

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

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Victor Bender,

Plaintiff,

vs.

The Jesuits d/b/a Chicago Province  
of the Society of Jesus,

Defendant.

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Case No. 03L 0 011449

Calendar B

Jury Trial Demanded

2004 MAR 23 PM 12:51  
CLERK OF CIRCUIT COURT  
LAW DIVISION  
03L 0 011449

**AMENDED COMPLAINT AT LAW**

NOW COMES the Plaintiff, by and through his attorneys, KERNS, PITROF, FROST & PEARLMAN and JEFF ANDERSON & ASSOCIATES, and for his causes of action against Defendant, states as follows:

**PARTIES**

1. Plaintiff Victor Bender is an adult male resident of the state of Massachusetts. At all times material, Plaintiff was a minor and a resident of Illinois.

2. At all times material, Defendants the Jesuits D/B/A Chicago Province of the Society of Jesus (the "Order") were and are a world-wide Roman Catholic religious order of priests with its principal place of business located in Rome, Italy. Defendant Order does business in the state of Illinois as Chicago Province of the Society of Jesus, with its principal place of business located at 2050 N. Clark St., Chicago, IL 60614. The Order and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy activities, the exercise of authority over various members of its religious order, and the

maintenance of the well-being of its members attending schools and parishes which are owned and/or operated by the Order in the Chicago area. Defendant Order owns and operates Loyola Academy in Wilmette, Illinois and has done so at all times material to this Amended Complaint.

### FACTS

3. At all times material, the Catholic Bishop of Chicago, a Corporation Sole (“Archdiocese”) was and is an Illinois corporation. At all times material to the complaint, the Archdiocese was conducting business in the State of Illinois. The Archdiocese and Defendant Order are both part of the Roman Catholic Church (the “Church”).

4. At all times material, Father Donald McGuire (“McGuire”) was a priest and member of Defendant Order and the Archdiocese. McGuire was educated by and ordained in 1961 by Defendant Order. At all times material, McGuire was under the direct supervision, employ and control of Defendant Order and the Archdiocese. McGuire was an adult and designated holy figure at the time of the sexual abuse alleged herein.

5. Defendant Order and/or the Archdiocese of Chicago transferred McGuire to several positions at different educational institutions and parishes including: Loyola Academy, Wilmette, IL; Loyola University, Chicago, IL; University of San Francisco, San Francisco, CA; Bellarmine Hall, Barrington, IL; Canisius House, Evanston, IL; and the Provincial Office, Chicago, IL.

6. At all times material hereto the Archdiocese fostered and maintained a network of schools throughout the diocese, some of which were under its direct control. Other schools, such as Loyola Academy, were under the control of religious orders but operated under the apparent control of the Archdiocese.

7. In the alternative, whether parishes throughout the Archdiocese were under the direct control of the Archdiocese or not, the Archdiocese was engaged in a joint venture with Defendant Order; said joint venture being a community of interest to promote religious values and education in exchange for money in the form of donations and tuition which was paid by students and their families.

8. McGuire began his formal training to become a priest in 1947 and was ordained a Priest in 1961. Since the time that McGuire began his training, and at all time relevant to the Amended Complaint, Defendant Order and other priests and personnel associated with the Church have monitored, supervised, trained, counseled and employed or otherwise exercised control over McGuire's secular and non-secular activities involving the public and his duties as a Jesuit.

9. Plaintiff was raised in a devout Roman Catholic family, was baptized, confirmed, and regularly celebrated mass, received the sacraments, and participated in church related activities. As a result, Plaintiff developed great admiration, trust, reverence, and respect for, and obedience to Roman Catholic priests from an early age. It was through this position of trust, respect and reverence that McGuire gained access to Plaintiff and his family.

10. From February 1965 to 1972, McGuire was a teacher and scholastic advisor at Loyola Academy, a prestigious boys-only high school during those years. McGuire lived on the Loyola Academy campus from 1965 to 1972. His duties included participating in the religious training of students, providing pastoral care, counseling, spiritual guidance and leadership to Catholics, specifically the Catholic students attending Loyola Academy. McGuire supervised students both in and out of the classroom and provided religious instruction for the spiritual and

emotional needs of children, including Plaintiff, entrusted to his care.

11. During this time period McGuire participated in, and as an agent for the Order assumed the responsibility for, the training and spiritual and emotional well being of Loyola Academy students, including Plaintiff. McGuire and other Jesuit teachers and priests were viewed as spiritual leaders and counselors, routinely being present and interacting with students. During liturgical seasons, McGuire conducted school wide religious celebrations.

12. McGuire engaged in a pattern and practice of sexually abusing Loyola Academy students during the years that he taught at the school. McGuire used his position of authority and respect at the school to facilitate his opportunity to abuse minor boys. Upon information and belief, McGuire sexually abused another Loyola student on a regular basis prior to the time that Plaintiff entered school there. Upon information and belief, during this time period, several Loyola administrators, officers, priests or teachers were aware, or should have been aware, that McGuire was sexually abusing several Loyola students.

13. Plaintiff entered Loyola Academy in the fall semester 1966 as a 13-year-old freshman. McGuire became Plaintiff's scholastic and spiritual advisor when Plaintiff entered Loyola Academy and remained so during the entire time that Plaintiff attended the school. McGuire took Plaintiff under his wing and began to spend considerable time with Plaintiff, purportedly to counsel Plaintiff, to help him cope with the demands of the Academy and to help him cope with being a young, small freshman from a different background than the other students.

14. McGuire began to engage in the "pre-sexual grooming" of Plaintiff almost immediately after meeting Plaintiff in 1966, shortly after Plaintiff entered Loyola Academy. The

grooming consisted of McGuire befriending Plaintiff and frequently lavishing attention on Plaintiff. For example, McGuire took Plaintiff on several overnight trips (including trips to a Lake Geneva cottage owned by Plaintiff's uncle), frequently helped Plaintiff with his studies and engaged in numerous extracurricular activities with Plaintiff, all in an effort to facilitate his sexual abuse of Plaintiff. McGuire also became friends with other members of Plaintiff's family.

15. Shortly after Plaintiff entered Loyola Academy, McGuire convinced Plaintiff's family that Plaintiff would be better off living at the school (despite the fact that it was normally a day-only school), purportedly to make it easier for McGuire to tutor and guide Plaintiff. Plaintiff essentially lived in McGuire's room at Loyola Academy for an almost two year period from 1966 to 1968, during which time Plaintiff was 13 to 15 years old.

16. From fall 1966 until the summer of 1968, McGuire regularly and repeatedly sexually abused Plaintiff. McGuire fondled and otherwise abused Plaintiff on an almost daily basis during the time period that Plaintiff essentially lived at Loyola Academy. McGuire told Plaintiff that anything happening between them was supposed to be kept secret. McGuire also repeatedly intimidated and threatened Plaintiff both physically and mentally to keep silent so that the abuse could continue.

17. The sexual abuse of the Plaintiff, and the circumstances under which the abuse occurred, caused Plaintiff to develop various psychological coping mechanisms and symptoms of psychological distress, including great shame, guilt, self-blame, confusion, depression, repression and dissociation. Because of the "pre-sexual grooming" by McGuire, coupled with the great trust, respect, and reverence Plaintiff had for the Church and the Order, Plaintiff believed that he

rather than the abuse priest was at fault for his psychological and emotional problems. Plaintiff has only recently been able to link his severe psychological and emotional problems with McGuire's abuse.

18. Upon information and belief, Defendant Order had been apprised of McGuire's pedophilic behavior and his propensity to engage in sexual abuse before he began abusing Plaintiff. Upon information and belief, Defendant Order had actual or constructive knowledge of material facts regarding McGuire's individual pedophile impulses and behavior before he abused Plaintiff, but failed to act on that knowledge thereby increasing the likelihood that Plaintiff would be harmed.

19. Further, and as described in more detail below, Defendant Order, the Archdiocese and the Church were aware, prior to the time that Plaintiff attended Loyola Academy, that a substantial number of Church priests and officials were sexually abusing children. Despite being aware of the problem of sexual abuse of minors within the Church communities from pedophile priests, the Order never warned Plaintiff or others within the Loyola Academy community of the dangerous propensities of some of its members. Similarly, neither the Church nor Defendant Order did anything to identify or supervise pedophile priests like McGuire. Rather, in an attempt to avoid scandal, the Church and Defendant Order ignored the problem and in fact added to it by transferring known pedophiles to other parishes where they could engage in similar behavior. The Church's and Defendant Order's acquiescence and cover-up in essence condoned the pedophile problem and allowed it to continue, thereby causing thousands of children such as Plaintiff to suffer abuse.

20. On information and belief, both before and after Plaintiff was first sexually abused by Defendant McGuire, Defendant Order and others knew or should have known of McGuire's dangerous and exploitive propensities and the risk he posed to the youth of Loyola Academy and/or that he was an unfit agent and failed to act on that knowledge. Despite its knowledge of McGuire's sexual abuse of Plaintiff and other students both before and after Plaintiff, Defendant Order allowed McGuire to remain at Loyola Academy until 1972 and represented him as a teacher in good standing, thus enabling him to retain his continued, unrestricted access to minor children. Defendant Order never advised parishioners, parents, students or law enforcement of McGuire's criminal conduct and the danger he posed to children. Nor did the Order warn Plaintiff or others of the potentially dangerous propensities of some members of its community. Defendant Order thereby increased the likelihood that Plaintiff would be harmed and would fail to obtain help.

21. Defendant Order created the misperception in the mind of Plaintiff and others that he and other children were safe with Defendant's teachers in general and with McGuire in particular. At no time during the period in question did Loyola Academy or the Order have in place a system or procedure to supervise or monitor priests' abstinence from sexual activity or pre-sexual grooming of children in order to prevent or minimize the risk of sexual contact with minors. Neither the Order nor Loyola Academy employed reasonably sufficient procedures for testing and screening priests and teachers for dangerous sexual proclivities, such as those shown by McGuire. As a result, despite the Order's knowledge of the problem of pedophilic priests in general and its specific knowledge with respect to McGuire, the Order made the youth attending Loyola Academy accessible by and vulnerable to acts of pre-sexual grooming, all of which were

done in the scope of employment or agency of the Order.

22. Further, and upon information and belief, Defendant Order and others maintained “secret files” in which they kept allegations of abuse, making it almost impossible for others within the Church community to learn of past abuse allegations directed at McGuire or other pedophile priests. As a result, despite the Order’s knowledge of the problem of pedophilic priests in general and any specific knowledge with respect to McGuire, the Order made the youth interacting with its priests accessible by and vulnerable to acts of pre-sexual grooming and abuse, all of which were done in the scope of employment or agency of the Order.

23. Defendant Order ratified the conduct of McGuire by ignoring the incidents of abuse committed by McGuire even though it was aware of the abuse and by not warning others, including law enforcement authorities, parishioners and Plaintiff and other Loyola Academy students, of McGuire’s propensity to commit sexual abuse on minor boys.

24. Further, the Order did nothing to prevent McGuire’s pre-sexual grooming process of Plaintiff and other young boys, designed to increase the already strong trust and confidence that Plaintiff, a young teen, had for McGuire. All actions taken by McGuire during this period of the pre-sexual grooming were within the scope of McGuire’s employment to the extent they provided the opportunity or environment to accomplish the sexual contact, or in the alternative, unnecessarily exacerbated the risk of the sexual contact occurring.

25. During the time period that Plaintiff attended Loyola Academy, and as a result of the affiliation Plaintiff had with the Church, the school and McGuire, a special fiduciary relationship of human, religious and spiritual trust developed between Plaintiff, McGuire and Loyola Academy, with concomitant *in loco parentis* duties, including providing a safe haven for

Plaintiff by providing for his physical and emotional care and safety. As a result of representations made by Defendant Order and because the Order held itself out as counselors and instructors on matters that were spiritual, moral and ethical, Plaintiff placed great trust in the Order so that the Order gained control and influence over Plaintiff. Defendant, by maintaining and encouraging such a relationship with Plaintiff, entered into a fiduciary relationship with Plaintiff.

26. 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 priests whom the Defendant Order promote as being celibate and chaste representatives of God on earth. Defendant Order's fiduciary relationship with Plaintiff was based upon justifiable trust on Plaintiff's side and superiority and influence on Defendants' side.

27. The local leaders of Defendant Order 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 the Plaintiff. This knowledge was not otherwise readily available. Defendant Order exercised its special or superior position to assume control of said knowledge and any response thereto.

28. 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 Defendant Order and

McGuire was compromised, inhibited or restricted by the Order.

29. Defendant had a secular standard of fiduciary duty which it breached by failing to act upon, or insufficiently acting upon or responding to, information which 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. Defendant Order 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 Amended Complaint, resulting in negative consequences to the welfare and well-being of Plaintiff.

30. As detailed elsewhere in this Amended Complaint, the acts of Defendant Order and others allowed pedophile predators, including McGuire, to perpetrate criminal acts of child sexual abuse throughout the United States for many decades. Persons controlling or directing the affairs of the Church and Defendant Order allowed this by making fraudulent representations, concealing criminal activity, obstructing justice and criminal investigations, evading civil and/or criminal liability, and by inculcating parishioners to keep their scandals secret through the guise of religious teachings and spiritual instruction and counseling.

31. By tradition, Roman Catholics, including Plaintiff, are taught to hold priests in the highest esteem as earthly representatives of God, and that priests, unlike lay people, belong to a separate and higher state in life, the so called "clerical state," 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, priests and other persons in leadership positions in the

Church have traditionally occupied a position of great trust and allegiance among the parents and youth of Illinois, including Plaintiff.

32. As part of this traditional reverence of Church clergy, Plaintiff was instructed and indoctrinated as a child to show obedience to priests and was taught to believe and did believe that it would be “sinful” or wrong to make any kind of an accusation against a priest or Bishop. Additionally, Plaintiff was instructed and believed that priests and Bishops followed their vow of celibacy and chastity and could not and would not engage in conduct considered sexual, evil or wrong. Plaintiff relied upon these teachings and incorporated them into his religious beliefs and practices. Accordingly, he believed that it would be sinful or wrong for anyone to make any kind of an accusation against a priest or Bishop and this contributed to Plaintiff’s belief that he was responsible for his psychological problems.

33. In addition, Plaintiff and others were taught and instructed that Church issues and scandals were not to be disclosed to the public at large or to law enforcement and that any such scandals were to remain strictly secret. “Good” Catholics, like Plaintiff, were taught and believed that such issues would be handled internally by the Church, including Defendant Order, and that it was un-Christian and counter to the tenants of the faith to make any public allegations against the Church or any priest. In fact, to disclose any such issues or scandals could result in excommunication. (See, for example, the Holy See’s 1962 INSTRUCTION entitled “On the Manner of Proceeding in Cases of Solicitation,” attached hereto as Exhibit A.) Plaintiff believed what he was taught by the Church. These teachings kept the wide spread problem of pedophile priests out of the public arena until recently.

34. As a result of Plaintiff's position as a minor and the aforementioned pre-sexual grooming of Plaintiff by McGuire, together with McGuire's position in the Church as a priest, holy man and authority figure, McGuire was able to have control and influence over Plaintiff. By his words and actions, McGuire represented to Plaintiff that the object of his relationship with Plaintiff was to provide friendship, counseling, comfort and advice. This representation was untrue and was intended by McGuire to deceive Plaintiff, to gain Plaintiff's trust and confidence and to obtain control over him. Plaintiff believed McGuire, justifiably relied upon him and gave him his trust and confidence. By his words and actions, McGuire assured Plaintiff that his conduct was proper and that he intended to help Plaintiff. McGuire and the Order actively concealed the wrongfulness of his exploitation, manipulation and misconduct. As a result, Plaintiff was unaware that the behavior of McGuire and the Order was wrongful until recently.

35. Plaintiff had the right to rely, and did rely, on the representations and teachings of the Church and Defendant Order including, but not limited to, representations regarding priests in general and McGuire in particular (including the representation that McGuire was a priest "in good standing"). Plaintiff also expected and believed that the Church and Defendant Order would not tolerate criminal misconduct that represented a known threat to children by any priest.

36. The Church and Defendant Order created the misperception in the mind of Plaintiff and others that he and other children were safe with priests in general and with McGuire in particular, and that, if there was conduct about which Plaintiff or her family might be concerned, it was an isolated instance of spurious misconduct which would be taken care of. In fact, Plaintiff was a victim of a known and preventable hazard that the Church, the Order and McGuire created and allowed to continue.

37. Because of his age, immaturity, religious and spiritual upbringing, the sexual pre-grooming of Plaintiff by McGuire, and the continual failure of any Order representative or other Catholic official aware of the abuse to help Plaintiff, it never occurred to Plaintiff until recently that any teacher at Loyola Academy or the Order would engage in criminal behavior, or knowingly actively be involved in a conspiracy to conceal criminal behavior. Even after McGuire had sexually molested him, due to his feelings of self-blame and guilt, Plaintiff assumed that there was something wrong with him rather than McGuire or the Order. Because of his feelings of self-blame and guilt, Plaintiff was unaware that what McGuire had done to him constituted sexual abuse or that he was injured as a result of the abuse. Defendant Order knew of McGuire's misconduct and the overall problem of pedophile behavior in the Church and the Order but failed to inform Plaintiff, anyone else within the Catholic community or the criminal authorities of McGuire's actions. As a result, Plaintiff was unable to understand the wrongfulness and illegality of McGuire's abuse of him and the related injury until recently.

38. The applicable statutes of limitations are tolled because the Order and others fraudulently concealed McGuire's exploitation and misconduct from law enforcement officials, Plaintiff, Plaintiff's family and others within the community. Upon information and belief, in an attempt to avoid scandal in the Order and protect the reputation of the Order and Church at any cost, Defendant Order concealed the nature of McGuire's abuse by denying the wrongfulness of McGuire's behavior, concealing the wrongfulness of his behavior from Plaintiff, and by improperly retaining McGuire as a priest and spiritual advisor despite being aware of McGuire's criminal conduct.

39. Such activity by the Order is consistent with the behavior of the Church officials in general when confronted with evidence of abusive behavior by priests. As noted in "A Report on the Crisis in the Catholic Church in the United States" (the "Report") released by The National Review Board for the Protection of Children and Young People (established by the United States Conference of Catholic Bishops)(attached hereto as Exhibit B): "Some bishops and other Church leaders often put what they erroneously believed to be the institutional concerns of the local Church above the concerns of the universal Church. The fear of scandal caused them to practice secrecy and concealment." (Ex. B, p. 9.)

40. Defendant Order and other Church leaders' desire to keep problems "in the family" further led to the fraudulent concealment of the criminally abusive actions of pedophiles such as McGuire. Officials of Defendant Order and the Church consistently refused to investigate and report abusive behavior. As noted in the Report: "[T]ime and again Church leaders failed to report incidents of possible criminal activity to the civil authorities." The Report further noted that "it is clear in hindsight that the Church could have prevented numerous acts of sexual abuse had its leaders reported all allegations of sexual abuse by priests to the civil authorities." (Ex. B, p. 110.) Additionally, and as specified in the Report, in numerous instances Church and Order leaders actively concealed the wrongful behavior of abusive priests such as McGuire by encouraging victims (such as the Plaintiff) and their parents to keep silent and not report the abuse.

41. Upon information and belief, after learning of McGuire's pedophilic tendencies, Defendant Order and others ratified his conduct by failing to report him to law enforcement authorities and failing to notify parishioners, members of the community and the laity after

McGuire committed the criminal acts against Plaintiff and those before and after him. Defendant Order's conduct suggested to Plaintiff that McGuire's actions were proper. Therefore, Defendant Order knew, or should have known, that its actions would silence Plaintiff, prevent him from discovering her injuries, her complaints and possible other complaints, and ultimately exacerbate him emotional distress and trauma. The Order knew Plaintiff was injured as a result of McGuire's abuse and also knew that he blamed his injuries on himself. Defendants should therefore be estopped from asserting any defense that Plaintiff's action is not timely under Illinois law because the Order and McGuire fraudulently concealed the wrongfulness of McGuire's conduct and did nothing to stop the wrongful behavior of McGuire (or other pedophiles).

42. The actions of the Church and Order leaders aggravated the harm suffered by Plaintiff and other victims and their families. As noted in the Report, the actions of the Church and Order leaders "created an atmosphere that has inhibited the healing process, and in some cases, enabled sexually abusive behavior to be repeated." (Ex. B, p 9). Defendant Order's institutional concerns and fear of scandal "caused them to practice secrecy and concealment." (Ex. B, p. 9). "Priests who engaged in sexual abuse of minors were, with distressing frequency, allowed to remain where they abused, reassigned to other parishes within the same Orders, or allowed to live in other Orders where they posed a further threat to children that predictably materialized into additional incidents of abuse." (Ex. B, p. 10). Thus, if the Order leaders had not engaged in a conspiracy to cover-up and hide the sexual abuse of minors by some of its priests, many incidents of abuse, such as that suffered by Plaintiff, might have been avoided.

43. The applicable statute of limitations is further tolled by McGuire and Defendant Order's acts of physically and mentally intimidating and threatening Plaintiff. In addition to McGuire's intimidation of Plaintiff, Defendant Order and McGuire led Plaintiff to believe that Plaintiff could trust McGuire as a benevolent and trustworthy male and spiritual advisor who cared about him. Further, and on information and belief, Defendant Order knew of McGuire's history of sexual abuse of minors but did not disclose such information to Plaintiff or others, thus deceiving Plaintiff and parishioners. The conduct of the Order and McGuire placed Plaintiff under powerful psychological duress in that this conduct caused Plaintiff to believe that he was the problem and must comply or lose the advice, counsel, attention, caring and comfort that McGuire otherwise purported to give him. McGuire's exploitation and Defendant Order's concealment placed Plaintiff under continuing duress in that it caused Plaintiff to believe that his emotional and psychological problems were unrelated to McGuire's conduct. In addition, since approximately 1966, Plaintiff has been subjected to manipulation by Defendant Order in that Defendant Order failed to disclose to Plaintiff and others that Defendant Order knew of and concealed Defendant McGuire's acts of sexual abuse of children both before and after McGuire's sexual abuse of Plaintiff. Because Defendant Order failed to disclose this information to Plaintiff, Plaintiff was unaware that he had a cause of action against Defendants until recently.

44. Due to the Defendant Order's representations, their concealment of their knowledge of McGuire's sexual molestation of children, and Plaintiff's religious teachings and beliefs, Plaintiff was further unable to appreciate (1) the wrongful nature of Defendant Order's conduct, (2) that he was a victim of sexual abuse committed upon him by McGuire, (3) that Defendant Order knew or had reason to know that McGuire was a pedophile prior to his abuse;

(4) that Defendant Order was responsible for the abuse, and (5) that the injuries he suffered were the result of the abuse.

45. Due to these same psychological coping mechanisms, Plaintiff was incapable of recognizing that he experienced injuries that were causally related to this sexual abuse. As a result, Plaintiff did not know, nor through the exercise of reasonable diligence did he have reason to know, of the fact of the injury or its causal relationship to the sexual abuse until less than two years prior to commencement of this action when Plaintiff began to make this discovery. In addition, Plaintiff did not know or have any reason to know through the exercise of due diligence that the Defendant Order knew of McGuire's prior sexual misconduct and the problem of pedophile priests in general, yet both before and after McGuire's sexual abuse of Plaintiff negligently continued to employ and failed to adequately investigate or supervise McGuire's activity at Loyola Academy.

46. As a direct result of Defendant McGuire's sexual abuse, and the negligent and wrongful conduct of Defendant Order and others, Plaintiff has suffered and continues to suffer severe and permanent emotional distress, terror, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, loss of religious faith, difficulty in practicing his religion through the church, severe psychological injury and deprivation of earning capacity, and has incurred and will continue to incur expenses for psychological treatment, therapy and counseling.

#### **FACTS APPLICABLE TO THE CONSPIRACY**

47. The Church is a hierarchal organization having its principal place of business in Vatican City, Italy. The Vatican is considered a sovereign nation enjoying all the rights and privileges of a sovereign nation. The ultimate political and religious ruler of the Church and the

Vatican is the Pope, currently Pope John Paul II.

48. Leaders in the Church, including local leaders of Defendant Order, were aware since at least the 1950's that there were a disturbing number of incidents involving sexual molestation and abuse of minor children by Roman Catholic priests.

49. Church Leaders, including local leaders of Defendant Order, were aware that child molesters (also variously characterized as pedophiles, ephebophiles and/or those with psychosexual disorders) are recidivistic, mobile, predators that usually abuse multiple victims and gravitate to activities with young persons in order to continue to molest.

50. Leaders in the Church, including local leaders of Defendant Order, were aware that the effects of sexual molestation upon children could be devastating, and knew that parishioners and potential victims were largely naive and ignorant of the reality and prevalence of pedophilia in the priesthood.

51. Leaders in the Church, including local leaders of Defendant Order, were gravely concerned about the scandal that would result if parishioners and the public at large were aware of the prevalence of pedophilia in the priesthood.

52. Since approximately the 1960s through to the present, persons controlling or directing the affairs of Defendant and others engaged in or joined in a conspiracy to intentionally, recklessly and/or negligently conceal criminal conduct of their agents, aid and abet the concealment of criminal conduct, aid and abet criminal sexual conduct, fail to report criminal conduct of their agents, obstruct justice, obstruct criminal investigation, obstruct state and/or local law enforcement, evade criminal and/or civil prosecution and liability, bribe and/or pay money to victims in Order to keep their criminal conduct secret, violate the civil rights of

children and families, engage in mail and/or wire fraud, and commit fraud and/or fraudulent inducement of their parishioners in furtherance of their scheme to protect molesting priests and other clergy from criminal prosecution, to maintain or increase charitable contributions and tuition payments and/or avoid public scandal in the Church.

53. This conspiracy was conducted by and through Defendant Order and others and directed by the Holy Roman Catholic Church (a/k/a, the Holy See).

54. Evidence of this conspiracy done by Defendant Order and others and the Holy See and of their knowledge that Roman Catholic clergy were sexually abusing children can be seen in the Holy See's 1962 INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A.) This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that it is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries." (Ex. A.) The INSTRUCTION contains explicit instructions as to how bishops and church leaders are to proceed in cases where a priest entices a penitent to engage in sexual conduct. (Ex. A.) The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73). It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.) At all points of the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret. (Ex. A.) In particular if church leaders find that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the Bishop and church leaders must keep the pertinent documents in secret archives. (Ex. A, ¶ 42.) The Vatican

INSTRUCTION also encourages Bishops and church leaders to avoid “scandal.” (Ex. A, ¶¶ 35,36, 64.) The INSTRUCTION identifies the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.)

55. As further evidence of this conspiracy, of an effort to avoid “scandal,” and that persons controlling the affairs of Defendant Order and others had knowledge that Roman Catholic clergy were sexually abusing children, in 1985, the National Conference of Catholic Bishops received a report titled “The Problem of Sexual Molestations By Roman Catholic Clergy.” This report described the continuing and growing problem of child sexual abuse by priests within the Roman Catholic Church. According to the report, if the Roman Catholic Church failed to deal with the problem of its pedophile (abuser of pre-pubescent children) and epehebophile (abuser of post-pubescent adolescents) priests and clergy, the Church could face liability in excess of \$1,000,000,000.00 over ten years. In addition, the report outlined steps that the Roman Catholic Church, through the National Conference of Catholic Bishops, must take to protect the Church and parishioners from the devastating effects of priests who molest children. In response, the National Conference of Bishops ignored the report and recommendations and, instead, continued actions, which allowed molesting priests to continue their actions. Upon information and belief, Defendant Order and others engaged in the wrongful activity described above in Order to protect financial interests in addition to protecting priests engaged in child molestation and other clergy protecting those priests from criminal prosecution and the other aspects of the scheme described above.

56. In that same report, the reporter cautioned the National Conference of Catholic Bishops to resist the practice by some to sanitize or purge the secret files of potentially dangerous material. In addition, the reporter warned the National Conference of Catholic Bishops that their practice of moving files containing potentially dangerous material to the Papal Apostolic Delegate, where the files would be immune from subpoena, could ultimately destroy the immunity enjoyed by the Holy See. These warnings were not heeded.

57. In furtherance of its scheme and enterprise to protect molesting priests and other clergy from criminal prosecution, maintain or increase charitable contributions and tuition payments and/or avoid public scandal in the Roman Catholic Church, persons controlling or directing the affairs of Defendant and others, intentionally and fraudulently engaged in the routine practice of maintaining secret "*sub secreto*" archival files of sexual misconduct by priests. These *sub secreto* files were and are accessible to the Bishops only. Such secret files were not reported to or made available to law enforcement authorities, or others, in Order for law enforcement to investigate the known crimes of the priests. In fact, on information and belief, the Roman Catholic Church periodically fraudulently purged files and hid them from persons, including law enforcement authorities, seeking access to them.

58. As evidence of this fraudulent practice and its widespread use, in 1990, in an address by Bishop A. James Quinn to the National Conference of Catholic Bishops titled "NCCB Guidelines, and other Considerations in Pedophilia Cases," Bishop Quinn stated:

Nevertheless, personnel files should be carefully examined to determine their content. Unsigned letters alleging misconduct should be expunged. Standard personnel files should contain no documentation relating to possible criminal behavior. Serious moral questions, signed allegations, those should be a part of the secret file anyhow. But they still subpoena them. But comb

through your files.

Now, when files have been subpoenaed, they cannot be tampered with; destroyed, removed; that constitutes obstruction of justice and contempt of court. Prior, however, thought and study ought to be given if you think its going to be necessary; if there's something there you really don't want people to see you might send it off to the Apostolic Delegate, because they have immunity to protect something that is potentially dangerous, or that you consider to be dangerous, you might send it there.

The Apostolic Delegate is the delegate from the Vatican and Holy See, which the Church contends enjoys sovereign immunity from lawsuits and subpoenas.

59. In furtherance of this conspiracy, the Church, including Defendant Order, have misrepresented, concealed and suppressed the existence of the problem of pedophile priests from parishioners and the public at large by suggesting that priests that were transferred because of credible allegations of sexual molestation or were in treatment due to sexual misconduct, were "on leave," on "retreat," on "sabbatical" and/or participating in "advanced studies."

60. Leaders in the Church, including local leaders of the Order, were gravely concerned about the scandal that would result if students, their families and the public at large were aware of the prevalence of pedophilia and sexual exploitation at Catholic schools, including those in the Order. When credible evidence of sexual molestation by a priest was brought to the attention of the Church, including Defendant Order, they represented to victims and their families that such molestation was an isolated incident and that the problem would be "taken care of" by the Church. In fact, Church leaders, including local leaders of Defendant Order, secretly colluded and conspired to conceal all such offenses using whatever means necessary including but not limited to transferring the offending priests to other assignments without informing: the victims

or their families that the priests would continue in ministry; parishioners or subsequent supervisors of the molestation or the reason for the transfer; and law enforcement or the general public about the offending priests' pedophile activities. Further, those offending priests which were removed from their assignments or suspended for misconduct were continuously listed in official Catholic Directories by euphemism, such as "absent on leave," "on duty outside Order," "advanced studies," "on special assignment" or "retired." Maintaining that they viewed sexual assaults of children by priests as moral failings, the Church, including Defendant Order, professed to be saddened by such activity and claimed that at all times they took appropriate steps to detect and prevent such activities. In fact, to protect their reputations and income, the Church and Defendant Order treated the sexual molestation of children by priests as scandal that was to be suppressed at any cost, despite knowing that suppression put the minor children of the Defendant Order at grave risk.

61. The Church, including local leaders of Defendant Order, deliberately adopted a policy of public deception. It was and is the policy and practice of the Church and Defendant Order to secrete the identities, retain the services of, and protect sexual offenders who are or had been Roman Catholic priests incardinated to and functioning within the Defendant Order over whose conduct the Defendant Order had control, and for whom Defendant Order was responsible in a master to servant relationship.

62. The Church and Defendant Order purposely suppressed the identity of sexual offenders to prevent the filing of both criminal and civil complaints in courts of competent jurisdiction, thus enabling further criminal conduct by those sexual offenders, while preventing the diminution of the flow of donated funds to the Church and Defendant Order.

63. As a result of the acts of persons controlling or directing the affairs of Defendant Order and others, priests, including McGuire, were allowed to perpetrate criminal acts of child sexual abuse throughout the United States over at least a 30-year period of time. Persons controlling or directing the affairs of Defendant Order and others maintained this web by making fraudulent representations, concealing criminal activity, obstructing justice and criminal investigations, evading civil and/or criminal liability, and by payment of money to victims in order to keep their criminal conduct secret, violating civil rights of children and families.

64. As a direct result of the sexual abuse and sexual exploitation, Plaintiff has suffered and continues to suffer severe and permanent emotional distress, resulting in physical manifestations, embarrassment, loss of self-esteem, humiliation and psychological injuries, was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, and has incurred and will continue to 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 I: VICARIOUS LIABILITY**

Plaintiff incorporates paragraphs 1 through 64 of this Amended Complaint as if fully set forth under this count and further alleges:

65. From approximately fall 1966 through early 1968, McGuire repeatedly engaged in intermitted, exploitative and harmful sexual contact upon the person of Plaintiff. Defendant Order ordained McGuire and in so doing granted him facilities to perform as a priest, teacher, spiritual leader and counselor within Defendants Order and held McGuire out to the community as a fit and competent agent of the Order. At all times material, McGuire was employed by

and/or was an agent of Defendant Order and was under its direct supervision and control when he negligently performed his duties and committed the wrongful acts described herein. McGuire committed the acts alleged within the apparent authority arising from his agency.

66. As alleged and described herein, the sexual abuse of Plaintiff and the concealment of McGuire's sexual abuse was undertaken while McGuire was a managing agent of Defendant Order, while in the course and scope of McGuire's employment with Defendant Order, and/or was ratified by Defendant Order. McGuire accomplished the sexual abuse and its concealment by virtue of his job-created authority as a teacher, spiritual leader and counselor within the Order.

67. McGuire was acting at least in part to serve the interests of the Order when he committed the sexual abuse and when the abuse was concealed from the Plaintiff. Specifically, McGuire was acting as a teacher and counselor, as well as using the trust, power and authority of the position granted, while he was with Plaintiff. Simultaneously, McGuire used that same power and authority to gain Plaintiff's confidence and trust, to sexually abuse him and to conceal the abuse.

68. By using his position as a teacher and counselor within Defendant Order and the trust, power and authority the position conferred on him, McGuire purported to act for/or speak on behalf of Defendant Order when he committed the tortuous acts (including the concealment of the abuse) alleged herein. Plaintiff further relied upon McGuire's apparent authority to act on behalf of the Order.

69. McGuire would not have been able to commit the sexual abuse alleged herein were he not given the authority to act as a teacher and counselor by Defendant Order under its direct supervision. McGuire conducted his tortuous conduct during his agency relationship with the

Order and while providing education and counseling to Plaintiff. Accordingly, Defendant Order is liable for the negligent and wrongful conduct of McGuire under the laws of vicarious liability, including the doctrine of respondeat superior.

70. As a direct result of this sexual abuse, Plaintiff has suffered the injuries and damages described herein.

WHEREFORE, Plaintiff demands judgment against Defendant Order in an amount in excess of \$50,000, plus costs, disbursements, reasonable attorney's fees, interest and such other relief as the court deems just and equitable.

#### **COUNT II: BREACH OF FIDUCIARY DUTY**

Plaintiff incorporates Paragraphs 1 through 64 of this Amended Complaint as if fully set forth in this count and further alleges:

71. As described more fully above, by holding Loyola Academy out as a safe and secure environment, and by undertaking the religious and educational instruction and spiritual and emotional counseling of Plaintiff, Defendant Order entered into a fiduciary relationship with the minor Plaintiff. Defendant Order breached its fiduciary duty to the Plaintiff by engaging in the negligent and wrongful conduct described herein.

72. As a direct result of Defendant Order's conduct, Plaintiff has sustained and continues to sustain the injuries and damages described herein.

WHEREFORE, Plaintiff demands judgment in an amount in excess of \$50,000, plus costs, disbursements, reasonable attorney's fees, interest and such other relief as the court deems just and equitable.

### **COUNT III: NEGLIGENCE**

Plaintiff incorporates Paragraphs 1 through 64 of this Amended Complaint as if fully set forth in this count and further alleges:

73. Defendant Order by accepting minor parishioners and holding Loyola Academy out as a place of safety, guidance, healing, refuge and support and by holding McGuire out as a fit agent, agreed to and did undertake to provide for the supervision, care and physical safety of Plaintiff. As such, Defendant Order owed Plaintiff a duty to provide for the supervision, care, and physical safety of Plaintiff in a reasonable manner, including the obligation to inform Plaintiff of McGuire's known dangerous propensities.

74. Defendant Order, by and through its agents, servants and employees, knew or should reasonably have known of McGuire's dangerous and exploitative propensities as a child sexual abuser and/or an unfit agent. Defendant Order further knew of the worldwide problem of pedophile priests within the Church and the Order. Prior to the time that McGuire abused Plaintiff, Defendant Order knew or should have known that McGuire was sexually abusing another student at Loyola Academy. Despite such knowledge, Defendant Order negligently retained and/or failed to supervise McGuire in his position of trust and authority as a priest, counselor and teacher, where he was able to commit the wrongful acts against Plaintiff.

75. Defendant Order failed to provide adequate warning to Plaintiff and his family of McGuire's dangerous and exploitive propensities. Further, Plaintiff was unaware of his cause of action because Defendant Order concealed its knowledge of McGuire's history of abuse.

76. Defendant Order breached its duty of care by exposing the minor Plaintiff to unsupervised contact with McGuire, wherein he was able to sexually abuse Plaintiff.

As a direct result of this negligent conduct, Plaintiff has sustained and continues to sustain the injuries and damages alleged herein.

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

#### **COUNT IV: FIDUCIARY FRAUD**

Plaintiff incorporates Paragraphs 1 through 64 in this Amended Complaint as if fully set forth in this count and further alleges:

77. By holding Loyola Academy out as a safe and secure environment, and by undertaking the religious and educational instruction and spiritual and emotional counseling of Plaintiff, Defendant Order entered into a relationship of influence and superiority over Plaintiff. This relationship caused Plaintiff to maintain confidence in Defendant's actions. Thus, Defendant Order entered into a fiduciary relationship with Plaintiff.

78. Further, and as detailed elsewhere in the Amended Complaint, by holding itself and its agents such as McGuire out as leaders, holy figures and representatives of the Catholic Church, Defendant Order solicited, accepted and/or entered into a relationship with Plaintiff whereby Defendant Order held a position of power and control over Plaintiff. This relationship caused Plaintiff to maintain confidence in Defendant Order's actions. Plaintiff entrusted his health, welfare and safety to Defendant Order because of Defendants' position of power and control and religious teachings, thus resulting in a fiduciary relationship between Defendant Order and Plaintiff.

79. As a fiduciary to Plaintiff, the Order had a duty to Plaintiff to obtain, warn and disclose information relating to sexual misconduct and other inappropriate behavior of McGuire.

80. On information and belief, Defendant Order and others had actual or constructive knowledge of McGuire's negligent and wrongful behavior both prior to and during Plaintiff's enrollment at Loyola Academy. Defendant Order, however, misrepresented, concealed, failed to investigate, failed to warn and/or failed to disclose information relating to sexual misconduct and other inappropriate behavior of McGuire.

81. Plaintiff justifiably relied upon Defendant Order for information, assistance and guidance relating to sexual misconduct and other inappropriate behavior of McGuire.

82. Defendant Order intended to conceal or failed to disclose information relating to McGuire's sexual misconduct and other inappropriate behavior.

83. Had Plaintiff been aware of the information described above, Plaintiff would have acted differently.

84. As a direct result of Defendant Order's conduct, Plaintiff has sustained and continues to sustain the injuries and damages described herein.

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

#### **COUNT V: FRAUDULENT CONCEALMENT**

Plaintiff incorporates Paragraphs 1 through 64 of this Amended Complaint as if fully set forth in this count and further alleges:

85. As described more fully above, Defendant Order, by accepting minor parishioners and holding Loyola Academy out as a place of safety, guidance, healing, refuge and support and

by holding McGuire out as a fit agent, agreed to and did undertake to provide for the supervision, care and physical safety of Plaintiff. As such, Defendant Order owed Plaintiff a duty to provide for the supervision, care, and physical safety of Plaintiff in a reasonable manner, including the obligation both to protect Plaintiff and to inform Plaintiff of his rights once it became aware of McGuire's abuse of Plaintiff.

86. Further, and as detailed elsewhere in the Amended Complaint, by holding itself and its agents such as McGuire out as leaders, holy figures and representatives of the Catholic Church, Defendant Order solicited, accepted and/or entered into a relationship with Plaintiff whereby Defendant Order held a position of power and control over Plaintiff. This relationship caused Plaintiff to maintain confidence in Defendant Order's actions. Plaintiff entrusted his health, welfare and safety to Defendant Order because of Defendants' position of power and control and religious teachings, thus further resulting in a fiduciary relationship between Defendant Order and Plaintiff.

87. Defendant Order, by and through its agents, servants and employees, knew of McGuire's sexual abuse of Plaintiff and other students at Loyola Academy. Defendant Order further knew of the worldwide problem of pedophile priests within the Church and the Order. Further, Defendant Order knew, as specified more fully above, that Plaintiff was unaware of the wrongfulness of McGuire's conduct.

88. As described more fully above, Defendant Order knowingly deceived Plaintiff into thinking that he was to blame and at fault for his psychological problems. Defendant Order knowingly misrepresented to Plaintiff the fact that McGuire had, improperly and criminally, sexually abused Plaintiff, that it knew of McGuire's history of abuse and that Plaintiff had rights

against it and McGuire because of these actions. Defendant Order intended to induce Plaintiff's silence and prevent him from informing others, including the police or others in the Catholic community, of its wrongful conduct. Defendant Order further wanted to deceive Plaintiff by convincing him that he had no civil remedy against it.

89. Because of his youth, his religious training and teachings, the psychological effect of the abuse, and the other reasons described more fully above, Plaintiff reasonably believed the Order's representations about McGuire. Plaintiff detrimentally relied upon Defendant Order's deceit by failing to pursue a civil remedy against McGuire or Defendant Order until many years after it happened, when he first realized the nature of McGuire's abuse and the injury resulting from it.

90. As a direct result of Defendant Order's conduct, Plaintiff has sustained and continues to sustain the injuries and damages described herein.

WHEREFORE, Plaintiff demands judgment in an amount in excess of \$50,000.00 plus costs, disbursements, reasonable attorney's fees, interest, and such other relief as the court deems just and equitable

#### **COUNT VI: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

Plaintiff incorporates paragraphs 1 through 64 of the Amended Complaint as if fully set forth under this count.

91. Defendant Order's conduct described herein is extreme and outrageous.

92. Defendant Order knew that there was a high probability that its conduct would inflict severe emotional distress upon Plaintiff.

93. Defendant Order recklessly disregarded the high probability that its conduct would

inflict severe emotional distress upon Plaintiff and its conduct, did, in fact, cause Plaintiff severe emotional distress.

94. Plaintiff suffered medically significant and diagnosable distress as a result of Defendant Order's actions as set forth above.

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

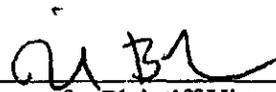
#### **COUNT VII: CONSPIRACY**

Plaintiff incorporates paragraphs 1 through 64 of the Amended Complaint as if fully set forth under this count.

95. Upon information and belief, and as detailed elsewhere in this Amended Complaint, Defendant Order and others, in concert with each other, and with the intent to conceal and defraud, conspired and came to a meeting of the minds whereby they would misrepresent, conceal or fail to disclose information relating to the sexual misconduct of Defendant Order's agents, including McGuire. By so concealing, Defendant Order committed at least one act in furtherance of the conspiracy.

96. As a direct result, Plaintiff has suffered substantial personal injury and damages described herein.

WHEREFORE, Plaintiff demands judgment in an amount in excess of \$50,000.00, plus costs, disbursements, reasonable attorney's fees, interest, and whatever relief the court deems just and equitable.

  
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