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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 For the County of Santa Barbara, Anacapa Division

8 Craig Clover, an individual,
9 Plaintiffs,

10 v.

11 Franciscan Friars of California, Inc.; Old
12 Mission Santa Barbara, and Does 3
through 100, Inclusive.

13 Defendants.
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) Case No. 1338070

) **FIRST AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF FOR:**

- 1. PUBLIC NUISANCE
- 2. NEGLIGENCE
- 3. NEGLIGENT SUPERVISION/
FAILURE TO WARN;
- 4. NEGLIGENT
HIRING/RETENTION
- 5. FRAUD;
- 6. FIDUCIARY/CONFIDENTIAL
RELATIONSHIP FRAUD AND
CONSPIRACY;
- 7. BREACH OF FIDUCIARY
DUTY;
- 8. NEGLIGENT FAILURE TO
WARN, TRAIN, OR EDUCATE
PLAINTIFFS;
- 9. INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS;
- 10. NEGLIGENT INFLECTION OF
EMOTIONAL DISTRESS;
- 11. VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200;
- 12. FRAUD AND DECEIT;
- 13. PREMISES LIABILITY.

25 Based upon information and belief available to Plaintiff Craig Clover at the time of
26 the filing of this First Amended Complaint, Plaintiff makes the following allegations:

27 **PARTIES**

- 28 1. Plaintiff Craig Clover is an adult male over the age of 26. Plaintiff was a minor

1 residing in the county of Santa Barbara at the time of the sexual abuse alleged herein.

2 2. Defendant Doe 1/Franciscan Friars of California, Inc. ("Defendant Franciscan Friars"
3 or "the Franciscans" or "Defendant Order") is a Roman Catholic Order and a nonprofit public
4 benefit corporation organized for religious purposes and incorporated under the laws of the
5 State of California, doing business in Santa Barbara. Defendant Order is the religious order
6 that owned and/or operated the properties in Santa Barbara -- St. Anthony's Seminary ("St.
7 Anthony's") and Doe 2/Old Mission Santa Barbara -- where many of Does 1 -100's other
8 pedophilic and/or ephebophilic agents sexually assaulted children.

9 2.1 Defendant Doe 2/Old Mission Santa Barbara ("Defendant Old Mission"), also known
10 as Saint Barbara Parish, is a Roman Catholic church or parish located in Santa Barbara,
11 California. Doe 2 is the church or parish where the perpetrators were assigned, or in
12 residence, or doing supply work, or volunteering at, or visiting during the period of wrongful
13 conduct. Does 1 through 100 are sometimes referred to collectively as "Defendants."

14 2.2 The Perpetrators, Franciscan Fathers Dave Johnson, Gus Krumm, and a third but as
15 yet unidentified Franciscan, were at all times relevant individuals residing and/or doing
16 business in the City and County of Santa Barbara, California, and were Roman Catholic
17 priests, members, religious brothers, employees, agents and/or servants of the Franciscans
18 and/or Defendant Old Mission and/or Does 3-100. During the dates of abuse, the
19 Perpetrators were assigned, or in residence, or doing supply work, or volunteering, or visiting
20 at Defendant Old Mission, and were under the direct supervision, employ and control of the
21 Franciscans and/or Defendant Old Mission and/or Does 3-100.

22 3. Defendant Does 3 through 100, inclusive, are individuals and/or business or
23 corporate entities incorporated in and/or doing business in California whose true names and
24 capacities are unknown to Plaintiff who therefore sues such defendants by such fictitious
25 names, and who will amend the First Amended Complaint to show the true names and
26 capacities of each such Doe defendant when ascertained. Each such Defendant Doe is legally
27 responsible in some manner for the events, happenings and/or tortious and unlawful conduct
28 that caused the injuries and damages alleged in this First Amended Complaint.

1 4. The Perpetrators and/or each Defendant were and/or are the agent, servant and/or
2 employee of the Franciscans and/or Defendant Old Mission and/or Does 3 -100. The
3 Perpetrators and/or each Defendant were acting within the course and scope of his, her or its
4 authority as an agent, servant and/or employee of the Perpetrators and/or other Defendants.
5 The Perpetrators and/or the Franciscans and/or Defendant Old Mission and/or Does 3 -100,
6 and each of them, are individuals, corporations, partnerships and other entities which engaged
7 in, joined in and conspired with the other wrongdoers in carrying out the tortious and
8 unlawful activities described in this First Amended Complaint, and the Perpetrators and/or
9 each Defendant ratified the acts of the Perpetrators and/or the Franciscans and/or Defendant
10 Old Mission and/or Does 3 -100 as described in this Complaint.

11
12 **BACKGROUND FACTS APPLICABLE TO ALL COUNTS**

13 5. The Perpetrators and Defendants' other pedophilic and/or ephebophilic agents
14 committed acts of Childhood Sexual Abuse in Santa Barbara before, during, and after the
15 time Craig attended St. Anthony's. The Franciscan corporate practice of concealing the
16 identities, propensities, and current assignments and/or residences of these perpetrators has
17 enabled and empowered such men to sexually assault and/or continue to place at risk
18 countless children around the various locations in the Western United States and throughout
19 the world where these Franciscans have conducted their business for nearly a century,
20 including but not limited to Franciscan friaries, missions, parishes, retreat centers and other
21 communities in the western States of Arizona, California, Missouri, Nevada, New Mexico,
22 Oregon, Utah and Washington, and in countries such as Africa, Brazil, El Salvador,
23 Guatemala, Israel, Italy, Mexico, Peru, the Philippines and Thailand. Finally, an unknown
24 number of Defendants' former pedophilic and/or ephebophilic agents, whose propensities
25 Defendants have been aware of for years but have disclosed to no one, continue to sexually
26 assault and/or place at risk countless children around these locations as well as at numerous
27 other locations, such as in the State of Idaho, where these former Franciscans now reside.

28 ///

1 The Origin of the Explosion of Franciscan Sex Crimes in Santa Barbara in the 1960s

2 6. Franciscan perpetrators have been sexually assaulting children in Santa Barbara since
3 at least 1936. During this time at least forty-four (44) pedophilic and/or ephebophilic Roman
4 Catholic priests or religious brothers have been assigned to work at and were living at and/or
5 visiting various locations around Santa Barbara County, including but not limited to St.
6 Raphael's Church in Goleta, San Roque, Our Lady of Guadalupe, Our Lady of Mt. Carmel in
7 Montecito, and the adjoining properties of St. Anthony's and the Mission. Twenty-seven
8 (27) of those priests or religious brothers were or are Franciscans.

9 Although Franciscan priests and Religious brothers abused Santa Barbara children
10 much earlier in the 20th Century, there was an explosion of Franciscan sex crimes against at
11 least sixty-two (62) local children beginning in the early 1960s. That explosion was triggered
12 by events involving the Franciscans in the Diocese of San Diego in the early 1950s.

13 Prior to Santa Barbara the Franciscans used parishes in communities that at the time
14 were on the outskirts of the Diocese, such as Banning and Beaumont, as havens to send their
15 problem priests and Religious Brothers. Eventually the Diocese ended the Franciscans'
16 conduct. According to a letter written by the Bishop of San Diego on April 26, 1950:

17 "During the thirteen years since this Diocese was erected, to my own
18 personal knowledge, the Saint Barbara Province of the Franciscan
19 Fathers has used this Diocese as a dumping ground for their moral,
20 mental and physical problems. It became necessary for me some
time ago to demand the withdrawal of one misfit after another." See
Exhibit "A" (Emphasis added).

21 The Bishop was so frustrated with the Franciscans that he commenced the process of
22 applying to the necessary religious bodies in Rome to evict the Franciscans from the parishes
23 in the Diocese of San Diego. It would appear the Bishop eventually succeeded, and
24 sometime in the 1950s the Franciscans made Santa Barbara their new dumping ground for
25 Franciscan perpetrators. Beginning in the late 1950s the Franciscans began sending the first
26 of at least twenty-six (26) Franciscan perpetrators to Santa Barbara following their expulsion
27 from the Diocese. Those perpetrators are identified below in the decades they first appeared
28 and continued to reside in or visit Santa Barbara based on information known to date:

- 1 - Fr. Owen Da Silva (1930s)
- 2 - Brother Berard Connolly (1940s, 1980s - 1990s)
- 3 - Fr. Martin McKeon (1950s - 1960s)
- 4 - Fr. Edward Henriques (1960s)
- 5 - Fr. Mario Cimmarrusti (1960s - 1970s)
- 6 - Fr. Mel Bucher (1960s)
- 7 - Fr. Forrest McDonald (1960s - 1970s)
- 8 - Br. Kevin Dunne (1960s - 1970s)
- 9 - Br. Sam Cabot (1960s-1980s)
- 10 - Fr. Edmund Austin (1970s)
- 11 - Fr. Gus Krumm (1970s - 1980s)
- 12 - Fr. Paul Conn (1970s - 1980s)
- 13 - Fr. Dave Johnson (1970s - 1980s)
- 14 - Fr. Joseph Prochnow (1970s - 1980s)
- 15 - Br. Matteo Guerrero (1970s, 1990s - 2000s)
- 16 - Fr. Robert Van Handel (1970s -1990s)
- 17 - Fr. David Carriere (1970s - 2000s)
- 18 - Fr. Steve Kain (1980s)
- 19 - Fr. Philip Wolfe (1980s)
- 20 - Pre-novitiate candidate Ed Byrom (1980s)
- 21 - Pre-novitiate candidate Tom Thing (1980s)
- 22 - Fr. Chris Berbena (1980s)
- 23 - Fr. Remy Rudin (1980s - 1990s)
- 24 - Br. Gerald Chumik (2000s)
- 25 - Pedro Vasquez (2000s)
- 26 - Fr. Claude Riffel (1941-44, 1975-76)
- 27¹ - Fr. Fr. Alexander Manville (1960-73).

By the 1960s if not sooner these corrupt seeds planted by the Franciscans began bearing poisonous fruit as Franciscan perpetrators abused Santa Barbara children at a horrifying rate. At least eighty-five (85) children have been sexually abused in Santa Barbara by Roman Catholic priests or religious brothers since 1936. Sixty-two (62) of those children were abused by Franciscan priests or religious brothers since 1960. The confirmed number of victims and Franciscan perpetrators grows each year.

The consequences of the Franciscans' continuing corporate practices with regards to Franciscan perpetrators have been disastrous both for local children, and for a society that continues to bear the financial burden of the psychological fallout for abuse survivors. Abuse

1. This number does not include at least two (2) lay perpetrators the Franciscans allowed to sexually assault seminarians or boys choir members on the grounds of St. Anthony's among other locations. Specifically, during the 1970s St. Anthony's faculty member Francisco Moreno sexually assaulted at least one student in Moreno's office, and invited an unknown number of men from the community to assault the student as well. Additionally, in the 1980s perpetrator Fr. Robert Van Handel allowed and enabled his pedophilic friend, Gerald Heather, to sexually assault at least three members of the Santa Barbara Boys Choir.

1 survivors often engage in addictive, self-destructive, and, unfortunately, sometimes criminal
2 behavior as they deal with the psychological scars caused by childhood sexual abuse. These
3 behaviors in turn result in things such as divorce proceedings on court calendars, substance
4 abuse, arrests, and incarcerations, all of which are paid for by the common taxpayer rather
5 than by the truly culpable but tax-exempt organizations that protected the perpetrators. The
6 evidence of the Franciscans' culpability in this regard is overwhelming.

7
8 **THE FRANCISCANS' CONTINUING REFUSAL TO PUBLICLY IDENTIFY ALL**
9 **OF THEIR CURRENT OR FORMER PEDOPHILIC MEMBERS HAS CREATED A**
10 **DEADLY ENVIRONMENT FOR TODAY'S CHILDREN**

11 7. Time and again the Franciscans have had the opportunity to end the cycle of abuse by
12 reporting perpetrators to law enforcement, and by warning the general public when a
13 Franciscan has been accused of sexually assaulting a child. Tragically, the Franciscans'
14 ongoing efforts to protect their pedophilic members, and to protect the corporation's financial
15 interests, establish a continuing pattern of conduct causing new harm to today's children, new
16 trauma to adult survivors of Franciscan childhood sexual abuse, and causing the continuing
17 financial burden to a society paying for the resulting psychological fallout.

18 8. Since at least 1964 the Franciscans have known their perpetrators were sexually
19 assaulting Santa Barbara children, and of the fact any child exposed to their agents was at a
20 heightened risk of being sexually assaulted. Since at least 1964 the Franciscans have been
21 concealing these crimes, and shielding their criminal members from discovery. Sadly, even
22 with the global settlement of the 2003-2006 litigation, the Franciscans have not changed their
23 ways. The following are examples only of some of the most recent known Franciscan
24 conduct placing today's children at risk. These examples illustrate the Franciscans' conduct
25 remains a present day threat to children wherever the Franciscans conduct their business:

26 ● In July of 2003, the Franciscans assigned an admitted perpetrator – Father Gus
27 Krumm – to a Sacramento parish next door to a school without any warning to the
28 community. One Franciscan priest readily admitted he was aware of Father Krumm's prior
abuses but did not think it was appropriate to share such information with parishioners.

1 Despite the fact the Franciscans claimed Father Krumm was forbidden contact with young
2 children, he did in fact have direct contact with young children while at this assignment.

3 • In January 2004 it was revealed that the Franciscans had assigned perpetrator
4 Brother Kevin Dunne to a Franciscan-run parish in Phoenix, St. Mary's Basilica. The
5 Franciscans warned neither the parishioners nor the community of the risk Dunne posed, and
6 the Phoenix community had no means of identifying Dunne as a perpetrator as – thanks to the
7 Franciscans never having reported Dunne's crimes to law enforcement – he had never been
8 prosecuted and is not a registered sex offender. Thus, the fact Dunne had raped at least one
9 St. Anthony's student, and the fact the Franciscans had settled a claim made by that student,
10 was known only to the Franciscans. The parish manager stated the Franciscans had never
11 advised him of Dunne's criminal conduct, and that "they probably should have."

12 • In July 2004 the Franciscans admitted – albeit only after a reporter from the
13 Dallas Morning News made the facts public – that yet another predator had been calling the
14 Old Mission Santa Barbara home for over two years. Specifically, in the early to mid-1970's
15 Franciscan Brother Gerald Chumik assaulted at least one victim in Canada. Canadian
16 authorities attempted to prosecute Brother Chumik in the 1990s, but Chumik fled to the
17 United States. The Franciscans successfully and secretly harbored Brother Chumik, a
18 fugitive from justice, behind the walls of the Mission for over two years. The Franciscans
19 provided no warning to the public, much less to neighboring schools, of the threat Brother
20 Chumik posed until the Dallas Morning News published the truth about Chumik.

21 • In July 2005, the Franciscan Vicar Provincial, Brother Tom West, admitted
22 Mission resident, Franciscan Pedro Vasquez, had been accused of sexually assaulting a
23 person West described as a "young man." The Franciscans had allowed Vasquez to live at
24 the Mission for three years without any warning to the community, and admitted to this fact
25 in July of 2005 only when they knew its publication was inevitable.

26 • In 2005, the former rector of St. Anthony's, Father Xavier Harris, testified that
27 while he was assigned at St. Williams in Los Altos in 2001, a well-known Franciscan
28 perpetrator, Father Steve Kain, assisted there as well. Father Harris did not warn any of the

1 parishioners of Father Kain's propensities, nor, to his knowledge, did any other Franciscans
2 warn any parishioners about Father Kain. With no shortage of victims who were unaware of
3 the risk he posed, Father Kain abused again. Father Harris testified that Father Kain was then
4 forced to stop assisting at St. Williams due to the abuse allegations, and was transferred to St.
5 Boniface in San Francisco. Once again, Father Harris testified he had no knowledge of any
6 warnings to parishioners at St. Boniface regarding Father Kain's propensities.

7 ● In late 2006 a victim spoke with Father Virgil Cordano at the Mission and
8 informed Cordano he had been raped in 1976 by a Franciscan religious brother, Brother
9 Mateo Guerro. Cordano did not act surprised at this information, admitted there had been
10 other complaints against Mateo, and admitted that Mateo had been transferred as a result. To
11 date, the Franciscans have taken no steps to make this information public, no steps to
12 determine whether there are any other victims of Mateo who have not come forward, no steps
13 to notify the communities in which Mateo has been assigned over the course of his career as a
14 Franciscan, and no steps to warn the current community where Mateo is assigned.

15 ● From approximately 1994 to at least 2008 the Franciscans assigned another
16 admitted perpetrator – Fr. Mel Bucher – to Old Mission San Luis Rey. Fr. Bucher sexually
17 assaulted at least one adolescent boy in Oregon in the early 1970s. Despite this admission,
18 the Franciscans allowed Fr. Bucher to manage the Mission San Luis Rey retreat center. The
19 retreat center conducts retreats for, among others, high school-aged children, including
20 overnight retreats for students from, among other locations, Mater Dei High School in Santa
21 Ana. At least one current Franciscan and former Mater Dei faculty member has stated he
22 would not discuss the allegations of abuse by Fr. Bucher with Mater Dei faculty or
23 administrators because he does not “see any purpose being served in that.” The Franciscans
24 have never warned the families of these students of Fr. Bucher's history of abuse.

25 ● In February 2009, Father Claude Riffel was accused of sexually assaulting a
26 boy at another Franciscan seminary, St. Francis Minor Seminary in Troutdale, Oregon, in the
27 early 1960s. Riffel was dean of discipline for the school when he would call the teenager out
28 of class on the pretext of assigning work and then abuse him. To date, the Franciscans have

1 taken no steps to make this information public, and no steps to determine whether there are
2 any other victims of Riffel who have not come forward. The Franciscans also have taken no
3 steps to notify the communities in which Riffel has been assigned during his career as a
4 Franciscan, including but not limited to the Santa Barbara community where from
5 approximately 1941-44, and again from 1975-76, Riffel was assigned to St. Anthony's and
6 worked with boys the same age as those he is accused of abusing at the seminary in Oregon.

7 ● In June 2009 Franciscan Father Alexander Manville was accused of the sexual
8 abuse of an approximately eight-year-old boy in 1992-93. To date, the Franciscans have
9 taken no steps to make this information public, and no steps to determine whether there are
10 any other victims of Manville who have not come forward. The Franciscans also have taken
11 no steps to notify the communities in which Manville has been assigned over the course of
12 his career as a Franciscan, including but not limited to the Santa Barbara community where
13 for approximately thirteen years, from 1960-73, Manville served on the faculty at Bishop
14 Diego High School.

15 Such action and inaction by the Franciscans has and will continue to produce
16 disastrous results, as evidenced by the case of Fr. Louis Ladenburger. Ladenburger left the
17 priesthood and the Franciscan order in 1996. However, early in his career as a Franciscan
18 Ladenburger was treated for what former St. Anthony's rector and Franciscan Provincial
19 Minister, Mel Jurisich, has described only as "inappropriate professional behavior and
20 relationships." Such vague terms are standard procedure for the Franciscans when describing
21 acts of childhood sexual abuse by their priests and religious brothers. After sending
22 Ladenburger for treatment for his criminal conduct twice in the 1980s, the Franciscans
23 allowed him to continue to work as a priest, including working at high schools. After another
24 psychological review in 1993 the Franciscans were sufficiently concerned to restrict
25 Ladenburger's ministry. However, at no time did the Franciscans report Ladenburger's
26 criminal acts to law enforcement. At no time did the Franciscans warn any families or
27 communities where Ladenburger had worked or was working as a priest. As a result, when
28 he left the priesthood nearly twenty-years after the Franciscans first learned of and began to

1 conceal the risk he posed to children, Ladenburger had never been convicted of a sex crime,
2 was not a registered sex offender, and only the Franciscans were aware of his pedophilic
3 propensities. An unknown number of children have been sexually assaulted by Ladenburger
4 as a result. In May of 2007 Ladenburger was arrested for sexually assaulting several children
5 in Idaho.

6 When first contacted shortly after Ladenburger's arrest the Franciscans denied having
7 any record of past abuses by Ladenburger. After this initial denial, Fr. Jurisich finally
8 admitted to Ladenburger's sordid history, and the Franciscans' knowledge since the 1980s of
9 the risk he posed to children. Ladenburger has since pleaded guilty to lewd conduct with two
10 boarding school students, and on March 24, 2008, was sentenced to five years in prison. The
11 sentencing judge, the Honorable John Luster, found Ladenburger's conduct so severe that he
12 rejected a joint request by the prosecution and the defense of a suspended sentence.

13 Ladenburger has admitted he is a sex addict. These latest victims are further evidence of the
14 continuing threat to all children posed by the Franciscans' refusal to warn the public of their
15 current and former members who have been accused of sexual abuse.

16 Four months after the Franciscans first denied then admitted they knew about the
17 threat posed by Ladenburger, they were at it again. One would hope that after decades of
18 Franciscan sexual abuse and cover-ups, at some point – perhaps, for instance, now that the
19 number of confirmed Santa Barbara victims of Franciscan childhood sexual abuse has risen
20 to sixty-three – the Franciscan hierarchy would **finally** reconsider the corporation's horribly
21 flawed strategy of lying about and refusing to identify Franciscan priests and brothers accused
22 of sexual abuse. One would hope that after seeing **today's children** continuing to be
23 victimized as a result of this failed corporate strategy they would finally recognize that for the
24 sake of both past and future victims, it was time to tell the truth. However, as evidenced by
25 their conduct toward survivor Maria Cunningham, the Franciscans have learned nothing from
26 the sad events involving Ladenburger, much less from their sordid history. Instead, they
27 continue to re-victimize survivors of Franciscan sexual abuse, to create new victims, and to
28 increase the resulting financial burden on society, by continuing to lie, conceal and cover-up

1 the identities of Franciscans who pose a risk to children.

2 In Maria's case, she contacted the Franciscans for help when she finally began to
3 make the connection between her injuries and the abuse she suffered. Because of her young
4 age at the time of the abuse, and the trauma she suffered during the abuse, she had been
5 unable to recall the name of her Franciscan perpetrator. She informed the Franciscans of her
6 age at the time of the abuse (6 years old), of her perpetrator's grooming techniques (such as
7 buying Maria candy), of the nature of the abuse (primarily digital penetration), of the fact her
8 perpetrator often abused her while they sat under a blanket, and of the fact he appeared to
9 come and go quite a lot and may not have lived at the Old Mission. She also informed the
10 Franciscans her perpetrator's name might be "Ed" or "Sam." In response, the Franciscan
11 Vicar Provincial, Br. Tom West, informed Maria in September 2007 and during a meeting in
12 November 2007 that the Franciscans had been "unable to find [any possible Franciscan
13 perpetrator] of either name." This response led Maria falsely to believe she was the only
14 child abused by her perpetrator, thus triggering new emotional distress, shame and self-
15 loathing in Maria. As is all too common in many victims of childhood sexual abuse, she
16 wondered what she had done wrong to make her the perpetrator's only target. Feeling
17 horribly alone and ashamed after the meeting, Maria suffered through new injuries as a result
18 of the Franciscans' supposed inability to identify her perpetrator: a debilitating panic attack
19 and migraine, and repeated vomiting throughout the night after the meeting with Br. Tom.
20 Thankfully, Maria was able to weather this attack with the support of her family. However,
21 for many survivors such a reaction frequently leads to depression, anger, self-medication and
22 substance abuse, and extreme acting out, all of which often result in the involvement of
23 medical and/or law enforcement personnel. The costs of such services are then born by the
24 general public.

25 Unbeknownst to Maria at the time, this new trauma could have been avoided. The
26 Franciscans and Br. Tom undoubtedly had, in fact, identified a possible Franciscan
27 Perpetrator named Sam: Br. Sam Cabot. In 2006 both Br. Tom and the Franciscans'
28 Provincial Minister, Fr. Jurisich, participated in multiple mediation sessions in Los Angeles

1 involving, among others, two victims of Br. Sam. Br. Tom and Fr. Jurisich knew from their
2 involvement in those two claims that Br. Sam had sexually abused two young girls who, like
3 Maria, were six years old during the periods of abuse; they knew that one of Br. Sam's
4 favorite grooming techniques, as with Maria, was to buy his victims candy; they knew that, as
5 with Maria, Br. Sam's abuse consisted primarily of digital penetration; they knew Br. Sam
6 used to abuse these two girls, as with Maria, as he sat with them under a blanket; and they
7 knew that Br. Sam had continued to abuse both these young girls in Santa Barbara even
8 while, as may have been the case with Maria, he was neither assigned nor living in Santa
9 Barbara at the time. Despite his knowledge of these obvious parallels, Br. Tom denied any
10 knowledge even of a possible Franciscan perpetrator named Sam. In fact, although during
11 his November 2007 meeting with Maria Br. Tom acknowledged that these two young cousins
12 had been abused by a Franciscan, he never disclosed to Maria the fact their perpetrator's
13 name was "Sam." Nor did he disclose his awareness of another possible Franciscan
14 perpetrator named "Ed," Fr. Edward Henriques, who also spent time in Santa Barbara during
15 the period of abuse.

16 Such Franciscan deception inevitably triggers further psychological fallout by victims
17 who find the courage to come forward, and results in new victims such as those of Louis
18 Ladenburger. Clearly, seeing yet another example in the Ladenburger case of the tragedy
19 Franciscan deception and duplicity has wrought has done nothing to change Franciscan
20 business practices when dealing with pedophilic priests and religious brothers. The
21 Franciscans' first and only loyalty is to their corporation and its members, pedophilic or
22 otherwise. As a result, both adult survivors of Franciscan childhood sexual abuse and today's
23 children exposed to Franciscan perpetrators continue to be chewed up and spat out by the
24 Franciscan corporate machine. And the number of past and present victims of this Franciscan
25 corporate scheme continues to grow.

26 Meanwhile, at least as recently as Spring 2007 the Franciscans allowed Br. Sam
27 Cabot to work within half a mile of an elementary school in Los Angeles. A school that most
28 likely is attended by numerous young girls the age of Br. Sam's prior victims. A school, and

1 a community, that undoubtedly had no idea that a predator such as Br. Sam is within easy
2 walking distance of their children. A predator who would be a registered sex offender had
3 the Franciscans first reported him to law enforcement when they learned of his crimes. A
4 predator who undoubtedly has many more victims in addition to those identified to date.

5
6 **THE COMPELLING STATE INTEREST IN PREVENTING CHILDHOOD**
7 **SEXUAL ABUSE**

8 9. In 2004, when asked whether any Franciscan perpetrators were still in ministry,
9 Franciscan spokesman Brother John Kiesler refused to respond to that question and argued
10 “[t]heir privacy has a right to be respected.” Brother Kiesler’s response graphically illustrates
11 the Franciscan mindset that has created an actionable Public Nuisance. The Franciscans
12 unequivocally and defiantly continue to place the interests of Franciscan perpetrators ahead
13 of the welfare of today’s children. In addition to being revolting, the Franciscans’ priorities
14 are unsupportable under California law. To the extent Franciscan perpetrators retain any
15 privacy interests, those interests are outweighed by the compelling state interest in preventing
16 childhood sexual abuse.

17 California courts and the state legislature have recognized, repeatedly, the compelling
18 state interest in preventing childhood sexual abuse. Fredenburg v. Fremont, 119
19 Cal.App.4th 408, 412-13 (2004) (discussing enactment and legislative history of Megan’s
20 Law); Burt v. County of Orange, 120 Cal.App.4th 273, 285 (2004) (“concerns with protecting
21 children from harm is a compelling interest supporting its efforts in gathering information
22 and filing reports concerning persons suspected of child abuse”); Roe v. Superior Court, 229
23 Cal.App.3d 832, 838 (1991) (recognizing the state’s compelling interest in protecting children
24 from abuse); People v. Gonzalez, 81 Cal.App.3d 274, 277 (1978) (recognizing compelling
25 state interest in the protection of children from sexual molestation); People v. Mills, 81 Cal.
26 App.3d 171, 181 (1978) (person who sexually assaults a child has waived his right to
27 privacy). However, for decades the Franciscans have successfully frustrated law enforcement
28 efforts to enforce this compelling state interest, shielding Franciscan perpetrators from

1 criminal prosecution. Time and again the Franciscans' efforts have helped such criminals
2 escape prosecution by concealing their crimes until the expiration of the applicable criminal
3 statutes of limitation.

4 One of the ways the Franciscans have helped their perpetrators escape prosecution
5 and registration is by instructing their members not to inform law enforcement of complaints
6 of abuse by Franciscans. Beginning at least as early as 1993, the Franciscans' Provincial
7 Minister met with each Franciscan community and instructed them on the procedure
8 regarding reporting allegations of sexual abuse. Those instructions required Franciscans who
9 suspected or received complaints of acts of childhood sexual abuse to report them only to the
10 Guardian of the local Franciscan community. The expectation was that the Guardian would
11 then tell the Provincial Minister. According to the Provincial's instructions, individual
12 Franciscans were not to report to law enforcement, and the decision as to whether there
13 would be a report to law enforcement was left entirely to the Provincial.

14
15 **The Franciscans' Abuse of the First Amendment to the U.S. Constitution to Protect**
16 **Franciscan Perpetrators from Criminal Prosecution**

17 9.1 Even worse, the Franciscans now are exploiting the religious freedoms protection
18 provided by the First Amendment in order to avoid their obligations as mandatory reporters
19 under Penal Code section 11166. In July of 2009 a former parishioner at the Franciscan
20 parish in Orange County, St. Simon and Jude, reported the Franciscans' latest child-
21 endangering ploy. That parishioner met with Franciscan Father Michael Harvey at his parish
22 in 2008. When the parishioner stated he wished to discuss notorious Franciscan perpetrator
23 Father Gus Krumm, Father Harvey's response was immediate and premeditated: before the
24 parishioner could say anything further about Krumm, Harvey insisted that any discussion
25 regarding Krumm be in the context of the confessional, thus rendering the communication
26 penitential.

27 Under Penal Code section 11166(c)(1), clergy can avoid their obligations to notify
28 law enforcement of reports of childhood sexual abuse if their knowledge or suspicion is

1 acquired in the context of a penitential communication. Thus, by insisting the parishioner
2 make any disclosure regarding Krumm as a penitential communication, Father Harvey
3 insured he would have no reporting obligation under section 11166 in the event of a report of
4 childhood sexual abuse. The legislature could not have intended section 11166(c) to be used
5 as a shield by entities that protect perpetrators of childhood sexual abuse, but that is exactly
6 what Father Harvey and the Franciscans have accomplished by insisting that any reports of
7 misconduct by Franciscans be made in the context of penitential communications. In so
8 doing the Franciscans have turned the Constitution on its head, using First Amendment
9 protections to shield Franciscan perpetrators from law enforcement and to make the world a
10 much more dangerous place for children.

11 As a result of such efforts by the Franciscans efforts to protect their predatory
12 members, very few of these men have been prosecuted, convicted, and forced to register as
13 sex offenders. Thus, the Franciscans have successfully concealed the identities of an
14 unknown number of Franciscan perpetrators.

15 As evidenced by their efforts to escape their reporting obligations, by the recent
16 victims in the Ladenburger case, and by the continuing pattern of deceit evidenced by the
17 Franciscans' conduct towards Maria, the clergy-abuse crisis has not been abated by the 2006
18 Franciscan litigation. To the contrary, it is business as usual at Franciscan corporate
19 headquarters. For this reason, the legal system cannot sit back and wait for current or former
20 Franciscan perpetrators such as Ladenburger to reveal themselves through new victims. The
21 ongoing lies, deceit, and concealment by the Franciscans mandate proactive efforts to save
22 today's children from new abuse like that suffered by Ladenburger's recent victims. The
23 public needs to know where Br. Cabot is currently working, particularly when he is less than
24 half a mile away from an elementary school. They need to know about the abuse committed
25 by Br. Matteo, and where he is currently assigned or in residence. They need to know about
26 Fr. Bucher's history of abuse, particularly where he is allowed to conduct or have access to
27 retreats for adolescents. And they need to know about every other current or former
28 Franciscan who, like Ladenburger until he was caught sexually abusing more children in

1 2007, have been accused of childhood sexual abuse but have not yet been identified.²

2 It is an abomination that of the twenty-seven (27) Franciscan perpetrators who have
3 lived in Santa Barbara since 1936, only two have been criminally prosecuted in Santa Barbara
4 County. The sad reality is the criminal courts' hands have been tied by the Franciscans'
5 successful efforts to conceal Franciscan criminal acts until the applicable statutes of
6 limitation have expired. As a result, absent immediate action by the civil courts, today's
7 children will continue to be victimized by Franciscan perpetrators throughout the Western
8 United States at the numerous locations where the Franciscans of the Province of St. Barbara
9 conduct their business. Pursuant to the compelling state interest in preventing acts of future
10 childhood sexual abuse, the Franciscans must be ordered to disclose immediately the
11 identities, histories of abuse, and last known locations of all current and former Franciscans
12 accused of childhood sexual abuse while they were members of the order. They also must be
13 ordered not to insist that reports of misconduct by Franciscans be made only in the context of
14 a penitential communication.

15
16 **DEFENDANTS' OPPORTUNITIES TO PREVENT THE ABUSE OF CRAIG**

17
18 **Notice to Defendants of the Threat Posed by Johnson and Krumm Before and During**
19 **their Abuse of Craig, and of the Threat Posed by Allowing Franciscans With No**
20 **Medical Training to Conduct Physical Exams of Students**

21 9.2 Defendants knew or should have known of the risk posed by Johnson and Krumm
22 before and – in the case of Johnson – during their assaults against Craig. They also knew it
23 was both highly inappropriate and dangerous to allow Franciscan faculty members with no
24 medical training to conduct physical examinations of students.

25 With regards to Johnson, his assault against Craig was observed if not outright

26
27
28 2. In a June 19, 2008, article in the Santa Barbara *Independent* the Franciscans admit to knowledge of twenty-seven (27) Franciscan perpetrators but, again, provide no information regarding their identities, assignment histories, or propensities.

1 participated in by at least one other Franciscan. Thus, Defendants could have stopped
2 Johnson's assault while it was in progress.

3 As to Krumm, long before the Franciscans assigned him to St. Anthony's he and
4 another notorious Franciscan perpetrator, Father Philip Wolfe, contracted the sexually
5 transmitted disease known as "crabs" while doing field work as novices (training to become
6 Franciscans). The source of the crabs were adolescent boys Wolfe and Krumm encountered
7 who, according to Krumm, were willing to do anything for money. And according to
8 Krumm, Wolfe contracted not only crabs but other sexually transmitted diseases from these
9 adolescent boys, prompting Wolfe's and Krumm's novice master (also a Franciscan) to
10 lecture both men angrily and repeatedly with regards to the sexual promiscuity with these
11 boys that resulted in Wolfe and Krumm contracting crabs. Thus, long before the Franciscans
12 hired Krumm and Wolfe and assigned them to work at St. Anthony's, the Franciscans knew
13 both Perpetrators had been sexually involved with adolescent boys. Despite this knowledge
14 the Franciscans assigned both Perpetrators to work with adolescent boys, including Craig,
15 doing nothing to stop the contact or to warn Craig.

16 Finally, with regards to physical examinations of students, during either the 1964-65
17 or 1965-66 school year, the Franciscans not only authorized such examinations but
18 authorized them by Father Mario Cimmarrusti --a man with no medical training who was one
19 of the most prolific Franciscan perpetrators in the history of this scandal. Cimmarrusti had
20 expressed "concern" during a faculty meeting that some students appeared not to be
21 developing normally, and had undescended testicles. No Franciscan questioned how
22 Cimmarrusti gained such knowledge. Cimmarrusti then told the faculty, including Fr. Harris,
23 that other signs a student was not developing normally included undeveloped sexual organs,
24 lack of pubic hair, softness or femininity, or no changes to a student's voice. He then
25 proposed a program to the faculty wherein he would perform an initial assessment of
26 freshmen students to determine if they were exhibiting any of these so called signs. Despite
27 the fact Cimmarrusti had no medical training, the fact the rector (who had worked at other
28 high schools prior to St. Anthony's) had never heard of such a program, and the fact St.

1 Anthony's applicants were required to submit proof of a complete physical exam by an actual
2 physician, the St. Anthony's Franciscan faculty, including rector Father Xavier Harris,
3 approved this program. Even worse, they approved the program without any understanding
4 as to how Cimmarrusti would perform these so-called "assessments." The Franciscans'
5 uninformed consent in this regard was especially egregious given that the initial assessment
6 proposed by Cimmarrusti included factors which by necessity required assessing each
7 student's testicles and pubic hair. Thus, Cimmarrusti's Franciscan-sanctioned sexual assaults
8 of new seminarians commenced, and by at least 1966 the Franciscans began receiving reports
9 that Cimmarrusti was sexually abusing students during these supposed examinations. A
10 number of future Franciscan perpetrators – including Van Handel, Johnson and Krumm –
11 were St. Anthony's students while Cimmarrusti was committing his Franciscan-sanctioned
12 assaults. At least one of them – Van Handel – continued Cimmarrusti's tradition and was
13 present at the start of a similar assault against Craig fifteen years after the Franciscans first
14 approved Cimmarrusti's supposed program.

15
16 **The Resulting Abuse of Craig Clover**

17 10. Plaintiff Craig Clover was raised Roman Catholic in Phoenix, Arizona. He attended a
18 Catholic school and served as an altar boy at his parish, St. Catherine of Siena. As a result of
19 this upbringing he viewed Roman Catholic priests with great respect and reverence, and
20 considered them to be the voice of God.

21 Unfortunately, Craig's home life was nightmarish, due in large part to an abusive
22 stepfather who beat Craig so badly that Child Protective Services was called to investigate on
23 at least one occasion, and on more than one occasion caused Craig sufficient injury to
24 necessitate a trip to the hospital for stitches. As a result, Craig often viewed his school and
25 parish as a sanctuary and safe-haven away from his abusive home life. Sadly, this
26 background made Craig a prime candidate for abuse by Defendants' predatory agents.

27 During Craig's 8th Grade year at St. Catherine the students were invited to attend a
28 presentation by the Franciscans. At the presentation Craig learned about St. Anthony's and

1 was invited to take a trip to Santa Barbara and tour the seminary. Craig seized the
2 opportunity to escape his abusive home life. He obtained a letter of recommendation from
3 his beloved parish priest in Phoenix and subsequently applied, was admitted to, and began
4 attending St. Anthony's in August of 1979.

6 The Assault During a Purported Physical Examination in the School Infirmary

7 Although initially thrilled to be so far away from his abusive home, the situation for
8 Craig at St. Anthony's degenerated quickly. Specifically, within a month or two of school
9 starting Craig was called to the infirmary. Upon arriving Craig observed notorious
10 perpetrator Father Robert Van Handel sitting near an infirmary bed, along with another
11 Franciscan he did not recognize. Van Handel then informed Craig he was there "for a check-
12 up." Unbeknownst to Craig, this was a fraudulent misrepresentation as the Franciscans have
13 never had any agents qualified to conduct medical exams, much less any such agents assigned
14 to St. Anthony's. To the contrary, when a serious medical problem arose with a student, the
15 Franciscans either called Paul Munch MD, or took the ill student to the hospital.

16 Unfortunately Craig had no knowledge of this fraud as the Franciscans had never
17 notified law enforcement, parents or the community that physical exams of students by men
18 with no medical training had been approved by the Franciscans almost two decades earlier,
19 and had been utilized to abuse numerous students since then. Craig also had been raised to
20 trust priests and follow their every instruction. Consequently, Craig believed Van Handel's
21 fraudulent misrepresentation, and when the second Franciscan told Craig where to stand and
22 to drop his pants, Craig complied without question. The man then approached Craig,
23 grabbed his (Craig's) testicles, and instructed Craig to turn his head to cough as if he was
24 conducting some sort of hernia exam. This ploy was utilized repeatedly during sexual
25 assaults by Father Cimmarrusti, the abuser of at least twenty-three (23) St. Anthony's
26 students in the 1960s.

27 The Franciscan then told Craig he had to perform another purported test, and without
28 any further explanation instructed Craig to bend over the infirmary bed. When Craig again

1 complied without question, the Franciscan proceeded to digitally penetrate the shocked boy
2 rectally. When the supposed exam was finished Craig felt embarrassed and ashamed, and
3 confused as to why he felt this way. However, he still gave no thought to questioning the
4 Franciscan as, in Craig's mind at that time, Catholic priests were incapable of any wrongful
5 conduct and were beyond reproach.

6
7 **The Assault by Dave Johnson**

8 Also during his first semester at St. Anthony's Craig was subjected to another sexual
9 assault by two Franciscans, then religious brother and future priest Dave Johnson and one
10 other Franciscan who Craig was unable to identify other than by his garb. However, there
11 was no "check-up" charade this time. Instead it was a physically violent and terrifying
12 assault involving Johnson's forcible rape of Craig with a foreign object. Craig was walking
13 down the hall one evening after dinner having just finished kitchen duty. Another student
14 told him he needed to go to Johnson's office, and Craig did so without question, knocking on
15 the closed office door. Johnson told him to come in and immediately instructed Craig to take
16 all his clothes off and get down on his knees. Shocked at the instruction and sensing
17 something was horribly wrong, Craig panicked and began crying. Johnson then angrily said
18 something to the effect of "I told you to take your clothes/pants off," walked behind Craig
19 and violently tackled or pushed Craig into the ground, simultaneously grabbing Craig's hair
20 and shoving Craig's face into the carpet. The door then opened and two more people entered,
21 an adult dressed in Franciscan garb, and a student. However, he did not get a good look at
22 them as Johnson was straddling his upper back. Craig heard the door being closed
23 immediately after they entered, heard Johnson say "grab his pants," and then felt hands
24 pulling his pants off. To Craig's horror, he then heard Johnson say "and the underwear."
25 Utterly panicked and terrified Craig continued crying, struggled to no avail, and began
26 pleading with Johnson "please don't do this, what did I do?" Now naked from the waist
27 down, and feeling as if someone was lying on him at a 45 degree angle holding him on the
28 ground so that his bare buttocks were exposed, Craig heard Johnson yelling at him, saying

1 "now it is my turn." Craig then began to feel something that felt like a big wooden stick first
2 being poked and prodded between his buttocks, and then being pushed against his anus.
3 Craig now recalls at this point going into another state of mind, dissociating himself from the
4 violent sexual assault. He prayed to God not to let this happen, while hearing himself crying
5 and sobbing, and still pleading with Johnson to stop. As the assault continued Craig stopped
6 struggling and submitted, having learned from past experiences that this was sometimes the
7 best way of ending an assault.

8 Craig may have blacked out and recalls regaining a semblance of consciousness or
9 awareness of the sound of Johnson and at least one other person in the room laughing. He
10 felt people get off of his now limp body, and then either stood or was pulled up and pulled his
11 pants up. He recalls seeing the student standing in the corner with a coat rack that may have
12 been the foreign object used by Johnson during the assault. He also saw the second man
13 standing over him, and recognizing the man was wearing the brown robes worn by
14 Franciscans. Johnson then told Craig to keep his mouth shut about the assault or he would
15 make matters worse. Craig fled the room.

16 17 The Assault by Gus Krumm

18 Unfortunately, as the school year came to a close yet another notorious perpetrator
19 and faculty member, then religious brother and future priest Gus Krumm, inflicted another
20 violent sexual assault on Craig. Specifically, one night as Craig walked down a seminary
21 hallway he passed by Krumm's office and heard what sounded like grunts or groans coming
22 from inside. As the front office door was open, Craig entered and asked if everything was ok.
23 Krumm emerged from his bedroom shortly thereafter; Krumm appeared to be sweating and
24 smelled bad, and looked disheveled wearing only Corduroy shorts and a gray t-shirt. Krumm
25 angrily asked what Craig was doing in his office, and Craig explained he had heard strange
26 noises and thought someone needed help. This enraged Krumm who proceeded to grab
27 Craig, spin him around, and drive Craig forcefully into the office wall. Krumm then pinned
28 Craig from behind to the point the boy could not move, pushing Craig's face against the wall.

1 Krumm then began thrusting his groin against Craig's buttocks, placed his mouth next to
2 Craig's ear, and reached around and grabbed the terrified and immobilized boy's genitals,
3 squeezing them tightly to the point Craig was in so much pain he began to cry. Eventually
4 Krumm said something to the effect of "you didn't see anything here, you didn't hear
5 anything, and you're not wanted. And you're probably not coming back." Craig was so
6 terrified and in such pain he agreed immediately. Krumm then released Craig's genitals and
7 shoved the still crying boy out of the office.

8 10.1 The sexual abuse and exploitation of Craig and the circumstances under which it
9 occurred caused Craig to develop various psychological coping mechanisms which
10 reasonably made him incapable of ascertaining the resulting damages from that conduct.
11 Within three years of filing his lawsuit, Craig discovered or reasonably should have
12 discovered that psychological injury or illness occurring after the age of majority was caused
13 by the sexual abuse.

14 When Craig first arrived at St. Anthony's he felt tremendously relieved to be away
15 from his abusive home-life. Catholic schools and parishes had long been his sanctuary, and
16 St. Anthony's felt particularly safe as it was located far away from his stepfather in another
17 state. As a result, his initial sense of relief was overwhelming, almost to the point of
18 euphoria.

19 The Perpetrators, acting as managing agents of the Defendants, utilized the trust and
20 reverence inherent in their status as a Franciscans to isolate and abuse Craig. Craig was
21 raised in a devout Roman Catholic family that idolized priests, was taught by Defendants to
22 trust, revere and obey priests as God's representatives on earth, and had long viewed priests
23 as the caretakers of his sanctuary from an abusive home-life. The Perpetrators exploited
24 Craig's hope of having been rescued from his abusive home-life and also utilized Craig's
25 trust and resulting vulnerability and deference to priests to manipulate Craig, who was
26 approximately fourteen (14) and fifteen (15) years of age during the period of abuse.

27 One of the manipulations resulted in Craig's abuse in the infirmary during the
28 purported physical exam. When Craig was instructed to go to the infirmary he did as he was

1 told. Once there, Father Van Handel fraudulently informed Craig before the assault that
2 Craig was there for a “check-up” to be performed by the Perpetrator. The Perpetrator then
3 fraudulently informed Craig he had to conduct a “test” on Craig. This use of what on its face
4 appeared to be a legitimate medical purpose, while in the school infirmary, coupled with Van
5 Handel’s and the Perpetrator’s trusted status as Franciscans, inhibited Craig’s awareness of
6 the wrongfulness of this conduct until recently. Van Handel and the Perpetrator thus
7 exploited Craig’s having been raised in the Catholic church, as well as Craig’s desperate need
8 to feel he was finally safe, and fraudulently induced Craig to believe he had been called to the
9 infirmary for a legitimate medical purpose. Consequently, while sensing something was
10 wrong Craig could not comprehend why he felt ashamed and embarrassed after the supposed
11 exams, and was unable to appreciate the wrongfulness of the conduct until recently, within
12 the last three years. Specifically, it was not until after he began recovering his memories of
13 the abuse by Johnson and Krumm that he first sought out and read other accounts of St.
14 Anthony’s students who were sexually abused. It was during this time that he first learned
15 that many students had been abused during fraudulent physical examinations conducted by
16 Franciscan perpetrators. Only after reading these accounts did he begin to suspect Van
17 Handel’s and the Perpetrator’s statements were fraudulent, and had been utilized by the two
18 Franciscans to make him vulnerable to the abuse by the Perpetrator. Until then, Van
19 Handel’s and the Perpetrator’s fraud, coupled with Craig’s inherent trust in the words of the
20 priests and his desperate need to believe he was finally somewhere safe, resulted in
21 psychological blocking mechanisms that prevented Craig from facing and realizing the
22 Perpetrator’s conduct in the infirmary was wrongful and had caused him injury.

23 With regards to the assaults by Johnson and Krumm, shortly after the assault by
24 Krumm, Craig returned to Phoenix for the summer. Initially Craig was hopeful things had
25 changed at home, but the abuse there continued soon after his return. Feeling trapped
26 between two terrifying choices – physical abuse at home in Phoenix versus physical and
27 sexual abuse at St. Anthony’s – Craig turned for help to the only remaining person and place
28 he felt he could trust, one of the priests at his home parish. That priest had always been

1 supportive of Craig in the past, helping him gain admission to St. Anthony's. As a result, he
2 was the only remaining person Craig felt he could speak honestly to about St. Anthony's.
3 Craig hoped that priest would be able to refer him (Craig) and help him gain admission to
4 another school outside of Phoenix, one without the horrors to which he had been subjected at
5 St. Anthony's.

6 Much to Craig's dismay when he went to the parish he was unable to find his
7 perceived savior, instead encountering Father Thomas O'Brien, a priest who would go on to
8 become the Bishop of the Diocese of Phoenix. O'Brien told Craig that the former priest was
9 no longer assigned to the parish, a statement that left Craig feeling utterly alone, and
10 desperate for anyone he could turn to for help, trust, and support. As a result, when O'Brien
11 asked if he could help, Craig seized on the offer and followed O'Brien back to his office.
12 Although not entirely comfortable with O'Brien, Craig was beyond desperate, seeing his
13 church, and O'Brien as its representative, as his last hope of escaping the horrific realities at
14 home and at St. Anthony's.

15 In his efforts to persuade O'Brien to help him Craig told O'Brien about the abuse at
16 home. After O'Brien learned Craig had attended St. Anthony's for his freshman year of high
17 school, O'Brien wanted to know why Craig was not planning on returning for his sophomore
18 year. Initially, Craig simply said things had happened. O'Brien pressed for details, and Craig
19 eventually described the assaults by Krumm and Johnson in detail, not realizing the purported
20 medical exam was an assault as well. O'Brien became quiet when Craig finished, and
21 appeared to be contemplating what Craig had said. Eventually, O'Brien asked what Craig
22 proposed he could do to help. Craig said he would really like to be able to go to another
23 school where he would not face the priests – Craig did not understand the difference between
24 priests and religious brothers such as Krumm and Johnson – who had assaulted him at St.
25 Anthony's. O'Brien's response was to tell Craig to let him see what he (O'Brien) could do,
26 saying he would have to make some calls and talk to some people. Craig felt hopeful that
27 O'Brien would save him, and even showed O'Brien photographs at the end of the meeting of
28 Krumm and Johnson from his yearbook. O'Brien in turn asked to hold on to the yearbook

1 until they met again, telling Craig to return 2 or 3 days later. Because O'Brien had appeared
2 kind and supportive up to that point, and because of his deep-rooted trust and faith in priests,
3 Craig was convinced O'Brien would take some action to help him. In fact, he was very
4 hopeful and excited to go back and see O'Brien.

5 Unfortunately, Craig had placed his faith and hope in a man who ultimately would be
6 proven to be a complete ethical and moral failure both as a priest and as a human being. In
7 June 2003, then Bishop O'Brien entered into a settlement with a Maricopa County prosecutor
8 that made it clear O'Brien was the last person the young boy should have looked to for help
9 in reporting Franciscans who sexually abused children. The grand jury investigation that
10 ultimately led to O'Brien's settlement in exchange for immunity revealed that, among other
11 things, in 1979 O'Brien had received reports of the abuse of a ten year-old boy by another
12 priest, and that instead of reporting the priest to law enforcement or warning parents, O'Brien
13 transferred the priest to another parish where the priest continued to abuse children.
14 Specifically, in exchange for immunity from prosecution for his actions O'Brien admitted
15 that beginning at least as early as 1979 and throughout his 22-year career as a bishop he
16 repeatedly placed children at risk to be sexually abused by transferring known perpetrator
17 priests to new parishes without any warning to the parish or the community. Further
18 evidence of O'Brien's moral depravity came within weeks of this agreement on June 16,
19 2003, when O'Brien was arrested for felony hit and run after the vehicle he was driving
20 struck and killed a six-foot tall, 235 lb. man. Despite the size of the victim and the fact the
21 impact had caved in O'Brien's windshield, O'Brien claimed he thought someone had thrown
22 a rock at his car, or that he had struck an animal. O'Brien was convicted of the felony in
23 February 2004.

24 Craig, of course, was ignorant of O'Brien's conduct, knowing only that the man was a
25 priest and believing accordingly that he was both trustworthy and had Craig's best interests at
26 heart. As a result, the year after O'Brien is known to have begun placing the interests of
27 perpetrator priests before the welfare of children, Craig placed his faith and trust in O'Brien
28 in reporting the sexual assaults by Johnson and Krumm. Unfortunately but not surprisingly,

1 O'Brien's response to Craig was consistent with his conduct uncovered by the grand jury in
2 2003 of defending perpetrator priests and attacking their victims.

3 As O'Brien had suggested, Craig returned two days after their first meeting only to
4 find O'Brien was not there. Craig left a message for O'Brien indicating he would return the
5 next day. However, when Craig returned the next day, a Friday, O'Brien again was
6 unavailable.

7 The following Monday Craig returned to the rectory. This time O'Brien was there,
8 and it quickly became apparent he wanted nothing to do with Craig. O'Brien appeared
9 evasive, avoiding eye contact, and even tried to walk through the rectory office as if he had
10 not seen Craig. The young boy's desperation emboldened Craig enough to plead with
11 O'Brien to talk to him about the request for help. O'Brien, appearing frustrated, asked Craig
12 to give him a few minutes, and about 20-30 minutes later walked out to call Craig back to his
13 office.

14 O'Brien's demeanor had changed dramatically from their first meeting, with O'Brien
15 now appearing and sounding agitated, cold, and abrupt. He asked Craig if he knew Father
16 Mel Jurisich, St. Anthony's rector, and then declared he had spoken to Father Jurisich about
17 Craig's reports of abuse by Johnson and Krumm. After pausing, a now clearly angry O'Brien
18 verbally attacked Craig, telling Craig that based on his (O'Brien's) discussion with Father
19 Jurisich, Craig's allegations were not only untrue, they were "preposterous." As Craig sat in
20 shocked silence O'Brien continued his attack accusing Craig of slandering good priests who
21 were trying to help people. Overwhelmed by a feeling of complete hopelessness as the last
22 man and last institution he felt he could turn to not only abandoned but in fact attacked him,
23 Craig realized he was trapped and broke down in tears. O'Brien was unmoved. Mercilessly
24 ignoring Craig's distress O'Brien continued his verbal attack on the boy, telling Craig that
25 not only were his complaints about Johnson and Krumm untrue, they rendered Craig a liar.
26 O'Brien then asked Craig if he realized it was a mortal sin to lie to a priest. In addition to
27 being emotionally distressed at the thought of having no options other than staying at home
28 or returning to St. Anthony's, Craig's distress was further exacerbated by the realization that

1 O'Brien now considered Craig the villain for reporting the abuse by Johnson and Krumm.
2 Bewildered and terrified, Craig mustered the courage to say he knew lying to a priest was a
3 mortal sin, but that he was not lying. O'Brien again was unmoved, and Craig desperately
4 asked if not begged O'Brien to help him find another school outside of the Phoenix area.
5 O'Brien's only response was dismissive, telling Craig that was something he would have to
6 work out with his parents.

7 By the end of the meeting with O'Brien, Craig felt doomed, as if his life was at a dead
8 end and he had nowhere to go, his last hope and safe-haven ripped away from him by
9 O'Brien. As a result, he shut down, withdrew emotionally, and disconnected as completely
10 as he could from the reality of his life. This withdrawal included the complete repression of
11 his memories of the abuse at St. Anthony's, the worst of the abusive environments he had
12 lived in because Johnson and Krumm had incorporated violent sexual assaults into physical
13 violence like that he experienced at home.

14 Craig walked out of the rectory in a daze, feeling hopeless and shocked that a leader
15 of the church he had been taught would always be there for him had not only turned its back
16 on but had attacked him for reporting Johnson's and Krumm's criminal conduct. He now
17 recalls leaving the parish and stepping on a bus going the opposite direction from where he
18 lived, ultimately spending the night in a park, feeling devastated and lost. Countless days of
19 extreme introversion and walking around in silence, emotionally shut down and unable to
20 face the reality of his life, would follow. It was not until July of 2006 that Craig began to
21 recover the repressed St. Anthony's memories sometime after an unexpected encounter with
22 Johnson, or at least a man who looked like Johnson. In the weeks that followed that
23 encounter Craig suffered through numerous inexplicable sleepless nights. Finally, after one
24 particularly fitful night of disturbing dreams, Craig awoke to the shocking realization he had
25 begun recovering memories of the abuse by Johnson and Krumm. And it was not until
26 sometime after he began recovering these memories that Craig first realized the abuse had
27 caused him injury. He also began for the first time to understand his own feelings
28 surrounding the abuse, how the abuse has affected him, and how it continues to affect him.

1 Craig's repression also rendered him unable to recognize the wrongfulness of
2 Johnson's and Krumm's conduct, and further resulted in Craig internalizing feelings of
3 shame, self-blame, and self-loathing. Blocking out and dissociating from those feelings
4 rendered Craig unable to perceive the injuries he suffered from the abusive conduct and its
5 effect on his life.

6 11. As a direct result of the wrongful conduct alleged herein, Plaintiff has suffered, and
7 continues to suffer great pain of mind and body, shock, emotional distress, physical
8 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,
9 humiliation, and loss of enjoyment of life; has suffered and continue to suffer spiritually; was
10 prevented and will continue to be prevented from performing Plaintiff's daily activities and
11 obtaining the full enjoyment of life; has sustained and continue to sustain loss of earnings and
12 earning capacity; and/or has incurred and will continue to incur expenses for medical and
13 psychological treatment, therapy, and counseling.

14
15 **FIRST CAUSE OF ACTION**

16 **PUBLIC NUISANCE**

17 **(Against The Defendants)**

18 12. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
19 forth herein.

20 13. Defendants continue to conspire and engage in efforts to: 1) conceal from the general
21 public the sexual assaults committed by, the identities of, and the pedophilic/ephebophilic
22 tendencies of, the Perpetrators and Defendants' other pedophilic agents; 2) attack the
23 credibility of the victims of the Perpetrators and Defendants' other pedophilic/ephebophilic
24 agents; 3) protect the Perpetrators and Defendants' other pedophilic/ephebophilic current and
25 former agents from criminal prosecution and registration as sex offenders for their sexual
26 assaults against children; and 4) exploit and abuse the protection for religious freedom
27 provided by the 1st Amendment to the U.S. Constitution for the purpose of escaping their
28 obligation to report childhood sexual abuse under California Penal Code section 11166, all in

1 violation of law.

2 14. The negligence and/or deception and concealment by Defendants was and is injurious
3 to the health of, indecent or offensive to the senses of, and an obstruction to the free use of
4 property by, the general public, including but not limited to residents of the County of Santa
5 Barbara and all other members of the general public who live in communities where
6 Defendants conducted, and continue to conduct, their work and/or ministry, and was and is
7 indecent and offensive to the senses, so as to interfere with the general public's comfortable
8 enjoyment of life in that children cannot be left unsupervised in any location where
9 Defendants' agents are present as the general public cannot trust Defendants to prohibit their
10 pedophilic agents from supervising, caring for, or having any contact with children, nor to
11 warn parents of the presence of the pedophilic agents of Defendants, nor to identify their
12 pedophilic agents, nor to identify and/or report to law enforcement their agents accused of
13 childhood sexual abuse, thus creating an impairment of the safety of children in the
14 neighborhoods where Defendants conducted, and continue to conduct, their work and/or
15 ministries.

16 Defendants' conduct has caused further injury to the public and severely impaired the
17 safety of children where Defendants have protected and concealed the Perpetrators and
18 Defendants' other pedophilic/ephebophilic agents from criminal prosecution and registration
19 as sex offenders for their sexual assaults, where the Perpetrators and/or Defendants' other
20 pedophilic/ephebophilic agents subsequently have left Defendants' employ, and where
21 Defendants have disavowed any responsibility for the Perpetrators and/or Defendants' other
22 pedophilic/ephebophilic former agents despite the fact Defendants facilitated these former
23 agents' avoiding criminal prosecution and having to register as sex offenders. As a result of
24 Defendants' conduct, when Defendants' former agents have sought employment placing them
25 in positions of trust with children, Defendants are the only ones aware of the risk posed by
26 these former agents, and potential employers, childcare custodians, and parents have no
27 means of identifying the risk to their children posed by such men. Today's children continue
28 to be put at risk and abused under these circumstances by Defendants' former agents, at least

1 as recently as 2007.

2 15. The negligence and/or deception and concealment by Defendants was specially
3 injurious to Plaintiff's health as he and his family were unaware of the danger posed to
4 children left unsupervised with agents of Defendants, and as a result of this deception,
5 Plaintiff was placed in the custody and control of the Perpetrators, agents of Defendants, who
6 subsequently sexually assaulted Plaintiff.

7 16. The continuing public nuisance created by Defendants was, and continues to be, the
8 proximate cause of the injuries and damages to the general public alleged in paragraph 14,
9 and of Plaintiff's special injuries and damages as alleged in paragraph 15.

10 17. In doing the aforementioned acts, Defendants acted negligently and/or intentionally,
11 maliciously and with conscious disregard for Plaintiff's rights.

12 18. As a result of the above-described conduct, Plaintiff has suffered, and continues to
13 suffer special injury in that they suffer great pain of mind and body, shock, emotional
14 distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem,
15 disgrace, humiliation, and loss of enjoyment of life; has suffered and continues to suffer
16 spiritually; was prevented and will continue to be prevented from performing Plaintiff's daily
17 activities and obtaining the full enjoyment of life; has sustained and will continue to sustain
18 loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses
19 for medical and psychological treatment, therapy, and counseling. As a proximate result of
20 these injuries, Plaintiff has suffered general and special damages in an amount in excess of
21 the jurisdictional minimum of this Court.

22 As a further result of the above-described conduct by Defendants Plaintiff further
23 requests injunctive relief prohibiting Defendants from, among other things: allowing their
24 pedophilic/ephebophilic agents to have any unsupervised contact with children; transferring
25 their pedophilic/ephebophilic agents to communities whose citizens are unaware of the risk to
26 children posed by said agents; failing/refusing to disclose to and/or concealing from the
27 general public and/or law enforcement when Defendants have transferred a
28 pedophilic/ephebophilic agent into their midst; failing/refusing to disclose to and/or

1 concealing from law enforcement and/or the general public the identities and the criminal
2 acts of their pedophilic/ephebophilic agents; failing/refusing to disclose to and/or concealing
3 from the public and/or law enforcement reports, complaints, accusations or allegations of acts
4 of childhood sexual abuse committed by Defendants' current or former agents; and insisting
5 that reports, complaints, accusations or allegations of acts by Defendants' agents be made
6 only in the context of a penitential communication. Defendants should be ordered to stop
7 failing/refusing to disclose to and/or concealing and instead should identify each and every
8 one of their current and former agents who have been accused of childhood sexual abuse, the
9 dates of the accusation(s), the date(s) of the alleged abuse, the location(s) of the alleged
10 abuse, and the accused agents' assignment histories.

11
12 **SECOND CAUSE OF ACTION**

13 **NEGLIGENCE**

14 **(Against All Defendants)**

15 19. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
16 forth herein.

17 20. Sometime in approximately 1979 and 1980 the Perpetrators repeatedly engaged in
18 unpermitted, harmful and offensive sexual conduct and contact with Plaintiff. Said conduct
19 was undertaken while the Perpetrators were employees, volunteers, representatives, or agents
20 of Defendants, while in the course and scope of employment with Defendants, and/or was
21 ratified by Defendants.

22 21. Prior to or during the abuse alleged above, Defendants knew, had reason to know, or
23 were otherwise on notice of unlawful sexual conduct by the Perpetrators and Defendants'
24 other pedophilic and/or ephebophilic agents. Defendants failed to take reasonable steps and
25 failed to implement reasonable safeguards to avoid acts of unlawful sexual conduct in the
26 future by the Perpetrators and Defendants' other pedophilic and/or ephebophilic agents,
27 including, but not limited to, preventing or avoiding placement of the Perpetrators and
28 Defendants' other pedophilic and/or ephebophilic agents in functions or environments in

1 which contact with children was an inherent part of those functions or environments.

2 Furthermore, at no time during the periods of time alleged did Defendants have in place a
3 system or procedure to supervise and/or monitor employees, volunteers, representatives, or
4 agents to insure that they did not molest or abuse minors in Defendants' care, including the
5 Plaintiff.

6 22. Defendants had a duty to protect the minor Plaintiff when he was entrusted to their
7 care by Plaintiff's parents. Plaintiff's care, welfare, and/or physical custody was temporarily
8 entrusted to Defendants. Defendants voluntarily accepted the entrusted care of Plaintiff. As
9 such, Defendants owed Plaintiff, a minor child, a special duty of care, in addition to a duty of
10 ordinary care, and owed Plaintiff the higher duty of care that adults dealing with children owe
11 to protect them from harm.

12 23. Defendants, by and through their agents, servants and employees, knew or reasonably
13 should have known of the Perpetrators' and Defendants' other pedophilic and/or
14 ephebophilic agents' dangerous and exploitive propensities and that they were unfit agents. It
15 was foreseeable that if Defendants did not adequately exercise or provide the duty of care
16 owed to children in their care, including but not limited to Plaintiff, the child entrusted to
17 Defendants' care would be vulnerable to sexual abuse by the Perpetrators and Defendants'
18 other pedophilic and/or ephebophilic agents.

19 24. Defendants breached their duty of care to the minor Plaintiff by allowing the
20 Perpetrators to come into contact with the minor Plaintiff without supervision; by failing to
21 adequately hire, supervise, or retain the Perpetrators and Defendants' other pedophilic and/or
22 ephebophilic agents who they permitted and enabled to have access to Plaintiff; by failing to
23 investigate or otherwise confirm or deny such facts about the Perpetrators and Defendants'
24 other pedophilic and/or ephebophilic agents; by failing to tell or concealing from Plaintiff,
25 Plaintiff's parents, guardians, or law enforcement officials that the Perpetrators and
26 Defendants' other pedophilic and/or ephebophilic agents were or may have been sexually
27 abusing minors; by failing to tell or concealing from Plaintiff's parents, guardians, or law
28 enforcement officials that Plaintiff was or may have been sexually abused after Defendants

1 knew or had reason to know that the Perpetrators may have sexually abused Plaintiff, thereby
2 enabling Plaintiff to continue to be endangered and sexually abused, and/or creating the
3 circumstance where Plaintiff was less likely to receive medical/mental health care and
4 treatment, thus exacerbating the harm done to Plaintiff; and/or by holding out the Perpetrators
5 to the Plaintiff and his parents or guardians as being in good standing and trustworthy.
6 Defendants cloaked within the facade of normalcy Defendants' and/or the Perpetrators' and
7 Defendants' other pedophilic and/or ephebophilic agents' contact and/or actions with the
8 Plaintiff and/or with other minors who were victims of the Perpetrators and Defendants'
9 other pedophilic and/or ephebophilic agents, and/or disguised the nature of the sexual abuse
10 and contact.

11 25. As a result of the above-described conduct, Plaintiff has suffered, and continues to
12 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
13 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
14 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will
15 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
16 enjoyment of life; has sustained and will continue to sustain loss of earnings and earning
17 capacity; and/or has incurred and will continue to incur expenses for medical and
18 psychological treatment, therapy, and counseling.

19

20

THIRD CAUSE OF ACTION

21

NEGLIGENT SUPERVISION/FAILURE TO WARN

22

(Against All Defendants)

23

26. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
24 forth herein.

25

27. Defendants had a duty to provide reasonable supervision of the Perpetrators and
26 Defendants' other pedophilic and/or ephebophilic agents, and to use reasonable care in

27

investigating the Perpetrators and Defendants' other pedophilic and/or ephebophilic agents.

28

Additionally, because Defendants knew or should have known of the heightened risk the

1 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents posed to all
2 children, Defendants had a heightened duty to provide reasonable supervision and protection
3 to children with whom Defendants allowed the Perpetrators and Defendants' other pedophilic
4 and/or ephebophilic agents to have contact and/or custody and control of; and to provide
5 adequate warning to the Plaintiff, the Plaintiff's family, minor students, and minor
6 parishioners of the Perpetrators' and Defendants' other pedophilic and/or ephebophilic
7 agents' dangerous propensities and unfitness.

8 28. Defendants, by and through their agents, servants and employees, knew or reasonably
9 should have known of the Perpetrators' and Defendants' other pedophilic and/or
10 ephebophilic agents' dangerous and exploitive propensities and that they were unfit agents.

11 Defendants also knew that if they failed to provide children who had contact with the
12 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents sufficient
13 supervision and protection, those children would be vulnerable to sexual assaults by the
14 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents. Despite such
15 knowledge, Defendants negligently failed to supervise the Perpetrators and Defendants' other
16 pedophilic and/or ephebophilic agents in the position of trust and authority as Roman
17 Catholic Priests, religious brothers, religious instructors, counselors, school administrators,
18 school teachers, surrogate parents, spiritual mentors, emotional mentors, and/or other
19 authority figures, where they were able to commit the wrongful acts against the Plaintiff.

20 Defendants failed to provide reasonable supervision of the Perpetrators and Defendants' other
21 pedophilic and/or ephebophilic agents, failed to use reasonable care in investigating the
22 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents, and failed to
23 provide adequate warning to Plaintiff and Plaintiff's family of the Perpetrators' and
24 Defendants' other pedophilic and/or ephebophilic agents' dangerous propensities and
25 unfitness. Defendants further failed to provide Plaintiff with adequate supervision and
26 protection, and failed to take reasonable measures to prevent future sexual abuse.

27 29. As a result of the above-described conduct, Plaintiff has suffered, and continues to
28 suffer great pain of mind and body, shock, emotional distress, physical manifestations of

1 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
2 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will
3 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
4 enjoyment of life; has sustained and will continue to sustain loss of earnings and earning
5 capacity; and/or has incurred and will continue to incur expenses for medical and
6 psychological treatment, therapy, and counseling. As a proximate result of these injuries,
7 Plaintiff has suffered general and special damages in an amount in excess of the
8 jurisdictional minimum of this Court.

9
10 **FOURTH CAUSE OF ACTION**
11 **NEGLIGENT HIRING/RETENTION**
12 **(Against All Defendants)**

13 30. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
14 forth herein.

15 31. Defendants had a duty not to hire and/or retain the Perpetrators and Defendants' other
16 pedophilic and/or ephobophilic agents given their dangerous and exploitive propensities.

17 32. Defendants, by and through their agents, servants and employees, knew or reasonably
18 should have known of the Perpetrators' and Defendants' other pedophilic and/or
19 ephobophilic agents' dangerous and exploitive propensities and/or that they were unfit agents.
20 Despite such knowledge, Defendants negligently hired and/or retained the Perpetrators and
21 Defendants' other pedophilic and/or ephobophilic agents in the position of trust and authority
22 as Roman Catholic Priests, religious brothers, religious instructors, counselors, school
23 administrators, school teachers, surrogate parents, spiritual mentors, emotional mentors,
24 and/or other authority figures, where they were able to commit the wrongful acts against the
25 Plaintiff. Defendants failed to use reasonable care in investigating the Perpetrators and/or
26 Defendants' other pedophilic and/or ephobophilic agents and failed to provide adequate
27 warning to Plaintiff and Plaintiff's family of the Perpetrators' and Defendants' other
28 pedophilic and/or ephobophilic agents' dangerous propensities and unfitness. Defendants

1 further failed to take reasonable measures to prevent future sexual abuse.

2 33. As a result of the above-described conduct, Plaintiff has suffered, and continues to
3 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
4 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
5 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will
6 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
7 enjoyment of life; has sustained and will continue to sustain loss of earnings and earning
8 capacity; and/or has incurred and will continue to incur expenses for medical and
9 psychological treatment, therapy, and counseling. As a proximate result of these injuries,
10 Plaintiff has suffered general and special damages in an amount in excess of the
11 jurisdictional minimum of this Court.

12
13 **FIFTH CAUSE OF ACTION**

14 **FRAUD**

15 **(Against All Defendants)**

16 34. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
17 forth herein.

18 35. Defendants knew and/or had reason to know of the sexual misconduct of the
19 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents.

20 36. Defendants misrepresented, concealed or failed to disclose information relating to
21 sexual misconduct of the Perpetrators and Defendants' other pedophilic and/or ephebophilic
22 agents as described herein, and Defendants continue to misrepresent, conceal, and fail to
23 disclose information relating to sexual misconduct of the Perpetrators and Defendants' other
24 pedophilic and/or ephebophilic agents as described herein.

25 37. Defendants knew that they misrepresented, concealed or failed to disclose
26 information relating to sexual misconduct of the Perpetrators and Defendants' other
27 pedophilic and/or ephebophilic agents.

28 38. Plaintiff justifiably relied upon Defendants for information relating to sexual

1 misconduct of the Perpetrators and Defendants' other pedophilic and/or ephebophilic agents.

2 39. Defendants, with the intent to conceal and defraud, did misrepresent, conceal or fail to
3 disclose information relating to the sexual misconduct of the Perpetrators and Defendants'
4 other pedophilic and/or ephebophilic agents.

5 40. As a direct result of Defendants' fraud, Plaintiff has suffered, and continues to suffer
6 great pain of mind and body, shock, emotional distress, physical manifestations of emotional
7 distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of
8 life; has suffered and continues to suffer spiritually; was prevented and will continue to be
9 prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of life;
10 has sustained and will continue to sustain loss of earnings and earning capacity; and/or has
11 incurred and will continue to incur expenses for medical and psychological treatment,
12 therapy, and counseling. As a proximate result of these injuries, Plaintiff has suffered general
13 and special damages in an amount in excess of the jurisdictional minimum of this Court.

14 41. In addition, when Plaintiff discovered the fraud of Defendants, and continuing
15 thereafter, Plaintiff experienced recurrences of the above-described injuries. In addition,
16 when Plaintiff finally discovered the fraud of Defendants, and continuing thereafter, Plaintiff
17 experienced extreme and severe mental and emotional distress that Plaintiff had been the
18 victim of the Defendants' fraud; that Plaintiff had not been able to help other minors being
19 molested because of the fraud; and that Plaintiff had not been able because of the fraud to
20 receive timely medical treatment needed to deal with the problems Plaintiff had suffered and
21 continues to suffer as a result of the molestations.

22
23 **SIXTH CAUSE OF ACTION**

24 **FIDUCIARY/CONFIDENTIAL RELATIONSHIP FRAUD**

25 **AND CONSPIRACY TO COMMIT FRAUD**

26 **(Against All Defendants)**

27 42. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
28 forth herein.

1 43. Because of Plaintiff's young age, and because of the status of the Perpetrators as
2 authority figures to Plaintiff, Plaintiff was vulnerable to the Perpetrators. The Perpetrators
3 sought Plaintiff out, and were empowered by and accepted Plaintiff's vulnerability.
4 Plaintiff's vulnerability also prevented Plaintiff from effectively protecting himself.

5 44. By holding the Perpetrators and Defendants' other pedophilic and/or ephebophilic
6 agents out as a qualified Roman Catholic clergy, religious brothers, religious instructors,
7 counselors, school administrators, school teachers, surrogate parents, spiritual mentors,
8 emotional mentors, medical services providers and/or caregivers, and/or other authority
9 figures, and by undertaking the religious and/or secular instruction and/or spiritual and
10 emotional counseling and/or medical care of Plaintiff, Defendants held special positions of
11 trust and entered into a fiduciary and/or confidential relationship with the minor Plaintiff.

12 45. Having a fiduciary and/or confidential relationship, Defendants had the duty to obtain
13 and disclose information relating to sexual misconduct of the Perpetrators and Defendants'
14 other pedophilic and/or ephebophilic agents.

15 46. Defendants misrepresented, concealed or failed to disclose information relating to
16 sexual misconduct of the Perpetrators and Defendants' other pedophilic and/or ephebophilic
17 agents, and Defendants continued to misrepresent, conceal, and/or fail to disclose information
18 relating to sexual misconduct of the Perpetrators and Defendants' other pedophilic and/or
19 ephebophilic agents as described herein.

20 47. Defendants knew that they misrepresented, concealed or failed to disclose
21 information relating to sexual misconduct of the Perpetrators and Defendants' other
22 pedophilic and/or ephebophilic agents.

23 48. Plaintiff justifiably relied upon Defendants for information relating to sexual
24 misconduct of the Perpetrators and Defendants' other pedophilic and/or ephebophilic agents.

25 49. Defendants, in concert with each other and with the intent to conceal and defraud,
26 conspired and came to a meeting of the minds whereby they would misrepresent, conceal or
27 fail to disclose information relating to the sexual misconduct of the Perpetrators and/or
28 Defendants' other pedophilic and/or ephebophilic agents.

1 50. By so concealing, Defendants committed at least one act in furtherance of the
2 conspiracy.

3 51. As a direct result of Defendants' fraud and conspiracy, Plaintiff has suffered, and
4 continues to suffer great pain of mind and body, shock, emotional distress, physical
5 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,
6 humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually;
7 was prevented and will continue to be prevented from performing Plaintiff's daily activities
8 and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of
9 earnings and earning capacity; and/or has incurred and will continue to incur expenses for
10 medical and psychological treatment, therapy, and counseling. As a proximate result of these
11 injuries, Plaintiff has suffered general and special damages in an amount in excess of the
12 jurisdictional minimum of this Court.

13 52. In addition, when Plaintiff discovered the fraud of Defendants, and continuing
14 thereafter, Plaintiff experienced recurrences of the above-described injuries. In addition,
15 when Plaintiff finally discovered the fraud of Defendants, and continuing thereafter, Plaintiff
16 experienced extreme and severe mental and emotional distress that Plaintiff had been the
17 victim of the Defendants' fraud; that Plaintiff had not been able to help other minors being
18 molested because of the fraud; and that Plaintiff had not been able because of the fraud to
19 receive timely medical treatment needed to deal with the problems Plaintiff had suffered and
20 continues to suffer as a result of the molestations.

21
22 **SEVENTH CAUSE OF ACTION**

23 **BREACH OF FIDUCIARY DUTY AND/OR CONFIDENTIAL RELATIONSHIP**

24 **(Against All Defendants)**

25 53. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
26 forth herein.

27 54. Because of Plaintiff's young age, and because of the status of the Perpetrators as
28 authority figures to Plaintiff, Plaintiff was vulnerable to the Perpetrators. The Perpetrators

1 sought Plaintiff out, and were empowered by and accepted Plaintiff's vulnerability.

2 Plaintiff's vulnerability also prevented Plaintiff from effectively protecting himself.

3 55. By holding the Perpetrators and Defendants' other pedophilic and/or ephebophilic
4 agents out as a qualified Roman Catholic clergy, religious brothers, religious instructors,
5 counselors, school administrators, school teachers, surrogate parents, spiritual mentors,
6 emotional mentors, medical services providers and/or caregivers, and/or any other authority
7 figure, by allowing the Perpetrators to have custody and control of and/or contact with the
8 Plaintiff, and by undertaking the religious and/or secular instruction and/or spiritual and/or
9 emotional counseling and/or medical care of Plaintiff, Defendants entered into a fiduciary
10 and/or confidential relationship with the minor Plaintiff.

11 56. Defendants and each of them breached their fiduciary duty to Plaintiff by engaging in
12 the negligent and wrongful conduct described herein.

13 57. As a direct result of Defendants' breach of their fiduciary duty, Plaintiff has suffered,
14 and continues to suffer great pain of mind and body, shock, emotional distress, physical
15 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,
16 humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually;
17 was prevented and will continue to be prevented from performing Plaintiff's daily activities
18 and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of
19 earnings and earning capacity; and/or has incurred and will continue to incur expenses for
20 medical and psychological treatment, therapy, and counseling. As a proximate result of these
21 injuries, Plaintiff has suffered general and special damages in an amount in excess of the
22 jurisdictional minimum of this Court.

23
24 **EIGHTH CAUSE OF ACTION**

25 **NEGLIGENT FAILURE TO WARN, TRAIN, OR EDUCATE PLAINTIFF**

26 **(Against All Defendants)**

27 58. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
28 forth herein.

1 59. Defendants breached their duty to take reasonable protective measures to protect
2 Plaintiff and other minor parishioners and/or students from the risk of childhood sexual abuse
3 by the Perpetrators and/or Defendants' other pedophilic and/or ephebophilic agents, such as
4 the failure to properly warn, train, or educate Plaintiff, his parents, Defendants' agents,
5 employees and volunteers, and other minor parishioners and/or students about how to avoid
6 such a risk and/or defend himself or herself if necessary, pursuant to Juarez v. Boy Scouts of
7 America, Inc., 81 Cal.App.4th 377 (2000).

8 Defendants knew, or in the exercise of reasonable diligence should have known, of
9 the general risk of sexual assaults against children and, specifically, of the Perpetrators' and
10 Defendants' other pedophilic and/or ephebophilic agents' propensities to commit, and history
11 of committing, sexual abuse of children, and that an undue risk to children in their custody
12 and care, such as Plaintiff, would exist because of this propensity to commit sexual assaults,
13 and the history of sexual assaults against children, unless Defendants adequately taught,
14 educated, secured, oversaw, and maintained students, including Plaintiff, as well as other
15 children in the custody and control of, or in contact with, Catholic clergy and Defendants'
16 other pedophilic and ephebophilic agents. Defendants were put on actual and/or constructive
17 notice, at least as early as 1964, that the Perpetrators and Defendants' other pedophilic and/or
18 ephebophilic agents were sexually assaulting children at countless locations, including Santa
19 Barbara County. From that date forward, Defendants repeatedly and negligently ignored
20 complaints from victims and/or their parents, as well as warnings from Catholic clergy, that
21 pedophilic and/or ephebophilic Catholic clergy were assaulting children in, among other
22 locations, Santa Barbara County.

23 Defendants also knew or should have known that the general risk of sexual assaults
24 against children and, specifically, the risk posed by the Perpetrators and Defendants' other
25 pedophilic and/or ephebophilic agents' propensities to commit, and history of committing,
26 sexual abuse of children, could be eliminated, or at least minimized, if they took steps to
27 educate, warn and train children in Defendants' custody and control, as well as those
28 children's parents, and Defendants' employees, agents and volunteers, regarding the danger

1 posed by pedophilic and ephebophilic clergy, how to recognize and avoid this danger, and
2 how a child should defend herself or himself when assaulted by pedophilic and/or
3 ephebophilic clergy. Based on their knowledge of the risk posed by the Perpetrators and
4 Defendants' other pedophilic and/or ephebophilic agents, and the history of sexual assaults
5 around Santa Barbara since at least 1936, Defendants had a duty to take the aforementioned
6 steps.

7 Notwithstanding the knowledge of the general risk of sexual assaults against children
8 and, specifically, that the Perpetrators and Defendants' other pedophilic and/or ephebophilic
9 agents had such propensities to commit, and had committed, sexual abuse of children, and
10 notwithstanding that Defendants knew it was not only reasonably foreseeable but likely that
11 the Perpetrators and Defendants' other pedophilic and/or ephebophilic agents would sexually
12 assault children, Defendants breached their duty to adequately teach, educate, secure, oversee,
13 and maintain students, including Plaintiff, as well as all other children in the custody and
14 control of, or in contact with, Catholic clergy, and breached their duty to educate, warn and
15 train children in Defendants' custody and control, as well as those children's parents and
16 Defendants' employees, agents and volunteers, regarding the danger to children posed by
17 pedophilic and/or ephebophilic clergy, how to recognize and avoid this danger, and how a
18 child should defend himself or herself when assaulted by pedophilic and/or ephebophilic
19 clergy.

20 Defendants knew or should have known that their failure to exercise reasonable care,
21 as discussed above, would cause Plaintiff severe emotional distress and physical injury.
22 Because of the foreseeability and likelihood of sexual assaults by the Perpetrators and
23 Defendants' other pedophilic and/or ephebophilic agents against Plaintiff and other children,
24 Defendants breached their duty of care to Plaintiff and other children in their custody and
25 control.

26 The failure of Defendants to educate, warn and train children in Defendants' custody
27 and control, as well as those children's parents and Defendants' employees, agents and
28 volunteers, regarding the danger to children posed by pedophilic and/or ephebophilic clergy,

1 how to recognize and avoid this danger, and how a child should defend himself or herself
2 when assaulted by pedophilic and ephebophilic clergy, was the proximate cause of Plaintiff's
3 injuries as alleged herein.

4 60. As a result of the above-described conduct, Plaintiff has suffered, and continues to
5 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
6 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
7 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will
8 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
9 enjoyment of life; has sustained and will continue to sustain loss of earnings and earning
10 capacity; and/or has incurred and will continue to incur expenses for medical and
11 psychological treatment, therapy, and counseling. As a proximate result of these injuries,
12 Plaintiff has suffered general and special damages in an amount in excess of the
13 jurisdictional minimum of this Court.

14
15 **NINTH CAUSE OF ACTION**

16 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

17 **(Against all Defendants)**

18 61. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
19 forth herein.

20 62. Defendants' conduct was extreme and outrageous and was intentional or done
21 recklessly. Defendants knew or should have known the Perpetrators and Defendants' other
22 pedophilic and/or ephebophilic agents were spending time in the company of and assaulting
23 numerous children, including Plaintiff, around Santa Barbara and other locations, including
24 on school grounds, in the parishes, and in the Perpetrators' rectory rooms. Defendants also
25 knew or should have known the Perpetrators and Defendants' other pedophilic and/or
26 ephebophilic agents were high risks to all children as Defendants had received numerous
27 complaints and other notice of prior acts of childhood sexual abuse by the Perpetrators and
28 Defendants' other pedophilic and/or ephebophilic agents, and had sent the Perpetrators and/or

1 Defendants' other pedophilic and/or ephebophilic agents for treatment for their pedophilia,
2 prior to and/or after assigning them to work in Santa Barbara. Given their knowledge of
3 numerous prior acts of abuse by the Perpetrators and Defendants' other pedophilic and/or
4 ephebophilic agents, Defendants knew or should have known that every child exposed to the
5 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents, including Plaintiff,
6 was substantially certain to be assaulted by the Perpetrator and Defendants' other pedophilic
7 and/or ephebophilic agents. Defendants knew or should have known, and had the
8 opportunity to learn of, the intentional and malicious conduct of the Perpetrators and
9 Defendants' other pedophilic and/or ephebophilic agents, and thereby ratified and joined in
10 said conduct by failing to terminate, discharge, or at least discipline the Perpetrators and
11 Defendants' other pedophilic and/or ephebophilic agents, and/or by failing to prevent them
12 from having contact with children. The conduct of Defendants in confirming, concealing and
13 ratifying that conduct was done with knowledge that Plaintiff's emotional and physical
14 distress would thereby increase, and was done with a wanton and reckless disregard of the
15 consequences to Plaintiff and other children in their custody and control.

16 63. As a result of Defendants' conduct, Plaintiff experienced and continues to
17 experience severe emotional distress resulting in bodily harm.

18 64. As a result of the above-described conduct, Plaintiff has suffered, and continues to
19 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
20 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
21 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will
22 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
23 enjoyment of life; has sustained and will continue to sustain loss of earnings and earning
24 capacity; and/or has incurred and will continue to incur expenses for medical and
25 psychological treatment, therapy, and counseling. As a proximate result of these injuries,
26 Plaintiff has suffered general and special damages in an amount in excess of the
27 jurisdictional minimum of this Court.

28

1 TENTH CAUSE OF ACTION

2 NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

3 (Against All Defendants)

4 65. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
5 forth herein.

6 66. Defendants knew or should have known that their failure to exercise reasonable care
7 in the selection, approval, employment and supervision of the Perpetrators and Defendants'
8 other pedophilic and/or ephebophilic agents would cause Plaintiff severe emotional distress.
9 Because of the foreseeability of sexual assaults by the Perpetrators and Defendants' other
10 pedophilic and/or ephebophilic agents against Plaintiff and other children, Defendants
11 breached their duty of care in engaging in the conduct referred to in the preceding paragraphs.

12 67. Defendants knew or should have known that their failure to exercise reasonable care
13 in providing adequate supervision to Plaintiff and other children in their custody and control,
14 despite the fact they knew or should have known of the threat to children posed by the
15 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents, would cause
16 Plaintiff severe emotional distress. Defendants also knew or should have known that their
17 failure to disclose information relating to sexual misconduct of the Perpetrators and
18 Defendants' other pedophilic and/or ephebophilic agents as described herein would cause
19 Plaintiff severe emotional distress and subject him to further assaults. Because of the
20 foreseeability of sexual assaults by the Perpetrators and Defendants' other pedophilic and/or
21 ephebophilic agents against Plaintiff and other children, Defendants breached their duty to
22 exercise reasonable care in failing to provide adequate supervision to Plaintiff and other
23 children in their custody and control, and in failing to disclose information to Plaintiff, his
24 family, and the general public relating to sexual misconduct of the Perpetrators and
25 Defendants' other pedophilic and/or ephebophilic agents.

26 68. Finally, Defendants knew or should have known that their creation and continuance of
27 the Public Nuisance set forth in the preceding paragraphs would cause Plaintiff severe
28 emotional distress. Because of the foreseeability of sexual assaults by the Perpetrators and

1 Defendants' other pedophilic and/or ephebophilic agents against Plaintiff and other children
2 as a result of this conduct, Defendants breached their duty of care in creating and continuing
3 the Public Nuisance referred to in the preceding paragraphs.

4 69. Plaintiff experienced and continues to experience severe emotional distress resulting
5 in bodily harm.

6 70. As a result of the above-described conduct, Plaintiff has suffered, and continues to
7 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
8 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
9 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will
10 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
11 enjoyment of life; has sustained and will continue to sustain loss of earnings and earning
12 capacity; and/or has incurred and will continue to incur expenses for medical and
13 psychological treatment, therapy, and counseling. As a proximate result of these injuries,
14 Plaintiff has suffered general and special damages in an amount in excess of the
15 jurisdictional minimum of this Court.

16 In addition, when Plaintiff finally discovered the negligent misrepresentations of
17 Defendants, and continuing thereafter, Plaintiff experienced extreme and severe mental and
18 emotional distress that Plaintiff had been the victim of the Defendants' negligent
19 misrepresentations; that Plaintiff had not been able to help other minors being molested
20 because of the negligent misrepresentations; and that Plaintiff had not been able because of
21 the negligent misrepresentations and failure to disclose to receive timely medical treatment
22 needed to deal with the problems Plaintiff had suffered and continues to suffer as a result of
23 the molestations.

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1 ELEVENTH CAUSE OF ACTION

2 UNFAIR COMPETITION –

3 VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200

4 (Against all Defendants)

5 71. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
6 forth herein.

7 72. At all times herein mentioned, Defendants conspired and engaged in unlawful, unfair
8 or fraudulent business acts, within the meaning of Business & Professions Code § 17200.

9 73. At all times herein mentioned, Defendants were and are engaged in nonprofit business
10 activities, including but not limited to: providing public service which the Catholic Church
11 refers to as its “ministry”; operating schools, universities, orphanages, or other institutions;
12 providing religious, psychological, emotional and social counseling; conducting various
13 charitable activities and providing services whether or not within the scope of 26 U.S.C. §
14 501(c)(3); and soliciting charitable donations.

15 74. At all times herein mentioned, Defendants have as a significant source of revenue the
16 receipt of charitable donations from persons who worship or associate themselves with the
17 Catholic Church.

18 75. At all times herein mentioned, Defendants conducted and continue through the
19 present to conduct their respective business affairs as set forth in Paragraphs 72 through 74 in
20 such a manner as to willfully and negligently: foster an environment conducive to predatory
21 pedophilic and ephhebophilic behavior; conceal from the general public the sexual assaults
22 committed by, the identities of, and the pedophilic and ephhebophilic tendencies of, Catholic
23 clergy; protect the pedophilic and ephhebophilic clergy from civil and criminal prosecution;
24 respond to allegations of sexual misconduct against the Catholic clergy with blanket denials
25 and/or the creation of entities controlled by the Church hierarchy that are misrepresented as
26 taking appropriate action but instead perpetuate the concealment of sexual misconduct;
27 represent to the Catholic laity and the general public that appropriate action is being taken by
28 the Church concerning allegations of sexual misconduct and child molestation when in fact it

1 is engaging in concealment and suppression of the truth; place predatory clergy into
2 communities with children without any warning to those communities; and attempting to
3 shield themselves from their reporting obligations of suspected childhood sexual abuse under
4 Penal Code section 11166 by insisting that anyone making a report of misconduct by a
5 Franciscan do so in the context of penitential communications to the Franciscan receiving the
6 report.

7 Further, on information and belief, Defendants represent to the Catholic laity, the
8 general public and survivors of clergy abuse that they have created entities, such as the
9 Independent Response Team and/or the Office of Pastoral Outreach and/or the Province
10 Review Board, which purport to “offer help . . . for those affected by Friar misconduct.”
11 Defendants further represent to the public that these entities will handle each “claim with the
12 strictest sensitivity and confidentiality.” In reality, and notwithstanding any good intentions
13 of the lay people who work within these entities, the information obtained by such entities
14 ultimately is harvested by the Franciscans and provided to their attorneys for use against
15 survivors of Franciscan sexual abuse who attempt to make a claim for the injuries they have
16 suffered.

17 76. The activities described in Paragraph 75 violate various civil and criminal laws of
18 California and of the United States;

19 77. The activities described in Paragraph 75 violate various civil and criminal laws of
20 California and of the United States, including the duty to report incidents of childhood sexual
21 abuse as required by Penal Code § 11166;

22 78. The activities described in Paragraph 75 offend public policy; are immoral, unethical,
23 oppressive, and unscrupulous; are substantially injurious to persons who utilize the services
24 described in Paragraph 75; and are undertaken without any valid reason, justification or
25 motive.

26 79. Defendants all conducted their business activities in such a way that members of the
27 public are likely to be deceived regarding those business activities.

28 80. As a result of the acts of unfair competition by Defendants, Plaintiff has suffered, and

1 continues to suffer great pain of mind and body, shock, emotional distress, physical
2 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,
3 humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually;
4 was prevented and will continue to be prevented from performing Plaintiff's daily activities
5 and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of
6 earnings and earning capacity; and/or has incurred and will continue to incur expenses for
7 medical and psychological treatment, therapy, and counseling. As a proximate result of these
8 injuries, Plaintiff has suffered general and special damages in an amount in excess of the
9 jurisdictional minimum of this Court.

10 81. As a further result of the above-described conduct by Defendants, Plaintiff further
11 requests injunctive relief prohibiting Defendants from, among other things: allowing their
12 pedophilic/ephebophilic agents to have any unsupervised contact with children; transferring
13 their pedophilic/ephebophilic agents to communities whose citizens are unaware of the risk to
14 children posed by said agents; failing/refusing to disclose to and/or concealing from the
15 general public and/or law enforcement when Defendants have transferred a
16 pedophilic/ephebophilic agent into their midst; failing/refusing to disclose to and/or
17 concealing from law enforcement and/or the general public the identities and the criminal
18 acts of their pedophilic/ephebophilic agents; failing/refusing to disclose to and/or concealing
19 from the public and/or law enforcement reports, complaints, accusations or allegations of acts
20 of childhood sexual abuse committed by Defendants' current or former agents; insisting that
21 reports, complaints, accusations or allegations of acts by Defendants' agents be made only in
22 the context of a penitential communication; and representing to the public that Defendants
23 have created entities to assist survivors of childhood sexual abuse when in reality Defendants
24 use such entities to obtain information used to attack survivors who make claims for injuries
25 caused by that abuse. Defendants should be ordered to stop failing/refusing to disclose to
26 and/or concealing and instead should identify each and every one of their current and former
27 agents who have been accused of childhood sexual abuse, the dates of the accusation(s), the
28 date(s) of the alleged abuse, the location(s) of the alleged abuse, and the accused agents'

1 assignment histories.

2
3 **TWELFTH CAUSE OF ACTION**

4 **FRAUD AND DECEIT**

5 **(Against All Defendants)**

6 82. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
7 forth herein.

8 83. The Perpetrators and Defendants' other pedophilic and/or ephebophilic agents held
9 themselves out to Plaintiff as Roman Catholic Priests, religious brothers, religious
10 instructors, counselors, school administrators, school teachers, surrogate parents, spiritual
11 mentors, emotional mentors, medical services providers and/or caregivers, and/or other
12 authority figures. The Perpetrators and Defendants' other pedophilic and/or ephebophilic
13 agents represented to Plaintiff and Plaintiff's parents that they would counsel and guide
14 Plaintiff with his educational, spiritual, and/or emotional needs, and/or represented that they
15 would provide medical care to Plaintiff that they were not qualified to provide.

16 84. These representations were made by the Perpetrators and Defendants' other
17 pedophilic and/or ephebophilic agents with the intent and for the purpose of inducing
18 Plaintiff and Plaintiff's parents to entrust the educational, spiritual and physical well being of
19 Plaintiff with the Perpetrators and Defendants' other pedophilic and/or ephebophilic agents.

20 85. The Perpetrators and Defendants' other pedophilic and/or ephebophilic agents
21 misrepresented, concealed or failed to disclose information relating to their true intentions to
22 Plaintiff and Plaintiff's parents when they entrusted Plaintiff to his care, which were to
23 sexually molest and abuse Plaintiff. Plaintiff justifiably relied upon the Perpetrators' and
24 Defendants' other pedophilic and/or ephebophilic agents' representations.

25 86. The Perpetrators and Defendants' other pedophilic and/or ephebophilic agents were
26 employees, agents, and/or representatives of Defendants. At the time they fraudulently
27 induced Plaintiff and Plaintiff's parents to entrust the care and physical welfare of Plaintiff to
28 the Perpetrators and Defendants' other pedophilic and/or ephebophilic agents, the

1 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents were acting within
2 the course and scope of their employment with Defendants.

3 87. Defendants are vicariously liable for the fraud and deceit of the Perpetrators and
4 Defendants' other agents.

5 88. As a result of the above-described conduct, Plaintiff has suffered, and continues to
6 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
7 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
8 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will
9 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
10 enjoyment of life; has sustained and will continue to sustain loss of earnings and earning
11 capacity; and/or has incurred and will continue to incur expenses for medical and
12 psychological treatment, therapy, and counseling. As a proximate result of these injuries,
13 Plaintiff has suffered general and special damages in an amount in excess of the
14 jurisdictional minimum of this Court.

15 89. In addition, when Plaintiff finally discovered the fraud of Defendants, and continuing
16 thereafter, Plaintiff experienced recurrences of the above-described injuries. In addition,
17 when Plaintiff finally discovered the fraud of Defendants, and continuing thereafter, Plaintiff
18 experienced extreme and severe mental and emotional distress that Plaintiff had been the
19 victim of the Defendants' fraud; that Plaintiff had not been able to help other minors being
20 molested because of the fraud; and that Plaintiff had not been able because of the fraud to
21 receive timely medical treatment needed to deal with the problems Plaintiff had suffered and
22 continues to suffer as a result of the molestations.

23
24 **THIRTEENTH CAUSE OF ACTION**

25 **PREMISES LIABILITY**

26 **(Against All Defendants)**

27 90. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
28 forth herein.

1 91. At all times herein mentioned, Defendants were in possession of the property where
2 the Plaintiff was groomed and assaulted by the Perpetrators, and had the right to manage, use
3 and control that property.

4 92. At all times herein mentioned, Defendants knew that the Perpetrators and Defendants'
5 other pedophilic and/or ephebophilic agents had a history of committing sexual assaults
6 against children, and that any child at, among other locations in Santa Barbara, the Mission
7 and St. Anthony's, was at risk to be sexually assaulted by the Perpetrators and Defendants'
8 other pedophilic and/or ephebophilic agents.

9 93. Defendants knew or should have known that the Mission and St. Anthony's had a
10 history of grooming of and/or sexual assaults against children committed by the Perpetrators
11 and/or Defendants' other pedophilic and/or ephebophilic agents and that any child at, among
12 other locations in Santa Barbara, the Mission and St. Anthony's, was at risk to be sexually
13 assaulted. It was foreseeable to Defendants that the Perpetrators and Defendants' other
14 pedophilic and/or ephebophilic agents would sexually assault children if they continued to
15 allow the Perpetrators and/or Defendants' other pedophilic and/or ephebophilic agents to
16 teach, supervise, instruct, care for, and have custody and control of and/or contact with
17 children.

18 94. At all times herein mentioned, Defendants knew or should have known the
19 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents were repeatedly
20 committing sexual assaults against children.

21 95. It was foreseeable to Defendants that the sexual assaults being committed by the
22 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents would continue if
23 Defendants continued to allow the Perpetrators and Defendants' other pedophilic and/or
24 ephebophilic agents to teach, supervise, instruct, care for, conduct physical examinations of,
25 and have custody of and/or contact with young children.

26 96. Because it was foreseeable that the sexual assaults being committed by the
27 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents would continue if
28 Defendants continued to allow them to teach, supervise, instruct, care for, conduct physical

1 examinations of, and have custody of and/or contact with young children, Defendants owed a
2 duty of care to all children, including Plaintiff, exposed to the Perpetrators and/or
3 Defendants' other pedophilic and/or ephebophilic agents. Defendants also owed a
4 heightened duty of care to all children, including Plaintiff, because of their young age.

5 97. By allowing the Perpetrators and/or Defendants' other pedophilic and/or ephebophilic
6 agents to teach, supervise, instruct, care for, conduct physical examinations of, and have
7 custody of and/or contact with young children, and by failing to warn children and their
8 families of the threat posed by the Perpetrators and Defendants' other pedophilic and/or
9 ephebophilic agents, Defendants breached their duty of care to all children, including
10 Plaintiff.

11 98. Defendants negligently used and managed the Mission and St. Anthony's, and created
12 a dangerous condition and an unreasonable risk of harm to children by allowing the
13 Perpetrators and Defendants' other pedophilic and/or ephebophilic agents to teach, supervise,
14 instruct, care for, conduct physical examinations of, and have custody of and/or contact with
15 young children at, among other locations, the Mission and St. Anthony's.

16 99. As a result of the dangerous conditions created by Defendants, numerous children
17 were sexually assaulted by the Perpetrators and Defendants' other pedophilic and/or
18 ephebophilic agents.

19 100. The dangerous conditions created by Defendants were the proximate cause of
20 Plaintiff's injuries and damages.

21 101. As a result of these dangerous conditions, Plaintiff has suffered, and continues to
22 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
23 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
24 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will
25 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
26 enjoyment of life; has sustained and will continue to sustain loss of earnings and earning
27 capacity; and/or has incurred and will continue to incur expenses for medical and
28 psychological treatment, therapy, and counseling. As a proximate result of these injuries,

1 Plaintiff has suffered general and special damages in an amount in excess of the
2 jurisdictional minimum of this Court.

3

4 WHEREFORE, Plaintiff prays for damages; injunctive relief; attorney's fees and costs;
5 statutory/civil penalties according to law; and such other relief as the court deems appropriate
6 and just.

7

8

JURY DEMAND

9

Plaintiff demands a jury trial on all issues so triable.

10

11 DATE: November 3, 2009

NYE, PEABODY, STIRLING & HALE, LLP

12

13

By:



14

DAVID L. NYE
TIMOTHY C. HALE

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EXHIBIT A

April 26, 1950

The Reverend James T. Booth
North American College.
Via dell'Umiltà 30
Rome, Italy

Dear Father Booth:

We will indeed be grateful to have the benefit of your priestly ministrations for what looks like a possible three months. Before coming to a final decision, however, will you kindly check the possible cost of a trip by boat or plane to the United States and from New York to San Diego? You understand, of course, that with our limited resources we must watch the overhead.

Please read over the inclosed petition and note the difficulties that confront us in regard to the tenure of the Franciscan Fathers in Banning and Beaumont. The fact is that the majority of Franciscan priests are not trained for parish work. Last summer a committee of some fourteen parishioners, representing the rank and file of the Precious Blood Parish in Banning, made a trip to San Diego to petition that a diocesan priest replace the Franciscan Father who, although a good priest, "was too old to do anything". This group pointed out that the diocesan priests had built churches and schools all around them but their parish had made no progress within the last fifty years -- all of which is only too true.

Another angle that is of importance. The late Archbishop Cantwell obtained a Beneplacitum for the Franciscan Fathers to enjoy at Banning, Beaumont and other parishes because of their willingness at that time to accept the Indian Missions in this Diocese. Over a year ago, the Franciscan Fathers gave up the Indian Missions on the plea that their Fathers were needed in China.

During the thirteen years since this Diocese was erected, to my own personal knowledge, the Santa Barbara Province of the Franciscan Fathers has used this Diocese as a dumping ground for their moral, mental and physical problems. It became necessary for me some time ago to demand the withdrawal of one misfit after another. To be specific, in a more recent case, they sent a man whose health had broken in China -- Father Emmanuel -- and who had never had a parish in the United States before to take charge of the Precious Blood Parish in Banning. He has not only failed but he has caused a decided rift in the parish there as the people are all on edge through lack of experience, imprudence and sudden change of judgement regarding the purchase of property for the proposed school. The fact is that the parish has to be directed from this Chancery because the incumbent there is incompetent. Several weeks ago we requested the Provincial to remove him and to replace him with an experienced, competent pastor. The Very Reverend Provincial Augustine Hobrecht called here yesterday and requested more time because he had no priest available to send to Banning. In the meantime, religion suffers. Note copies of inclosed letters from two Franciscans who had parishes in this Diocese.

1/3
The Reverend James T. Booth
April 26, 1950 - #2

After studying the matter, will you kindly advise me regarding a Canonist in Rome who through experience and other qualities would be the best to represent me in petitioning the Congregation to set aside the Beneplacitum and restore the two parishes of Banning and Beaumont to the Diocese for the good of religion.

About two years ago the mission across the tracks for Mexicans in Beaumont was wrecked by an earthquake. Since that time we have been begging and pleading with the pastor in charge to assemble somekind of an outline for the rebuilding of the Mexican Mission; but we can't even get a response to our letters. I asked for the removal of the sick priest the Franciscans had sent to Beaumont and now it becomes necessary to request the removal of his successor. It is the same old story. The Franciscans simply do not have men trained for this work.

My first thought was if these matters could be presented to the present Franciscan General he might consider giving up the two parishes of Beaumont and Banning. They still have two other parishes -- one in San Diego and one in Fort Yuma. Both have been poorly staffed and have been spiritually dead for the past thirteen years to my personal knowledge. In Old Town, San Diego, we have tried to get the Franciscan Fathers to build a parochial school. During World War II they purchased a vast amount of land adjoining their property but got it tied up by lease for government property. If they had built a school when requested, it would have been paid for now. If you think it wise to request the San Diego parish, that could be included in our petition. It is indeed most regrettable that these parishes were given to the Franciscans because they are absolutely needed for our own Diocesan priests in view of the fact that the intense heat of Imperial Valley and the Coachella Valley requires a change after two or three years for the priests who serve in these difficult climates.

You surely get the picture and you can be a great help to us in collaborating with one of the leading Canonists in Rome to adjust this difficulty. If, after due consideration, the Very Reverend General declines to release the parishes under consideration, then you and the Canonist retained could complete a petition to the Congregation that handles these matters. It is possible that you will require more details before whipping the case into final shape for presentation.

With kindest regards and renewed appreciation,

Devotedly your servant in Christ,

Bishop of San Diego.