

MICHAEL K. JEANES  
Clerk of the Superior Court

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10 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**  
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 **1) DANIEL SEARS, a single man,**

13 **Plaintiff,**

14 **vs.**

15 **2) THE ROMAN CATHOLIC**  
16 **CHURCH OF THE DIOCESE OF**  
17 **PHOENIX, a Corporation Sole, by**  
18 **and through Bishop Thomas J.**  
19 **Olmsted, his Predecessors and**  
20 **Successors;**

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

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

25 **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

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

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 See<sup>1</sup>.)

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

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24  
25 <sup>1</sup> 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  
5 70. The aforementioned conduct included more than two incidents of unlawful  
6 activity which shared the same intent, results, accomplices, victims and was effectuated  
7 by similar methods. The last incident of unlawful activity occurred within five years of a  
8 prior incident of unlawful activity.

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

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

19  
20 73. Said violations of A.R.S. §13-2314.04 were committed for Enterprise I's,  
II's and/or III's financial gain.

21  
22 74. As a result of these violations, Plaintiff suffered the reasonably foreseeable  
injuries described herein.

23  
24 **COUNT FOUR**  
**(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.  
25

**COUNT NINE**  
**(Negligent Hiring and Supervision)**

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2  
3 111. Plaintiff incorporates and realleges each and every previous allegation  
4 above as though fully set forth herein.

5 112. Defendants and each of them, and in particular, Defendants Roman  
6 Catholic Church of the Diocese of Phoenix and O'Brien, had a duty, pursuant to common  
7 law, to supervise the work and activities of Father Salinas. In particular, said Defendants  
8 had a duty to supervise Father Salinas to ensure that he did not use and abuse his position  
9 to the harm or detriment of others.  
10

11 113. The Defendants knew or should have known that Salinas was and had been  
12 imperiling the welfare of altar boys and other minor parishioners, including Plaintiff, and  
13 was and had been abusing and molesting altar boys and other minor parishioners. Despite  
14 this, the Defendants knowingly or negligently permitted Plaintiff and perhaps other  
15 minors to be endangered and abused.  
16

17 114. Defendants had a pattern and practice of failing to supervise priests under  
18 their purview and failing to protect the minors in the care and custody of such priests  
19 from other improper conduct in order to protect the Defendants at the expense of the  
20 parishioners.  
21

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

**COUNT TEN**  
**(Vicarious Liability Respondeat Superior)**

24  
25 116. 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  
25 4. For costs and attorneys' fees incurred, and to be incurred, to the extent  
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 12<sup>th</sup> day of June, 2006.

**G. DAVID DELOZIER, P.C.**

  
\_\_\_\_\_  
G. David DeLozier  
Attorney for Plaintiff

1  
2 VERIFICATION

3 STATE OF ARIZONA )  
4 COUNTY OF MARICOPA ) ss.

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

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

10 *Daniel Sears*  
11 DANIEL SEARS

12  
13 SUBSCRIBED AND SWORN TO before me this 1 day <sup>JUNE</sup>~~MAY~~, 2006.

14  
15 *A. Frances Owens*  
16 Notary Public

17 My Commission Expires:

18 4-1-2009

