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13 **SUPERIOR COURT OF THE STATE OF ARIZONA**

14 **COUNTY OF MARICOPA**

15 Jane Doe, an individual,
16 Plaintiff,
v.
17 Roman Catholic Diocese of Phoenix, an
Arizona non-profit corporation; and Claretian
18 Missionaries USA Province a/k/a Missionary
Sons of the Immaculate Heart of Mary, an
19 Illinois non-profit corporation,
Defendants.

NO. CV2021-019628

**DEFENDANT CLARETIAN
MISSIONARIES USA PROVINCE, INC.'S
REPLY IN SUPPORT OF ITS MOTION TO
DISMISS**

(Assigned to the Honorable Timothy J. Ryan)

22 Defendant Claretian Missionaries USA Province, Inc. a/k/a Missionary Sons of the
23 Immaculate Heart of Mary, an Illinois non-profit corporation, incorrectly named as Claretian
24 Missionaries USA Province a/k/a Missionary Sons of the Immaculate Heart of Mary, an Illinois
25 non-profit corporation, (hereinafter “the Claretians”) and for its Reply in Support of its Motion to

1 Dismiss Plaintiff’s Third Amended Complaint (“TAC”) pursuant to Ariz. R. Civ. P. 12(b)(6),
2 states as follows:

3 **I. PLAINTIFF’S RESPONSE IS UNTIMELY AND FAILS TO COMPLY WITH**
4 **ARIZONA CIVIL PROCEDURE.**

5 On July 22, 2022, the Claretians filed its Motion to Dismiss requesting this Court to
6 dismiss this lawsuit based on Plaintiff’s failure to timely file her lawsuit in accordance with the
7 requirements of A.R.S. § 12-514 and H.B. 2466, and on the grounds that the Claretians cannot be
8 held vicariously liable for Fr. Salinas’s conduct. Pursuant to Rule 7.1(a)(3), Ariz. R. Civ. P.,
9 Plaintiff’s response to the motion was due on August 10, 2022. Plaintiff never requested or
10 conferred with Defendant regarding an extension to respond prior to the August 10, 2022,
11 deadline. Instead, nine days after the deadline to respond to the Claretians’ Motion had passed
12 Plaintiff filed her Motion to Extend Response Deadline to Defendant Roman Catholic Diocese of
13 Phoenix and Claretians’s Motions to Dismiss on August 19, 2022. Plaintiff’s Motion to Extend
14 failed to cite to any authority to support her request and again failed to confer with Defendant’s
15 counsel via phone, email or otherwise regarding the requested extension. Plaintiff’s failure to file
16 a response on August 10, 2022, and her failure to confer with the Claretians regarding any
17 extension of time should be construed as her consent to the granting of the Claretians’s Motion to
18 Dismiss.

19 **II. PLAINTIFF’S TOLLING AGREEMENT ARGUMENT IS A RED HERRING –**
20 **HER CLAIMS ARE TIME BARRED.**

21 Plaintiff wants this Court to believe that the tolling agreement between the parties
22 to absolves her of having to comply with Arizona law. Hardly. Plaintiff’s TAC completely fails
23 to meet the requirements set forth in the *Window Legislation*. ARS § 12-514; H.B. 2466, § 3(C).
24 To timely file her claim, Plaintiff was required to sufficiently plead her cause of action consistent
25 with Ariz. R. Civ. P. 8(a)(2) and demonstrate that the Claretians, a non-perpetrator, “knew or
26 otherwise had actual notice” of prior misconduct committed by Fr. Salinas that created an
unreasonable risk of sexual conduct or sexual contact with a minor. ARS § 12-514; H.B. 2466, §

1 3(C). Despite the standard set forth in the *Window Legislation*, Plaintiff failed to sufficiently plead
2 a proper cause of action demonstrating that the Claretians had the requisite knowledge under ARS
3 § 12-514. Because she failed to do so, her claims cannot be brought under the Window Statute
4 and are therefore untimely.

5 While Plaintiff argues that the tolling agreement renders her claim timely and that
6 this Court should interpret ARS § 12-514 broadly, she misses the deficiencies in her pleading
7 entirely. Regardless of whether Plaintiff filed her Complaint before December 31, 2020, or on
8 May 25, 2022, her TAC is riddled with insufficient allegations, conclusory statements, and
9 generalizations that do not satisfy Rule 8's or the *Window Legislation's* requirements. Arizona
10 courts will not assume the truth of "conclusions of law, inferences, or deductions that are
11 necessarily implied by well-pleaded facts, unreasonable inferences, or unsupported conclusions
12 from such facts or legal conclusions alleged as facts." *Swift Transp. Co. of Ariz. L.L.C. v. Ariz.*
13 *Dep't of Revenue*, 249 Ariz. 382, 385 (App. 2020) (citations omitted). Nor will Arizona courts
14 "speculate about hypothetical facts that might entitle the plaintiff to relief." *Cullen v. Auto-Owners*
15 *Ins. Co.*, 218 Ariz. 417, 419-20 (2008) (citation omitted).

16 Plaintiff cites to a 2018 report released by the Attorney General of the
17 Commonwealth of Pennsylvania, a behavioral analysis from the FBI, and several other unrelated
18 investigations to establish that the Claretians knew or had actual notice that Fr. Salinas had a
19 propensity to engage in child sex abuse prior to Plaintiff's incident. Compl. ¶ 27-29, 33-39. Not
20 only do these reports fail to identify and name Fr. Salinas, but they require the reader, and this
21 Court, to speculate about hypothetical facts, which Arizona Courts will not do. *Cullen*, 218 Ariz.
22 at 419-20 (citation omitted). Plaintiff's TAC consists of over generalizations and unreasonable
23 inferences that do not satisfy the knowledge required to revive her claim under the *Window*
24 *Legislation*, and if it did, the level of knowledge required would then create a windfall of claims
25 against any non-perpetrator. ARS § 12-514; H.B. 2466, § 3(C).

1 Plaintiff also attempts to rely on a lawsuit previously brought against Fr. Salinas to
2 establish that the Claretians knew of Fr. Salinas’s alleged conduct. Compl. ¶ 56. However, that
3 case involved an alleged incident that occurred in 1988, after Plaintiff’s own alleged incident in
4 1976, and is irrelevant as to whether the Claretians knew or had actual notice of any conduct by
5 Fr. Salinas in or prior to 1976. *See* the Complaint attached hereto as Exhibit A; Compl. ¶ 14.

6 Plaintiff does allege that the Claretians knew and should have known of Fr. Salinas’s
7 prior misconduct, but this falls short of “knew or otherwise had actual notice” of prior misconduct
8 committed by Fr. Salinas that created an unreasonable risk of sexual conduct or sexual contact
9 with a minor. Compl. ¶ 62, 65, 68, 74; ARS § 12-514; H.B. 2466, § 3(C). Plaintiff points out that
10 she alleges that the Claretians knew that Fr. Salinas was a pedophile once in her TAC, but this is
11 nothing more than an unsupported conclusion which is insufficient to support a cause of action.
12 Compl. ¶ 73; *Cullen*, 218 Ariz. at 419.

13 Plaintiff’s TAC lacks sufficiently well-pleaded allegations that the Claretians knew
14 or had actual notice of prior conduct committed by Fr. Salinas that created an unreasonable risk
15 of sexual conduct or sexual contact with a minor – the Plaintiff in particular. Nor does Plaintiff
16 allege how the Claretians knew of Fr. Salinas’s prior misconduct or when the Claretians learned
17 of it. As a result, Plaintiff has failed to sufficiently allege any facts to meet the standard as required
18 by the *Window Legislation* to revive her time-barred cause of action. Therefore, Plaintiff’s claim
19 is time-barred.

20 **III. THE CLARETIANS ARE NOT VICARIOUSLY LIABLE FOR FATHER**
21 **SALINAS’ ALLEGED SEXUAL MISCONDUCT.**

22 Counts I, II, III, IV, VI, and VII of Plaintiff’s TAC should be dismissed with
23 prejudice, because, as a matter of law, the Claretians cannot be held vicariously liable for Fr.
24 Salinas’s alleged criminal sexual misconduct. In Arizona, “[a]n employer is vicariously liable for
25 such acts only if the employee is acting ‘within the scope of employment’ when the accident
26 occurs.” *Engler v. Gulf Interstate Eng’g, Inc.*, 230 Ariz. 55, 57 (2012) (citation omitted). While

1 typically a question of fact, whether an employee’s tort falls within the scope of employment is a
2 question of law “if the undisputed facts indicate that the conduct was clearly outside the scope of
3 employment.” *Smith v. Am. Exp. Travel Related Services Co., Inc.*, 179 Ariz. 131, 136 (App.
4 1994).

5 To determine whether the course and scope of employment, Arizona courts look to
6 the extent to which the employee was subject to the employer’s control. *Engler*, 230 Ariz. at 57.
7 In other words, an employee is within the scope of his employment when he is “performing work
8 assigned by the employer or engaging in a course of conduct subject to the employer’s control.”
9 Restatement (Third) of Agency § 7.07(2); *See Engler*, 230 Ariz. at 58 (2012) adopting
10 Restatement § 7.07 as “the appropriate test for evaluating whether an employee is acting within
11 the scope of employment.” However, an employee’s conduct is “outside the scope of employment
12 when the employee engages in an independent course of action that does not further the
13 employer’s purposes and is not within the control or right of control of the employer.” *Engler*,
14 230 Ariz. at 58.

15 Plaintiff argues that the Claretians are vicariously liable because the alleged criminal
16 conduct was incidental to Fr. Salinas’s position and authority. To support her argument, Plaintiff,
17 relies on *State, Dept. of Admin v. Shallock* where the Arizona Supreme Court held that a
18 reasonable jury could find a managing officer’s sexual harassment of subordinate employees for
19 over a decade was “incidental” to his management duties and that the employer knew or should
20 have known about the misconduct and did nothing to stop it. *Id.* at 256-58.

21 *State, Dept. of Admin* is contrary to the facts in this case. For example, Fr. Salinas
22 was not the director or manager of Queen of Peace, nor did he have managerial duties or any
23 apparent care duties to or at Queen of Peace. Compl. ¶ 43; *See* Ex. 3 and 4 to Compl. Instead, Fr.
24 Salinas was the director of Mount Claret where he was assigned to perform his work, not at Queen
25 of Peace. Compl. ¶ 43, 45-46, 50-51; Ex. 3 to Compl. Any alleged criminal conduct committed
26

1 by Fr. Salinas while at a church that he was not assigned to could not have been incidental to his
2 employment with the Claretians.

3 Second, the court in *State, Dept. of Admin* applied Section 229 of the Restatement
4 (Second) of Agency; however, the Arizona Supreme Court subsequently adopted Restatement §
5 7.07(2) as “the appropriate test for evaluating whether an employee is acting within the scope of
6 employment.” *See Engler*, 230 Ariz. at 58. Under this test, an employer is not vicariously liable
7 when the act “occurs within an independent course of conduct not intended by the employee to
8 serve the purpose of the employer.” Restatement (Third) of Agency § 7.07(2); *See Engler*, 230
9 Ariz. at 58. This is because, “[a]n independent course of conduct represents a departure from, not
10 an escalation of conduct involved in performing assigned work or other conduct that an employer
11 permits or controls.” *Id.* The undisputed facts show that the alleged criminal conduct occurred
12 outside the control of the Claretians and independent from the scope of his employment, as a
13 matter of law, for several reasons.

14 First, when the alleged incident occurred, Fr. Salinas was the director of Mount
15 Claret where he was assigned to perform his work. Compl. ¶ 43, 45-46, 50-51; Ex. 3 to Compl.
16 Fr. Salinas was also the director of the Mount Claret Cursill Center in Phoenix, not Queen of
17 Peace. *See* Ex. 2 and 3 to Compl. There are no allegations that Fr. Salinas was at Queen of Peace
18 to further his mission and duties as directed by the Claretians. Plaintiff’s premises liability claim
19 against the Diocese supports this conclusion that the Claretians were not directing Fr. Salinas at
20 the time of the alleged conduct.

21 Even if this Court were to find that such managerial or supervisory duties come
22 along with Fr. Salinas’s position as a director of the Cursillo Movement, Plaintiff’s TAC lacks
23 any allegations asserting that the alleged incident occurred during one of the Cursillo Movement
24 workshops. Moreover, although Plaintiff’s TAC contains a typo regarding the correct
25 identification of Fr. Salinas, it is clear that any involvement with the Cursillo Movement was done
26

1 during one's own "free time." Compl, ¶ 47; Ex. 5. Therefore, the alleged criminal conduct was
2 not incidental to his employment with the Claretians.

3 Instead, the alleged criminal conduct was independent from his assigned work that
4 the Claretians permitted or controlled. "When an employee commits a tort with the sole intention
5 of furthering the employee's own purposes, and not any purpose of the employer, it is neither fair
6 nor true-to-life to characterize the employee's action as that of a representative of the employer."
7 *Id.* This is because, "[w]here the employee is acting solely on his own behalf and not in concert
8 with his employer, no vicarious liability will attach." *Pruitt v. Pavelin*, 141 Ariz. 195, 205 (App.
9 1984).

10 It is clear that the alleged criminal conduct occurred while Fr. Salinas was acting
11 solely on his own behalf. For example, Plaintiff's father took her to Queen of Peace to be
12 supervised during the week and on weekends. Compl. ¶ 51. On the day he dropped Plaintiff off,
13 Fr. Salinas told her father "that he would *personally supervise her.*" *Id.* (*Emphasis added*). Fr.
14 Salinas was assigned to Mount Claret, not Queen of Peace. As a result, Fr. Salinas's promise to
15 personally supervise Plaintiff was done so on his own behalf and not in concert with his assigned
16 duties. Moreover, the tort occurred after making this personal independent promise with the sole
17 intention of furthering his own alleged interests as criminal conduct involving a minor cannot be
18 reflective any purpose of the Claretian's.

19 Finally, to timely file her claims, the Window Legislation requires Plaintiff to
20 demonstrate that the Claretians had knowledge or actual notice of Fr. Salinas's sexual misconduct
21 with a minor. However, if this Court were to deny the Claretians's Motion to Dismiss on the
22 grounds that it cannot be held vicariously liable, this Plaintiff, and those after her, would be able
23 to use a vicarious liability claim as a trojan horse to avertedly defeat having to meet the required
24 standard set forth in the Window Legislation.

25 The undisputed facts show that Fr. Salinas's alleged criminal conduct was
26 independent from his employment with the Claretians, and not subject to the Claretians's control

1 when the incident occurred at a church he was not assigned to or had an apparent authority to act
2 within the scope of his duties. Therefore, vicarious liability should not attach to the Claretians as
3 a matter of law, and Counts I, II, III, IV, VI, and VII of Plaintiff’s TAC should be dismissed with
4 prejudice.

5 **IV. NO SPECIAL RELATIONSHIP EXISTED BETWEEN PLAINTIFF AND THE**
6 **CLARETIANS THAT ESTABLISHED A FIDUCIARY DUTY.**

7 Count VII should be dismissed with prejudice, because a fiduciary relationship did
8 not exist between Plaintiff and the Claretians. Plaintiff alleges that a special relationship between
9 her and the Claretians gave rise to a fiduciary relationship, because she was dropped off at Queen
10 of Peace by her father on a daily basis. Compl. ¶ 51, 97-98, 101. However, the two cases that
11 Plaintiff relies on to support her argument only reinforce the Claretians’s position for dismissal of
12 Count VII.

13 In *Doe v. Holy See (State of Vatican City)*, the plaintiff brought a breach of fiduciary
14 duty claim against the defendant churches. 17 A.D.3d 793 (N.Y. App. Div. 3d Dep’t 2005). Aside
15 from the plaintiff’s claims being time-barred pursuant to the statute of limitations, the *Holy See*
16 court stated that where “a parishioner plaintiff seeks to establish the existence of a fiduciary
17 relationship with an institutional church defendant, the plaintiff may not merely rely on the
18 church's status in general, but must come forward with facts demonstrating that his or her
19 relationship with the institution was somehow unique or distinct from the institution's relationship
20 with other parishioners generally.” *Id.* at 795. The court then dismissed plaintiff’s fiduciary duty
21 claim for failing to demonstrate the existence of a fiduciary relationship between plaintiff and the
22 churches that was unique and distinct from the defendant’s relationships with other parishioners.
23 *Id.* at 795-76.

24 Also, in *Marmelstein v. Kehillat New Hempstead*, the plaintiff brought a breach of
25 fiduciary duty claim for misconduct while the priest acted as the plaintiff’s counsel, advisor, and
26 therapist. 892 N.E.2d 375, 377 (N.Y. 2008). The *Marmelstein* court dismissed the plaintiff’s claim
for failing to sufficiently demonstrate that a fiduciary relationship was developed. *Id.* at 379.

1 Similarly, this Court should dismiss Plaintiff's fiduciary duty claim on the grounds
2 that Plaintiff is asking Arizona to adopt a standard that has not even been recognized by the cases
3 she relies on. Even under this standard, the Claretians's did not exert control or dominance over
4 the Plaintiff at the time of the criminal conduct, nor does Plaintiff allege sufficient facts that are
5 unique and distinct from the defendants' relationships with other parishioners. *Holy See (State of*
6 *Vatican City)*, 17 A.D.3d at 795-76.

7 As stated above, the Claretians's assigned Fr. Salinas to Mount Claret, not Queen
8 of Peace, and submit that any alleged conduct occurred outside of the Claretians's control.
9 Moreover, the Claretians did not know that Fr. Salinas could possibly be asserting such control
10 because the Claretians did not assign him to Queen of Peace to supervise children. Compl. ¶ 51.

11 There is no reason for this Court to change course and recognize and create a new
12 fiduciary duty owed by a church to a parishioner or even more tenuously between a mission and
13 parishioner of another church. Therefore, this Court should dismiss Count VII with prejudice.

14 **V. JOINDER**

15 In addition to the authorities and arguments set forth herein, the Claretians join in
16 the arguments and supporting authorities provided by the Diocese of Phoenix in its reply in
17 support of its Motion to Dismiss. This joinder is intended to apply only to those claims that
18 Plaintiff has asserted against both the Diocese and the Claretians.

19 **VI. CONCLUSION**

20 For the reasons set forth above, the Claretians respectfully requests this Court to
21 dismiss Plaintiff's Third Amended Complaint, including Plaintiff's claim for punitive and
22 exemplary damages with prejudice.

1 DATED this 19th day of September, 2022.

2 JONES, SKELTON & HOCHULI P.L.C.

3
4 By /s/ Chelsey M. Golightly

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EXHIBIT A

MICHAEL K. JEANES
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Description	Qty	Amount
CASE# CV2006-051833		
CIVIL NEW COMPLAINT 001		245.00
TOTAL AMOUNT		245.00
Receipt# 00008008263		

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

1) DANIEL SEARS, a single man,

Plaintiff,

vs.

2) THE ROMAN CATHOLIC
CHURCH OF THE DIOCESE OF
PHOENIX, a Corporation Sole, by
and through Bishop Thomas J.
Olmsted, his Predecessors and
Successors;

3) BISHOP THOMAS O'BRIEN, a
single man;

4) FATHER MARCEL H. SALINAS, a
single man;

5) ST. TIMOTHY'S CATHOLIC
CHURCH;

6) JOHN and JANE DOES I-X; and

7) BLACK ENTITIES I-X,

Defendants.

Case No. CV2006-051833

COMPLAINT

Plaintiff, by and through the attorney undersigned, for his claim for relief against
the Defendants alleges as follows:

1
2 **PARTIES**

3 1. At the time of the events alleged, Plaintiff was a resident of, and still
4 resides in the state of Arizona.

5 2. The events and acts alleged below, out of which this action arises, occurred
6 in various counties of Arizona, one of which is Maricopa County.

7 3. Defendant Roman Catholic Church of the Diocese of Phoenix (“Diocese of
8 Phoenix”) is a corporation solely consisting of and headed by the Bishop. The governing
9 Bishop of the Phoenix Diocese during the relevant times at issue in this Complaint was
10 Bishop Thomas O’Brien, former governing Bishop of the Diocese of Phoenix, who has
11 been given immunity from certain criminal charges by the Office of the Maricopa County
12 Attorney. Currently, Bishop Olmstead is the governing Bishop of the Diocese of
13 Phoenix. The Diocese of Phoenix is incorporated in the State of Arizona. Defendant
O’Brien is a resident of Arizona.

14 4. Father Marcel Salinas is, upon information and belief, a single man.

15 5. Defendant St. Timothy’s Church was and is owned and controlled by the
16 Diocese of Phoenix. St. Timothy’s is located in the town of Mesa, Maricopa County,
17 Arizona. At the time of the events at issue, Defendant Marcel Salinas was a priest
18 assigned to St. Timothy’s Church by the Diocese of Phoenix during all times alleged in
this Complaint.

19 6. Defendants John and Jane Does I-X, on information and belief, are
20 married and residing in Maricopa County, Arizona, and at all times relevant hereto
21 were acting in furtherance of their marital communities. Said Defendants have, upon
22 information and belief, helped to cause the incidents alleged herein. The true names
23 of John and Jane Does I-X are not known but will be provided to this Court as they are
24 learned.

25 7. Defendants Black Entities I-X, on information and belief, are entities which
operate in and have substantial ties to Maricopa County, State of Arizona. Said

1 Defendants have, upon information and belief, helped to cause the incident or accident
2 alleged herein. The true names of Black Entities I-X are not known but will be provided
3 to this Court as they are learned.

4 **JURISDICTION**

5 8. The amount in controversy exceeds the jurisdictional threshold of this
6 Court.

7 9. Beginning on or about 1988 and through approximately 1989, Defendants
8 caused an event or events to occur in Maricopa County upon which this action is based.
9 As such, venue is proper in the Superior Court in and for Maricopa County.

10 **GENERAL ALLEGATIONS**

11 10. Plaintiff, Daniel Sears, was born on November 20, 1979. As a child, he
12 and his family attended St. Timothy's Catholic Church in Mesa, Arizona.

13 11. One of the priests assigned to St. Timothy's Church during approximately
14 1988 to 1989 was Father Marcel Salinas.

15 12. When Plaintiff was approximately nine (9) years old, beginning on or about
16 1988, at the conclusion of church services, Defendant Salinas would ask Plaintiff to stay
17 behind to assist him with carrying various items back to his office.

18 13. On two separate occasions, once Plaintiff was in Defendant Salinas' office,
19 Defendant Salinas would get on his knees and rub Plaintiff in Plaintiff's crotch area,
20 telling Plaintiff that he had to pray for his penis because it was the devil's tool.

21 14. These events caused serious and debilitating emotional and psychological
22 distress upon Plaintiff. He subconsciously repressed many of these memories.

23 15. Plaintiff was only one of several or many victims of Defendant Salinas.

24 16. Upon information and belief, Defendant O'Brien, the Bishop of the Diocese
25

1 of Phoenix, knew or should have known of Salinas' propensities and behavior with boys
2 but did not report Salinas' criminal acts to the police, did nothing to investigate Salinas'
3 activities at St. Timothy's and identify his victims, did nothing to attempt to mitigate the
4 serious damage done to Plaintiff and other members of St. Timothy's who were Salinas'
5 victims, did nothing to protect other children from being endangered by his conduct, and
6 did nothing to ensure that Salinas did not molest other boys when he was transferred to
7 other parishes.
8

9 17. Upon information and belief, Salinas continued to molest minor boys at the
10 other parishes to which he was transferred.
11

12 18. Upon information and belief, the Diocese of Phoenix knew of these
13 molestations and continued its pattern and practice of transferring Salinas from parish to
14 parish when his acts threatened to become public. The Diocese of Phoenix continued to
15 fail to notify the police, to investigate Salinas' activities, to protect other boys from
16 Salinas, and to do anything to mitigate or help Salinas' past victims even after it
17 repeatedly received evidence of Salinas' propensities.
18

19 19. Plaintiff and his parents continued to be parishioners at St. Timothy's and
20 Plaintiff continued activities within St. Timothy's Church.

21 20. The manner in which the Diocese of Phoenix dealt with Salinas' sexual
22 improprieties and his victims followed the same pattern and practice that the Diocese of
23 Phoenix has followed in dealing with other priests accused of sexual improprieties and
24 their victims; namely, protecting pedophilic priests and concealing their pedophilia.
25

21. Defendant Diocese of Phoenix had a pattern and practice of ratifying,

1 concealing and failing to report or investigate the criminal activities of the priests
2 employed by them or associated with them. Said Defendant had a policy of protecting
3 the priests and avoiding, at all costs, any consequences to the church. The Defendants
4 had a pattern and practice of not fully investigating the sexual crimes of the priests and
5 identifying their victims. Many victims went undetected. The Defendants followed the
6 pattern, practice and mandate of all of the entities or associated entities of the Roman
7 Catholic Church, to conceal from the public and the parishioners any knowledge of
8 inappropriate, unsafe or criminal activities of priests, including sexual abuse of minors,
9 and to protect those priests and the church. This pattern and practice may be ongoing to
10 this day.
11
12

13 22. Consistent with that pattern, the Diocese and other Defendants never reported
14 Salinas to the police, investigated Salinas or attempted to identify Salinas' victims to
15 ensure that they obtained necessary help to address the problems caused by Salinas'
16 molestations.
17

18 23. The acts of Salinas were foreseeable and expected, and the resulting damage
19 to Plaintiff and his family was foreseeable and expected. The activities of all Defendants
20 caused the Plaintiff to suffer serious physical and emotional harm and distress, including
21 posttraumatic stress disorders, which have continued through to the present day. Plaintiff
22 has incurred and continues to incur healthcare expenses, counseling expenses, has lost
23 vocational opportunities and has endured continuing emotional pain and suffering and
24 disruption of his life.
25

24. The Defendants, and each of them, acted in concert and as the agents of one

1 another in the acts alleged herein. The Defendants were part of a conspiracy to keep
2 sexual improprieties of priests a secret from the public and parishioners and to protect the
3 church and priests at all costs. Because of this conspiracy between the Defendants,
4 Salinas was allowed to molest minors, including Plaintiff, and no help was ever offered to
5 his victims even though Defendants knew or should have known of Salinas' propensities.
6

7 25. The acts of each of the individual Defendants were done within the scope of
8 their authority with their employing entities, or incidental to that scope of authority, were
9 acquiesced in, affirmed and ratified by those entities.
10

11 26. Defendants were successful until recently, when Plaintiff read an article on
12 sexual abuse by priests, which caused the memories of what Salinas had done to him to
13 come back. Plaintiff was unable to understand the nature and cause of his injuries until
14 that time.
15

16 27. As a direct and proximate result of Salinas' and the other Defendants'
17 conduct, Plaintiff has suffered physical and extreme emotional harm.
18

19 28. Defendants' wrongful conduct was guided by evil motives or willful or
20 wanton disregard of the interests of Plaintiff. Defendants consciously pursued a course of
21 conduct knowing it created substantial risk of significant harm to Plaintiff.
22

23 29. Defendants' criminal and wrongful conduct was clearly demonstrated when on
24 May 3, 2003, now former Bishop Thomas J. O'Brien and the Roman Catholic Diocese of
25 Phoenix entered into an agreement with the State of Arizona by and through the
Maricopa County Attorney Richard M. Romley. That agreement specifically provided
that:

1 . . . the investigation developed evidence that Thomas J. O'Brien failed to
2 protect the victims of criminal sexual misconduct of others associated with
3 the Roman Catholic Diocese of Phoenix. . . .

4 It further provided, in part, that:

5 . . . Thomas J. O'Brien . . . allowed Roman Catholic priests under his
6 supervision to have contact with minors after becoming aware of allegations
7 of criminal sexual misconduct . . . [and] transferring offending priests to
8 situations where children could be further victimized. . . .

9 **FACTUAL BACKGROUND**
10 **RACKETEERING INFLUENCE AND CORRUPT ORGANIZATION ACT**
11 **COUNT**

12 30. Plaintiff incorporates and realleges each and every previous allegation above
13 as though fully set forth herein.

14 31. The relationship among Defendants, the Roman Catholic Church of the
15 Diocese of Phoenix, Bishop Thomas O'Brien, his predecessors and successors, and St.
16 Timothy's Church, constitutes an association-in-fact enterprise under A.R.S. §13-
17 2314.04, hereinafter "Enterprise I." Enterprise I has engaged in activities or a pattern of
18 unlawful activity in violation of A.R.S. §§13-2314.04, et seq.

19 32. Alternatively, the relationship between the United States Bishops of the
20 Roman Catholic Church, including Defendant O'Brien and his predecessors (hereinafter
21 "Enterprise II") constitutes an association-in-fact enterprise under A.R.S. §13-2314.04.
22 Enterprise II has engaged in activities or a pattern of unlawful activity in violation of
23 A.R.S. §§13-2314.04, et seq.

24 33. Alternatively, the relationship among Defendant O'Brien, Defendant Salinas
25 and Defendant O'Brien's predecessors, and their agents (hereinafter "Enterprise III")

1 constitutes an association-in-fact enterprise under A.R.S. §13-2314.04. Enterprise III has
2 engaged in activities or a pattern of unlawful activity in violation of A.R.S. §§13-
3 2314.04, et seq.

4
5 34. Enterprises I, II, and/or III had an ongoing business separate and apart from the
6 racketeering acts alleged herein in that they were involved in the operation of the Roman
7 Catholic Church of the United States.

8 35. The Defendants maintained and exercised control over the enterprises alleged.

9
10 36. Since approximately the 1950s through to the present, persons controlling or
11 directing the affairs of Enterprises I, II and/or III engaged in or joined in a conspiracy to
12 intentionally, recklessly and/or negligently conceal criminal conduct of its agents, aid and
13 abet the concealment of criminal conduct, aid and abet criminal sexual conduct, fail to
14 report criminal conduct of its agents, obstruct justice, obstruct criminal investigation,
15 obstruct state and/or local law enforcement, evade criminal and/or civil prosecution and
16 liability, bribe, and/or pay money to and/or otherwise intimidate, manipulate and/or
17 otherwise coerce victims in order to keep criminal conduct secret, violate the civil rights
18 of children and families, engage in mail and/or wire fraud, commit fraud and/or
19 fraudulent inducement of its parishioners in furtherance of its schemes to protect
20 molesting priests and other clergy from criminal prosecution, to maintain or increase
21 charitable contributions and tuition payments and/or avoid public scandal in the Roman
22 Catholic Church.
23

24
25 37. This pattern and practice of concealing criminal activity was conducted by and
through Enterprises I, II and/or III and directed by the Holy Roman Catholic Church (aka,

1 the Holy See¹.)

2 38. Evidence of this pattern and practice of criminal concealment done by
3 Enterprises I, II and/or III and the Holy See and their knowledge that Roman Catholic
4 clergy were sexually abusing children, specifically those children such as Plaintiff that
5 were abused in part through the use of the relationship between priest and parishioner can
6 be seen in the Holy See's 1962 INSTRUCTION entitled "On the Manner of Proceedings
7 in Cases of Solicitation." This INSTRUCTION was intended to reach all patriarchs,
8 archbishops and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it
9 states that it is "to be diligently stored in the secret archives of the Curia as strictly
10 confidential." "Not [sic] is it to be published or added to with any commentaries." The
11 INSTRUCTION contains explicit instructions as to how bishops and church leaders are
12 to proceed in cases where a priest entices a penitent to engage in sexual conduct. The
13 INSTRUCTION specifically mentions that these cases encompass situations where
14 children are sexually abused. It mentions that church officials could transfer offending
15 priests to different assignments. At all points of the process of handling sex abuse cases
16 dealing with a penitent the matters are to be kept secret. In particular if church leaders
17 find that the allegations lack foundation, they are mandated to destroy all of the
18 documents. If however the allegations are found to have foundation the Bishop must keep
19 the pertinent documents in secret archives. The Vatican INSTRUCTION also encourages
20
21
22
23

24
25 ¹ The Holy See consists of the Pope, The Roman Curia [the offices that act with the
Pope's delegated authority in governing the church], and all who assist the pope in Rome
in governing the church as its universal pastor.

1 Bishops to avoid scandal. The INSTRUCTION identifies the worse crime as any
2 obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of
3 either sex.

4
5 39. As further evidence of the pattern and practice of concealment of criminal
6 activity, of an effort to avoid "scandal," and that persons controlling the affairs of
7 Enterprises I, II and/or III had knowledge that Roman Catholic clergy were sexually
8 abusing children, in 1985 the National Conference of Roman Catholic Bishops received a
9 report titled "The Problem of Sexual Molestations by Roman Catholic Clergy." The
10 report described the continuing and growing problem of child sexual abuse by priests
11 within the Roman Catholic Church. According to the report, if the Roman Catholic
12 Church failed to deal with the problem of its pedophile (abusers of prepubescent
13 children) and ephobophile (abusers of postpubescent as adolescents) priests and clergy,
14 the church could face liability in excess of \$1,000,000,000.00 over ten years. In addition,
15 the report outlined steps that the Roman Catholic Church, through the National
16 Conference of Catholic Bishops, must take to protect the Church and parishioners from
17 the devastating effects of priests who molest children. In response, the National
18 Conference of Bishops ignored the report and recommendations, and instead continued
19 actions which allowed molesting priests to continue their actions. Upon information and
20 belief, Enterprise I, II and/or III engaged in the racketeering activity described above in
21 order to protect the financial interests of the Roman Catholic Church, in addition to
22 protecting priests engaged in child molestations and other clergy protecting those priests
23 from criminal prosecution and other aspects of the scheme described above.
24
25

1 40. In that same report, the reporter cautioned the National Conference of Catholic
2 Bishops to resist the practice by some to sanitize or purge the secret files of potentially
3 dangerous material. In addition, the reporter warned the National Conference of Catholic
4 Bishops that their practice of moving files containing potentially dangerous material to
5 the Papal Apostolic Delegate, where the files would be immune from subpoena, could
6 ultimately destroy the immunity enjoyed by the Holy See. These warnings were not
7 heeded.
8

9 41. In furtherance of its scheme and enterprise to protect molesting priests and
10 other clergy from criminal prosecution, maintain or increase charitable contributions and
11 tuition payments and/or avoid public "scandal" in the Roman Catholic Church, persons
12 controlling or directing the affairs of Enterprises I, II and/or III intentionally and
13 fraudulently engaged in the routine practice of maintaining secret "sub secret" archival
14 files of sexual misconduct by priests. These sub secret files were and are accessible to the
15 Bishops only. Such secret files were not reported to or made available to law enforcement
16 authorities, or others, in order for law enforcement to investigate the known crimes of the
17 priests. In fact, on information and belief, the Roman Catholic Church periodically
18 fraudulently purged files and hid them from persons, including law enforcement
19 authorities, seeking access to them.
20
21

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

1 Nevertheless, personal files should be carefully examined to determine their
2 content. Unsigned letters alleging misconduct should be expunged. Standard
3 personnel files should contain no documentation relating to possible
4 criminal behavior.

5 Serious moral questions, signed allegations, those should be part of the
6 secret file anyhow. But they still subpoena them. But comb through your
7 files.

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

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

17 43. In furtherance of its schemes, persons controlling or directing the affairs of
18 Enterprises I, II and/or III have routinely entered into secret settlement agreements with
19 confidentiality provisions that required victims of sexual abuse to preserve the secrets
20 from scrutiny by the public and law enforcement authorities. When litigation was
21 settled, frequently attorneys for the victims were required to return to the Diocese all
22 records produced to the attorneys (typically under an order of confidentiality) as a
23 condition of settlement of the case.

24 44. In furtherance of the scheme, persons controlling or directing the affairs of
25 Enterprises I, II and/or III paid victims of sexual exploitation and abuse in order to
influence them not to report the sexual exploitation and abuse to law enforcement
authorities and ultimately to avoid the victims being able to testify in court against

1 members of Enterprises I, II and/or III.

2 45. As a result of the acts of persons controlling or directing the affairs of
3 Enterprises I, II and/or III, priests were allowed to perpetuate criminal acts of child abuse
4 throughout the United States over at least a 50 year period of time. Persons controlling or
5 directing the affairs of Enterprises I, II and/or III, maintained this by making fraudulent
6 representations, concealing criminal activity, obstructing justice and criminal
7 investigations, evading civil and/or criminal liability, and payment of money to victims in
8 order to keep its criminal conduct secret, violating civil rights of children and families,
9 and committing mail and wire fraud.
10

11 46. Upon information and belief, persons controlling or directing the affairs of
12 Enterprises I, II and/or III fraudulently misrepresented the facts of known sexual
13 misconduct to prospective parishioners and their families for the economic purpose of
14 maintaining and/or increasing the charitable contributions and tuition payments of
15 parishioners, seminarians, and the general public.
16

17 47. Each of the persons controlling or directing the affairs of Enterprises I, II
18 and/or III conspired with each other, the above-named priest perpetrators and others in
19 the Roman Catholic Church in the conduct of a pattern of unlawful activity described
20 above to acquire or maintain an interest in or control of an enterprise in violation of
21 A.R.S. § 13-2314.04, and other Arizona laws.
22

23 48. Defendants' fraudulent acts affected interstate commerce by affecting
24 charitable contributions and tuition payments of parishioners across the nation.
25

49. As a result of the schemes and unlawful activity of persons controlling or

1 directing the affairs of Enterprises I, II and/or III, untold thousands of children,
2 adolescents and young adults, including Plaintiff, were subjected to sexual abuse and
3 exploitation by Roman Catholic clergy through a pattern of unlawful activity over a
4 period of more than five decades.

5
6 50. As a result of the illegal acts of the persons controlling or directing the
7 affairs of Enterprises I, II and/or III, Plaintiff suffered damages.

8 51. The persons controlling or directing the affairs of Enterprises I, II and/or III
9 engaged in a continuing pattern or practice of the illegal activities as set forth herein
10 throughout various jurisdictions in the United States.

11
12 52. The persons controlling or directing the affairs of Enterprises I, II and/or III
13 criminal and wrongful conduct was admitted when on May 3, 2003, now the former
14 Bishop Thomas J. O'Brien and the Roman Catholic Diocese of Phoenix entered into an
15 agreement with the State of Arizona by and through the Maricopa County Attorney
16 Richard M. Romley. That agreement specifically provided that:

17
18 . . . the investigation developed evidence that Thomas J. O'Brien failed to
19 protect the victims of criminal sexual misconduct of others associated with
the Roman Catholic Diocese of Phoenix. . . .

20 It further provided, in part, that:

21 . . . Thomas J. O'Brien . . . allowed Roman Catholic priests under his
22 supervision to have contact with minors after becoming aware of allegations
23 of criminal sexual misconduct . . . [and] transferring offending priests to
situations where children could be further victimized. . . .

24 **COUNT ONE**
25 **(Assault and/or Battery)**

55. Plaintiff incorporates and realleges each and every previous allegation above

1 as though fully set forth herein.

2 53. Defendant Salinas' sexual molestation of Plaintiff as described herein
3 constitutes an offensive and harmful touching. Moreover, Plaintiff was placed in
4 imminent fear and peril of such offensive and harmful touching.
5

6 54. As a direct and proximate cause of Defendant Salinas' assault and battery as
7 alleged herein, Plaintiff has been injured and has incurred terrible emotional pain, severe
8 physical and emotional distress and permanent damage.

9 **COUNT TWO**
10 **(Negligence)**

11 58. Plaintiff incorporates and realleges each and every previous allegation
12 above as though fully set forth herein.

13 59. Defendants Diocese of Phoenix, Bishop O'Brien and St. Timothy's had a
14 duty to supervise properly all priests under their control and to exercise care in referring
15 or retaining such priests, including specifically Salinas.
16

17 60. Defendants Diocese of Phoenix, Bishop O'Brien and St. Timothy's had a
18 duty to investigate, hire, fire, retain and/or supervise their employees or priests they knew
19 posed a danger to minors so that a safe environment and services would be provided. All
20 the Defendants had a duty to report any criminal sexual impropriety by a priest, including
21 Salinas, that had harmed any of their parishioners, altar boys or students to the
22 appropriate authorities, to undertake whatever acts were necessary to ensure that the
23 priest be stopped from molesting future victims and to undertake whatever acts were
24 necessary to ensure that the priests' past victims be helped and their damages mitigated,
25

1 including Plaintiffs’.

2 61. All the Defendants had a duty to warn minor boys and their parents,
3 including Plaintiff, about Salinas and his propensities once they were on notice and to
4 help and mitigate the damage to any of his victims.
5

6 62. Defendants breached their duties to Plaintiff.

7 63. As a result of Defendants’ breach of duty of care to Plaintiff, Plaintiff has
8 been injured and has incurred terrible emotional pain, severe physical and emotional
9 distress and permanent damage.
10

11 **COUNT THREE**
12 **(Arizona RICO- Violation of A.R.S. § 13-2314.04)**

13 64. Plaintiff incorporates and realleges each and every previous allegation
14 above as though fully set forth herein.

15 65. The relationship described in Enterprise I, II and/or III constitutes an
16 association in fact enterprise as defined under A.R.S. § 13-2301(d).

17 66. The unlawful activity described in Enterprise I, II and/or III constitutes an
18 association in fact enterprise as defined under A.R.S. § 13-2301(d).

19 67. The persons described and others associated with or employed by those
20 persons were employed by or associated with Enterprise I, II and/or III.
21

22 68. Enterprise I, II and/or III engaged in activities which affected interstate or
23 foreign commerce.

24 69. The persons described above aided and abetted by each other, their agents,
25 employees and others, conducted and participated directly or indirectly in the conduct of

1 affairs of the enterprise and/or associated themselves with the enterprise described as
2 Enterprise I, II and/or III through a pattern of unlawful activity in violation of A.R.S.
3 §13-2314.04 as described herein.

4 70. The aforementioned conduct included more than two incidents of unlawful
5 activity which shared the same intent, results, accomplices, victims and was effectuated
6 by similar methods. The last incident of unlawful activity occurred within five years of a
7 prior incident of unlawful activity.

8 71. Enterprise I, II, and/or III conspired to and did take specific acts to conceal
9 sexual misconduct perpetrated by Salinas up to the present.

10 72. Enterprise I, II and/or III, agreed to, conspired to, and did violate A.R.S.
11 §13-2314.04. Defendants' violations included but are not limited to obstructing or
12 hindering criminal investigations or prosecutions, scheming to defraud Plaintiff, his
13 family, parishioners, the public and law enforcement, sexual exploitation of Plaintiff, and
14 performed, authorized, requested, commanded, ratified, and/or recklessly tolerated the
15 sexual exploitation of minors, adolescents and young adults, including Plaintiff.

16 73. Said violations of A.R.S. §13-2314.04 were committed for Enterprise I's,
17 II's and/or III's financial gain.

18 74. As a result of these violations, Plaintiff suffered the reasonably foreseeable
19 injuries described herein.

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23 **COUNT FOUR**
24 **(Breach of Fiduciary Duty)**

25 75. Plaintiff incorporates and realleges each and every previous allegation

1 above as though fully set forth herein.

2 76. Salinas, O'Brien and each of the other Defendants had a special
3 relationship with Plaintiff and had a confidential or fiduciary relationship with him.
4 O'Brien and the other Defendants were in a superior position to know that Salinas was
5 and had been causing harm to Plaintiff. Plaintiff followed the strict mandates of the
6 Defendants, and the Defendants were authorities involved in many areas of the Plaintiff's
7 life. Plaintiff relied on Defendant Salinas and others as religious and secular advisors and
8 as an ultimate authority, in reliance on the representations and endorsement of the
9 Defendants.
10

11 77. As a result of the special relationship between clergy and parishioner, and
12 by virtue of the Defendants undertaking the guidance of the then vulnerable person,
13 Defendants held a position of empowerment over the Plaintiff.
14

15 78. Further, by virtue of Defendants holding its parishes out as safe and secure
16 institutions and holding themselves out as shepherds and leaders of the Roman Catholic
17 Church, Defendants solicited and/or accepted this position of empowerment. This
18 empowerment prevented the Plaintiff from effectively protecting himself, and Defendants
19 thereby entered into a fiduciary relationship with the Plaintiff.
20

21 79. Plaintiff placed his trust and confidence in the Defendants as his spiritual
22 guides, authority figures, teachers, mentors and confidantes.
23

24 80. As a fiduciary to the Plaintiff, the Defendants had a duty to obtain and
25 disclose to Plaintiff information relating to the sexual misconduct and inappropriate
behavior of Defendants' agents. Further, as the caretaker and fiduciary, the Defendants,

1 and each of them, owed the Plaintiff the duty of trust and loyalty and the duty to work for
2 his benefit. Defendants had a duty to disclose to the Plaintiff and others the wrongful
3 nature of the abuse.

4 81. Defendants breached their fiduciary duty to the Plaintiff.

5
6 82. As a direct and proximate result of their breach of this duty, Plaintiff
7 sustained a loss of earnings and earning capacity, has experienced continuing emotional
8 pain and suffering and other emotional problems, has suffered disruption of his
9 relationship with family members and other persons significant in his life, and has
10 suffered disruption of and loss in the quality of his life.

11
12 **COUNT FIVE**
13 **(Intentional and/or Negligent Concealment)**

14 83. Plaintiff incorporates and realleges each and every previous allegation
15 above as though fully set forth herein.

16 84. As a result of the special relationship between clergy and parishioners,
17 Defendants undertook the care and guidance of a vulnerable person and held a position of
18 empowerment over him.

19 85. Further, in holding out its parishes as safe and secure places and holding
20 themselves out as shepherds and leaders of the Roman Catholic Church, Defendants
21 solicited and/or accepted this position of empowerment. This empowerment prevented
22 the Plaintiff from effectively protecting himself, and Defendants thereby entered into a
23 fiduciary relationship with the Plaintiff.

24
25 86. As fiduciaries to the Plaintiff, the Defendants had a duty to obtain and

1 disclose to Plaintiff information relating to the sexual misconduct and inappropriate
2 behavior of Defendants' agents, including but not limited to Salinas.

3 87. Upon information and belief, Defendants had actual or constructive
4 knowledge of Salinas' inappropriate behavior prior to the sexual assaults described
5 above.
6

7 88. Defendants misrepresented, concealed and/or failed to disclose to Plaintiff
8 information relating to Salinas' sexual misconduct.

9 89. Defendants knew that they misrepresented, concealed and/or failed to
10 disclose to Plaintiff information relating to Salinas' sexual misconduct and Defendants
11 intended that Plaintiff rely on their misrepresentations and/or omissions.
12

13 90. Plaintiff justifiably relied on Defendants for information about the conduct and
14 misconduct of the Defendants to ensure his safety while he was involved in activities
15 conducted or operated by the Defendants for the benefit of the Plaintiff.
16

17 91. Upon information and belief, Defendants, in concert with others, and with the
18 intent to conceal and defraud, conspired and came to a meeting of the minds where they
19 would misrepresent, conceal or fail to disclose information relating to the sexual
20 misconduct of the Defendants' agents. By so concealing, Defendants committed at least
21 one act in furtherance of the conspiracy.

22 92. As a direct and proximate result of the Defendants' fraud and conspiracy,
23 Plaintiff sustained a loss of earnings and earning capacity, has experienced continuing
24 emotional pain and suffering and other emotional problems, has suffered disruption of his
25 relationship with family members and other persons significant in his life, and has

1 suffered disruption of a loss in the quality of his life.

2 **COUNT SIX**
3 **(Intentional Infliction of Emotional Distress)**

4 93. Plaintiff incorporates and realleges each and every previous allegation
5 above as though fully set forth herein.

6 94. Defendant Salinas' conduct was extreme and outrageous, and done with the
7 intent or knowledge that it would cause extreme emotional distress.

8 95. Defendants Diocese of Phoenix, O'Brien, and St. Timothy's Church
9 intentionally failed to supervise, remove or otherwise sanction Salinas when they had
10 actual notice or based on information available to them should have known of the danger
11 he presented to parishioners like the Plaintiff and when they continued to place him
12 positions of authority over people like the Plaintiff.

13 96. Said Defendants knew or should have known that Salinas was unsuitable
14 for the position that he held.

15 97. Said Defendants failed to adequately review and monitor the services which
16 Salinas was providing and intentionally ignored his misconduct.

17 98. Said Defendants intentionally failed to confront, remove or sanction Salinas
18 about misconduct that said Defendants either knew or should have known about in his
19 interactions with parishioners like the Plaintiff.

20 99. In failing to communicate information to Plaintiff about Salinas and in
21 failing to act to protect Plaintiff from harm, said Defendants engaged in extreme and
22 outrageous conduct, intended to cause or committed in reckless disregard of the
23
24
25

1 probability of causing emotional distress and harm.

2 100. Plaintiff suffered medically significant and diagnosable distress as a result
3 of the Defendants' actions as set forth above.

4 101. As a direct and proximate result of the Defendants' conduct, Plaintiff
5 suffered and continues to suffer great pain of mind and body, shock, emotional distress,
6 physical manifestations of emotional distress, embarrassment, loss of self-esteem, guilt,
7 loss of pride and dignity, disgrace, humiliation, and loss of enjoyment of life, and has
8 incurred and will continue to incur health care expenses for treatment of these physical
9 and emotional injuries.
10

11
12 **COUNT SEVEN**
13 **(Negligent Intentional Infliction of Emotional Distress)**

14 102. Plaintiff incorporates and realleges each and every previous allegation
15 above as though fully set forth herein.

16 103. Defendants acted unreasonably and imprudently in failing to disclose to
17 Plaintiff and in failing to communicate information to Plaintiff about Salinas and in
18 failing to act to protect Plaintiff from harm.

19 104. Plaintiff suffered medically significant and diagnosable distress as a result
20 of the Defendants' actions as set forth above.

21 105. As a direct and proximate result of the Defendants' conduct, Plaintiff
22 suffered and continues to suffer great pain of mind and body, shock, emotional distress,
23 physical manifestations of emotional distress, embarrassment, loss of self-esteem, guilt,
24 loss of pride and dignity, disgrace, humiliation, and loss of enjoyment of life, and has
25

1 incurred and will continue to incur health care expenses for treatment of these physical
2 and emotional injuries.

3
4 **COUNT EIGHT**
5 **(Aiding and Abetting Tortious Conduct)**

6 106. Plaintiff incorporates and realleges each and every previous allegation
7 above as though fully set forth herein.

8 107. Salinas' sexual misconduct with respect to Plaintiff was, in and of itself,
9 tortious, including assault, battery, invasion of privacy, and intentional infliction of
10 emotional distress.

11 108. Defendants knew about Salinas' sexual misconduct with Plaintiff and
12 others.

13 109. By failing to take appropriate disciplinary action against Salinas, by failing
14 to warn victims and potential victims of Salinas' conduct, by enabling Salinas to remain
15 in unsupervised contact with minors and children during the scope and course of Salinas'
16 employment, and by misrepresenting and concealing Salinas' misconduct, among other
17 things, Defendants knowingly and intentionally aided and abetted Salinas' tortious
18 conduct.
19

20 110. As a direct and proximate result of the Defendants' aiding and abetting of
21 Salinas' tortious conduct, Plaintiff sustained a loss of earnings and earning capacity, has
22 experienced continuing emotional pain and suffering and other emotional problems, has
23 suffered disruption of his relationship with family members and other persons significant
24 in his life, and has suffered disruption of and loss in the quality of his life.
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COUNT NINE
(Negligent Hiring and Supervision)

111. Plaintiff incorporates and realleges each and every previous allegation above as though fully set forth herein.

112. Defendants and each of them, and in particular, Defendants Roman Catholic Church of the Diocese of Phoenix and O'Brien, had a duty, pursuant to common law, to supervise the work and activities of Father Salinas. In particular, said Defendants had a duty to supervise Father Salinas to ensure that he did not use and abuse his position to the harm or detriment of others.

113. The Defendants knew or should have known that Salinas was and had been imperiling the welfare of altar boys and other minor parishioners, including Plaintiff, and was and had been abusing and molesting altar boys and other minor parishioners. Despite this, the Defendants knowingly or negligently permitted Plaintiff and perhaps other minors to be endangered and abused.

114. Defendants had a pattern and practice of failing to supervise priests under their purview and failing to protect the minors in the care and custody of such priests from other improper conduct in order to protect the Defendants at the expense of the parishioners.

115. As a result of Defendants' negligent hiring and failure to supervise Father Salinas, Plaintiff has suffered severe emotional damage.

COUNT TEN
(Vicarious Liability Respondeat Superior)

116. Plaintiff incorporates and realleges each and every previous allegation

1 above as though fully set forth herein.

2 117. The acts of Salinas described above were done within the scope of his
3 employment or agency with the Diocese of Phoenix in that they were authorized by the
4 Diocese of Phoenix or incidental to conduct authorized by the Defendant Diocese of
5 Phoenix. Moreover, the Diocese of Phoenix acquiesced in, and affirmed and/or ratified
6 Salinas' acts by its concurrent and subsequent conduct, making it vicariously liable. The
7 acts of Salinas were foreseeable and expected, and the resulting damage to the Plaintiff
8 was foreseeable and expected. Upon information and belief, Defendant Diocese of
9 Phoenix knew or should have known of similar prior acts of Salinas and undoubtedly
10 knew of concurrent and post similar acts of Salinas with perhaps other altar boys and
11 minor parishioners.
12
13

14 118. Defendant Diocese of Phoenix is liable for the acts of its employee or agent
15 Salinas even if Salinas was acting outside the scope of his employment or agency,
16 because Defendant Diocese of Phoenix was negligent or reckless in allowing Salinas to
17 have unsupervised access to children parishioners to be able to take them into the sacristy
18 of St. Timothy's Church, and other locations in the church, in contravention of the rules
19 of the Diocese. Salinas was aided in accomplishing the molestation of Plaintiff by the
20 existence of the agency relation between himself and Defendant Diocese of Phoenix.
21

22 119. The acts and omissions of Defendants Salinas and O'Brien described
23 above was done within the scope of their employment or agency with the Diocese of
24 Phoenix and the Diocese of Phoenix in that they were authorized by the Diocese of
25 Phoenix and the Diocese of Phoenix or incidental to conduct authorized by the Defendant

1 Diocese of Phoenix and the Diocese of Phoenix. Moreover, the Diocese of Phoenix and
2 the Diocese of Phoenix acquiesced in, affirmed and/or ratified Salinas' and O'Brien's
3 acts by its concurrent and subsequent conduct, making them vicariously liable.
4

5 120. As a direct and proximate result of the Defendants' conduct, Plaintiff
6 suffered and continues to suffer great pain of mind and body, shock, emotional distress,
7 physical manifestations of emotional distress, embarrassment, loss of self-esteem, guilt,
8 loss of pride and dignity, disgrace, humiliation, and loss of enjoyment of life, and has
9 incurred and will continue to incur healthcare expenses for treatment of these physical
10 and emotional injuries.
11

12 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, their
13 successors in interests, and each of them jointly and severally as follows:

14 1. For special damages in an amount to be proven at trial, including but not
15 limited to medical expenses incurred and to be incurred, loss of earnings and earning
16 capacity;
17

18 2. For general damages in an amount to be proven at trial for pain and
19 suffering, loss of disruption of relationships with family members, pain and suffering,
20 other emotional suffering and loss of enjoyment of life;

21 3. For punitive or exemplary damages to be set by a jury in an amount
22 sufficient to punish the Defendants for their outrageous conduct and to make an example
23 out of them so that others do not engage in similar conduct in the future;

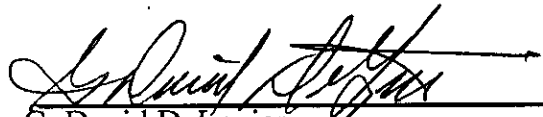
24 4. For costs and attorneys' fees incurred, and to be incurred, to the extent
25 permitted by Arizona law, including pursuant to A.R.S. § 13-2314.04;

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- 5. For pre- and postjudgment interest to the extent permitted by law;
- 6. For such other and further relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED this 12th day of June, 2006.

G. DAVID DELOZIER, P.C.


G. David DeLozier
Attorney for Plaintiff

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VERIFICATION

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss.

I, Daniel Sears, being first duly sworn on oath, depose and state that:

I am the Plaintiff in the above-entitled action; I have read the foregoing Complaint and the facts and matters alleged therein are true in substance and in fact to the best of my knowledge, except as to those matters alleged on information and belief, and as to those matters I believe them to be true.

Daniel Sears
DANIEL SEARS

SUBSCRIBED AND SWORN TO before me this 1 day ^{June}~~May~~, 2006.

A. Frances Owens
Notary Public

My Commission Expires:

4-1-2009

