

Judge Thomas Anderle  
Department 3 SB-Anacapa  
1100 Anacapa Street  
P.O. Box 21107  
Santa Barbara, CA 93121-1107

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CIVIL LAW & MOTION  
Ernesto C vs Does 1 through 100  
Case No: 1337577  
Hearing Date: Tue Apr 20, 2010 9:30

Nature of Proceedings: Demurrer/Motion Strike

Demurrer to First Amended Complaint

Motion to Strike re First Amended Complaint

#### RULINGS

The demurrer is sustained without leave as to the 1st cause of action for public nuisance, 5th cause of action for fraudulent concealment, 11th cause of action for unfair competition; the demurrer is sustained with leave to amend as to the 6th cause of action for fiduciary/confidential relationship fraud/conspiracy, and 12th cause of action for intentional misrepresentation. The motion to strike is denied.

#### BACKGROUND

This is an action for childhood sexual abuse, asserted against the Franciscan Friars, for the abuse of plaintiff Ernesto C. at the hands of Father Dave Johnson at St. Anthony's in Santa Barbara. Several things of note happened at the 12/8/09 CMC. First, the case was ordered related to Case No. 1338070 (Craig Clover v. Franciscan Friars), and Case No. 1338630 (John Paul Saindon v. Franciscan Friars). Second, counsel agreed, and the court ordered, that initial demurrers would focus on (1) the public nuisance causes of action, (2) the B&PC § 17200/UCL causes of action, and (3) the fraud causes of action, with resolution of the remaining causes of action stayed pending the decision in Quarry v. Doe 1, California Supreme Court Case No. S171382 [issue under review is whether the Court of Appeal erred in concluding that plaintiffs were entitled to rely on the delayed discovery provisions of the statute of limitations (CCP § 340.1) for claims of childhood sexual abuse against specified non-perpetrators who knew of the abuse and had the ability to prevent it but failed to do so.]

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Plaintiffs set forth extensive general allegations, including allegations that, since the late 1950s, the Franciscans have used Santa Barbara as a dumping ground for their priests, monks, and pre-novitiate candidates accused of sex crimes against children, having sent at least 26 perpetrators to Santa Barbara following the Franciscans' expulsion from the Diocese of San Diego. At least 62 children were abused by Franciscan priests or religious brothers since 1960. The general allegations include facts showing that the Franciscans knew the perpetrators were abusing children, but concealed the crimes and shielded their members from discovery. Consequently, most perpetrators' crimes were never reported to law enforcement, they were never prosecuted, and are therefore not registered as sex offenders. Plaintiff alleges that the Franciscans have continued to reassign perpetrators once their deeds have become known, without giving any warning to the public or parishioners. Extensive specific examples of abuses and concealment are set forth. Plaintiffs allege that the state has a compelling interest in protecting childhood sexual abuse, which outweighs any privacy interests by the Franciscan perpetrators. Plaintiffs allege that the Franciscans have abused the First Amendment to protect perpetrators from criminal prosecution, in requiring any discussions of reports of abuse to be conducted in the confessional, rendering the communication penitential, and thereby avoiding the Penal Code § 11166 requirement to report suspected childhood sexual abuse.

With respect to plaintiff Ernesto C., plaintiff alleges that the Franciscans had notice of the threat his abuser (Dave Johnson) posed before he abused plaintiff. They had notice that he had abused another St. Anthony's student, Craig Clover (another plaintiff in other suit), as early as Fall 1979. The details of Ernesto's abuse by Johnson, which took place in 1980-1981, are detailed.

#### Public nuisance (1st c/a)

Incorporates general allegations, and alleges that defendants continue to conspire and engage in efforts to (1) conceal from the general public the sexual assaults committed by, the identities, and the pedophilic/ephebophilic tendencies of the Perpetrator and defendants' other pedophilic agents, (2) attack the credibility of the victims, (3) protect the perpetrator and other pedophilic/ephebophilic agents from criminal prosecution and registration as sex offenders, and (4) exploit/abuse the religious freedom protection of the First Amendment to escape their obligation to report childhood sexual abuse under PC § 11166. Defendants' negligence, deception, and concealment was/is injurious to the health of, indecent or offensive to the senses of, and an obstruction to the free use of property by, the general public, including residents of Santa Barbara County and other communities in

which defendants conducted and continue to conduct their work or ministry. Children cannot be left unsupervised in any location where agents of defendants are present, and the public cannot trust defendants to keep their pedophilic agents from having contact with children, to warn parents of the presence of the pedophilic agents, or to identify/report to law enforcement the agents accused of childhood sexual abuse, thereby creating an impairment to the safety of children. Further harm has been caused because defendants have protected/concealed the perpetrators from criminal prosecution and

registration as sex offenders, and defendants have thereafter disavowed any responsibility for perpetrators

who have subsequently left defendants' employ, resulting in their being placed in positions of trust with children even though defendants are the only ones aware of the risks posed by these perpetrators. Defendants' deception was especially injurious to plaintiff's health, as he and his family were unaware of the danger posed by defendants' agents to unsupervised children, and he was placed in the custody/control of his perpetrator. That conduct is continuing, and continues to cause injuries and damages to the general public. As a result, plaintiff was injured.

Plaintiff seeks injunctive relief prohibiting defendants from allowing their pedophilic agents from having unsupervised conduct with children, transferring them to communities whose citizens are unaware of the risks posed, failing/refusing to disclose and concealing from the public and law enforcement when they have transferred a perpetrator into their midst, failing to disclose to law enforcement or the public the identities and criminal acts of their agents, failing to disclose to the public and law enforcement the allegations of childhood sexual abuse committed by their current or former agents, and insisting that reports of acts be made only in the context of a penitential communication. Defendants should be ordered to identify each current or former agent accused of childhood sexual abuse, dates of accusation, dates of alleged abuse, locations of alleged abuse, and agents' assignment histories.

#### Fraudulent concealment (5th c/a)

Incorporates all prior allegations, and alleges that defendants knew or had reason to know of the sexual misconduct of plaintiff's perpetrator, and other pedophilic agents, but concealed that misconduct, and continued to fail to disclose information relating to sexual misconduct of plaintiff's perpetrator and other pedophilic agents. Defendants knew they concealed such information of sexual misconduct. Plaintiff justifiably relied upon defendants for information relating to sexual misconduct of the perpetrator and the other pedophilic agents. As a result, plaintiff suffered mental and physical injury.

#### Fiduciary/confidential relationship fraud/conspiracy (6th c/a)

Incorporates prior allegations, and alleges that because of plaintiff's young age, and the status of the perpetrator as an authority figure to him, plaintiff was vulnerable to him. He sought plaintiff out, and was empowered by and accepted plaintiff's vulnerability, which also prevented plaintiff from effectively protecting himself. By holding the perpetrator and other pedophilic agents out as qualified clergy, brother, instructor, counselor, administrator, teacher, surrogate parent, spiritual mentor, emotional mentor, and authority figure, and by undertaking the religious or secular instruction and spiritual/emotional counseling of plaintiff, defendants held special positions of trust and entered into a fiduciary or confidential relationship with plaintiff. Defendants therefore had the duty to disclose information related to the perpetrator's and the other pedophilic agents' sexual misconduct. Defendants knew they concealed that information. Plaintiff relied upon defendants for such information. Defendants acted in concert with each other in

concealing the information, and committed at least one act in furtherance of the conspiracy. As a result, plaintiff suffered great physical and emotional injury.

Unfair competition (11th c/a) [appears to have been abandoned by plaintiff, who has not opposed the demurrer to this cause of action.]

#### Fraudulent misrepresentation (12th c/a)

Incorporates prior allegations, and alleges that the perpetrator and defendants' other pedophilic agents held "himself" out to plaintiff as a priest, brother, instructor, counselor, administrator, teacher, surrogate parent, spiritual mentor, emotional mentor, and authority figure, and represented to plaintiff and his parents that they would counsel and guide plaintiff with his educational, spiritual, and/or emotional needs. These representations were made by the perpetrator and the other pedophilic agents with the intent of inducing plaintiff and his parents to entrust plaintiff's educational, spiritual, and physical well-being to the perpetrator and the other pedophilic agents. The perpetrator and the other pedophilic agents concealed [his] true intentions, which were to sexually molest and abuse plaintiff. Plaintiff justifiably relied on the representations. The perpetrator and other pedophilic agents were employees, agents, and/or representatives of defendants, acting within the course and scope of their employment when they made the representations to plaintiff and plaintiff's parents, and defendants are vicariously liable for the fraud and deceit of the perpetrator and other agents. As a result, plaintiff suffered great physical and emotional distress.

### JOINT ANALYSIS

#### Demurrer

Pursuant to the agreement of the parties, this demurrer addresses only the public nuisance, unfair competition, and fraud-related causes of action. The parties agreed, and the court ordered, that the resolution of all other causes of action will be stayed pending the California Supreme Court's decision in the Quarry case. The Court notes that the Quarry case is fully briefed, but has not yet been set for oral argument.

#### Unfair competition claim (11th c/a)

The court notes that plaintiff has not opposed the demurrer to the Unfair Competition cause of action. The court will deem the failure to oppose the demurrer as an acknowledgement of the propriety of the arguments made in the demurrer. In fact, the court finds defendants' analysis of that cause of action persuasive, and will sustain the demurrer to the unfair competition cause of action without leave to amend. It is clear to the court that even if the UCL applied to defendants' ministry, plaintiff has not sustained the requisite injury required to establish his standing to pursue a UCL cause of action based upon defendants' current actions in allegedly failing to warn of perpetrators' alleged prior conduct.

### Public nuisance claim (1st c/a)

The demurrer to the public nuisance cause of action will be sustained, without leave to amend. While defendants made a number of challenges to the public nuisance cause of action, the one which the Court found most persuasive, and ultimately determinative, was that based upon plaintiff's lack of standing to assert a public nuisance.

The court recognizes that the purpose of attempting to state a cause of action for public nuisance is to avoid the statute of limitations bar, should the California Supreme Court determine the Quarry case in such a manner as to require the dismissal, on statute of limitations grounds, of the causes of action in this case which have been stayed pending that decision. Should the Supreme Court determine that those causes of action remain viable, the public nuisance cause of action would likely fade into obscurity, and the focus of the parties and the court would be on the causes of action by which plaintiff could best obtain compensation for the damages he sustained by the childhood molestation.

A public nuisance is one that affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted on individuals may be unequal. CC § 3480. The term "public nuisance" comprehends an act or omission that interferes with the interests of the community or the health, comfort, or convenience of the general public. *Venuto v. Owens-Corning Fiberglas Corp.* (1971) 22 Cal.App.3d 116, 123. An individual cannot sue for public nuisance unless he alleges facts showing special injury to himself of a character different in kind, rather than degree, from that suffered by the general public. *Id.* at p. 124.

Although the statute of limitations defense has not directly been placed at issue in the demurrer, a discussion of the law aids in evaluating the cause of action. In actions brought by private citizens to recover damages for special injury caused by a public nuisance, the nuisance is characterized as either "continuing" or "permanent," and such characterization determines whether the suit is subject to the statute of limitations. If the nuisance is permanent, the three year statute of limitations applies. *Mangini v. Aerojet-Gen. Corp.* (1991) 230 Cal.App.3d 1124, 1144. However, a nuisance is generally considered a continuing nuisance if it may be abated or discontinued at any time. *Mangini v. Aerojet-General Corp.*, *supra*, 230 Cal.App.3d at 1146. An action for continuing nuisance may be brought at any time. *Bake v. Burbank-Glendale-Pasadena Airport Authority* (1985) 39 Cal.3d 862, 868-869. Every repetition of a continuing nuisance is a separate wrong for which the injured person may bring successive actions for damages until the nuisance is abated, even though an action based on the original wrong may be barred by the statute of limitations. *Phillips v. City of Pasadena* (1945) 27 Cal.2d 104, 107-108.

The discussion with respect to the statute of limitations makes clear that a plaintiff may not avoid the statute of limitations on his own long-completed claim by alleging that his

damages resulted from a continuing public nuisance, unless he is able to allege that defendants ongoing conduct continues to cause harm to him, or continues to threaten to cause him harm. Certainly, plaintiff alleges that he was actually harmed—back in 1980-1081—by the very conduct which he alleges is continuing to this day. However, he neither suffered further molestation from defendants’ conduct after that time period, nor has there been any threat of sexual molestation to him since that time. While defendants’ pervasive conduct in secreting and transferring known, accused, or suspected perpetrators of sexual abuse on minors may not have been discovered until some years later, and while such conduct is alleged to have continued to the present, plaintiff is not at risk from such conduct at this time, and has not been at risk from such conduct for many years. Under these circumstances, the court cannot see how plaintiff could possibly have retained his standing to sue for a public nuisance which no longer affects him.

By analogy, a plaintiff living next door to a polluting factory, who could successfully allege the requisite harm which differs in kind from that suffered by the general public, could potentially file his lawsuit for continuing public nuisance at any time he is still living next door to the factory, and still suffering, or in danger of suffering, that harm. However, if he moves away from the property, and no longer suffers that requisite harm which differs in kind from that suffered by the general public, he could not take advantage of the lack of a statute of limitations for continuing nuisance and sue for his original harm 10 years later, even though the factory in fact continues to operate, and public nuisance could be considered a continuing one. This Court believes that once the public nuisance no longer causes or threatens to cause him that requisite injury which differs in kind from that suffered by the general public, he no longer has standing to file suit based upon that continuing public nuisance.

#### Fraud-based claims (5th, 6th, and 12th c/a)

The demurrer to the 5th cause of action will be sustained without leave to amend; the demurrer to the 6th and 12th causes of action will be sustained with leave to amend.

Like the continuing public nuisance cause of action, the Court understands that the fraud-based causes of action were alleged in an attempt to avoid a statute of limitations bar under CCP § 340.1, should the California Supreme Court determine the Quarry case in such a manner as to require the dismissal, on statute of limitations grounds, of the remaining causes of action in this case which have been stayed pending that decision. The “delayed discovery” provisions applicable to fraud causes of action are not at issue in the demurrer.

#### Intentional misrepresentation claim.

The 12th cause of action for fraudulent misrepresentation alleges that the perpetrator and defendants’ other pedophilic agents held themselves out to plaintiff as a priest, brother, instructor, counselor, administrator, teacher, surrogate parent, spiritual mentor, emotional mentor, and authority figure, and represented to plaintiff and his parents that they would counsel and guide plaintiff with his educational, spiritual, and emotional needs. The

representations were made by the perpetrator and other pedophilic agents with the intent of inducing plaintiff and his parents to entrust plaintiff's educational, spiritual, and physical well-being to the perpetrator and other pedophilic agents. It alleges that the perpetrator and other pedophilic agents concealed their true intentions to molest and abuse plaintiff. Plaintiff justifiably relied on the representations, and the perpetrator and other pedophilic agents were acting within the course and scope of their employment when they made the representations to plaintiff and plaintiff's parents, and defendants are vicariously liable.

First, the demurrer asserts that the fraud claim is not pleaded with requisite specificity, in that the plaintiff did not plead facts to show how, when, where, to whom, and by what means the representations were tendered. In opposition, plaintiff asserts that the specific pleading rule for fraud is relaxed when defendant necessarily possesses full information concerning the facts of the controversy, or when facts lie more in the opposing party's knowledge.

The court acknowledges that, in a case such as this wherein the representation were made decades ago, precision in allegation of the "how, when, where, to whom, and by what means" facts with respect to the tender of the misrepresentations may not be entirely possible. Defendant contends that plaintiff does not identify any priest or employee who made a misrepresentation. That is not accurate. In fact, the complaint alleges that misrepresentations were made by the "perpetrator," who in the context of this case is Fr. Dave Johnson. The FAC also expressly alleges that the representations were made to plaintiff and his parents. However, while the Court understands what plaintiff is generally attempting to accomplish through his fraudulent misrepresentation cause of action, the representation by Fr. Johnson that he would "counsel and guide plaintiff with his educational, spiritual, and/or emotional needs" is so general in nature that it cannot support a claim for fraud. Given that vague representation, the court cannot determine that there is any basis to relax the specific pleading requirements of the "how, when, where" facts of the representation. Consequently, the Court will sustain the demurrer to the 12th cause of action, with leave to amend, for failure to sufficiently specifically allege the representation made to plaintiff and to his parents, and the manner in which it was made.

Second, defendants argue that the plaintiff must allege an intent by the defendant to induce the particular action which resulted in the harm, citing *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 364, and *Conrad v. Bank of America* (1996) 45 Cal.App.4th 133, 157. Defendants then assert that plaintiff failed to allege facts to support that defendants intended to induce him to submit to sexual contact, "or any other inducement," and that no facts are alleged to support that plaintiff actually and justifiably relied on an alleged misrepresentation in submitting to sexual conduct. Essentially, defendants appear to be contending that, the context of this action, the specific reliance that the perpetrators intended to induce must have been plaintiff's submission to sexual contact. The Court believes defendants are attempting to put a little too fine a point on the issue. All that *Goehring* says is that "intent to defraud, i.e., to induce reliance" is an element of fraud. *Conrad* states that defendant must intend to induce a particular act of

the plaintiff and is not liable in fraud for unintended consequences, and that it must be shown that the plaintiff actually and justifiably relied upon the defendant's misrepresentation in acting to his detriment. However, it is also true that one who deceives another with the intent to induce that other person to alter his or her position to his or her injury or risk is liable for any damages that the other person thereby suffers. CC § 1709. The required intent is the intent to induce reliance so that the person defrauded alters his or her position. *Gagne v. Bertran* (1954) 43 Cal.2d 481, 488. The defendants' intent to cause the plaintiff to suffer a particular type of damage or harm is not an element of a cause of action for fraud. *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85.

While the precise nature of plaintiff's reliance is not clearly alleged, requiring that the demurrer also be sustained with leave to amend on this basis, the court does not believe that either the intent or the reliance need be the plaintiff's submission to sexual contact. Rather, the complaint here alleges that defendant agents made the representation with the intent to induce plaintiff and his parents to entrust plaintiff's educational, spiritual, and physical well-being to the perpetrator and the other pedophilic agents, and that the perpetrator and other agents concealed their true intent, which was to sexually molest plaintiff. Plaintiff then alleges simply that he justifiably relied upon the representations. While it is not clearly alleged, it appears that the "justifiable reliance" plaintiff contends existed was his enrollment at and participation in the program of instruction at St. Anthony's Seminary. In response to the perpetrator's representations that he would counsel and guide plaintiff with his educational, spiritual, and emotional needs—apparently to induce plaintiff to come to St. Anthony's—plaintiff and his parents concluded that the Franciscans at St. Anthony's would properly counsel and guide plaintiff with his educational, spiritual, and emotional needs, in his quest to become a priest, and plaintiff was thereafter actually enrolled in and entrusted to the Franciscans operating St. Anthony's. They in fact did not appropriately counsel and guide plaintiff, and in fact he was sexually molested.

Third, the demurrer contends that, because the Franciscan Friars is a corporation, a fraud allegation against them must allege the names of the persons making the misrepresentations, their authority to speak for the corporation, to whom they spoke, what they said or wrote, and when they said or wrote it, citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. Certainly, no such allegations are made. However, while the absence of such allegations precludes a claim of the corporation's direct liability for fraud, it does not necessarily end the discussion of the Franciscans' vicarious liability for the fraud of its agents. If an agent acting within his or her actual or apparent authority gains an advantage by means of fraud, the principal is jointly liable with the agent for damages, even though the principal is innocent of personally participating in the fraud, if the principal accepts and retains the benefits that result from the transaction. *Ach v. Finkelstein* (1968) 268 Cal.App.2d 667, 677. The principal is not vicariously liable for fraud if an agent is using the principal to obtain a benefit for the agent and other parties in a transaction in which the principal will ultimately not benefit, and if the plaintiff was one of those other parties and knew that the agent's actions did not arise from the normal conduct of the agent's duties on behalf of the principal, but were designed ultimately to



benefit only the individual parties to the transaction. *Saks v. Charity Mission Baptist Church* (2001) 90 Cal.App.4th 1116, 1138-1139.

Defendants separately argue that defendants cannot be held vicariously liable for Fr. Johnson's alleged fraud, because sexual assault is outside the course and scope of a priest's duties as a matter of law, and there is no basis for imputing liability, citing *Rita M. v. Roman Catholic Archbishop* (1986) 187 Cal.App.3d 1453, 1461. The court in *Rita M.* affirmed a dismissal following the sustaining of a demurrer without leave to amend, finding that the Archbishop had no respondeat superior liability for sexual activity between a priest and a parishioner, since such conduct was not characteristic of the Archbishop of the Roman Catholic Church. The court also found there were no facts which could lead the court to conclude that the Archbishop had ratified the acts of the priests.

In response to the demurrer, plaintiff disputes the continued viability of *Rita M.*, in light of the information which has come to light in the intervening years since 1986 about the pervasive conduct of priests and brothers in sexually abusing children. Plaintiff also contends he has alleged sufficient facts to support vicarious liability, on theories that (1) the Franciscans authorized the perpetrator's conduct, (2) the Franciscans ratified the conduct, or (3) public policy dictates they should have vicarious liability responsibility. Specifically with respect to ratification, plaintiff contends that his abuser engaged in openly inappropriate conduct and abused him on a school-sanctioned camping trip, all after they had notice of abuse by that perpetrator. [Note: While the three cases were ordered related, plaintiff treats them as though they were ordered consolidated, and also provides examples of ratification for plaintiffs Saindon and Clover. Only the Ernesto C. complaint is currently before the court.] Plaintiff asserts that he can provide more specific allegations of ratification. In reply, defendant contends that (1) ratification only exists where the act ratified conferred a benefit on the employer and the agent intended to act on behalf of the principal, (2) ratification requires evidence that the principal intended to chose and adopt the act as his own, and there is no such thing as negligent ratification, (3) the employer must have had actual knowledge of the conduct, and there are no allegations of the Franciscans actual knowledge of plaintiff's abuse by the perpetrator. Defendant cites *Fretland v. County of Humboldt* (1990) 69 Cal.App.4th 1478, 1491, for the proposition that an employer's notice of prior misconduct by an employee does not serve as ratification of his subsequent assault, and that ratification must be of the subject act on which the action is based. Here, that would require sexual assault of plaintiff's sexual abuse by Fr. Johnson.

The court notes that, in the context of the fraud cause of action, it is the Franciscan's vicarious liability for the fraud of Fr. Johnson in representing (albeit inadequately) that he would "counsel and guide plaintiff with his educational, spiritual, and/or emotional needs." It is not clear to the court that the authorization or ratification needed to relate to the ultimate sexual assault of plaintiff. In any event, however, the complaint baldly alleges that the defendants "are vicariously liable for the fraud and deceit of the Perpetrator and Defendants' other agents," without further explanation. [FAC @ ¶ 87] While the allegations with respect to the Franciscans' extensive conduct in secreting and

transferring known abusers within the organization is incorporated by reference into the cause of action, and may, in fact, have some relevance to the issues of prior authorization or subsequent ratification of the abuse, that connection is not made clear. The Court will therefore sustain the demurrer to the 12th cause of action, with leave to amend, on the additional ground that plaintiff has not adequately alleged the basis for defendants' vicarious liability.

Concealment based claims.

While plaintiffs allege separate causes of action for fraudulent concealment of the sexual misconduct of the perpetrator and other pedophilic agents (5th) and fiduciary/confidential relationship fraud/conspiracy which is also based upon the failure of the defendants to disclose to plaintiff and his parents the known information related to the perpetrator's and other pedophilic agents' sexual misconduct (6th), in reality the two causes of action state but one claim. This is because there is no cause of action for fraudulent concealment unless there was a duty to disclose which, under the circumstances presented by the complaint, could only exist if there was either a fiduciary or confidential relationship between plaintiff and plaintiff's parents, and the Franciscan Friars. (A duty to disclose can also arise if a person undertakes to speak, so that the speaker is bound not only to tell the truth but also not to suppress or conceal facts within speaker's knowledge that materially qualify those stated, because one who speaks at all must make a full and fair disclosure. *Brownlee v. Vang* (1965) 235 Cal.App.2d 465, 477. The facts as alleged do not appear to invoke this rule.)

Because the 5th cause of action for fraudulent concealment makes no effort to allege the existence of a confidential or fiduciary relationship, and because its amendment to do so would render it duplicative of the 6th cause of action, the demurrer to the 5th cause of action will be sustained without leave to amend.

Defendants' demurrer contends that plaintiff cannot state a claim for fraud based on concealment, because he was not in a fiduciary relationship with defendants or with Fr. Johnson. An essential element of a claim for fraud by concealment is that there be a duty to disclose material information, and no such duty arises unless the parties stand in a fiduciary or confidential relationship. *Nussbaum v. Weeks* (1989) 214 Cal.App.3d 1589, 1594. Defendants assert that no fiduciary relationship can arise from a purely religious relationship, citing *Richelle L. v. Roman Catholic Archbishop of San Francisco* (2003) 106 Cal.App.4th 257.

In opposing the demurrer, plaintiff contends that the FAC makes clear that the confidential relationship is not premised solely upon the nature of his religious faith, and also alleges secular grounds for the existence of a confidential relationship, including the student-teacher relationship plaintiff had with the perpetrators. Defendants respond by asserting that no fiduciary relationship arises from a student-teacher relationship, citing *Jennifer C. v. Los Angeles Unified School District* (2009) 168 Cal.App.4th 1320.

The court finds that defendants' demurrer fails to meet the burden of establishing that there was no fiduciary or special relationship giving rise to a duty to disclose. The demurrer failed to fully appreciate that fiduciary and confidential relationships are not co-extensive, and did not establish as a matter of law that no confidential relationship could have existed, giving rise to the duty to disclose. As discussed by the court in *Richelle L.*, supra, 'fiduciary' and 'confidential' have been used to describe any relationship existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party. Such a relationship ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter's knowledge or consent. Fiduciary relationships are usually recognized legal relationships, whereas a confidential relationship may be founded on a moral, social, domestic, or merely personal relationship, as well as on a legal relationship. The essence of either a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party. A confidential relationship may exist even though there is no fiduciary relationship. *Vai v. Bank of America* (1961) 56 Cal.2d 329, 337-338.

While the complaint never clearly explains the structure of St. Anthony's Seminary, the court presumes from the allegations that it was a boarding institution, wherein the young boys came to live apart from their families at a relatively young age while receiving religious and other instruction, in the hopes of one day becoming priests. While it may be true that neither a solely religious relationship nor a student teacher relationship give rise to a fiduciary relationship, it is entirely possible that, under the circumstances, a confidential relationship of trust was created and existed between the young St. Anthony's students and both the Franciscan Friars, generally, and the predatory priests into whose care they were entrusted. The demurrer fails to negate this possibility.

Even so, the demurrer to the 6th cause of action must be sustained, with leave to amend, for its failure to properly allege justifiable reliance, as outlined in the discussion of the demurrer to the 12th cause of action.

#### Motion to strike

The motion to strike is denied. Defendants contend the disputed allegations were added to the complaint only for their scandal and shock value, and that they were relevant, if at all, only to the legally defective continuing public nuisance and unfair competition causes of action, and based upon their contention that these causes of action cannot be maintained, seek to have the allegations stricken from the complaint. Plaintiff responds that defendant is impermissibly seeking to defeat the public nuisance cause of action by striking the allegations necessary to its establishment, and also asserts that the allegations are necessary to other of the causes of action.

The allegations certainly have scandal and shock value; however, even though the

allegations have been drafted in a dramatic manner, it is primarily the nature of the Franciscans' underlying conduct that causes that scandal and shock value, not the manner in which the allegations are drafted. The court has not analyzed the causes of action which

are stayed, in order to determine whether the allegations are relevant to any of those claims. The mere fact that those causes of action are stayed would appear to preclude the court from doing so, rendering this motion premature. Further, the court believes that at least some of the allegations have relevance to the plaintiff's contentions—relevant at this time—that the Franciscans either authorized or ratified the conduct of Fr. Johnson. For all of these reasons, the motion to strike will be denied.