

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Personal Injury

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Doe 51,

Court File No.:

Plaintiff,

v.

**COMPLAINT**Canons Regular of the Order of the Holy Cross,  
Province of St. Odilia, a/k/a Crosier Fathers and Brothers, Inc.,Defendant.  

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Plaintiff, for his cause of action against Defendant, alleges that:

**PARTIES**

1. Plaintiff Doe 51 (hereinafter "Plaintiff") is an adult male resident of the State of Minnesota. In the interest of privacy, the identity of Plaintiff has been disclosed under separate cover to Defendant.

2. At all times material, Defendant Canons Regular of the Order of the Holy Cross, Province of St. Odilia, a/k/a Crosier Fathers and Brothers Province, Inc. (hereinafter referred to as "Crosiers") was and continues to be an organization or entity, which includes, but is not limited to, civil corporations, decision making entities, officials, and employees authorized to conduct business and conducting business in the State of Minnesota and with principal places of business at 104 North Crosier Drive, Onamia, Minnesota and 4423 North 24<sup>th</sup> Street, Suite 400, Phoenix, Arizona. For numerous years, including at the time of the abuse, the Crosiers' headquarters were in St. Paul, Minnesota. The Crosiers are a Roman Catholic religious order of priests and brothers affiliated with the Roman Catholic Church. The provincial is the top official of the Crosiers and is given authority over all matters dealing with the Crosiers as a result of his

position. The Crosiers function as a business by engaging in numerous revenue producing activities and soliciting money in exchange for its services. The Crosiers have programs which seek out the participation of children. The Crosiers, through its officials, have control over these programs involving children and the authority to appoint, supervise, monitor and fire each person working with children in these programs. Prior Kermit Holl is the superior of the Crosiers in Minnesota and is given authority over civil corporations including, but not limited to, the Crosier Seminary in Onamia, Crosier Missionary, Crosier Community of Anoka, Crosier Community of Shoreview and Crosier Fathers of Onamia. At the time of the abuse, many of the top decision makers and officials for the Crosiers were headquartered in St. Paul, Minnesota.

### FACTS

3. At all times material, Father Gerald Funcheon (hereinafter “Funcheon”), was an ordained Roman Catholic Priest employed by Defendant Crosiers. At all times material, Funcheon remained under the direct supervision, employ and control of Defendant Crosiers. Defendant Crosiers placed Funcheon in positions where he had access to and worked with children as an integral part of his work.

4. At all times material, Brother Gabriel Guerrero (hereinafter “Guerrero”) was a Catholic Brother of the Crosier Order and employed by Defendant Crosiers. At all times material, Guerrero remained under the direct supervision, employ and control of Defendant Crosiers. Defendant Crosiers placed Guerrero in positions where he had access to and worked with children as an integral part of his work.

5. At all times material, Brother Roman Fleischhacker (hereinafter “Fleischhacker”), was a Catholic Brother of the Crosier Order and employed by Defendant Crosiers. At all times material, Fleischhacker remained under the direct supervision, employ and control of Defendant

Crosiers. Defendant Crosiers placed Fleischhacker in positions where he had access to and worked with children as an integral part of his work.

6. Prior to the sexual abuse of Plaintiff, Defendant Crosiers learned or should have learned that Funcheon was not fit to work with children.

7. Defendant Crosiers knew or should have known that Funcheon was a danger to children before Funcheon sexually abused Plaintiff.

8. Defendant Crosiers negligently or recklessly believed that Funcheon was fit to work with children; that Funcheon would not sexually abuse children; that Funcheon would not injure children; and/or that Funcheon would not hurt children.

9. In approximately 1979, Defendant Crosiers placed Funcheon at the Crosier Monastery and Seminary in Onamia, Minnesota. Funcheon had unlimited access to children at Crosier Seminary. Children, including Plaintiff and his family, were not told what Defendant Crosiers knew or should have known – that Funcheon was a danger to children.

10. Prior to the sexual abuse of Plaintiff, Defendant Crosiers learned or should have learned that Guerrero was not fit to work with children.

11. Defendant Crosiers knew or should have known that Guerrero was a danger to children before Guerrero sexually abused Plaintiff.

12. Defendant Crosiers negligently or recklessly believed that Guerrero was fit to work with children; that Guerrero would not sexually abuse children; that Guerrero would not injure children; and/or that Guerrero would not hurt children.

13. In approximately 1958, Defendant Crosiers placed Guerrero at the Crosier Monastery and Seminary in Onamia, Minnesota. Guerrero had unlimited access to children at Crosier Seminary. Children, including Plaintiff and his family, were not told what Defendant

Crosiers knew or should have known – that Guerrero was a danger to children.

14. Prior to the sexual abuse of Plaintiff, Defendant Crosiers learned or should have learned that Fleischhacker was not fit to work with children.

15. Defendant Crosiers knew or should have known that Fleischhacker was a danger to children before Fleischhacker sexually abused Plaintiff.

16. Defendant Crosiers negligently or recklessly believed that Fleischhacker was fit to work with children; that Fleischhacker would not sexually abuse children; that Fleischhacker would not injure children; and/or that Fleischhacker would not hurt children.

17. In approximately 1964, Defendant Crosiers placed Fleischhacker at the Crosier Monastery and Seminary in Onamia, Minnesota. Fleischhacker had unlimited access to children at Crosier Seminary. Children, including Plaintiff and his family, were not told what Defendant Crosiers knew or should have known – that Fleischhacker was a danger to children.

18. Plaintiff was raised in a devout Roman Catholic family and attended Crosier Seminary as a minor between approximately 1979 and 1981. As a result of his upbringing, Plaintiff developed great admiration, trust, reverence and respect for the Roman Catholic Church, including Defendant Crosiers and its agents, including Funcheon, Guerrero and Fleischhacker.

19. By holding Funcheon, Guerrero, and Fleischhacker out as safe to work with children, and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, Defendant Crosiers entered into a fiduciary relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendant Crosiers undertaking the care and guidance of the then vulnerable minor Plaintiff, Defendant Crosiers held a position of empowerment over Plaintiff.

20. Further, Defendant Crosiers, by holding itself out as being able to provide a safe

environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented the then minor Plaintiff from effectively protecting himself and Defendant Crosiers thus entered into a fiduciary relationship with Plaintiff.

21. Defendant Crosiers had a special relationship with Plaintiff.

22. Defendant Crosiers owed Plaintiff a duty of reasonable care because it had superior knowledge about the risk that its agents, including Funcheon, Guerrero and Fleischhacker, posed to Plaintiff, the risk of abuse in general in its programs and/or the risks that its agents posed to minor children.

23. Defendant Crosiers owed Plaintiff a duty of reasonable care because it solicited youth and parents for participation in its programs, encouraged youth and parents to have youth participate in its programs, undertook custody of minor children, including Plaintiff, promoted its facilities and programs as being safe for children, held its agents, including Funcheon, Guerrero and Fleischhacker out as safe to work with children, encouraged parents and children to spend time with its agents, and/or encouraged its agents, including Funcheon, Guerrero and Fleischhacker to spend time, interact with, and recruit children.

24. Defendant Crosiers had a duty to protect Plaintiff from harm because Defendant Crosiers' actions created a foreseeable risk of harm to Plaintiff.

25. Defendant Crosiers' breach of its duties include, but are not limited to: failure to have sufficient policies and procedures to prevent child sexual abuse, failure to properly implement policies and procedures to prevent child sexual abuse, failure to take reasonable measures to make sure that the policies and procedures to prevent child sexual abuse were working, failure to adequately inform families and children of the risks of child sexual abuse, failure to investigate the risk of child molestation, failure to protect children in its programs from

sexual abuse, failure to adhere to applicable standards of care for child safety, failure to investigate the amount and type of information necessary to represent the institutions, programs, leaders and people as safe and failure to use ordinary care in determining whether its facilities were safe and/or whether it had sufficient information to represent its facilities as safe.

26. Defendant Crosiers failed to use ordinary care in determining whether its facilities and agents were safe to work with children and/or in determining whether it had sufficient information to represent its facilities and agents as safe to work with children. Defendant Crosiers' failures include, but are not limited to, failure to have sufficient policies and procedures to prevent abuse by its agents and at its facilities, failure to investigate risks at its facilities and of its agents, failure to properly train workers at its facilities, failure to have any outside agency test its safety procedures, and failure to train its agents and employees to properly identify signs of child molestation.

27. Defendant Crosiers also breached its duty to Plaintiff by failing to warn Plaintiff and his family of the risk that its agents, including Funcheon, Guerrero and Fleischhacker, posed and the risk of child sexual abuse by clerics. It also failed to warn them about any knowledge that Defendant Crosiers had about child sexual abuse.

28. Defendant Crosiers also breached its duty to Plaintiff by failing to report its agents' sexual abuse of children to law enforcement.

29. Defendant Crosiers knew or should have known that some of its leaders and people working at Catholic institutions and schools were not safe.

30. Defendant Crosiers knew or should have known that it did not have sufficient information about whether its leaders and people working at Catholic institutions and schools were safe.

31. Defendant Crosiers knew or should have known that there was a risk of child sexual abuse for children participating in Catholic programs and activities and with its agents and employees.

32. Defendant Crosiers knew or should have known that it did not have sufficient information about whether there was a risk of child sexual abuse for children participating in Catholic programs and activities and with its agents and employees.

33. Defendant Crosiers knew or should have known that it had numerous agents who had sexually molested children. It knew or should have known that child sexual molesters have a high rate of recidivism. It knew or should have known that there was a specific danger of child sexual abuse for children participating in its youth programs and with its agents.

34. Defendant Crosiers held its leaders and agents out as people of high morals, as possessing immense power, teaching families and children to obey these leaders and agents, teaching families to respect and revere these leaders and agents, soliciting youth and families to its programs, marketing to youth and families, recruiting youth and families and holding out the people that worked in the programs as being safe to work with children.

35. Defendant Crosiers were negligent and/or made representations to Plaintiff and his family during each and every year of his minority.

36. Between approximately 1979 and 1981, when Plaintiff was approximately 15 to 17 years old, Funcheon, Guerrero and Fleischhacker each inflicted harmful, offensive and unpermitted sexual contact upon Plaintiff.

37. Defendant Crosiers failed to inform law enforcement authorities what they knew or should have known about Funcheon, Guerrero and Fleischhacker. As a direct result, Funcheon, Guerrero and Fleischhacker avoided criminal investigation and prosecution and

continued to sexually abuse minor boys.

38. As a direct result of Defendant Crosiers' conduct described herein, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, physical, personal and psychological injuries. Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counselling, and on information and belief has and/or will incur loss of income and/or loss of earning capacity.

#### **COUNT I: NEGLIGENCE**

39. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count and further alleges that:

40. Defendant Crosiers owed Plaintiff a duty of reasonable care.

41. Defendant Crosiers breached the duty of reasonable care it owed to Plaintiff.

42. Defendant Crosiers' breach of its duty was a proximate cause of Plaintiff's injuries.

43. As a direct result of Defendant Crosiers' negligent conduct, Plaintiff has suffered the injuries and damages described herein.

#### **COUNT II: NEGLIGENT SUPERVISION**

44. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count and further alleges that:

45. At all times material, Funcheon, Guerrero and Fleischhacker, were employed by Defendant Crosiers and were under Defendant Crosiers' direct supervision, employ and control



when they committed the wrongful acts alleged herein. Funcheon, Guerrero and Fleischhacker each engaged in the wrongful conduct while acting in the course and scope of their employment with Defendant Crosiers and/or accomplished the sexual abuse by virtue of their job-created authority. Defendant Crosiers failed to exercise ordinary care in supervising Funcheon, Guerrero and Fleischhacker in their assignments and failed to prevent the foreseeable misconduct of Funcheon, Guerrero and Fleischhacker from causing harm to others, including Plaintiff.

46. As a direct result of Defendant Crosiers' negligent conduct, Plaintiff has suffered the injuries and damages described herein.

### **COUNT III: NEGLIGENT RETENTION**

47. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count and further alleges that:

48. Defendant Crosiers, by and through its agents, servants and employees, became aware or should have become aware of problems indicating that Funcheon, Guerrero and Fleischhacker were unfit agents with dangerous and exploitive propensities, prior to each cleric's sexual abuse of Plaintiff, yet Defendant Crosiers failed to take any further action to remedy the problem and failed to investigate or remove Funcheon, Guerrero or Fleischhacker from working with children.

49. As a direct result of Defendant Crosiers' negligent conduct, Plaintiff has suffered the injuries and damages described herein.

### **PRAYER FOR RELIEF**

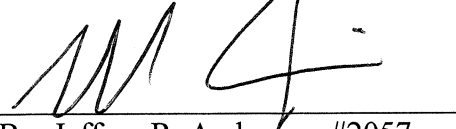
50. Plaintiff demands judgment against Defendant in an amount in excess of \$50,000.00, plus costs, disbursements, reasonable attorneys' fees, interest and such other and further relief as the court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial on all issues so triable.

Dated: March 17, 2015

JEFF ANDERSON & ASSOCIATES, P.A.



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**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that sanctions, including costs, disbursements, and reasonable attorneys' fees may be awarded pursuant to Minn. Stat. § 549.211 to the party against whom the allegations in this pleading are asserted.

