

**THIRD JUDICIAL DISTRICT
COUNTY OF DOÑA ANA
STATE OF NEW MEXICO**

JANE DOE 42,

Plaintiff,

vs.

D-307-CV-2020-01600

**CATHOLIC DIOCESE OF EL PASO,
ST. FRANCIS DE PAULA CHURCH, INC., and
ORDER OF FRIARS MINOR –
PROVINCE OF ST. BARBARA,**

Beyer, Marci

Defendants.

**COMPLAINT FOR DAMAGES FOR CAUSING SEXUAL ABUSE BY PRIESTS,
FAILURE TO PREVENT SEXUAL ABUSE BY PRIESTS, FOR THE SEXUAL ABUSE
ITSELE, AND RELATED CLAIMS, INCLUDING REQUEST FOR EQUITABLE
RELIEF**

Plaintiff, by and through his attorneys of record, HALL & MONAGLE, LLC (Brad D. Hall and Levi A. Monagle) and for her Complaint for Damages Due to Sexual Abuse by Priests, Failure to Prevent Sexual Abuse by Priests, for the Sexual Abuse Itself, and Related Claims, Including Request for Equitable Relief, states:

I. PARTIES, JURISDICTION, AND VENUE

1. At the time she was sexually abused and assaulted by Defendants' Priest, Plaintiff resided in Tularosa, New Mexico. Plaintiff currently resides in Tularosa, Otero County, New Mexico.

2. At all times relevant to this Complaint, Defendant Catholic Diocese of El Paso (hereinafter "the Diocese" or "CDEP") was a Texas religious entity with its principal place of business in El Paso County, Texas, and which at all times material to this Complaint operated

facilities in southern and western New Mexico, including Otero County, New Mexico, and Dona Ana County, New Mexico.

3. At all times relevant to this Complaint, Defendant Order of Friars Minor – Province of St. Barbara (hereinafter “Franciscans” or “the Province”) was a Catholic religious order and California corporation doing business in Otero County, New Mexico.

4. St. Francis de Paula Church, Inc. is a New Mexico nonprofit corporation with its principal place of business in Otero County, New Mexico, and was at all times relevant to this Complaint staffed by the Diocese and/or the Province.

5. The acts and omissions alleged herein occurred in Tularosa, Otero County, New Mexico, among other places.

6. Prior to its separate incorporation under New Mexico civil law, Defendant St. Francis de Paula Church, Inc. was considered a parish under Catholic Canon Law.

7. Defendant St. Francis de Paula Church, Inc. is the successor in interest to St. Francis de Paula Church, and St. Francis de Paula Church is the predecessor in interest to Defendant St. Francis de Paula Church, Inc.

8. Under Catholic Canon Law and/or New Mexico law, and at the time of the events underlying this Complaint, parishes (including St. Francis de Paula Church) were separate administrative entities from the administrative entity of the diocese in which they reside and function.

9. Under Catholic Canon Law and/or New Mexico law, and at the time of the events underlying this Complaint, St. Francis de Paula Church was an administrative entity separate from the administrative entity of CDEP.

10. Under Catholic Canon Law and/or New Mexico law, and at the time of the events underlying this Complaint. St. Francis de Paula Church held funds separate from CDEP, held property separate from CDEP, hired and paid personnel separate from CDEP, and made supervisory decisions separate from CDEP.

11. Under Catholic Canon Law and/or New Mexico law, and at the time of the events underlying this Complaint, Fr. Damian Gamboa was a pastor/administrator at St. Francis de Paula Church.

12. Upon information and belief, Fr. Gamboa was ordained as a priest by the Province.

13. Upon information and belief, Fr. Gamboa received faculties from the Diocese and its bishop to serve as a priest at the Parish.

14. Jurisdiction and venue are proper with this Court.

II. FACTS

15. The allegations of the preceding and succeeding paragraphs are incorporated herein by this reference.

16. Plaintiff was a victim of childhood sexual abuse perpetrated by a priest.

17. The sexual abuse of Plaintiff occurred on the physical premises of St. Francis de Paula Church.

18. The priest who abused Plaintiff was Fr. Damian Gamboa (“Defendants’ Priest”). At the time he sexually abused Plaintiff, Defendants’ Priest was a pastor/administrator of St. Francis de Paula Church.

19. Defendants’ Priest began abusing Plaintiff in approximately 1982 or 1983, when Plaintiff was approximately 13 or 14 years old, and continued abusing her for approximately two years thereafter.

20. Plaintiffs' parents were staunch Catholics who attended St. Francis de Paula Church, Inc., where Defendants' Priest was pastor.

21. The sexual abuse of Plaintiff by Defendants' Priest caused Plaintiff emotional, psychological and physical harm.

22. Plaintiff has only recently (since 2019) begun to understand the nature of the sexual abuse she suffered, and the fact that she sustained severe emotional, psychological and physical injuries as a result of the childhood sexual abuse by Defendants' Priest.

23. Defendants' Priest used his status and substantial power as a priest to isolate Plaintiff for sexual abuse.

24. CDEP imbued Defendants' Priest with the powers and authorities of his priesthood.

25. In addition or in the alternative, the Province imbued Defendants' Priest with the powers and authorities of his priesthood.

26. In addition or in the alternative, St. Francis de Paula Church imbued Defendants' Priest with the powers and authorities of his priesthood.

27. At all times material to this Complaint, and according to the internal policies and procedures of the Catholic Church and the Diocese, Defendants' Priest was an employee of and under the control of the Diocese and/or the Province and/or the Parish, and acted within an agency relationship with the Diocese and/or the Province and/or Parish (while providing guidance, direction, counseling, confessional response, and psychological assistance to his parishioners, including Plaintiff).

28. The Defendants imbued their priests (including Defendants' Priest) with substantial power over the lives of their vulnerable parishioners. The imbueing of such power does not necessarily implicate teaching the victim any particular set of religious beliefs. However, no

question exists that the Defendants taught vulnerable parishioners, particularly children, to put complete trust in priests and believe that priests had divine power and authority over them and their souls.

29. According to the internal policies and procedures of the Catholic Church and the Diocese, the Diocese (through its Bishop) had (and currently has) the power to allow, disallow, and control the service of any clergy within the geographical jurisdiction of the Diocese.

30. Plaintiff's parents trusted that Plaintiff would be safe from sexual predation while in the care and custody of priests like Defendants' Priest.

31. Plaintiff's parents only allowed Plaintiff to spend time alone with Defendants' Priest because Defendants' Priest's status as a priest created a special relationship of deep trust.

32. But for the fact that Defendants' Priest was a priest, Plaintiff's parents would never have allowed Plaintiff to spend time alone with Defendants' Priest.

33. Defendants' Priest's knowledge of the deference to priests engrained in Catholic children by their upbringing in the Church encouraged and facilitated his sexual abuse of those Catholic children, including Plaintiff. Defendants' Priest knew that Catholic children were trained to give unquestioning obedience to priests (rather than to defend themselves from sexual abuse by priests), and exploited Plaintiff's trained obedience for his own sexual gratification. The scope of Defendants' Priest's employment allowed him unfettered access to children like Plaintiff, and performing priestly functions as an agent for the Diocese and/or Parish allowed unfettered access to these minors.

34. The facts described herein support legal claims for battery, premises liability, and negligence taking many forms, including but not limited to "failure to warn" or "negligent hiring, training, retention and supervision."

35. In addition to being liable for their own direct negligence, the Defendants are vicariously liable for the sexual abuse suffered by Plaintiff at the hands of Defendants' Priest, under the aided-in-agency laws of New Mexico.

36. Defendants' acts and/or omissions resulted in injuries to Plaintiff and give rise to Plaintiff's causes of action for damages. As a direct and proximate result of sexual abuse from Defendants' Priest, Plaintiff suffered and continues to suffer serious injury and harm, including but not limited to physical injury, psychological injury, emotional distress, embarrassment, humiliation, loss of self-esteem, depression, and other damages. His trust in religion and in authority figures has been seriously breached. His faith has been badly damaged.

37. Plaintiff is entitled to all compensation allowable under New Mexico law and jury instructions for harms caused by Defendants, including punitive damages.

38. Defendant CDEP is legally responsible for punitive damages for the harms caused by Defendants' Priest.

39. In addition or in the alternative, the Province is legally responsible for punitive damages for the harms caused by Defendants' Priest.

40. In addition or in the alternative, Defendant St. Francis de Paula Church is legally responsible for punitive damages for the harms caused by Defendants' Priest.

41. Defendants' Priest sexually abused Plaintiff in a manner legally constituting the tort of battery.

42. As a direct and proximate result of childhood sexual abuse at the hands of Defendants' Priest, Plaintiff suffered and continues to suffer severe emotional and psychological distress. Plaintiff now suffers from embarrassment, humiliation, damaged faith, loss of sexual capacity and intimacy, loss of self-esteem, depression, and other damages.

43. Defendants' Priest's sexual batteries of Plaintiff described herein were intentional, malicious, willful, reckless, and/or wanton, displaying a conscious, deliberate, and/or reckless disregard of, or utter indifference to, harmful consequences, including the health and safety of Plaintiff, resulting in injuries and harm to Plaintiff, justifying an award of punitive damages against the Defendants.

III. NEGLIGENCE: ALL DEFENDANTS

44. The allegations of the preceding and succeeding paragraphs are incorporated herein by this reference.

45. The Defendants had and continue to have numerous duties to prevent their conduct or the conduct of priests in their employ, care or custody from harming people, including Plaintiff.

46. Defendants' negligence includes, but is not limited to, the following acts and/or omissions:

- a. The Defendants knew or should have known that vulnerable children like Plaintiff were the foreseeable victims of sexual abuse when they were in the custody of persons with dangerous propensities like Defendants' Priest, and Defendants' accordant duty was breached by the assignment of Defendants' Priest to parish ministry without adequate vetting or supervision;
- b. The Defendants knew or should have known of Defendants' Priest's sexual abuses and/or other sexual misconduct, and knew or should have known of the sexual abuse of many other vulnerable individuals by many more area priests, and did nothing to stop or warn vulnerable parishioners like Plaintiff of the likelihood of sexual abuse by its priests;

- c. The Defendants knew or should have known of Defendants' Priest's proclivity to sexually abuse children such as Plaintiff, and did nothing to stop it or warn parishioners of its likelihood, or to warn parishioners that pedophiles were in their midst;
- d. The Defendants knew or should have known of the risk that some priests would sexually abuse Catholic children if those priests were not closely supervised and/or that the Catholic children were not trained to defend themselves from sexual abuse, by priests and/or clergy but the Defendants took no steps to closely supervise their priests and/or clergy and/or to train Catholic children to defend themselves from sexual abuse by priests and/or clergy;
- e. The Defendants failed to hire, train, supervise, and/or retain priests who would not molest, abuse, and harm vulnerable children;
- f. The Defendants failed to supervise their priests in a manner sufficient to prevent those priests from sexually abusing children entrusted to them by virtue of their status as priests;
- g. The Defendants failed to take reasonable precautions to protect Plaintiff from sexual abuse.
- h. The Defendants failed to protect vulnerable parishioners like Plaintiff in their parishes from abuse by priests like Defendants' Priest.
- i. Regardless of whether the Diocese and Parishes knew specific details about Defendants' Priest's crimes against children, or feigned ignorance of his involvement in the culture of sexual abuse that dominated these decades, Defendants failed in their duty to keep the church premises of their parishes safe for use by Plaintiff and other vulnerable parishioners.

47. Defendants breached these duties and were negligent, resulting in damage to Plaintiff.

48. The Defendants' negligent acts and/or omissions directly led to the sexual abuse of Plaintiff by, among other things, empowering priests to abuse vulnerable parishioners, and adhering to policies and practices of secrecy to protect abusive priests and the Diocese and Parish from scandal. Adherence to these policies and practices of secrecy was more important to the Defendants than warning vulnerable parishioners of sexually abusive priests in their midst, which would have promoted safety and accountability.

49. Each of the above acts and/or omissions were singularly and/or cumulatively the actual and/or proximate cause of the occurrence in question and the resulting significant harm, injuries, and damages sustained by Plaintiff.

50. Thus, the Defendants are directly liable for their own negligence.

51. Defendants' acts and/or omissions described herein were intentional, malicious, willful, reckless, and/or wanton, displaying a conscious, deliberate, and/or reckless disregard of, or utter indifference to, harmful consequences, including the health and safety of Plaintiff, resulting in injuries and harm to Plaintiff, justifying an award of punitive damages.

52. WHEREFORE, Plaintiff requests judgment against the Defendants in an amount reasonable to compensate her for damages, including punitive damages, for interest including pre-judgment interest, costs, and such other and further relief as this Court may deem appropriate.

IV. VICARIOUS LIABILITY FOR SEXUAL BATTERIES: ALL DEFENDANTS

53. The allegations of the preceding and succeeding paragraphs are incorporated herein by this reference.

54. The sexual abuse of Plaintiff by Defendants' Priest constituted battery and intentional infliction of emotional distress, among other torts.

55. At all times relevant to this Complaint, Defendants' Priest was an agent or employee of one or more of the Defendants, up to and including all of the Defendants. But for the fact that Defendants' Priest was a Catholic priest, with all of the duties, responsibilities, and vested and apparent authority that being a Catholic priest entails over a Catholic child – such as disciplinarian, teacher, confessor, and pastoral counselor – Defendants' Priest would not have had the necessary authorities or powers needed to abuse Plaintiff.

56. Thus, the Defendants are vicariously liable for the conduct of the priest who abused Plaintiff under the theory of “aiding-in-agency,” because they imbued the priest with substantial power over vulnerable children like Plaintiff and sexual abuse occurred as a result.

57. The agency and power dynamic in this case has nothing to do with the theological beliefs of the Catholic religion.

58. Defendants' acts and/or omissions described herein were intentional, malicious, willful, reckless, and/or wanton, displaying a conscious, deliberate, and/or reckless disregard of, or utter indifference to, harmful consequences, including the health and safety of Plaintiff, resulting in injuries and harm to Plaintiff, justifying an award of punitive damages.

59. Priests are managers of parishes, and the Defendants are legally responsible for punitive damages for the harms caused by its priests.

60. A corporation may be held liable for punitive damages for the misconduct of its employees, managers, and/or agents. The actions of Defendants' employees, managers, and/or agents, viewed in the aggregate, determine that Defendants had the requisite culpable mental state because of the cumulative conduct of its employees, managers, and/or agents. The totality of

circumstances indicates Defendants' intentional, malicious, willful, deliberate, wanton and/or reckless disregard for the harmful consequences, including the health and safety of Plaintiff.

61. Defendants' employees, managers, and/or agents, engaged in in a pattern and practice of intentional, malicious, willful, deliberate, wanton and/or reckless conduct, which cumulatively demonstrated punitive-damages-invoking conduct on the part of Defendants.

62. Alternatively, Defendants ratified such conduct to justify the imposition of punitive damages.

63. WHEREFORE, Plaintiff requests judgment against the Defendants in an amount reasonable to compensate her for damages, including punitive damages, for interest including pre-judgment interest, costs, and such other and further relief as this Court may deem appropriate.

V. JURY DEMAND

64. Plaintiff respectfully requests trial by jury of the issues in this case.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully pray for a judgment against Defendants for damages sufficient to fully compensate Plaintiff for all the injuries and damages described herein, for compensatory damages, punitive damages, attorney's fees, for costs, pre-judgment and post judgment interest as allowed by law, for an Order from the Court requiring the release of documents from Defendants' archives to the public, and for such other, and further relief, general and special, at law or in equity to which Plaintiff is entitled.

HALL & MONAGLE, LLC

/s/ Levi A. Monagle 08/04/20
BRAD D. HALL
LEVI A. MONAGLE
320 Gold Ave SW #1218

Albuquerque, NM 87102
(505) 255-6300, (505) 255-6323 Fax

Attorneys for Plaintiff