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1ST CIRCUIT COURT
STATE OF HAWAII
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N. ANAYA
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN ROE 1,

Plaintiff,

v.

CANONS REGULAR ORDER OF THE)
HOLY CROSS, PROVINCE OF ST.)
ODILIA a/k/a CROSIER FATHERS)
AND BROTHERS PROVINCE, Inc.,)
CONGREGATION OF CHRISTIAN)
BROTHERS OF HAWAII, INC, A)
Hawaii not for profit)
corporation t/a)
DAMIEN MEMORIAL SCHOOL,)
ROMAN CATHOLIC CHURCH IN THE)
STATE OF HAWAII, a Hawaii)
Not for profit corporation,)
FR. GERALD FUNCHEON, JOHN)
DOE INDIVIDUALS, CORPORATIONS,)
PARTNERHIPS AND)
AND GOVERNMENTAL AGENCIES)
1-100,)

Defendants.)

Civil No. 12-1-1467-05 VLC
(other non-motor vehicle tort)
COMPLAINT; SUMMONS

THE
vs.

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.

N. Anaya
Clerk, Circuit Court, First Circuit

COMPLAINT

Plaintiff John Roe 1, a fictitious name used to protect plaintiff's privacy interest, alleges the following against Defendants CANONS REGULAR ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC., THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC, a Hawaii not for Profit corporation t/a DAMIEN MEMORIAL SCHOOL, ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII, a Hawaii not for profit corporation, and Fr. Gerald Funcheon:

PARTIES

- a. Plaintiff John Roe 1 (hereinafter referred to as "Plaintiff") is an adult male who resides in the City and County of Honolulu, State of Hawaii. Plaintiff was a minor at the time of the sexual abuse alleged herein.
- b. At all times material to the Complaint, Defendant Canons Regular of the Order of the Holy Cross doing business in Minnesota as the Crosier Fathers and Brothers Province, Inc., and Canons Regular of the Order of the Holy Cross, Province of St. Odilia, a/k/a Crosier Fathers and Brothers, Inc., (hereinafter referred to as "Crosiers"), was and continues to be a Roman Catholic religious order of priests and brothers affiliated with the Roman Catholic Church. The Crosiers principle place of business is located at 104 North Crosier Drive, Onamia, Minnesota 56359.

- c. At all times material to the Complaint, Defendant The Congregation of Christian Brothers of Hawaii, Inc., a Hawaii not for Profit corporation trading as and doing business as Damien Memorial School (hereinafter referred to as "Damien") was an all-boys, Catholic, college preparatory institution based on the tradition of the Irish Christian Brothers and their corporate entity, The Congregation of Christian Brothers of Hawaii, Inc., with its principle place of business at 1401 Houghtailing Street, Honolulu, Hawaii 96817.
- d. At all times material to the Complaint, Defendant The Roman Catholic Church in The State of Hawaii ("Diocese") was and continues to be a diocese of the Roman Catholic Church a not for profit religious corporation, authorized to conduct business and conducting business in the State of Hawaii with its principal place of business at 1184 Bishop Street, City and County of Honolulu, State of Hawaii.
- e. At all times material, Defendant Father Gerald Funcheon (hereinafter referred to as "Funcheon"), was a Roman Catholic Priest, a member of, educated by, and under the direct supervision, authority, employ, and control of the Crosiers.

- f. Plaintiff has attempted to ascertain the names and identities of possible defendants who are presently unknown to plaintiff. Plaintiff's efforts include reviewing records and interviewing witnesses including other potential victims.
- g. Plaintiff alleges, upon information and belief, that the conduct of other defendants, presently unknown to plaintiff, was or may have been a proximate or legal cause of the harm that he has suffered as alleged herein.
- h. Plaintiff has satisfied the requirements of Hawaii Revised Statutes, Section 657, specifically Act 68 enacted in 2012.

FACTS

1. Plaintiff was born, raised, and resided at all relevant times in the City and County of Honolulu, State of Hawaii, and entered Damien as a freshman in 1983. As a result of his upbringing, Plaintiff developed great admiration, trust, reverence, and respect for, and obedience to persons in authority, including Funcheon.

2. At all times material, Funcheon was a Catholic priest, educated, trained, ordained, and employed by each and all of the defendants and under the direct supervision, employ, agency, and control of each and all of the defendants.

3. Plaintiff alleges, upon information and belief, Funcheon began working as a school-community chaplain/teacher at Damien in approximately 1982.

4. Damien exists within the borders and jurisdiction of defendant Diocese for its benefit and under its control.

5. Generally, Funcheon's employment duties with the Crosiers and Damien included teaching and working with children. Funcheon was a teacher and provided guidance for the spiritual and emotional needs of children, including Plaintiff, entrusted to his care.

6. At all times material, Plaintiff was a student at Damien where he came to know, admire, trust, revere, and respect Funcheon as a person of great influence and persuasion as an authority figure, priest, teacher, spiritual advisor, and counselor.

7. As a student at Damien, each and all of the Defendants were responsible for the minor's care and well-being. Each and all of the Defendants owed a duty of care to Plaintiff. Each and all of the Defendants had responsibility or control over the activities in which Plaintiff and Funcheon were engaged.

8. In approximately 1983 through 1984, when Plaintiff was approximately thirteen years old, Funcheon served as Plaintiff's chaplain, counselor, and teacher at Damien.

9. In approximately 1983 or 1984, when Plaintiff was approximately thirteen years old, Funcheon, using his position of authority, trust, reverence, and control as a Roman Catholic Priest and teacher, engaged in unpermitted, harmful and offensive sexual contact upon the person of Plaintiff. The sexual contact and/or acts constituted or would have constituted a criminal offense under part V or VI of chapter 707 (Haw. Rev. Stat. Sections 707-730 (2011)).

10. The sexual abuse and exploitation occurred while Funcheon took Plaintiff on a trip/retreat to the eastern shore of Oahu, Hawaii and while Plaintiff was entrusted to Defendants' care, custody, and control and while Funcheon was under the direct supervision, employ, and control of Defendants.

11. Before Funcheon sexually abused Plaintiff, several reports were made to the Crosiers about Funcheon's inappropriate sexual conduct towards minors. Before Plaintiff was sexually abused, the Crosiers had serious concerns about Funcheon's interactions with children, Funcheon's sexuality, and Funcheon's abuse of alcohol and prescription drugs. This is all information that Defendants either knew or should have known.

12. As a result of the complaints and concerns regarding Funcheon's inappropriate behavior and sexual abuse of minor students, he was moved by the Defendants between several

different locations before being transferred from Damien.

13. The Defendants allowed Funcheon to have unsupervised and unlimited access to children at Damien.

14. The Defendants did not tell any of the students or their parents, including Plaintiff or his parents, that they knew or should have known that Funcheon was a known child molester. The Defendants also did not tell any of the students or their parents that they had or should have had information that Funcheon had a pattern of grooming and molesting boys.

15. Before Plaintiff was first sexually abused by Funcheon, the Defendants knew or should have known material facts regarding Funcheon's sexual misconduct, impulses and behavior, but failed to act on that knowledge thereby increasing the likelihood that Plaintiff would be harmed. The Defendants' failure to act on that knowledge also contributed to Plaintiff's injuries and his inability to: appreciate the abuse and resulting injuries he sustained; or obtain help for the abuse and injuries he suffered.

16. The Defendants engaged in a pattern and practice of fraudulent conduct in order to conceal the criminal and harmful acts of its agents and employees. The Defendants, by and through their agents, persons controlling and/or directing the Defendants' organizations, misrepresented and/or failed to

present the facts of known sexual misconduct to victims, their families, students, the public and/or law enforcement authorities for the furtherance of a scheme to protect predatory priests and other clergy from criminal prosecution, to maintain or increase charitable contributions and/or avoid public scandal thereby creating and perpetuating a conspiracy of silence and/or misrepresentation.

17. By holding out Funcheon as a qualified priest and teacher, employed by the Defendants, and by undertaking the instruction and spiritual and emotional guidance of the minor Plaintiff, Defendants entered into a special relationship with Plaintiff. As a result of Plaintiff being a minor, and by Defendants undertaking the care and guidance of the then vulnerable Plaintiff, the Defendants held a position of empowerment over Plaintiff.

18. Further, Defendants and others within the Church held themselves out to students and their parents, including Plaintiff, as counselors and instructors on matters that were spiritual, moral, and ethical. Accordingly, Plaintiff placed trust in Defendants so that Defendants gained superiority and influence over Plaintiff. Defendants, by maintaining and encouraging such a relationship with Plaintiff and preventing

the then minor Plaintiff from effectively protecting himself, entered into a fiduciary relationship with Plaintiff.

19. This fiduciary relationship with Plaintiff established a duty of good faith, fair dealing and the duty to act with the highest degree of trust and confidence. This fiduciary relationship includes the duty to warn, and to disclose, and the duty to protect children from sexual abuse and exploitation by Catholic employees whom the Defendants promote as being safe with children. The Defendants' fiduciary relationship with Plaintiff was based upon a justifiable trust on Plaintiff's side and superiority and influence on Defendants' side.

20. At all times material, by accepting custody of then minor Plaintiff, the Defendants accepted custody *in loco parentis*, as a parent, and owed Plaintiff the duty of full disclosure of all the information they had or should have had regarding Funcheon's history of sexual misconduct.

21. Further, the leaders of the Defendants were in a specialized or superior position to receive and did receive specific information regarding misconduct by priests and other agents and employees that was of critical importance to the well-being, protection, care and treatment of innocent victims, including Plaintiff. This knowledge was not otherwise readily available. The Defendants exercised its special or superior

position to assume control of said knowledge and any response thereto.

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

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

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

25. By tradition, Roman Catholics and those within their custody and control including Plaintiff, are taught to hold

religious figures in the highest esteem as earthly representatives of God, and that religious figures, unlike lay people, belong to a separate and higher state in life, which they represent to be of divine origin and which they represent entitles them to special privileges. For these and other reasons relating to the practices of the Church, religious figures and other persons in leadership positions in the Church have traditionally occupied a position of great trust and allegiance among parents and youth, including Plaintiff.

26. By placing Funcheon at Damien in approximately 1982 through 1984, the Defendants, through their agents, affirmatively represented to minor children and their families at the school, that Funcheon did not have a history of molesting children, that the Defendants did not know that Funcheon had a history of molesting children and that the Defendants did not know that Funcheon was a danger to children.

27. By allowing Funcheon to remain in active ministry, the Crosiers and Damien, through their agents, made continuing affirmative representations to minor children and their families, including Plaintiff and his family, that Funcheon did not have a history of molesting children, that the Crosiers and Damien did not know that Funcheon had a history of molesting children and that the Crosiers and Damien did not know that

Funcheon was a danger to children.

28. Apart from the representations made directly to Plaintiff, the Defendants, through their agents, made these representations with the knowledge and intent that they would be communicated to the minor Plaintiff through his parents' words and actions. The Defendants also had reason to believe that the representations made to Plaintiff's parents would influence Plaintiff and particularly that the representations would influence the amount and type of time spent alone with Funcheon, Funcheon's access to Plaintiff, and Funcheon's ability to molest Plaintiff.

29. The Defendants were in a specialized position where they had knowledge that Plaintiff did not. The Defendants were in a position to have this knowledge because they were Funcheon's employer and because the Defendants were responsible for Funcheon. Plaintiff, on the other hand, was a child. As a child he was not in a position to have information about Funcheon's inappropriate tendencies towards children.

30. Particularly, the Defendants knew or should have known that Funcheon had sexually molested numerous children and that Funcheon was a danger to children before Funcheon molested Plaintiff.

31. Because Defendants were in positions of superiority

and influence over him, Plaintiff believed and relied upon these misrepresentations.

32. Had Plaintiff or his family known what the Defendants knew or should have known that Funcheon had sexually molested numerous children before Plaintiff and that Funcheon was a danger to children, Plaintiff would not have been sexually molested.

33. In instances where the Church, including leaders of the Defendants, had actual knowledge or should have known about offending clerics, including Funcheon, they failed to warn children and their parents and denied knowledge thereof.

34. Despite having actual or constructive knowledge of Funcheon's pedophile propensities and previous instances of molestation of other children, the Crosiers, Damien and others concealed the danger which he and other offending clerics presented by misrepresenting them as clerics in good standing, thus enabling those offending clerics to retain their continued, unrestricted access to minor children.

35. Plaintiff had the right to rely, and did rely, on the representations and teachings of the Church, the Crosiers, and Damien including, but not limited to, representations regarding clerics in general and Funcheon in particular (including the representation that Funcheon was a cleric in good standing).

Plaintiff also expected and believed that the Church, the Crosiers, and Damien would not tolerate criminal misconduct that represented a known threat to children by any cleric.

36. As a result of his early instruction and indoctrination, it would never have occurred to Plaintiff that any cleric would engage in criminal behavior, or knowingly or actively conceal criminal behavior. Accordingly, even after Funcheon had sexually molested him, Plaintiff assumed that he was somehow the guilty party, rather than Funcheon.

37. Further, as a result of that early instruction and indoctrination, Plaintiff assumed that Funcheon's sexual molestation of him was an isolated occurrence and that the Defendants were unaware and uninvolved, regarding both the criminal sexual behavior and the wide-ranging efforts to conceal that criminal conduct from him and others.

38. The sexual abuse of Plaintiff and the circumstances under which it occurred caused Plaintiff to develop confusion, various coping mechanisms and symptoms of psychological disorders, including post-traumatic stress disorder, anxiety, depression, repression and disassociation. As a result of: 1) these disorders; and 2) Defendants' fraudulent conduct, Plaintiff formed a reasonable and rational fear that he would be disbelieved and was unable to fully perceive or know that: 1)

the conduct of Funcheon was pervasive; 2) the Church and Defendants knew or had reason to know that Funcheon was a pedophile prior to his abuse; 3) the Defendants were responsible for the abuse; and 4) the injuries he suffered were the result of the abuse. Because Plaintiff's emotional and psychological injuries manifested themselves in ways seemingly unconnected to the sexual abuse by Funcheon, Plaintiff was unable to perceive or know the existence or nature of his psychological and emotional injuries and their causal connection to the sexual abuse.

39. As a direct result of the sexual abuse and sexual exploitation and other wrongful conduct described herein, Plaintiff has suffered and continues to suffer from injuries including, but not limited to: great pain of mind and body; severe and permanent emotional distress; physical manifestations of emotional distress; psychological injuries, including post-traumatic stress disorder and depression; feelings of shame, embarrassment, and powerlessness; was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; will incur expenses for medical and psychological treatment, therapy and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity.

COUNT ONE

SEXUAL ASSAULT AND BATTERY AGAINST THE CANNONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHER OF HAWAII, INC.; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

41. In approximately 1983 or 1984, while Plaintiff was a minor, Funcheon intentionally touched and manipulated the body and genitals of Plaintiff in a sexual manner.

42. At all times material, the aforesaid conduct of Funcheon was offensive to Plaintiff and done without Plaintiff's consent.

43. Funcheon knew or should have known that Plaintiff would find such conduct offensive.

44. As a direct result of Funcheon's intentional conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT TWO

VICARIOUS LIABILITY AGAINST THE CANNONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHER OF HAWAII, INC.; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

46. The Defendants hired, trained, and educated Funcheon for his employment.

47. At all times material, the Defendants granted Funcheon power to perform as a priest, spiritual leader, teacher, and to work with children.

48. The Defendants, their agents, servants, and employees, held out Funcheon to children and their parents, including Plaintiff and his family, as a fit and competent agent of Defendants.

49. In approximately 1983 or 1984, Funcheon engaged in unpermitted, harmful and offensive sexual contact upon the person of Plaintiff. Said conduct was undertaken while Funcheon was an employee and agent of the Defendants, while in the course and scope of employment with the Defendants, was ratified by the Defendants, and/or was accomplished by virtue of Funcheon's job-created authority.

50. Plaintiff alleges upon information and belief, at all times material, Funcheon was under the direct supervision and control of the Defendants when he negligently, grossly negligently and/or intentionally performed his duties and committed the wrongful acts described herein.

51. Funcheon was acting at least in part to serve the interests of his employer when he committed the sexual abuse.

Specifically, Funcheon was acting as a priest and teacher, as well as using the trust, power, and authority of the position granted, while he was with Plaintiff. Simultaneously, Funcheon used that same power and authority to gain Plaintiff's confidence and trust to sexually abuse Plaintiff.

52. By using his position as a teacher, priest and spiritual leader, and the trust, power, and authority of the position conferred upon him, Funcheon purported to act and/or speak on behalf of the Defendants when he committed the tortious and/or criminal acts alleged herein. Plaintiff further relied on Funcheon's apparent authority to act on behalf of the Crosiers and Damien.

53. Funcheon would not have been able to commit the sexual abuse were he not given the authority to act as a religious leader by the Defendants under their direct supervision. Funcheon conducted his tortious and/or criminal conduct during his agency relationship with the Defendants while providing ministry and educational instruction to Plaintiff. Therefore, the Defendants are liable for the negligent and/or wrongful conduct of Funcheon under the law of vicarious liability, including the doctrine of respondeat superior.

54. As a result of the above-described conduct, Plaintiff has suffered the injuries and damages described herein.

COURT THREEGROSS NEGLIGENCE AGAINST THE CANNONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHER OF HAWAII, INC.; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

55. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count.
56. Defendants assumed a duty to Plaintiff by:
- a. holding Funcheon out to the public, including Plaintiff, as a competent and trustworthy employee, representative, priest, teacher and counselor of high morals;
 - b. holding out its facilities and school as a safe environment for children;
 - c. taking and inviting children into its facilities;
 - d. entrusting children to the care of Funcheon during extracurricular activities; and
 - e. fostering an environment in which Plaintiff was inhibited from reporting the sexual abuses against him.
57. The Defendants grossly breached this duty by exposing Plaintiff to Funcheon, an unfit agent with dangerous and exploitive propensities.

58. As a result of the above-described conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT FOUR

FRAUD (INTENTIONAL MISREPRESENTATION) AGAINST THE CANNONS
REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA,
a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE
CONGREGATION OF CHRISTIAN BROTHER OF HAWAII, INC.; THE ROMAN
CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND
ALL DOE DEFENDANTS

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

60. The Defendants affirmatively represented to Plaintiff that Funcheon did not have a history of molesting children, that the Defendants did not know that Funcheon had a history of molesting children, and/or that the Crosiers and Damien did not know that Funcheon was a danger to children.

61. The Defendants knew or should have known that Funcheon had a history of sexually molesting children and/or was a danger to children.

62. Whether Funcheon had a history of molesting children, whether the Defendants knew or should have known that Funcheon had a history of molesting children, and/or whether the Defendants knew or should have known that Funcheon was a danger to children were all material facts to Plaintiff.

63. Had Plaintiff known that Funcheon had a history of sexually molesting children and/or that the Defendants knew or

should have known that Funcheon had a history of sexually molesting children, Plaintiff would have acted differently and would never have spent unsupervised time with Funcheon.

64. The Defendants made the misrepresentations with the intent to induce Plaintiff to act on the misrepresentations, which Plaintiff did to his detriment.

65. Plaintiff justifiably relied upon the Defendants' misrepresentations which caused him to be sexually molested by Funcheon and suffer the other damages described herein.

66. The Defendants knew that their misrepresentations were false or at least were reckless and without care of whether these representations were true or false.

67. The Defendants' misrepresentations were the proximate cause of Plaintiff's damages.

68. As a result of the above-described conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT FIVE

FRAUD (GROSSLY NEGLIGENT MISREPRESENTATION) AGAINST THE CANNONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHER OF HAWAII, INC.; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

69. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth in this count.

70. The Defendants, through their agents, represented to Plaintiff and his family that Funcheon did not have a history of molesting children and that Funcheon was not a danger to children.

71. Funcheon did have a history of sexually molesting children and was a danger to children.

72. The Defendants owed a duty of care to Plaintiff because they knew or should have known that Funcheon would have access to children, including Plaintiff, knew or should have known that Funcheon was a danger to children, should have known that Funcheon had molested children before he molested Plaintiff, and knew or should have known that parents and children would place the utmost trust in Funcheon.

73. The Defendants, through their agents, in acts separate from and before their representation, grossly failed to use ordinary care in making the representation or in ascertaining facts related to Funcheon. The Defendants knew or reasonably should have foreseen that its representation would subject Plaintiff to the unreasonable risk of harm.

74. The Defendants grossly failed to use ordinary care to determine Funcheon's history of molesting children and whether he was safe for work with children before the Defendants made their representations about Funcheon.

75. Plaintiff believed and justifiably relied upon the Defendants' representations that caused him to be sexually molested by Funcheon.

76. As a result of the above-described conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT SIX

FRAUD (INTENTIONAL NON-DISCLOSURE) AGAINST THE CANNONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHER OF HAWAII, INC.; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

77. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth in this count.

78. As a result of Plaintiff being a minor and the relationships between the Plaintiff and the Defendants described herein, and by the Defendants undertaking the care and guidance of the then vulnerable Plaintiff, the Defendants held a position of empowerment over Plaintiff to such an extent that Plaintiff was prevented from effectively protecting himself from Funcheon, absent the disclosure of the material facts described herein.

79. The Defendants had special knowledge of the material facts that priests including, but not limited to Funcheon regularly participated in sexual activity. The Defendants also had knowledge or should have had knowledge of the material facts that priests generally, and Funcheon particularly, participated

in sexual activity with minors. Plaintiff did not have access to these material facts that prevented Plaintiff from effectively protecting himself against Funcheon.

80. The Defendants had special knowledge or should have had knowledge of the material facts that Funcheon, participated in sexual activity with minors prior to Funcheon having sexual contact with Plaintiff. Plaintiff did not have access to these material facts that prevented Plaintiff from effectively protecting himself from Funcheon.

81. The Defendants, through their agents, had a duty to disclose to Plaintiff the material facts described in this Complaint.

82. The Defendants, through their agents, intentionally did not disclose the facts described in this Complaint to the then minor Plaintiff in order to induce him to act on the misrepresentations to his detriment.

83. Plaintiff relied upon this intentional non-disclosure, which caused him to be sexually molested by Funcheon.

84. As a result of the above-described conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT SEVEN

GROSSLY NEGLIGENT RETENTION AGAINST THE CANNONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSTIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHER OF HAWAII, INC.; THE ROMAN CATHOLIC CHURCH IN

THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

86. The Defendants, by and through their agents, knew or should reasonably have known of Funcheon's dangerous and exploitive propensities as a child sexual abuser and his tendencies towards inappropriate sexual relationships, and despite such knowledge, the Defendants employed and continued to employ Funcheon in a position of trust and authority as a priest, counselor, and teacher without proper or adequate supervision, thereby providing him the opportunity to commit the wrongful acts against Plaintiff described herein.

87. Despite such knowledge, the Defendants grossly negligently deemed Funcheon a fit agent for ministry and teaching and employed and continued to employ Funcheon in a position of trust and authority as a priest and teacher without proper or adequate supervision, thereby providing him the opportunity to commit the wrongful acts against Plaintiff described herein.

88. As a result of the above-described conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT EIGHT

GROSSLY NEGLIGENT SUPERVISION AGAINST THE CANNONS REGULAR OF

THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a
CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF
CHRISTIAN BROTHER OF HAWAII, INC.; THE ROMAN CATHOLIC CHURCH IN
THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

90. Plaintiff alleges, upon information and belief, that at all times material Funcheon was employed by the Defendants and was under the direct supervision and control of the Defendants when he intentionally and/or grossly negligently performed his duties and committed the wrongful acts described herein. Funcheon had apparent and actual authority on behalf of the Defendants and engaged in the wrongful conduct while acting in the course and scope of his employment with the Defendants and/or accomplished the sexual abuse by virtue of his job-created authority.

91. The Defendants had a duty to exercise care in supervising Funcheon in his assignment and failed to prevent the injuries sustained by Plaintiff as a result of the foreseeable misconduct of their employee, Funcheon.

92. The aforesaid occurrences were caused by or contributed to by the negligence, carelessness and recklessness and the willful, wanton, reckless, and grossly negligent conduct of the Defendants, their agents, servants and/or employees, in failing to properly and adequately supervise the conduct of

Funcheon as it related to the Plaintiff, other young children, and other parishioners.

93. The Defendants knew or should have known of Funcheon's inappropriate propensities towards sexual conduct with youth and with whom he came in contact with as a result of his position as a priest and teacher.

94. That as a result of the Defendants' inadequate supervision of Funcheon, Plaintiff was sexually abused by Funcheon when Plaintiff was approximately thirteen years old.

95. As a result of the above-described conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT NINE

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST THE
CANNONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF
ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.;
THE CONGREGATION OF CHRISTIAN BROTHER OF HAWAII, INC.; THE
ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; AND FUNCHEON;
FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

97. Funcheon's conduct toward Plaintiff, as described herein, was outrageous and extreme.

98. A reasonable person would not expect or tolerate the sexual harassment, molestation and abuse of Plaintiff by Funcheon. Plaintiff had great trust, faith and confidence in

Funcheon, and in Defendants, which, by virtue of Funcheon's and Defendants' wrongful conduct, turned to fear.

99. Defendants' conduct toward Plaintiff, as described herein, was outrageous and extreme.

100. A reasonable person would not expect or tolerate Defendants putting Funcheon who was known to Defendants to be a child molester and a child abuser, in contact with minors at Damien. Defendants' acts and/or failures to act enabled Funcheon to have access to minor students and so that he could commit wrongful sexual acts, including the conduct described herein, with minors, including Plaintiff. Plaintiff had great trust, faith and confidence in Defendants, which by virtue of Defendants' wrongful conduct, turned to fear.

101. A reasonable person would not tolerate or expect Defendants to be incapable of supervising and/or stopping employees of Defendants, including Funcheon, from committing wrongful sexual acts with minors, including Plaintiff. Plaintiff had great trust, faith and confidence in Defendants, which, by virtue of Defendants' wrongful conduct, turned to fear.

102. Defendants' conduct described herein was intentional and malicious and done for the purpose of causing or with the

substantial certainty that Plaintiff would suffer humiliation, mental anguish, and emotional and physical distress.

103. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer pain and suffering, including but not limited to, anxiety, embarrassment and emotional distress.

104. Plaintiff, based on information and belief, alleges that the conduct of Defendants was oppressive, malicious and despicable in that it was intentional and done in conscious disregard for the rights and safety of others, and were carried out with a conscious disregard of their right to be free from such tortious behavior, such as to constitute oppression, fraud or malice.

COUNT TEN

GROSSLY NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS AGAINST THE CANNONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHER OF HAWAII, INC.; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; AND FUNCHEON; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

106. Funcheon's conduct toward Plaintiff, as described herein, was outrageous and extreme.

107. A reasonable person would not expect or tolerate the sexual harassment, molestation and abuse of Plaintiff by Funcheon. Plaintiff had great trust, faith and confidence in Funcheon, and in Defendants, which, by virtue of Funcheon's and Defendants' wrongful conduct, turned to fear.

108. Defendants' conduct toward Plaintiff, as described herein, was outrageous and extreme.

109. A reasonable person would not expect or tolerate Defendants putting Funcheon who was known to Defendants to be a child molester and a child abuser, in contact with minors at Damien. Defendants' acts and/or failures to act enabled Funcheon to have access to minor students and so that he could commit wrongful sexual acts, including the conduct described herein, with minors, including Plaintiff. Plaintiff had great trust, faith and confidence in Defendants, which by virtue of Defendants' wrongful conduct, turned to fear.

110. A reasonable person would not tolerate or expect Defendants to be incapable of supervising and/or stopping employees of Defendants, including Funcheon, from committing wrongful sexual acts with minors, including Plaintiff. Plaintiff had great trust, faith and confidence in Defendants, which, by virtue of Defendants' wrongful conduct, turned to fear.

111. Defendants' conduct described herein was grossly negligent and done for the purpose of causing or with the substantial certainty or reckless or conscious disregard of the likelihood that Plaintiff would suffer humiliation, mental anguish, and emotional and physical distress.

112. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer pain and suffering, including but not limited to, anxiety, embarrassment and emotional distress.

113. Plaintiff, based on information and belief, alleges that the conduct of Defendants was grossly negligent, oppressive, malicious and despicable in that it was done in reckless manner or with a conscious disregard for the rights and safety of others, and were carried out with a conscious disregard of their right to be free from such tortious behavior, such as to constitute oppression, fraud or malice.

COUNT ELEVEN

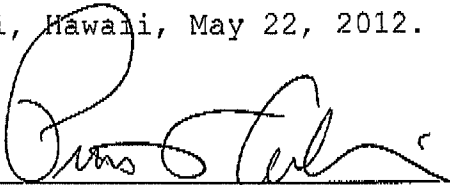
PUNITIVE DAMAGES AGAINST THE CANNONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHER OF HAWAII, INC.; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; AND FUNCHEON; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

115. The conduct of the defendants or each of them constituted gross negligence, intentional, willful and wanton, or malicious misconduct or was conducted with such a want of care as to constitute a conscious indifference to the rights of others including plaintiff warranting the imposition of punitive damages.

WHEREFORE, plaintiff prays that judgment be entered in his favor, and against defendants, jointly and severally for general, special, and punitive damages, together with costs of suit, attorney's fees, pre- and post-judgment interest, and other relief pursuant to Rule 54 of the Hawaii Rules of Civil Procedure.

DATED: Wailuku, Maui, Hawaii, May 22, 2012.



Peter T. Cahill, ESQ.

John M. O'Neill, ESQ.

Jeffrey R. Anderson, Esq. pending
Pro Hac Vice Admission