Defendant Holy See promotes the sacred liturgy, directs and coordinates the spreading of its doctrine and other things necessary to promote its doctrine. It creates, appoints,

assigns and re-assigns bishops, superiors of religious orders, and through the bishops and superiors of religious orders has the power to directly assign. The Holy See has the final and sole power to remove individual clergy. All bishops, clergy, and priests, including religious order priests, vow to show respect and obedience to the Pope and their bishop.

32. Defendant Holy See also examines and is responsible for the work and discipline and all those things which concern bishops, superiors of religious orders, priests and deacons of the religious clergy. In furtherance of this duty, Defendant Holy See requires bishops to file a report, on a regular basis, outlining the status of, and any problems with clergy. Defendant Holy See promulgates and enforces the laws and regulations regarding the education, training and standards of conduct and discipline for its members and those who serve in the governmental, administrative, judicial, educational and pastoral workings of the Catholic Church world-wide. Defendant Holy See is also directly and solely responsible for removing superiors of religious orders, bishops, archbishops and cardinals from service and/or making them ineligible for positions of leadership in the various divisions and offices of the Catholic church.

33. The Defendant, Holy See, buys and sells real and personal property, and purchases and supplies goods and services in pursuit of its private and business activities.

34. The Defendant, Holy See – even beyond its collection through Peter's Pence and other means, is supported through the contributions of its parishioners, which are received as part of a regular course of commercial conduct in the form of donations of money, real property and personal property.

35. A major source of funds for the Defendant, Holy See, is monies received from its parishioners in the form of tithing. The amount of money flowing to the Defendant from the United States is directly affected by the beliefs of its parishioners in the righteousness of the

Defendant and its conduct. As members of the Church, they are obligated to revere, respect, and obey the edicts issued from the Holy See, and are under threat of a denial of the sacraments or excommunication if they do not follow those edicts.

36. Another major source of funding that the Holy See and its agents receive is in the form of tuition for attendance at its Catholic Schools.

37. The Defendant, Holy See, directs and mandates the morals and standards of conduct of all clergy of the Roman Catholic Church. The Defendant, Holy See, ostensibly does this by and through its agents and instrumentalities, by enforcement of the CODE OF CANON LAW written and promulgated by the Defendant, Holy See and used as the employee manual for clergy.

38. The Defendant, Holy See, creates, appoints, assigns, reassigns and retires all clerics in the order of bishop. It accords definitive approval to the election of the heads of religious orders and, through the religious superiors and the bishops of dioceses, it exercises the power to directly assign and remove individual priests and deacons. It also determines whether religious orders are to be disciplined for inappropriate behavior and whether they may remain in the Church following inappropriate behavior.

39. All bishops, priests and clergy, including religious order priests, vow to show respect and obedience to the Defendant, Holy See. For example, when a priest is ordained, he kneels before his bishop and promises him and his successors obedience and respect. On the day a priest receives the fullness of the priesthood in his ordination to the episcopacy, he stands before his consecrators and the assembled people of God and promises his obedience and loyalty to the supreme Roman pontiff, the Defendant, Holy See. He receives financial support throughout the full length of his life, and he may not be deprived of his pension or his clerical

status unless the Holy See approves.

40. Each Cardinal takes an oath upon becoming a Cardinal which requires obedience to the Holy See and also requires secrecy in certain circumstances. An English translation of that oath is "I [name and surname], Cardinal of the Holy Roman Church, promise and swear to be faithful henceforth and forever, while I live, to Christ and his Gospel, being constantly obedient to the Holy Roman Apostolic Church, to Blessed Peter in the person of the Supreme Pontiff [name of current Pontiff], and of his canonically elected Successors; to maintain communion with the Catholic Church always, in word and deed; not to reveal to anyone what is confided to me in secret, nor to divulge what may bring harm or dishonor to Holy Church; to carry out with great diligence and faithfulness those tasks to which I am called by my service to the Church, in accord with the norms of the law."

41. The Defendant, Holy See, examines and is responsible for the work and discipline and all those things which concern bishops, superiors or religious orders, priests and deacons. In furtherance of this duty, the Defendant, Holy See, among other things, requires bishops to file a report, on a regular basis, outlining the status of and any problems with priests and clergy.

42. The Defendant, Holy See, promulgates and enforces the laws and regulations regarding the education, training and standards of conduct and discipline for those who serve in the governmental, administrative, judicial, educational and pastoral workings of the Roman Catholic Church worldwide.

43. By virtue of his office the Pope as head of the Holy See possesses supreme, full, immediate, and universal ordinary power in the Catholic Church, which he is always able to exercise freely.

44. There is no appeal of a decision of the Pope as head of the Holy See.

45. No priest, cleric, superior of a religious order, bishop, archbishop or cardinal may be removed from service or a position of leadership without the approval of the Defendant, Holy See; nor can any priest, cleric, superior of a religious order, bishop, archbishop or cardinal remain in service or a position of leadership over the objection of the Defendant, Holy See.

46. The Defendant, Holy See, is directly and absolutely responsible for removing bishops, archbishops and cardinals from service and/or making them ineligible for positions of leadership in the various divisions and offices of the Roman Catholic Church by issuing instructions, mandates and dictates in the United States.

47. The problem of childhood sexual abuse committed by Roman Catholic clerics and others within the Defendant's control is almost as old as the Roman Catholic Church itself. The first formal legislation was passed at the Council of Elvira in Spain in 306 A.D. This council passed legislation condemning sexual abuse by the clergy, including sexual abuse of boys. The Council of Elvira was the first in a series of legislative attempts by the Church to curb its problem of childhood sexual abuse committed by its clergy.

48. In the 11th century, a writing authored by Father Peter Damien, THE BOOK OF GOMORRAH, was presented to the Defendant, Holy See. This work encouraged punishment of priests and clerics who sexually molested and abused children, particularly boys.

49. In 1917 the Defendant, Holy See, codified all of its rules, regulations and laws, including those applicable to its employees, agents, and instrumentalities, in one document known as the CODE OF CANON LAW. This code specifically forbade priests and clerics from having sexual relations or relationships with children under the age of sixteen, demonstrating that the Defendant, Holy See, was well aware of the centuries-old practice of childhood sexual abuse

by Roman Catholic priests and clerics. Today, in the current version of the Code (1983 version), the sexual abuse of children by priests and clerics continues to be expressly forbidden.

50. The Code of Canon Law is mandatory and must be obeyed by each member of the Holy See, including by all Dioceses, Archdioceses, Bishops, Archbishops, Cardinals, and priests.

51. The Defendant, Holy See, has known about the widespread problem of childhood sexual abuse committed by its clergy for centuries, but has covered up that abuse and thereby perpetuated the abuse. Secret settlement agreements with victims have been used to silence the victims and their families and to protect the abuser from criminal prosecution by United States and state authorities. This practice was designed to shield the Defendant, Holy See, from "scandal", and has been mandated not only in the United States but throughout the world, including North and South America, Europe and Australia. The Defendant, Holy See, is responsible for the historically verified practice of the hierarchy, including the bishops, moving sexually abusive priests to areas where allegations of the offender's abusive conduct were not known. The Defendant, Holy See, has never taken appropriate or effective steps to remove sexually abusive priests from the ministry. The absolute power of the Defendant, Holy See, over its bishops and clergy in the United States was demonstrated in 2002, when the most powerful American bishop's organization, the U.S. Conference of Catholic Bishops adopted a proposed policy designed to protect children from priest sexual abuse. The bishops were powerless to implement this policy without approval from the Defendant, Holy See. The Defendant, Holy See, denied approval of key provisions sought by the U.S. bishops which would have required that its agents in the United States report all known or suspected child abuse to the civil authorities. The Defendant, Holy See, also refused to give the U.S. bishops the power to remove abusive priests from the ministry.

52. While the "public" policy of the Defendant, Holy See, is to forbid childhood sexual abuse by priests and clerics within its control, the actual "private" or secret policy is to harbor and protect its abusive priests, clerics, bishops, archbishops, cardinals, agents, and employees from public disclosure and prosecution, in order to maintain the Pope's rightful claim of control and thereby ensure that its parishioners, followers and financial contributors will keep confidence in the institution, continue to view the Holy See and the Pope as deserving of allegiance, and, therefore, continue to contribute money and property to the Defendant, Holy See.

53. The Defendant, Holy See, has mandated a multi-level policy of mandatory secrecy over all matters involving the administrative, legislative and judicial activities of the Vatican offices and departments under the direct authority of the Pope, as well as over all similar activity in the various dioceses throughout the world. There are degrees of secrecy demanded of the bishops, clergy, and members. The highest level of secrecy is the absolute secrecy mandated for all communications which take place in the sacrament of penance, commonly referred to as "confession." The highest level of secrecy outside the confessional is known as the "Pontifical secret," which is imposed on certain activities of the various departments or congregations of the Holy See. Violation of the Pontifical Secret results in certain severe penalties, including excommunication.

54. At all times material hereto, and as part of both its course of commercial conduct and particular commercial transactions and acts, the Defendant directed its bishops in the United States to conceal from its parishioners and the general public the sexual abuse of children committed by its priests, bishops, clerics, agents and employees in order to avoid public scandal, and to perpetuate its Christian public image and power to ensure the continued receipt of funds

from its parishioners and other financial contributors, all in furtherance of the Defendant's commercial activities.

55. Plaintiff was sexually abused as a child by one of the Defendant's clerics, agents or employees. The Defendant's directives to conceal the sexual abuse of children committed by its clerics, agents, and employees in order to maximize revenue and image by avoiding scandal was a substantial factor in bringing about Plaintiff's abuse.

56. At all times material hereto, the Defendant, Holy See, violated customary international law of human rights by ignoring, tolerating, disregarding, permitting, allowing, condoning and/or failing to report inhuman and degrading treatment such as the sexual abuse of minor children. This conduct constitutes a violation of various human rights conventions, including the Universal Declaration of Human Rights and the Convention on the Rights of the Child, which the Defendant signed and ratified, and the Defendant's violation of customary international law and conventions was a substantial factor in bringing about the Plaintiff's injuries.

57. At all times material hereto, the Defendant, Holy See, breached duties owed to the Plaintiffs under customary international law of human rights, the federal common law, the law of the fifty states, and the law of the State of Illinois, thereby causing injury to Plaintiff.

58. At all times material hereto, the Defendant, Holy See's directives, which, among other things, prohibited the reporting of child sexual abuse to law enforcement authorities, constitute an act or acts of concealment or misleading or obstructive conduct under statutory law, common law, and customary international law.

59. At all times material hereto, the Defendant, Holy See's concealment of its policy of harboring and protecting its abusive priests, clerics, bishops, archbishops, cardinals, agents

and employees from public disclosure and prosecution constitutes an act or acts of concealment or misleading or obstructive conduct under statutory law, common law, and customary international law.

60. The Holy See has established exclusive policies and standards that dictate how sexual abuse of children by its employees will be handled. With respect to this aspect of its employment policy and business, the Holy See mandates certain procedures and absolute secrecy by all involved on pain of immediate removal from the organization (excommunication), retains the power at all times to conduct the inquisition of the case itself, and admits no deviations from its mandate. Through its mandated policies and its agents and instrumentalities, the Holy See is an integral part of the day-to-day handling of cases of child sex abuse by clergy.

61. In 1922, the Holy See released a confidential document regarding cases of solicitation of sex in the confessional. This document mandated a specific procedure for the Holy See's agents to use when a cleric abused kids using the confessional. The document required strict secrecy.

62. The 1922 document showed that the Holy See was fully aware that there was a systemic problem of its agents sexually molesting children using the confessional.

63. In 1962, the Holy See released the confidential document, Instruction on The Manner of Proceeding in Cases of Solicitation, (The Vatican Press, 1962), available at <http://www.scribd.com/doc/8690038/The-1962-Vatican-Document-on-Clergy-Sexual-Abuse> (The heading of the document says "From the Supreme and Holy Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite'" (Hereinafter referred to as "Crimen Sollicitationis")), which is a document containing mandatory and specific instructions regarding the handling of child sex abuse by

clergy. It permits no discretion in the handling of such cases. According to the document itself, it is an "instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail." *Crimen Sollicitationis* at paragraph 24.

64. The 1962 document again reinforced that the Holy See had knowledge that there was a systemic problem of its agents sexually molesting children using the confessional.

65. In Ireland, a government-generated in-depth report that investigated and analyzed the sexual abuse of minors by clergy documented that the Catholic Church had a systemic problem of numerous clergy sexually abusing youth. The report reached several conclusions including but not limited to: Cases of sexual abuse were managed within the institution with a view to minimizing the risk of public disclosure and consequent damage to the institution; the offenses were not reported to the police; the recidivist nature of sexual abuse was well known to authorities within the institution; the Church authorities knew that the sexually abusing clergy were often long-term offenders who repeatedly abused children wherever they were working; When confronted with evidence of sexual abuse, a standard response of the religious authorities was to transfer the offender to another location where, in many instances, he was free to abuse again; sexual abuse was endemic in boys' institutions <http://www.childabusecommission.com/rpt/04-06.php> (last viewed July 14, 2009). The Holy See, was an active manager and mandated the policies that led to these horrific occurrences in Ireland.

66. Also during this time Defendant Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962, Fr. Gerald Fitzgerald, working in the United States, was in communication with Defendant Holy See. At the request of the prefect, Cardinal Alfredo Ottaviani, one of the Holy

See's officials, he prepared a report dated April 11, 1962. In this report he discussed the various types of sexual problems of priests, including sexual abuse of minors: "On the other hand, where a priest for many years has fallen into repeated sins which are considered, generally speaking, as abnormal (abuse of nature) such as homosexuality and most especially the abuse of children, we feel strongly that such unfortunate priests should be given the alternative of a retired life within the protection of monastery walls or complete laicization."

67. In 1963 Fr. Gerald had a private audience with Pope Paul VI (1963-1978) and on August 27, 1963 submitted a report to the pope at the pope's request. Concerning priests who sexually abuse minors he said to the pope: "Problems that arise from abnormal, homosexual tendencies are going to call for, not only spiritual, but understanding psychiatric counseling. Personally I am not sanguine of the return of priests to active duty who have been addicted to abnormal practices, especially sins with the young.....Where there is indication of incorrigibility, because of the tremendous scandal given, I would most earnestly recommend total laicization." The Holy See, chose to keep this report and knowledge a secret under its long standing policy to avoid scandal at all costs. At this point the Holy See knew that it had a widespread problem of its clergy sexually molesting minors, including in the United States, and it authorized, facilitated and participated in the creation of these facilities in the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

68. Defendant Holy See's policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation against clergy for the crime of solicitation – which includes sexual abuse of a minor – created a shroud of secrecy insulating McCormack from consequence. This policy is explicitly laid out in the 1962 Vatican secret

document, *Crimen Sollicitationis*. Which specifies, in paragraph 4, that although the penalty for a Church member who violates the vow of secrecy regarding child sex abuse by clergy is usually excommunication, extreme cases can also result in removal from ministry or “They [the Ordinary, or controlling agent] will also be able to transfer him to another [assignment], unless the Ordinary of the place has forbidden it because he has already accepted the denunciation and has begun the inquisition.” Through this policy and others the Holy See knowingly allowed, permitted and encouraged child sex abuse by its priests, including McCormack.

69. The Holy See retains at all times the power over who conducts the “inquisition” that investigates claims regarding the “crime of solicitation.” *Crimen Sollicitationis* at paragraph 2. While it delegates power over such proceedings to its chosen agents, it retains the unilateral power at all times to “summon[] the case to itself.” *Id.* In addition, if it is unclear whether the “denounced person” is under the jurisdiction of any of the Holy See's agents, the 1962 document orders the agent with knowledge of the abuse to send the case “to the Supreme Holy Congregation of the Holy Office.” *Crimen Sollicitationis* at paragraph 31.

70. The Holy See specifically has carved out the treatment of child sex abuse by clergy from other employment issues in order to have continuing control over this issue, and governs it every day and perpetually according to non-negotiable and mandatory standards that it first set into place in 1867, which is approximately when civil law also outlawed child sex abuse, and then reiterated and elaborated in 1922, 1962 and 2001. The Holy See has defined the “worst crime” to be covered by its dictated procedures, standards, and mandatory treatment, as “any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempting by him with youths of either sex or with brute animals (bestiality).” *Crimen Sollicitationis* at paragraph

73. There is no discretion given to its agents in the handling of such cases:

What is treated in these cases has to have a greater degree of care and observance so that those same matters be pursued in a most secretive way, and, after they have been defined and gives over to execution, they are to be restrained by a perpetual silence. (Instruction of the Holy Office, February 20, 1867, n. 14), each and everyone pertaining to the tribunal in any way or admitted to knowledge of the matters because of their office, is to observe the strictest secret, which is commonly regarded as a secret of the Holy Office, in all matters and with all persons, under the penalty of excommunication *latae sententiae*, ipso facto and without any declaration [of such a penalty] having been incurred and reserved to the sole person of the Supreme Pontiff, even to the exclusion of the Sacred Penitentiary, are bound to observe [this secrecy] inviolably. *Crimen Sollicitationis* at paragraph 11.

71. Defendant Holy See mandated secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for the crime of solicitation include an order to move offending priests to other locations once they have been determined to be “delinquent.” In response to allegations, the document mandates that supplementary penalties include “As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place (Canon 2302).” *Crimen Sollicitationis* at paragraph 64. Defendant Holy See created and maintained this policy of secrecy and transfers, threatening all involved with excommunication and, thus, damnation, if they do not comply. According to *Crimen Sollicitationis*, once these non-discretionary penalties are levied, only the Holy See through the Congregation of the Holy Office, has the power to alter or remit the punishment.

72. In *Crimen Sollicitationis*, the Holy See created a specific procedure which local Ordinaries, as agents of Defendant Holy See were required to follow. Moreover, the commandment of silence regarding cases of sexual abuse embodied in the instruction on pains of removal (excommunication) operated to deprive the local agents of any meaningful discretion. Even if *Crimen Sollicitationes* can be read to allow the local agent of the Holy See to choose one

of a limited number of options, the instruction from the Holy See nonetheless mandates which of those specific options should be chosen, and mandates how each is to be handled. In addition, the Holy See reserves to itself the power to reverse whichever of the limited set of options is chosen.

73. Again in 1988 the Holy See issued another mandatory and specific policy that reiterated that the Holy See's Congregation for the Doctrine of Faith had the power over crimes against morals, which includes sexual abuse of children by priests. This document was Apostolic Constitution called *Pastor Bonus* (available at http://www.bishop-accountability.org/AtAGlance/church_docs.htm) (last visited May 10, 2011.)

74. In 1990 Bishop A. James Quinn, at Midwest Canon Law Society Meeting (4/23-25/90), told of a policy where Bishops could send documents that "you really don't want people to see" to the Vatican embassy in Washington "because they have immunity." (available at http://www.bishop-accountability.org/AtAGlance/church_docs.htm) (last visited May 10, 2011.)

75. Pope John Paul II issued an Apostolic Letter, *Sacramentorum Sanctitatis Tutela*, dated April 30, 2001, available at <http://www.bishop-accountability.org/resources/resource-files/churchdocs/SacramentorumAndNormaeEnglish.htm> (last visited May 10, 2011), which confirms the direct relationship between Defendant Holy See and employees who commit these crimes of solicitation. The mandate supplemented the 1962 *Crimen Solicitationis* and confirmed its position as an executive disciplinary handbook:

"It is to be kept in mind that an Instruction of this kind had the force of law since the Supreme Pontiff, according to the norm of can. 247, § 1 of the *Codex Iuris Canonici* promulgated in 1917, presided over the Congregation of the Holy Office, and the Instruction proceeded from his own authority... Pope Paul VI... confirmed the Congregation's judicial and administrative competence... Finally, by the authority with which we are invested, in the Apostolic Constitution, *Pastor Bonus*, promulgated on June 28, 1988, we expressly established, "[The Congregation for the Doctrine of the Faith]

examines delicts against the faith and more grave delicts whether against morals or committed in the celebration of the sacraments, which have been referred to it and, whenever necessary, proceeds to declare or impose canonical sanctions according to the norm of both common and proper law," thereby further confirming and determining the judicial competence of the same Congregation for the Doctrine of the Faith as an Apostolic Tribunal.

76. The 2001 mandate expressly reserved to the Holy See's Congregation of the Doctrine of the Faith the right to deal with allegations of child sex abuse against priests.

77. Under the mandatory policy contained in the 2001 mandate, Bishops, Archbishops, Cardinals and hierarchs are required to report any priest accused of sexual misconduct to the Holy See's Congregation for the Doctrine of Faith.

78. In 2002 the Bishops of the United States agreed on a number of policies meant to deal with child sexual abuse by priests (called the Dallas Charter). The Holy See ultimately had to approve any policy that the Bishops agreed upon. The Bishops did not have the authority to adopt any changes to the law on their own. All power to do so is reserved to the Holy See. In fact the Holy See required numerous revisions to the Dallas Charter before it was approved by the Holy See.

79. Actions of the Defendant occurring in the United States include the transmission and receipt in the United States of policies, directives, orders or other direction or guidance, whether explicit or implicit.

80. Plaintiff was harmed as a result of the Defendant's practice and policy of not reporting suspected child abuse to law enforcement officials and requiring secrecy of all its agents who received reports of abuse. There are children today who are in imminent danger of abuse because the Defendant has failed to report or release the names of agents that have been either been convicted or credibly accused of molesting children, or that Defendant itself has

found guilty of abuse.

81. There are a number of priests, brothers, and agents who Defendant continued in ministry after Defendant knew or suspected that those agents had molested children.

82. Defendant knew that there was a high probability that these clerics would sexually molest more children, but sought to protect itself from scandal, sought to keep its income stream going, at the peril of children.

83. On information and belief, Defendant did not report all allegations of childhood sexual abuse by its agents and former agents to law enforcement, those directly in the path of danger, or the public. Further Defendant adopted and enforced a policy and practice where its agents were not supposed to report abuse by Defendant's agents to law enforcement, those directly in the path of danger, or the public.

84. After 2001 Defendant instructed its agents that all cases of sexual abuse by its agents were to be handled through Defendant. Since then Defendant has found out about thousands of cases. Defendant has not released the names of the sex offenders that it learned about since 2001 to the public and to law enforcement.

85. Defendant has known that child molesters have a very high rate of recidivism, meaning that they are likely to abuse more children. As such, Defendant knew that children, parents, and guardians who did not possess Defendant's knowledge about its agents and former agents and who unsuspectingly were around these agents and former agents were at a high risk to be sexually molested.

86. Because of the high rate of recidivism, Defendant Holy See's agents and former agents had probably already molested numerous children. As such, Defendant Holy See knew that there were many victims out there that were hurt because of Defendant Holy See's policies

of secrecy, deception, and self protection.

87. Children are at risk because the public and law enforcement do not know the identity and the locations of these agents and former agents of Defendant Holy See who have been accused of sexual misconduct.

88. At all times material, Defendant Holy See employed priests, including Father Daniel McCormack ("McCormack"), to provide religious and pastoral services. Father McCormack's duties were limited to performing ecclesiastical and parochial services. At no time did he perform legislative work or governmental functions on behalf of the Holy See and was not a civil servant or diplomatic or military employee of the sovereign Holy See. Father McCormack was employed by Defendant as a priest. The duties of McCormack's employment included but were not restricted to teaching the word of God and the law of the church, providing religious, educational, and counseling services, and obtaining financial support for the Church. Defendant Holy See controlled McCormack, was responsible for punishment if there was wrongdoing, and had some stake in paying McCormack for his services. Defendant controlled all aspects of McCormack's conduct including his clothing, his routine, his practices, and his teachings. Defendant also supplied McCormack with materials for his fundraising and solicitation of property. Defendant Holy See had the sole authority to remove McCormack from his position as a priest. At all times material, McCormack was a Roman Catholic priest, employed by and an agent of Defendant Holy See, under its direct supervision and control, particularly on the issue of child sex abuse.

89. The Holy See also employed to recruit and solicit adults and children to become members of the financial operation so that the new members would contribute money.

90. Daniel McCormack was ordained as a Roman Catholic priest in 1994 and

remained under Defendant Holy See's direct supervision, employ and control during all times material to this Complaint.

91. At Ordination, each priest agreed to be obedient to their Bishop and the Holy See (the Pope).

92. The Holy See has complete and final control over each Bishop, Archbishop, Cardinal, Religious leader and priest within the Catholic Church.

93. The Holy See is a traditional monarchy, which means that it holds all authority in the first instance and any authority held by others within the institution is delegated from the Holy See. The Holy See has reaffirmed this on numerous occasions, including in its book of rules and regulations, the Code of Canon Law: "The Roman Pontiff . . . has not only primacy of honor, but supreme and full power of jurisdiction over the universal Church both in those things that pertain to faith and morals, and in those things that affect the discipline and government of the Church." (Canon 218 from the 1917 Code) "This power is truly Episcopal, ordinary, and immediate both over each and every church and over each and every pastor and faithful independent from any human authority." (Id.)

94. The Holy See has complete and total control, including day to day control, over each aspect of the Catholic Church. To the extent that some of the entities underneath the Holy See's absolute control are separate corporations, the Holy See maintains complete control over these separate corporations. The Holy See directs and requires each of these entities to strictly follow all of its policies and procedures, requires each of these entities to report its activities to the Holy See, requires each cleric working with the separate corporation to swear absolute obedience to the Holy See, and is the only entity that can create or terminate these corporations. And with respect to the particular issue of child sex abuse, the Holy See demands complete and

unswerving obedience regarding procedures, the scope of potential penalties, and how each case will be disposed of ultimately.

95. Any corporations, including but not limited to any Archdiocese or Diocese in Illinois which was or is incorporated, were and are an alter ego of the Holy See. The Holy See retained and does still retain complete and final control over these corporations. The Holy See has day to day control of these entities through mandatory policies and procedures, mandatory meetings, mandatory obedience, and dictation of most aspects of their agents lives.

96. Additionally, the Holy See determined long ago that it would require some of the entities under its control to incorporate in order to reduce the Holy See's exposure to claims by people that it harmed, in order to keep the public from discovering the Holy See's involvement in the systematic cover-up and concealment of child sex abuse by its agents, and in order to defraud those people that its agents harmed, including those that its agents sexually abused as children.

97. The Holy See is the only entity that can fire a priest.

98. The Holy See is the only entity that can fire a Bishop, Cardinal, or Religious leader.

99. St. Agatha's Parish and our Lady of the West Side Catholic School were each controlled operated and ran under the Holy See's policies and protocols. The Holy See controlled and mandated all aspects of the parish and school. The children relied upon Defendant and its agents to provide them with teaching, food, and shelter at the facilities.

100. Daniel McCormack was a fundraiser and solicitor of members for the Holy See. He raised a great deal of resources for the Holy See. McCormack was also able to recruit numerous children, adults and families to become paying members of the Holy See's

organization.

101. The Holy See wanted to retain McCormack's services as a fund raiser and recruiter.

102. Prior to becoming a priest, from 1986 to 1991, McCormack attended Niles Seminary, and Mundelein Seminary. This Seminary was controlled and operated by the Holy See with some of its power over the seminary delegated to the Archdiocese of Chicago and the Archbishop of Chicago.

103. While he was an adult in the seminary system, McCormack sexually abused, touched, or molested a minor boy in Mexico.

104. While he was an adult in the seminary system, McCormack engaged in improper or predatory sexual conduct with young adult males that were also seminarians.

105. In or about 1992, while McCormack was still a seminarian, seminary officials, faculty members, and on information and belief, the Vice Rector of St. Mary of the Lake Seminary, in Mundelein, Illinois, learned of McCormack's acts of sexual misconduct and molestation.

106. All of the seminary officials, faculty members, and the Vice Rector of St. Mary of the Lake Seminary, in Mundelein, Illinois were Holy See agents, employees and/or controlled by the Holy See.

107. In or about 1992, despite learning of McCormack's proclivities for engaging in deviant sexual conduct, neither the Holy See nor its agent reported McCormack to civil authorities, or otherwise warn the public.

108. Also despite learning of McCormack's sexual proclivities for engaging in deviant sexual conduct, the Holy See and its agents did not remove McCormack from the seminary

system, and instead, promoted and eventually ordained him as a Catholic priest within the Archdiocese of Chicago.

109. McCormack promised obedience the Holy See (the Pope) and to the Archbishop of Chicago, an agent of the Holy See.

110. At all relevant times, including when McCormack was a seminarian and a priest, McCormack was an employee or agent or apparent agent of the Holy See.

111. Following his ordination, McCormack was authorized to represent himself as a priest of the Holy See, to wear the uniform or vestments of a priest, to teach and counsel the public on behalf of the Holy See, including minors and to otherwise exercise the rights, privileges, and responsibilities of a Roman Catholic priest.

112. In or about 1998, Defendant McCormack was appointed to teach, counsel, instruct, and guide child parishoners at Holy Family Parish.

113. In October 1999, the principal of Holy Family School, who was a nun, received a report that Daniel McCormack asked a fourth-grade boy to pull down his pants in the sacristy at Holy Family.

114. The nun was a Holy See agent, employee and/or under the direct control of the Holy See.

115. When confronted with the report in or about 1999, McCormack admitted that "he used poor judgment."

116. The principal reported this incident to an official at the Office of Catholic Schools, and was told by the official that "if the parents aren't pushing it, let it go." This official was a Holy See employee, under its control.

117. The principal reported McCormack's behavior with children in 2000 to

Archdiocese officials numerous time. She told several Archdiocese officials verbally and in writing about an incident involving a young boy.

118. These Archdiocesan officials were agents, employees of and/or under the direct control of the Holy See.

119. The Holy See and its agents did not at any time prior to the time that Plaintiff was abused tell civil authorities about this report, did not tell any of the parishioners at any of the parishes where McCormack worked about this report, and did not tell any other children or parents about the report.

120. In or about September 2000, rather than remove McCormack from ministry or restrict his access to children, the Holy See and its agents, promoted McCormack to the position of Pastor of St. Agatha's parish, in Chicago, Illinois. At the time that he was assigned to St. Agatha's, the Holy See knew or should have known of the prior reports or allegations of sexual abuse of minors and of sexual activity with seminarians by McCormack.

121. McCormack duties and responsibilities at St. Agatha's parish included recruiting and soliciting children in the neighborhood and their families to become members of Defendant's organization so that they would pay money to the organization.

122. While at St. Agatha's parish, the Holy See continued to allow McCormack access to children, despite the prior reports that McCormack had engaged in sexual misconduct with at least two minor boys, and two young male seminarians. The Holy See did not inform the public, the neighborhood, children that McCormack brought to St. Agatha's or children attending St. Agatha's of McCormack's deviant sexual history, and the danger that he posed to children.

123. St. Agatha's included a church, a rectory, an afternoon day care, and an elementary school campus that was part of Our Lady of the West Side. While at St. Agatha's

and Our Lady of the West Side, McCormack provided instruction, mentoring, education and guidance to children, solicitation and recruitment of children to become members, and also became the coach of St. Agatha's boys' basketball team.

124. From 1999 to 2005, officials of the Office of Catholic Schools, all agents of the Holy See, received numerous allegations of suspicious activities involving McCormack with children. These allegations caused the teachers to undertake their own "informal monitoring" of their minor students when McCormack was in the school.

125. On September 5, 2003, the Holy See's agents received a report of possible misconduct by McCormack with children. The female that reported the misconduct left a telephone number for a return call to make sure that it was dealt with appropriately.

126. After receiving the September 5, 2003 report, the Holy See and its agents took no action to remove McCormack from ministry, restrict his access to children, warn the public, report McCormack to civil authorities, or otherwise protect children from McCormack for more than two years, until January 2006.

127. In August of 2005 the Office of the Vicars for Priests, which were the Holy See's agents, employees or under its control, learned that McCormack was being questioned by the Chicago Police Department regarding allegations of sexual abuse of a minor boy.

128. In or around August 2005, the Holy See's agents received information that the allegations of sexual abuse by McCormack being investigated by the Chicago Police Department were credible.

129. In August of 2005 the Holy See and its agents did not inform law enforcement of the previous incidents of sexual misconduct by McCormack.

130. In August 2005, the Holy See and its agents did not remove McCormack from

ministry, restrict his access to children, or inform any of the parishioners, including any of the children, parents or workers, at St. Agatha's parish that law enforcement was investigating McCormack for childhood sexual abuse.

131. In September of 2005, the mother of a 10 or 11 year old boy twice called the Holy See's agents and reported in detail that McCormack had sexually molested her son on multiple occasions in 2003.

132. Also in September of 2005, the mother of the 10 or 11 year old boy met with the principal and a teacher at Our Lady of the Westside School. The mother again reported in detail that McCormack sexually had molested her minor son.

133. Both the principal and teacher at Our Lady of the Westside School are Holy See agents, employees, and/or under its control.

134. In September 2005, the Holy See and its agents did not remove McCormack from ministry or restrict his access to children, and did not inform any of the parishioners, including any of the children, parents or the majority of the workers, at St. Agatha's parish that they had recently received new reports from a mother that her child was molested by McCormack.

135. On or about October 15, 2005, the Archdiocese of Chicago's Professional Review Board recommended to the Holy See's agent that McCormack be removed from his position as pastor at St. Agatha's for the safety of children. The Holy See and its agents, however, chose not to remove McCormack from ministry until January 2006.

136. Beginning in approximately 2005, McCormack gained Plaintiff John Doe 100's trust and admiration as a priest at St. Agatha's Parish.

137. Because of his position of trust and through the authority granted by Defendant Holy See, McCormack sexually molested the minor Plaintiff between approximately 2005 and

January of 2006.

138. By placing Daniel McCormack and allowing him to work with children at St. Agatha's in approximately 2000 and continuing until approximately 2006, and by allowing McCormack to recruit and solicit children to become members, Defendant Holy See, affirmatively represented to minor children and their families, including Plaintiff John Doe 100, that Daniel McCormack did not have a history of molesting children and was not a danger to children, that Defendant did not know or suspect that Daniel McCormack had a history of molesting children and that Defendant did not know that Daniel McCormack was a danger to children.

139. Defendant Holy See was in a specialized position where it had knowledge that Plaintiff did not. Defendant was in a position to have this knowledge because it was McCormack's employer and because the Defendant was responsible for McCormack and because its policies mandated secrecy with respect to the sort of knowledge learned about McCormack. Plaintiff on the other hand was a child. As a child he was not in a position to have information about McCormack's molestation of other children or Defendant's knowledge of the danger McCormack posed to children. Nor was he in a position to know that the Defendant mandated that its employees keep such knowledge from others, including children like him.

140. In addition to the representations regarding safety being made directly to Plaintiff, Defendant Holy See made these representations with knowledge and intent that they would be communicated to the minor Plaintiff through his parents/caregivers words and actions. Defendant also had reason to believe that the representations made to Plaintiff's parents/caregivers would influence Plaintiff and particularly that the representations would influence the amount and type of time spent alone with McCormack, McCormack's access to

Plaintiff, and McCormack's ability to molest Plaintiff.

141. Particularly, Defendant Holy See knew that Daniel McCormack was a child molester and knew that Daniel McCormack was a danger to children before McCormack molested Plaintiff.

142. Because of the superiority and influence that Defendant Holy See had over him, Plaintiff believed and relied upon these misrepresentations.

143. Daniel McCormack repeatedly sexually molested the Plaintiff. This abuse occurred while Plaintiff was a minor, including occurring the St. Agatha premises.

144. Had Plaintiff or his family known what Defendant Holy See knew - that Daniel McCormack was a suspected child molester and a danger to children before Plaintiff was first molested by McCormack, Plaintiff would not have been sexually molested.

145. Had Plaintiff and his family known that the Holy See knew that there was a wide spread problem of its agents sexually molesting children using the confessional, Plaintiff would not have been abused.

146. As a direct and proximate result of Defendant Holy See's conduct described herein, Plaintiff John Doe 100 and his family have suffered a monetary loss, a loss of Plaintiff's time, a loss of Plaintiff's labor and a loss of Plaintiff's services.

147. If the Holy See had not engaged in its vast enterprise of soliciting funds, recruiting members, and other commercial activities, and had not deceived Plaintiff while undertaking this commercial activity, Plaintiff would not have been abused.

148. Peter's Pence, the Holy See's seminary activities, its solicitation of funds, and the other commercial and business activities described herein all had a direct role in causing Plaintiff's harms.

149. As a direct and proximate result of Defendant Holy See's conduct described herein, Plaintiff John Doe 100 has suffered and continues to suffer great pain of mind and body, shock, emotional distress, embarrassment, loss of self-esteem, extreme difficulty with relationships, problems with authority, disgrace, humiliation and loss of enjoyment of life, is more likely to develop Post Traumatic Stress Disorder, Depression, Chemical dependency, and more likely to attempt suicide, was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, has sustained loss of earning capacity and has incurred and will continue to incur expenses for medical and/or psychological treatment, therapy and counseling. The amount of Plaintiff's damages will be fully ascertained at trial.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT/ BREACH OF
IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
AGAINST DEFENDANT HOLY SEE

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

151. A contract was formed between Plaintiff and Plaintiff's family, on the one hand, and Defendant on the other, when Plaintiff's family agreed to place their child in McCormack's care and allowed him to be on the St. Agatha premises. Plaintiff was a party to and an intended beneficiary of this contract.

152. Additional contracts were formed when Father McCormack developed a special relationship with Plaintiff.

153. One of the implied terms of these contracts was to keep the Plaintiff safe from childhood sexual assault.

154. Another implied term of the contracts was that Defendant would not employ priests who are childhood sexual abusers.

155. Another implied term of the contract was that the Defendant would not conceal knowledge of sexual abuse by agents from children and their families

156. Another implied term of the contracts was that the Defendant would provide a reasonably safe environment.

157. Another implied term of the contracts was that the Defendant would not allow parishioners and students and children to be sexually molested and abused at the school.

158. Another of the implied terms of the contracts was that if priests or other employees of Defendant observed, or became aware of, the Plaintiff being sexually abused by a priest, they would immediately take the necessary steps to cause the illegal and outrageous conduct to cease.

159. Another of the implied terms of the contracts was that neither priests nor other employees at St. Agatha's would sexually abuse minor children.

160. Defendant breached these duties under each of the contracts formed with Plaintiff's family, in part for the benefit of Plaintiff.

161. As a direct result of Defendant's breach of its contractual duties, Plaintiff has suffered the injuries and damages described herein.

162. As a direct result of Defendant's breach of its contractual duties, Plaintiff and his family suffered a loss of money and a loss of his services.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount to be determined at trial, plus costs, disbursements, reasonable attorneys' fees, interest, and such other relief that the Court deems just and equitable

SECOND CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY
AGAINST DEFENDANT HOLY SEE

163. Plaintiff incorporates all paragraphs of this complaint into this count as if alleged herein.

164. A special legal relationship existed between the Plaintiff and the Defendant, Holy See, in the nature of a fiduciary relationship, which relationship was carried out by and through priests, clerics and administrators under the direct and absolute control of the Defendant, Holy See, in their capacity as paid educators and/or counselors and recruiters of minor children in the private schools of the Roman Catholic Church in the United States.

165. The Defendant breached fiduciary duties owed to the Plaintiff under the common law of the states, the federal common law, the laws of the fifty states, and customary international law of human rights, including but not limited to:

- a. The duty to warn parents, who entrusted their children's care, custody and control to the churches and schools of the Roman Catholic Church, that its priests, clerics and agents in those churches and schools were known pedophiles, sexual predators and perpetrators of childhood sexual abuse.
- b. The duty to report known or suspected perpetrators of childhood sexual abuse to authorities as required by statutory law, the common law, and customary international law.
- c. A duty to provide a reasonably safe environment at its institutions.
- d. A duty to mandate safe policies and procedures for its institutions.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount to be determined at trial, plus costs, disbursements, reasonable attorneys' fees, interest, and such other relief that the Court deems just and equitable

THIRD CAUSE OF ACTION
VIOLATION OF CUSTOMARY INTERNATIONAL
LAW OF HUMAN RIGHTS
AGAINST DEFENDANT HOLY SEE

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

167. The instructions, mandates and dictates of the Defendant, Holy See in the United States prohibiting the disclosure of the identity and existence of pedophiles and sexual predators under its control, thereby placing children in a position of peril, is a gross violation of established, universally recognized norms of international law of human rights. The customary international law of human rights has been codified in various international agreements, including but not limited to:

- a. the *Universal Declaration of Human Rights*, in that the Defendant, Holy See, as a matter of policy, at all times practiced, ignored, tolerated, disregarded, permitted, allowed, condoned or failed to report childhood sexual abuse which the international community and the civilized world views as cruel, inhumane and degrading; and
- b. the *Convention on the Rights of the Child*, in that the Defendant, Holy See, among other things, did not make the interests of minor children in its control their primary responsibility; did not conform to international standards for the safety and health of those children in considering the suitability of their priests, clerics,

bishops, archbishops, cardinals, agents and servants; did not take all appropriate legislative, administrative, social and educational measures to protect those children from sexual abuse; did not prevent, identify, report, investigate, treat or follow-up on instances of childhood sexual abuse of which it had knowledge; did not take all appropriate measures to ensure that school discipline was administered in a manner consistent with human dignity; and did not undertake to protect those children from sexual exploitation and abuse.

168. The Defendant, Holy See, signed the *Universal Declaration of Human Rights* in 1948; the Defendant, Holy See, signed the *Convention on the Rights of the Child* in 1990.

169. The worldwide acceptance of various international agreements, including the *Convention on the Rights of the Child*, demonstrates that some of their provisions have attained the status of customary international law. The *Convention on the Rights of the Child* provides that "in all actions concerning children . . . the best interests of the child shall be a primary consideration," Art. 3, that the signatories "shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, . . . , including sexual abuse," Art. 19, and that they "undertake to protect the child from all forms of sexual exploitation and sexual abuse," Art. 34. These provisions codify longstanding legal human rights norms that reflect actual practices of states in prohibiting childhood sexual abuse, are not so novel as to be considered outside the bounds of what is customary, and are of universal concern.

170. The practices, instructions, mandates, and dictates of the Defendant, Holy See, in the United States prohibiting the disclosure of the identity and existence of pedophiles and sexual predators under its control and thereby placing children in positions of harm, whether undertaken

under the color of law or only in its capacity as a private actor, are violations of customary international law, and are crimes to which the law of nations attributes individual responsibility.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount to be determined at trial, plus costs, disbursements, reasonable attorneys' fees, interest, and such other relief that the Court deems just and equitable

FOURTH CAUSE OF ACTION
NEGLIGENCE
AGAINST DEFENDANT HOLY SEE

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

172. The Defendant, Holy See, by and through its agents, servants and employees, breached duties owed to the Plaintiffs under the common law of the states, the federal common law, the laws of the fifty states, the law of the State of Illinois and customary international law of human rights, including but not limited to:

- a. The duty to provide safe care, custody and control of the minor children entrusted by their parents to the Roman Catholic churches and schools under the absolute control of the Defendant, Holy See.
- b. The duty to warn parents who entrusted their children's care, custody and control to the churches and schools of the Roman Catholic Church that priests and other clerics were known pedophiles, sexual predators and perpetrators of childhood sexual abuse.
- c. The duty to warn parents and children of a dangerous condition on Defendant's premises.
- d. The duty to provide reasonable supervision of its employees to prevent sexual

abuse.

e. The duty to not retain employees that presented an unreasonable risk of harming others.

f. The duty to report known or suspected perpetrators of childhood sexual abuse to authorities as required by statutory law, common law, and customary international law.

173. The Defendant, Holy See, knew that its priests, clerics and agents in the United States, including Illinois, were committing acts of childhood sexual abuse and engaging in dangerous and exploitive conduct as pedophiles, sexual predators and perpetrators of childhood sexual abuse, and that these priests, clerics, bishops, archbishops, cardinals, agents, and employees created an unsafe condition on the premises of the aforesaid churches and schools, institutions to whom the custody and control of said minor children was placed.

174. The acts and omissions of the Defendant, Holy See, alleged herein, including the concealment of its policy of harboring and protecting its abusive priests, agents and employees from public disclosure and prosecution and directives prohibiting the reporting of child sexual abuse to authorities, as part of a regular course of commercial conduct and particular commercial transactions and acts, were a substantial factor in bringing about the damages suffered by the Plaintiffs as a result of childhood sexual abuse.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount to be determined at trial, plus costs, disbursements, reasonable attorneys' fees, interest, and such other relief that the Court deems just and equitable

FIFTH CAUSE OF ACTION
FRAUD
AGAINST DEFENDANT HOLY SEE

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

this count.

176. Defendant affirmatively represented to Plaintiff and his family that Daniel McCormack did not have a history of molesting children, that Defendant did not know or suspect that Daniel McCormack had a history of molesting children and that Defendant did not know that Daniel McCormack was a danger to children.

177. Daniel McCormack did have a history of sexually molesting children. Defendant knew that Daniel McCormack had a history of sexually molesting children and that he was a danger to children.

178. Plaintiff justifiably relied upon Defendant's misrepresentations which caused him to be sexually molested by Daniel McCormack and suffer the other damages described herein.

179. Defendant knew that its misrepresentations were false or at least were reckless without care of whether these representations were true or false.

180. Defendant made the misrepresentations with the intent to deceive Plaintiff and to induce him to act on the misrepresentations to his detriment.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount to be determined at trial, plus costs, disbursements, reasonable attorneys' fees, interest, and such other relief that the Court deems just and equitable.

SIXTH CAUSE OF ACTION
FRAUD (INTENTIONAL NON-DISCLOSURE)
AGAINST DEFENDANT HOLY SEE

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

182. Defendant knew that Daniel McCormack had a history of sexually molesting children before McCormack sexually molested Plaintiff.

183. Whether or not McCormack had a history of sexual abuse was a material fact to Plaintiff.

184. Plaintiff relied on this non-disclosure.

185. Defendant intentionally did not disclose this fact to the then minor Plaintiff in order to induce him to act on the misrepresentations to his detriment.

186. Plaintiff relied upon this intentional non-disclosure, which caused him to be sexually molested by McCormack and suffer the other damages described herein.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount to be determined at trial, plus costs, disbursements, reasonable attorneys' fees, interest, and such other relief that the Court deems just and equitable.

SEVENTH CAUSE OF ACTION
FRAUD (NEGLIGENT MISREPRESENTATION)
AGAINST DEFENDANT HOLY SEE

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

188. Defendant, through its agents including Archbishop George, represented to Plaintiff and his family that McCormack did not have a history of molesting children and that McCormack was not a danger to children.

189. McCormack did have a history of sexually molesting children and was a danger to children.

190. The Holy See owed a duty of care to Plaintiff because it knew or should have known that McCormack would have access to children including Plaintiff, should have known that McCormack was a danger to children, and should have known that McCormack had molested children before he molested Plaintiff, and should have known that parents and children

would place the utmost trust in McCormack.

191. The Holy See, through its agents including Archbishop George, failed to use ordinary care in making the representation or in ascertaining the facts related to McCormack. The Holy See reasonably should have foreseen that its representation would subject Plaintiff to the unreasonable risk of harm.

192. The Holy See failed to use ordinary care to determine McCormack's significant/lengthy history of molesting children and whether he was safe for work with children before it made its representation about McCormack. The Holy See's failures include but are not limited to: failure to ask McCormack whether he sexually molested children, failure to ask McCormack's co-workers whether he molested children or whether they had any concerns about McCormack and children, failure to investigate McCormack's interest in children, failure to have a sufficient system to determine whether McCormack molested children and whether he was safe, failure to train its employees properly to identify signs of child molestation by fellow employees, and failure to investigate warning signs about McCormack when they did arise.

193. Plaintiff believed and justifiably relied upon Defendant Holy See's representations which caused him to be sexually molested by McCormack and suffer the other damages described herein.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount to be determined at trial, plus costs, disbursements, reasonable attorneys fees, interest, and such other relief that the Court deems just and equitable.

EIGHTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST DEFENDANT HOLY SEE

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

this count.

195. Defendant's conduct was extreme and outrageous.

196. The Holy See knew that there was a high probability that its conduct would cause severe emotional distress.

197. The Holy See's conduct did in fact cause severe emotional distress.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount to be determined at trial, plus costs, disbursements, reasonable attorneys fees, interest, and such other relief that the Court deems just and equitable.

NINTH CAUSE OF ACTION
INJUNCTION AGAINST DEFENDANT HOLY SEE
FOR RELEASE OF NAMES OF SEX OFFENDERS

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

199. Defendant's practices have endangered numerous children in the past and these practices will continue to put children at risk in the future.

200. Plaintiff, when he was a child, and other children today have the right to not be harmed or sexually molested by agents and former agents of Defendant.

201. Defendant owes a duty to warn all children and their parents that come into contact with its agents or former agents of allegations of sexual misconduct by the agents and former agents because these children and their parents hold many of these agents and former agents in esteemed positions, believe in the infallibility of the Pope, and the trustworthiness of the Holy See, all of which gives them virtually unlimited access to children.

202. Defendant also owes a duty to children and their parents to release all of the

names of its agents and former agents against whom Defendant has deemed to have credible allegations of sexual misconduct with children to law enforcement and to the public at large.

203. Unless injunctive relief is granted, numerous children across the United States, including in Illinois, and across the world are at risk of being sexually molested by Defendant's agents and former agents. In order to ensure that children are protected and free from sexual molestation by Defendant's agents and former agents, Plaintiff is entitled to an injunction ordering that Defendant:

- a. Release the names of Defendant's agents and former agents that it found guilty of sexual misconduct with children to the public and to law enforcement,
- b. Release the names of Defendant's agents or former agents that have admitted abusing children to the public and to law enforcement,
- c. Release the names of Defendant's agents and former agents that have been convicted of sexually abusing a child to law enforcement and to the public.

TENTH CAUSE OF ACTION
INJUNCTION AGAINST DEFENDANT HOLY SEE
FOR RELEASE OF DOCUMENTS REGARDING SEX OFFENDERS

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

205. Defendant's practices have endangered numerous children in the past and these practices will continue to put children at risk in the future.

206. Plaintiff, when he was a child, and other children today the right to not be harmed or sexually molested by agents and former agents of Defendant.

207. Defendant's practices of retaining, hiding, and concealing evidence of crimes of its agents and former agents has endangered numerous children and continues to put children in

peril.

208. Defendant owes a duty to all children and their parents to release all documents relating to agents and former agents accused of sexually molesting children and also to release.

209. Unless injunctive relief is granted, numerous children across the United States, including in Illinois, and across the world are at risk of being sexually molested by Defendant's agents and former agents. In order to ensure that children are protected and free from sexual molestation by Defendant's agents and former agents, Plaintiff is entitled to an injunction ordering that Defendant:

- a. Release all documents related to Defendant's agents and former agents that it found guilty of sexual misconduct with children to the public and to law enforcement,
- b. Release all documents related to Defendant's agents or former agents that have admitted abusing children to the public and to law enforcement,
- c. Release all documents related to Defendant's agents and former agents that have been convicted of sexually abusing a child to law enforcement and to the public.

ELEVENTH CAUSE OF ACTION
ADDITIONAL INJUNCTIVE RELIEF
AGAINST THE HOLY SEE

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

211. As a result of the violations under the common law of the states, the federal common law, the laws of the fifty states and customary international law of human rights set forth herein, and in addition to monetary damages for those violations, the Plaintiff seeks orders:

- a. requiring that the Defendant, Holy See, cease its violations of the internationally

- recognized human rights of children;
- b. requiring the Defendant, Holy See, to report all allegations of childhood sexual abuse in each and every one of the United States;
 - c. requiring that the Defendant, Holy See, conform its conduct to the mandates of the common law of the states, the federal common law, the laws of the fifty states, and customary international law of human rights;
 - d. requiring that Defendant, Holy See, act in ways that are in the best interests of children; and
 - e. retaining jurisdiction in this Court for a period of no less than ten (10) years to ensure that the interests of children are not further compromised by the conduct of the Defendant, Holy See.

DEMAND FOR TRIAL

Plaintiff hereby demands a trial by jury in this matter as to all Defendants.

JURY TRIAL REQUESTED.

Dated: May 11, 2011

Respectfully submitted,

/s/ Marc J. Pearlman

Marc J. Pearlman, Esq. (Bar No. 6207522)

Kerns, Frost & Pearlman, LLC

Three First National Plaza

70 West Madison

Suite 5350

Chicago, IL 60602

(312) 261-4550

mbrooks@kfplegal.com

mpearlman@kfplegal.com

Jeffrey R. Anderson, #6281587

Michael G. Finnegan (MN Bar No. #033649X)

Applications for *pro hac* admission to be filed

Jeff Anderson and Associates, P.A.
366 Jackson Street, Suite 100
St. Paul, Minnesota 55101
(651) 227-9990
jeff@andersonadvocates.com

ATTORNEYS FOR PLAINTIFF