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10
11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**
13

14 JOHN MW DOE, a single man,

15 Plaintiff,

16 v.

17 THE ROMAN CATHOLIC CHURCH OF
18 THE DIOCESE OF PHOENIX, a corporation
19 sole; ST. THOMAS THE APOSTLE
20 ROMAN CATHOLIC PARISH PHOENIX,
21 an Arizona corporation; JOHN DOE 1-100;
22 JANE DOE 1-100; and BLACK & WHITE
23 Corporations 1-100,

24 Defendants.

Case No.: CV2020-010604

**PLAINTIFF'S MOTION FOR NEW
TRIAL, Ariz. R. Civ. P. 59 & 60**

(Tort – Negligence – Non-Motor
Vehicle)

(Assigned to the Honorable
Bradley Astrowsky)

(Oral Argument requested)

25 Pursuant to Rules 59 and 60, Ariz. R. Civ. P., Plaintiff moves this court for an
26 order vacating its ruling dated July 14, 2022 granting Defendants' Motion to Dismiss and
27 request an order granting Plaintiff a New Trial. The Court's ruling dated July 14, 2022
28 is based on errors of fact and law. Ariz. R. Civ. 59(a)(1)(D)(F) & (H). Newly discovered
evidence that Plaintiff still has not had an opportunity to fully develop shows that
Defendants and their lawyers misrepresented or otherwise may have failed in their duty
of candor to the tribunal leading the court to grant Defendants' motion. Ariz. R. Civ. P.
60(b)(2)(3) & (6). Plaintiff's motion is supported by the following memorandum of
points and authorities and the entire record in this matter.

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MEMORANDUM OF POINTS & AUTHORITIES

I. FACTS & PROCEDURAL HISTORY

A. Plaintiff's Second Amended Complaint alleges the Diocese Defendants knew or had actual notice of misconduct by priests in its programs, including Fr. Doran, that Defendants conceal by employing strategies designed to prevent the public from discovering the sexual misdeed of priests.

Fr. John P. Doran is a Roman Catholic priest. (SAC ¶ 73). Defendant Diocese of Phoenix assigned Fr. John P. Doran to work at St. Thomas the Apostle Catholic Church. (SAC ¶ 76). By assigning him to work at St. Thomas, the Diocese gave Fr. Doran a position of trust and authority that Fr. Doran used to groom and sexually abuse children, including Plaintiff. (SAC ¶¶ 83, 84, 86, 88, 89). Fr. Doran sexually abused Plaintiff from approximately 1970 through 1971 when Plaintiff was 12 to 13-years-old. (SAC ¶ 88).

The Roman Catholic Church of the Diocese of Phoenix and St. Thomas the Apostle (Diocese Defendants) knew or had actual notice of misconduct that increased the risk for sexual conduct or sexual contact by Defendants agents or employees; including conduct by Fr. James P. Doran. (SAC ¶¶ 14, 72). The Diocese Defendants had knowledge or actual notice that many of its agents engaged in grooming behavior designed to breakdown the psychological and physical barriers so that perpetrators like Doran could then sexually abuse the child. (SAC. ¶ 15)(*See e.g.* ¶¶ 22-67). Fr. Doran's grooming behavior includes, but is not limited to, isolating children; touching, groping and tickling children; and bathing with children. (SAC ¶ 15).

Fr. John P. Doran was accused of child sexual abuse in 1963. (SAC ¶ 74).¹ The Diocese Defendants knew or had actual notice of this accusation. (SAC ¶¶ 14, 15). *See i.e. Cullen v. Auto-Owners Ins. Co.*, 189 P.3d 344, 346 (2008)(“Courts must also assume the truth of the well-pled factual allegations and indulge all reasonable inferences²

¹ The 1963 report is publicly known because of the Diocese of Tucson bankruptcy.

² An inference is a conclusion formed because of known facts or evidence. <https://www.merriam-webster.com/dictionary/inference>

1 therefrom.”).

2 The sexual abuse of children is a known problem within Defendants’ programs.
3 (*See e.g.* SAC ¶¶ 22-67). The cancer of child sexual abuse persists in Defendants’
4 programs, in part, because the Diocese Defendants engage in a pattern and practice to
5 conceal and cover-up sexual abuse and sexual misconduct of any kind by its priests,
6 brothers, clerics, bishops and agents. (SAC ¶ 16). Having been given positions of trust
7 and access to children by the Diocese Defendants, the cover Defendants provide allow
8 perpetrator priests to sexually abuse children. Among the strategies the Diocese
9 Defendants employ to conceal clergy sexual misconduct includes the use of euphemisms
10 rather than accurate words to describe sexual misconduct; recommending treatment
11 (using unproven treatment methods) for offending priests; and transferring offenders to
12 new work assignments without full disclosure. (SAC ¶ 16). Due to the cancer and cover-
13 up of child sexual abuse in the Defendants’ programs, in 2003, the Bishop of Phoenix
14 signed an agreement admitting the Diocese knew about “priests who had allegations of
15 sexual misconduct made against them [who] were transferred to ministries without full
16 disclosure.” (SAC ¶ 19). Logically, one cannot conceal misconduct and credibly disclaim
17 knowledge of the very act or acts sought to be concealed.

18 Although the 2003 agreement Bishop O’Brien signed with criminal prosecutors
19 was among the first of its kind, the identity of the priests who were moved from parish-
20 to-parish and diocese-to-diocese has never been fully disclosed.

21 On July 14, 2022, the trial court granted the Diocese Defendants’ Motion to
22 Dismiss. The trial court found that “Plaintiff made no statements that were specific to
23 Father Doran.” (*But see* SAC ¶ 74). The trial court granted the Diocese Defendants
24 motion to dismiss on the grounds that “Nowhere in Plaintiff’s SAC does he plead actual
25 allegation that Defendants possessed any factual information, prior to Doran’s alleged
26 abuse of Plaintiff, supporting the conclusion³ that Defendants knew or had actual notice

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28 ³ Conclusion: (2) a judgment arrived at by reasoning, an inferential statement. Black’s Law
Dictionary, p. 284 (7th Ed., 1999)(emphasis added).

1 that Doran engaged in misconduct creating an unreasonable risk.”⁴

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3 **B. New evidence the Diocese Defendants’ disclosed in a separate but related**
4 **case shows Defendants knew and had actual notice of Doran’s misconduct**
5 **and that Defendants misrepresented facts to the trial Court.**

6 No one knows exactly how many children Fr. John P. Doran sexually abused while
7 working as a Roman Catholic priest. The Diocese Defendants, despite promises to be
8 truthful and transparent, have not made information about Fr. Doran’s sexual abuse of
9 children publicly available. Through other litigation, however, Plaintiff’s counsel
10 uncovered additional evidence supporting the allegations in Plaintiff’s Second Amended
11 Complaint.

12 The Plaintiff in *John BL Roe v. Diocese of Phoenix*, CV2020-09502, was also
13 sexually abused by Fr. John P. Doran at St. Thomas the Apostle Catholic Church.
14 Undersigned counsel is counsel of record in *John BL Roe v. Diocese of Phoenix*, CV2020-
15 095202.

16 In *John BL Roe v. Diocese of Phoenix*, CV2020-09502, the Diocese Defendants
17 are represented by Nicholas Bauman of Lewis Roca Rothgerber Christie, LLP and John
18 C. Kelly of Coppersmith Brockelman. Mr. Bauman and Mr. Kelly also represent the
19 Diocese Defendants in this matter. In its Motion to Dismiss, the Diocese of Phoenix
20 represented to the court “that Defendants did not have knowledge or actual notice of
21 misconduct by other priests before Doran sexually abused Plaintiff.” (*See* Diocese
22 Defts.’ *Mtn to Dismiss* at p. 8: 4-6).

23 On March 14, 2022, two months and 26 days before filing the Motion to Dismiss
24 in this case, the Diocese Defendants disclosed documents and records in the *BL Roe* case

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26 ⁴ Other divisions of this court disagreed with this division and denied the Diocese Defendants’
27 motion to dismiss on virtually identical complaints. Moreover, other divisions of this court
28 recognize that “Given the reality of where the knowledge lies here the court is obligated to
interpret the pleadings in light most favorable to the plaintiff.” The reality is the knowledge
exists in Defendants’ files, including files Defendants work tirelessly to keep secret. (Exhibits
15: *JB Doe v. Diocese*, CV2020-016745, ME dated 02/22/22).

1 relevant to Defendants' knowledge or actual notice.

2
3 **1. Upon the creation of the Diocese of Phoenix, all relevant data**
4 **regarding clergy was transferred from the Diocese of Tucson to the**
5 **Diocese of Phoenix including the reports of sexual abuse that**
6 **occurred before 1969 when the Diocese of Phoenix was created.**

7 On June 28, 1969, Pope Paul VI decreed that a new Diocese shall be created out
8 of the territory of the Diocese of Tucson and the Diocese of Gallup. The new diocese
9 shall be called the Diocese of Phoenix. (Exhibit 1: The Executive Decree for the
10 Establishment of the Diocese of Phoenix at bates 291)(DOP-JohnRLRoe-288 – 301).
11 Priests who had an office or benefice within the territory of the newly formed Diocese of
12 Phoenix “shall be considered clergy belonging to that diocese.” (*Id.* at bates 300). Pope
13 Paul VI ordered that all documents regarding clergy be sent to the *Curia* for the newly
14 formed Diocese of Phoenix and that they be safe guarded by the *curia* for the Diocese of
15 Phoenix.

15 Finally, let the documents which pertain to the
16 clergy, faithful and all other matters of concern
17 to the new Diocese be sent to the proper Curia and
18 there be carefully safeguarded.

19 (*Id.* at bates 300).

20 The diocesan *curia* is “[t]he personnel and offices assisting the diocesan bishop in
21 directing the pastoral activity, administration, and the exercise of judicial power of his
22 diocese. [] Principal officers of a diocesan *curia* are the vicar general of the diocese, the
23 chancellor [] [and] consultors” (Exhibit. 2: Official Catholic Directory – Glossary)
24 After Pope Paul VI’s decree, the Phoenix Diocese created a liaison committee “to
25 establish the administrative functions of the Diocese of Phoenix and to transfer all
26 relevant data / with dispatch.” (Exhibit 3: *Questions of Administration for Bishops Green*
27 *and McCarthy* at bates 307)(emphasis added).

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2 **2. The Diocese of Phoenix knew or had actual notice of Fr. John P.**
3 **Doran’s pre-1969 misconduct but does all it can to “not incriminate**
4 **themselves as to what [is] in their files.”**

4 On March 14, 2022, in the *BL Roe* matter, the Diocese Defendants disclosed
5 records showing the Diocese of Phoenix knew or had actual notice of Fr. John P. Doran’s
6 pre-1969 sexual misconduct. Instead of representing to court and counsel that the
7 Diocese Defendants had this information in its file from the inception the Diocese of
8 Phoenix was created, the Diocese Defendants represented “that Defendants did not have
9 knowledge or actual notice of misconduct by other priests before Doran sexually abused
10 Plaintiff.” (*See* Diocese Defts.’ *Mtn to Dismiss* at p. 8: 4-6). The Diocese Defendants
11 also led the court to believe that no one “within the Diocese of Phoenix knew of Doran’s
12 alleged prior misconduct prior to 1970 or 1971.” (*See* Diocese Defts.’ *Mtn to Dismiss* at
13 p. 11: 7-8). The evidence shows these representations are false.

14 In early 1958, Bishop Green of the Diocese of Tucson confronted Fr. John P.
15 Doran regarding “homosexual sex with minors” (aka child sexual abuse)⁵ and alcohol
16 abuse. Fr. Doran was sent to consult with a brother priest (Fr. Augustine O’Dea),
17 however, there was no follow-up, only trust that Fr. Doran would “see it through.”
18 (Exhibit 4: *Note to File re Doran, John* dated 02/31/2003). In a letter dated January 31,
19 1958, Fr. Doran admits to Bishop Green that he has been struggling with “this problem”
20 by himself, and although he has made some progress, he has not been able to make a
21 complete break. Fr. Doran was glad that Bishop Green called him to account and was
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23 ⁵ Fr. Dennis Pecore, SDS is another priest who worked in the Diocese of Phoenix and who has
24 been twice convicted of child sexual abuse. In a psychosexual evaluation, Fr. Pecore admitted
25 to having a “homosexual relationship with a minor.” Fr. Pecore also admitted “the relationship
26 with the boy was sexually satisfying.” This is consistent with Defendants’ use of euphemisms to
27 describe the acts of child sexual abuse and minimize the harm caused. By describing and
28 documenting the sexual abuse as a “homosexual relationship with a child” Defendants are able
to deny knowledge, notice or otherwise admit the wrongfulness of their acts and the severity of
of harm caused to the child. Denying the reality of the crimes committed also justified
Defendants failure to report these crimes to civil authorities. (Exhibit 16a & b: Psychological
Assoc., *Psychological Evaluation of Fr. Dennis Pecore, SDS* 12/10/1986 at bates 1764).

1 sorry for the trouble “this need of mine caused you.” (Exhibit 5: *Letter J. Doran to*
2 *Bishop Green* 01/31/1958). Fr. Doran sent the letter personally – “for Bishop Green
3 alone.” (*Id.*).

4 Three months later, on April 22, 1958, Fr. Phillip Poirier wrote Bishop Green to
5 report that the problems with Fr. Doran and children continued. Fr. Poirier is a priest
6 who worked with Fr. Doran at St. Thomas. Fr. Poirier wrote Bishop Green explaining
7 that he decided to write him before the coming confirmation tour to “save [the Bishop]
8 from asking [Fr. Poirier] questions about the problem.” (Exhibit 6: *Ltr P. Poirier to*
9 *Bishop Green* 04/22/1958). Fr. Poirier reported “there was a good bit of hugging and
10 squeezing of the young lads in the sacristy and on the grounds. These incidents frighten
11 me for with knowledge of the background I view them as dynamite.” (*Id.*)(emphasis
12 added). Fr. Poirier also reported that Fr. Doran spent time with the pianist from the airport
13 who was the “house-keeper” at the old rectory and who was known for his abilities as a
14 “masseur.” (*Id.*). Fr. Poirier reported to Bishop Green that Fr. Doran also spent two days
15 after Easter at the mineral baths outside Mesa “getting baths and rub-downs.”⁶

16 In a letter dated May 17, 1958, Fr. Doran explained to Bishop Green that he
17 received the enclosed note from a brother priest after “the latest outbreak.” The note was
18 on letter head from St. Thomas the Apostle Church with the initials of fellow priest “pjp.”
19 The priest demanded that Fr. Doran treatment him “as a man and a Padre. If not, I shall
20 feel perfectly justified to talk as freely as I wish to whomever I wish.” (Exhibit 7: *Ltr J.*
21 *Doran to Bishop Green* dated 05/17/1958).

22 On April 25, 1966, a student from Brophy College Preparatory wrote Bishop
23 Green to report Fr. John P. Doran’s sexual misconduct. The Brophy student told Bishop
24

25 ⁶ The plaintiff in *John FC Doe v. Diocese of Phoenix*, CV2020-001935, was forensically
26 interviewed as part of MCAO’s investigation of Fr. Joseph J. Henn, SDS. *See State v. Joseph J.*
27 *Henn*, CR2020-001327. During his interview, FC Doe explained that Fr. Joseph J. Henn and
28 another priest, Fr. Denis Pecore, “used the term, the term always used was rubdowns, so he called
it rubdown.” (Exhibit 17: MCAO – DR2019-037 – Forensic Interview of FC Doe at bates 130-
131). This is consistent with Defendants’ use of euphemisms to describe and document child
sexual abuse.

1 Green that “On four separate occasions I’ve been submitted to homosexual acts with my
2 pastor John Doran. All of these occasions have taken place at the Viking Sauna Bath on
3 16th Street.” When Fr. Doran asked the Brophy student to go a fifth time, the student
4 spoke with Fr. John Enright, SJ of Brophy and refused the invitation. Fr. Enright, SJ,
5 encouraged the Brophy student to report the sexual misconduct to the Bishop. In his
6 letter, the student explained the acts of abuse occurred between the first week of February
7 and the first week of April 1966. The sexual abuse included Fr. Doran masturbating the
8 Brophy student and the student masturbating Fr. Doran. (Exhibit 8: *Ltr Unknown to*
9 *Bishop Green* dated 04/25/1966). In a subsequent memo, the Diocese of Tucson
10 documented that the Brophy student may have been TR. (Exhibit 4: *Note to File re*
11 *Doran, John* dated 02/21/2003).

12 On June 24, 2002, June Kellen, the Chancellor for the Diocese of Tucson,
13 memorialized a report of child sexual abuse by Fr. Doran. She also memorialized her
14 conversations with Sister Mary Ann Winters, the Chancellor for the Diocese of Phoenix
15 and Father Diskin, the vice chancellor for the Diocese of Phoenix. Ms. Kellen reported
16 the sexual abuse of KB by Fr. Doran when KB was a parishioner at St. Thomas. The
17 Chancellor and Vice Chancellor for the Diocese of Phoenix told Ms. Kellen that “[t]hey
18 would meet with the man (KB) but would not incriminate themselves as to what was in
19 their files.” (Exhibit 9: *Memo to Bishop Moreno, Bishop Kincanas, Father Van Wagner*
20 *and Fred Allison* dated 09/24/2002)(emphasis added).

21 Just as it did in 2002, in its effort to dismiss this case the Diocese Defendants
22 misrepresented facts so as to not incriminate the Diocese as to what is in their files. In
23 doing so, the Diocese Defendants breached its duty of candor.

24
25 **3. The Diocese of Phoenix, through its *curia* - vicar general and**
26 **consultors - knew or had actual notice that Fr. Doran engaged in**
27 **misconduct when the Diocese of Phoenix was created in 1969.**

28 The Roman Catholic Church in the United States annually publishes an Official
Catholic Directory (OCD) listing each Catholic institution within each diocese and the

1 priest, brothers, bishops, sisters and other religious workers working in that diocese. The
2 Roman Catholic Church publishes the OCD, in part, to obtain special tax treatment that
3 is reaffirmed by the U.S. Treasury Department annually. The OCD is regularly published
4 in the summer of each calendar year. In 1946, the United States “Treasury Department
5 affirmed the exemption from federal income tax of all Catholic institutions listed in the
6 OCD for that year. Each year since 1946, in a separate letter, the 1946 ruling has been
7 reaffirmed with respect to subordinate organizations listed in the current addition of the
8 OCD.” (Exhibit 10: Office of General Counsel, *Memo – Subordinate Organizations*
9 *Under USCCB Group Ruling 2021 Ruling*, dated 09/10/2021). Accordingly, the Official
10 Catholic Directory “is “the definitive compilation of Roman Catholic Institutions in the
11 United States.” *Hartwig v. Albertus Magnus College*, 93 F. Supp. 2d 200, 202-203 (D.
12 Conn. 2000).

13 According to the OCD, the diocesan *curia* is the personnel and offices assisting
14 the diocesan bishop in directing the pastoral activity, administration, and the exercise of
15 judicial power of his diocese. [] Principal officers of a diocesan *curia* are the vicar
16 general of the diocese, the chancellor [] [and] consultors” (Exhibit 2: Official
17 Catholic Directory – Glossary)(emphasis added).

18 In 1968, Monsignor Bernard L. Gordon was a diocesan consultor for the Diocese
19 of Tucson. (Exhibit 11: OCD 1968). In 1969, Monsignor Bernard L. Gordon was the
20 vicar general of the Diocese of Tucson. (Exhibit 12: OCD 1969). As both consultor and
21 vicar general for Tucson, Monsignor Bernard L. Gordon was one of the principal officers
22 who helped the Bishop of Tucson manage and administer the affairs of the diocese. As
23 a principal officer in the governance of the Diocese of Tucson, Monsignor Bernard L.
24 Gordon was familiar with all matters regarding the assignment of Catholic priests and
25 their fitness to work as priests. As vicar general, Monsignor Gordon acted on behalf of
26 the bishop and supervised the diocese.

27 In 1969/1970, Monsignor Bernard L. Gordon was appointed vicar general for the
28 newly created Diocese of Phoenix. He was also one of the consultors for the Diocese of

1 Phoenix along with Fr. John P. Doran. As members of the diocesan *curia* for the Diocese
2 of Phoenix, both Monsignor Bernard L. Gordon and Fr. John P. Doran were principal
3 officers of the Diocese of Phoenix when it was created in 1969. (Exhibit 13: OCD 1970).

4 **II. LEGAL ARGUMENT**

5 **A. Substantial justice requires the trial court vacate its ruling and grant** 6 **Plaintiff a new trial.**

7 Rule 59(a), Ariz. R. Civ. P., allows the Court to review and correct any errors in
8 this proceeding which have had a material effect on the outcome and to ensure that
9 substantial justice has been done before an appeal becomes necessary. *King v. Superior*
10 *Court*, 138 Ariz. 147, 673 P.2d 787 (1983). Rule 59(a), Ariz. R. Civ. P., permits the trial
11 court, on motion of the aggrieved party, to vacate a judgment and to grant a new trial for
12 any of the eight reasons stated in subpart (a). *Sanders v. Foley*, 190 Ariz. 182, 185 (App.
13 1997). To avoid unnecessary appeals, foster trial on the merits, and access to justice, a
14 litigant should be given the opportunity to persuade the trial court of its errors. *Maganas*
15 *v. Northrup*, 112 Ariz. 46, 49 (1995). A new trial is necessary in this case because the
16 trial court applied a heightened pleading standard specifically rejected by the Arizona
17 Supreme Court. The trial court's ruling is also based on misconduct by the prevailing
18 party. And finally, newly discovered material evidence that could not have been
19 discovered and produced prior to the trial court's ruling having a tendency to show
20 Diocese Defendants knew or had actual notice of Fr. John P. Doran's misconduct. Ariz.
21 R. Civ. P. 59(a)(A)(B) and (D).

22 23 **1. The trial court applied a heightened pleading standard and drew** 24 **inferences and conclusions in Defendants favor which is contrary** 25 **to law.**

26 The trial court did not correctly apply the legal standard. "Arizona follows a notice
27 pleading standard, the purpose of which is to give the opponent fair notice of the nature
28 and the basis of the claim and indicate generally the type of litigation involved." *Cullen*
v. Auto-Owners Ins. Co., 218 Ariz. 417, 419 6, 189 P.3d 344, 346 (2008) quoting *Mackey*

1 v. *Spangler*, 81 Ariz. 113, 115, 301 P.2d 1026, 1028 (1956). A motion to dismiss is not
2 a procedure for resolving disputes about the facts or merits of a case. *Coleman v. City of*
3 *Mesa*, 230 Ariz. 352, 363, 284 P.3d 863, 874 (2012). Instead, the narrow question
4 presented by the motion to dismiss for failure to state a claim is whether facts alleged in
5 a complaint are sufficient “to warrant allowing the [plaintiff] to attempt to prove [his]
6 case.” *Id.* at 363, 284 P.3d at 874. Dismissal is permitted only when a “plaintiff[] would
7 not be entitled to relief under any interpretation of the facts susceptible to proof.” *Fid.*
8 *Sec. Life Ins. Co. v. State Dep’t of Ins.*, 191 Ariz. 222, 224, 954 P. 2d 580, 582
9 (1998)(emphasis added). “It is not necessary for the plaintiff to prove its case within the
10 complaint.” *Hopi Tribe v. Arizona Snowbowl Resort Ltd. P’Ship*, 418 P.3d 1032, 1035
11 (App. 2018). Moreover, a motion to dismiss requires the trial court to accept all material
12 facts alleged by the nonmoving party as true and indulge all reasonable inferences in
13 favor of the non-moving party. *Acker v. CSO Chevira*, 188 Ariz. 252, 255, 934 P.2d 816,
14 819 (App. 1997); *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 189 P.2d 344, 346
15 (2008)(Arizona declined to adopt the more fact-specific pleading standard adopted by the
16 United States Supreme Court in *Bell Atlantic Corp. v Twombly*).

17 As the Arizona Supreme Court found in *Mackey v. Spangler*,
18 the test as to whether a complaint is sufficient to withstand
19 a motion to dismiss is whether enough is stated therein
20 which, if true, would entitle plaintiff to some kind of relief
21 on some theory. The court **should not grant a motion to**
22 **dismiss unless it appears certain** that the plaintiff would
be entitled to no relief under any state of facts which is
susceptible to proof under the claim as stated.

23 *Mackey v. Spangler*, 81 Ariz. 113, 301 P.2d 1026, 1027 (1956).

24 In his Second Amended Complaint, Plaintiff alleged Fr. Doran was accused of
25 child sexual abuse in 1963. (SAC ¶ 74). Plaintiff also alleged that Defendants knew or
26 had actual notice of Fr. Doran’s misconduct. (SAC ¶¶ 14, 15, 72). The reasonable
27 inference that the trial court must draw in Plaintiff’s favor is that Defendants knew or had
28 actual notice of the 1963 accusation. Instead of drawing inferences in Plaintiff’s favor,

1 the trial court drew inferences in favor of Defendants. Specifically, the trial court inferred
2 and concluded that because the Diocese of Phoenix was not created until 1969, the
3 Diocese of Phoenix could not have possibly known of Fr. Doran’s pre-1969 misconduct.
4 The trial court’s inference and conclusion was not only contrary to law, it defies common
5 sense: What employer would not seek out information about its employee particularly
6 when the employee would be placed in positions of trust and authority and working with
7 children? More importantly, the trial court’s conclusion is demonstrably false because
8 when Pope Paul VI created the Diocese of Phoenix, he ordered that all documents
9 regarding clergy be transferred to the Diocese of Phoenix. In the process of establishing
10 the Diocese of Phoenix, the Tucson Diocese and Phoenix Diocese created committees,
11 consultants, procedures and transferred principal officers to ensure that the knowledge of
12 the Diocese of Tucson was transferred to the Diocese of Phoenix.

13 The trial court should grant Plaintiff a new trial because the trial court drew
14 inferences and conclusions in favor of Defendants which is contrary to law. Arizona law
15 required the trial court to draw inferences in Plaintiff’s favor.

16
17 **2. The Diocese Defendants breached its duty of candor to the tribunal
in making false representations to court and counsel.**

18 Under Rule 59(a), Ariz. R. Civ. P., the trial court may grant a new trial when there
19 has been misconduct by the prevailing party. Where there has been misconduct of the
20 prevailing party or the party’s counsel, a new trial is warranted if the right to a fair trial
21 has been material affected. *Colfer v. Ballantyne*, 89 Ariz. 408, 363 P.2d 588 (1961);
22 *Miller v. Palmer*, 143 Ariz. 84, 691 P.2d 1112 (App. 1984).

23 “Attorney candor and honesty form the bulwark of our judicial system.” *In Re*
24 *Ireland*, 146 Ariz. 340, 706 P.2d 352 (1985). “A lawyer shall not knowingly make a false
25 statement of fact or law to a tribunal or fail to correct a false statement of material fact or
26 law previously made to the tribunal by the lawyer.” Ariz. R. Sup. Ct. 42, E.R. 3.3(a).
27 Intentionally misleading a court by omission is a violation of the duty of candor to the
28 tribunal. *In Re Ireland*, 146 Ariz. 340, 706 P.2d 352 (1985)(ER 3.3 formerly DR7-

1 102(A)(3)(attorney had a duty to inform the court of his client’s finances, information the
2 attorney withheld from the court); *Pumpphrey v. KW Thompson Tool Company*, 62 F.3d
3 1128, 1130 (9th Cir. 1995)(a new trial was appropriate where manufacturer “engaged in
4 scheme to defraud the jury, the court, and Plaintiffs, through the use of misleading,
5 inaccurate and incomplete responses to discovery requests, the presentation of fraudulent
6 evidence and the failure to correct false impressions created.”).

7 On June 9, 2022, counsel for the Diocese represented “that Defendants did not
8 have knowledge or actual notice of misconduct by other priests before Doran sexually
9 abused Plaintiff.” (*See* Diocese Defts.’ *Mtn to Dismiss* at p. 8: 4-6). The Diocese
10 Defendants also led the court to believe that no one at the Diocese of Phoenix knew of
11 Fr. Doran’s pre-1969 misconduct. The Diocese Defendants and its lawyers failed to
12 inform the court that on June 28, 1969, Pope Paul VI ordered all documents regarding
13 clergy to be transferred to the new diocese.

14 On March 14, 2022, 2 months and 26 days before making the false representation,
15 counsel for the Diocese disclosed documents and records showing the Diocese knew or
16 had actual notice of Fr. Doran’s prior misconduct. Although the records were originally
17 maintained by the Diocese of Tucson, by papal decree issued June 28, 1969, all
18 documents regarding clergy were sent to the *curia* – the personnel and offices that govern
19 the diocese – of the newly formed Diocese of Phoenix. (Exhibit 1: The Executive Decree
20 for the Establishment of the Diocese of Phoenix at bates 291)(DOP-JohnRLRoe-288 –
21 301). Counsel for the Diocese false representations is evident by the fact that the vicar
22 general for the Diocese of Tucson in 1968, Monsignor Bernard Gordon, became the vicar
23 general for the newly created Diocese of Phoenix. Monsignor Gordon was also one of
24 the consultors for both Diocese. As both vicar general and consultor for both diocese,
25 Monsignor Gordon knew or had actual notice of Fr. Doran’s misconduct and was part of
26 the process of transferring all relevant data to the Diocese of Phoenix. (Exhibit. :
27 *Questions of Administration for Bishops Green and McCarthy* at bates 307). Counsel for
28 the Diocese led this court to believe that the Diocese Defendants had no knowledge or

1 actual notice of Fr. Doran’s misconduct when in fact, counsel for the Diocese disclosed
2 records in a separate proceeding showing that the information gathered by the Diocese of
3 Tucson prior to 1969 was transferred to the Diocese of Phoenix just as Pope Paul VI
4 decreed when he established the Diocese of Phoenix on June 28, 1969. Counsel for the
5 Diocese failed to correct the false statement.

6 Under Rule 59, Ariz. R. Civ. P., the trial court should grant a new trial because the
7 court’s ruling is based on false and misleading statements of fact.

8 **3. Newly discovered evidence shows the Diocese Defendants knew or**
9 **had actual notice of Fr. John P. Doran’s sexual misconduct.**

10 A new trial should be granted where newly discovered evidence existed at the time
11 of the ruling but could not have been discovered through due diligence and the new
12 evidence probably would have changed the outcome. *Black v. Black*, 114 Ariz. 282, 560
13 P.2d 800 (1977); *Pumpphrey v. KW Thompson Tool Company*, 62 F.3d 1128, 1130 (9th
14 Cir. 1995)(a new trial was appropriate where manufacturer “engaged in scheme to
15 defraud the jury, the court, and Plaintiffs, through the use of misleading, inaccurate and
16 incomplete responses to discovery requests, the presentation of fraudulent evidence and
17 the failure to correct false impressions created.”).

18 Here, there was no lack of diligence. Plaintiff had no ability or opportunity to
19 discover the new evidence. Moreover, in many of its cases the Diocese Defendants insist
20 on a protective order prohibiting information disclosed in one case from being used in a
21 different case even though the cases may share the same witnesses and evidence. By
22 insisting on these types of protective orders, the Diocese Defendants are able to
23 misrepresent and mislead courts. *See Garcia v. Peeples*, 734 S.W.2d 343, 347 (Tex.
24 1987)(“Shared discovery is an effective means to insure full and fair disclosure. Parties
25 subject to a number of suits concerning the same subject matter are forced to be consistent
26 in their responses by the knowledge that their opponents can compare those responses.”);
27 *see e.g. Haeger v. Goodyear Tire & Rubber Co.*, 793 F.3d 1122 (9th Cir. 2015).

28 The evidence disclosed in *John RL Roe v. Diocese of Phoenix*, CV2020-09502,
shows the Diocese Defendants knew or had actual notice of Fr. John P. Doran’s sexual

1 misconduct from the very beginning. On June 28, 1969, Pope Paul VI ordered that all
2 documents regarding clergy be transferred to the governing body (*curia*) of the newly
3 created Diocese of Phoenix. (Exhibit 1: The Executive Decree for the Establishment of
4 the Diocese of Phoenix at bates 291)(DOP-JohnRLRoe-288 – 301). The records in the
5 Diocese Defendants possession and produced by the Diocese Defendants in *BL Roe* show
6 that Diocese Defendants knew or had actual notice as early as 1958 that Fr. John P. Doran
7 engaged in sexual misconduct. His brother priest, Fr. Poirier, documented that Fr. Doran
8 was engaging in the type of grooming behavior alleged in Plaintiff’s complaint when he
9 reported to the Bishop that “there was a good bit of hugging and squeezing of the young
10 lads in the sacristy and on the grounds. These incidents frighten me for with knowledge
11 of the background I view them as dynamite.” (Exhibit 6: *Ltr P. Poirier to Bishop Green*
12 04/22/1958)(emphasis added). By 1966, a Brophy student made it clear that on four
13 occasions, Fr. John P. Doran took the student to a sauna where Fr. Doran masturbated the
14 boy. (Exhibit 8: *Ltr Brophy Student to Bishop Green* dated 04/25/1966). These facts
15 were known to the Diocese Defendants because the files in its archives, files / information
16 the Diocese Defendants withheld from this court so as not to “incriminate themselves as
17 to what was in their files.” (Exhibit 9: *Memo to Bishop Moreno, Bishop Kincana, Father*
18 *Van Wagner and Fred Allison* dated 09/24/2002)(emphasis added).

19 Finally, the documents disclosed by the Diocese Defendants regarding the
20 formation of the Diocese of Phoenix, and its structure, show that principal officers in the
21 governance of both the Diocese of Tucson and the Diocese of Phoenix knew or had actual
22 notice of Fr. Doran’s misconduct. Monsignor Bernard Gordon was vicar general and
23 consultor for both the Tucson diocese and the Phoenix diocese. As the vicar general and
24 principal officer of the curia, Monsignor Gordon supervises the whole of the diocese and
25 acts on behalf of the bishop. (See Exhibit 14: *Dep. Of Thomas Olmsted* 10/22/2019 at p.
26 33: 19-23; 102: 7-9). The knowledge and actual notice Monsignor Gordon carried with
27 him from Tucson to Phoenix when he became the first vicar general was part of the
28 knowledge and information of the Diocese of Phoenix.

1 **B. The trial court may relieve a party from a judgment or order because of**
2 **newly discovered evidence or misrepresentation.**

3 Rule 60, Ariz. R. Civ. P., allows the trial court to grant Plaintiff relief from its
4 ruling granting Defendants’ motion to dismiss where the result is unjust. Newly
5 discovered evidence is grounds for relief under Rule 60, Ariz. R. Civ. P., where the
6 evidence was in existence at the time of the ruling and could not have been discovered
7 through the exercise of due diligence. *Catalina Foothills Ass.’n v. White*, 132 Ariz. 427,
8 646 P.2d 312 (App. 1967).

9 In this case, the newly discovered evidence the Diocese Defendants disclosed in
10 *RL Doe* shows the Diocese Defendants knew and had actual knowledge of Fr. Doran’s
11 misconduct. On June 28, 1969: Pope Paul VI orders that all documents pertaining to
12 clergy be sent to the *curia* for the newly created Diocese of Phoenix. The records from
13 the Diocese of Phoenix *curia* show:

- 14 • Early 1958 – the Bishop of Tucson confronted Fr. John P. Doran about
15 homosexual sex with minors (child sexual abuse) and alcohol;
- 16 • 01/31/1958 – Fr. Doran admits to the Bishop that he has had a problem for
17 some time and with the help of a brother priest has put together a “plan”
18 to break him of the problem;
- 19 • 04/22/1958 – Fr. Phillip Poirie, a priest who worked with Fr. Doran at St.
20 Thomas reported that Fr. Doran engaged in “a good but of hugging and
21 squeezing of the young lads in the sacristy and on the grounds. These
22 incidents frighten me for with knowledge of the background I view them
23 as dynamite.”
- 24 • 04/25/1966 – an unknown Brophy student, after consulting with another
25 priest, reported that on four separate occasions Fr. John P. Doran took him
26 to a sauna where Fr. Doran masturbated the boy;
- 27 • The Diocese Defendants are willing to meet with Fr. Doran’s victims,
28 however, the Diocese Defendants are unwilling to reveal anything that
 would “incriminate themselves as to what was in their files.”

1 Under Rule 60, Ariz. R. Civ. P., the trial court may relieve Plaintiff from the court's
2 prior ruling because of fraud or other misconduct. "Other misconduct" within the
3 meaning of the Rule need not amount to fraud or intentional misrepresentation but may
4 include even accidental omissions. *Estate of Page v. Litzenburg*, 177 Ariz. 84, 865 P.2d
5 128 (App. 1993). The Diocese Defendants in this case made a factual misrepresentation
6 when it claimed the Diocese Defendants did not have knowledge or actual notice of Fr.
7 Doran's pre-1969 misconduct because the Diocese of Phoenix did not exist. The orders
8 of Pope Paul VI and the process of establishing the newly created Diocese show that not
9 only were documents transferred to the new diocesan *curia* where the Diocese
10 Defendants continues to safeguard them, but the knowledge of Fr. Doran's misconduct
11 was known to principal officers of the Diocese of Phoenix, including the vicar general,
12 Monsignor Bernard Gordan. Monsignor Gordon was vicar general of both dioceses. As
13 vicar general, Monsignor Gordan carried the knowledge of Fr. Doran's misconduct from
14 Tucson to Phoenix when he became the first vicar general for the Diocese of Phoenix.

15 **III. CONCLUSION**
16

17 For the reasons stated above, pursuant to Rules 59 and 60, Ariz. R. Civ. P.,
18 Plaintiff requests that the trial court grant Plaintiff a new trial and or relieve Plaintiff from
19 its ruling dated July 14, 2022. In the alternative, and pursuant to Rule 15, Ariz. R. Civ.
20 P., Plaintiff requests leave to amend his complaint with the newly discovered evidence
21 the Diocese and its lawyers omitted from its Motion to Dismiss.
22

23 **DATED** this 27th day of July, 2022.

24 **MONTOYA, LUCERO & PASTOR, P.A.**

25
26 By: /s/Robert E. Pastor
27 Robert E. Pastor
28 Attorneys for Plaintiff

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I hereby certify that on
This 27th day of July, 2022
I electronically filed the attached document
with the Clerk of the Court using the Clerk's
e-filing system.

The original / copies of the foregoing
Mailed / delivered this 27th day of July, 2022:

/s/ C. Wilhelm